
***DETENTION AND
CORRECTIONS
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SECTION 32: PRETRIAL DETENTION

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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.

1964

U.S. District Court
SEPARATION
WORK

Tyler v. Harris, 226 F.Supp. 852 (W.D. Mo. 1964). Unconvicted persons can be kept with convicted persons in federal medical centers, but they may not be subjected to involuntary servitude. (Medical Center For Federal Prisoners, Springfield, Missouri)

1966

U.S. District Court
SEPARATION

Johnston v. Ciccone, 260 F.Supp. 553 (W.D. Mo. 1966). Pretrial confinement with convicted persons in the U.S. Medical Center for Federal Prisoners is not unconstitutional for persons found to be mentally ill. (United States Medical Center for Federal Prisoners)

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.

NOTE: Footnote 9, p. 810 "Maine appears to be the only state to allow absentee ballot for absence from the polls for any sufficient reason...." 21 M.R.S.A. Section 1251, 1306 (1964). (Cook County Jail, Illinois)

1970

U.S. District Court
STATE INTEREST

Davis v. Lindsay, 321 F.Supp. 1134 (S.D. N.Y. 1970). The only state interest in incarcerating pretrial detainees is to guarantee appearance at trial. (City Jail, New York)

1971

- U.S. Appeals Court
CLOTHING
CONDITIONS
Anderson v. Nossner, 438 F.2d 183 (5th Cir. 1971), cert. denied, 409 U.S. 848 (1971). Male arrestees/petitioners forced to strip and kept in such condition for up to thirty-six hours and female arrestees/petitioners were forced to go without clothing other than underwear leads to finding of constitutional violation. (Mississippi State Penitentiary, Parchman)
- U.S. District Court
PUNISHMENT
Conklin v. Hancock, 334 F.Supp. 1119 (D. N.H. 1971). Pretrial detainees are not subject to "punishment." (New Hampshire State Prison, Concord, New Hampshire)
- U.S. District Court
STATE INTEREST
PUNISHMENT
CONDITIONS
"LEAST RESTRICTIVE
MEANS"
Hamilton v. Love, 328 F.Supp. 1182 (E.D. Ark. 1971). The only legitimate purpose served by pretrial detention is assuring defendants' presence at trial. Minimally, a detainee ought to have the reasonable expectation that he would survive his period of detainment with his life; that he would not be assaulted, abused, or molested during his detainment; and that his physical and mental health would be reasonably protected during this period. Detainees may not be subjected to any punishment, "cruel and unusual" or not. Conditions of incarceration for detainees must, cumulatively, add up to the least restrictive means of assuring appearance at trial. One female staff member must be on duty twenty-four hours a day. There should be one staff member patrolling on each cell floor in the immediate area of every detainee on a twenty-four hour basis. (Palaski County Jail, Arkansas)

1972

- U.S. Supreme Court
SPEEDY TRIAL
Barker v. Wingo, 407 U.S. 514 (6th Cir. 1972). A defendant's constitutional right to a speedy trial cannot be established by an inflexible rule, but can be determined only on an ad hoc balancing basis, in which the conduct of the prosecution and that of the defendant are weighed. Among relevant factors to be considered are: the length and reason for delay, the defendant's assertion of his right, and prejudice to the defendant. (Christian County, Kentucky)
- U.S. District Court
ATTORNEY VISITS
PARITY WITH
SENTENCED
Brenneman v. Madigan, 343 F.Supp. 128 (N.D. Ca. 1972). Pretrial detainees must have opportunities to participate in educational, vocational and recreational programs comparable to those of sentenced misdemeanants. Pretrial detainees have a first amendment right to visit with attorneys. (Alameda County Jail Facility, California)
- U.S. District Court
STATE INTEREST
HAIR
Collins v. Schoonfield, 344 F.Supp. 257 (D. Md. 1972). A detainee can be deprived of constitutional rights "only to the extent such denial is required to insure that he appears at trial and to restrain him from endangering or disrupting the security of the institution in which he is detained, or to deter him, if his conduct has already caused such danger or disruption, from repeating such conduct. 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. (Baltimore City Jail, Maryland)
- U.S. District Court
PROGRAMS
Hamilton v. Landrieu, 351 F.Supp. 549 (E.D. La. 1972). All inmates, including pretrial detainees, shall be eligible to participate in rehabilitative programs. Rehabilitative programs shall be immediately established and maintained. (Orleans Parish Prison, Louisiana)
- U.S. District Court
STATE INTEREST
"LEAST RESTRICTIVE
MEANS"
Smith v. Sampson, 349 F.Supp. 268 (D. N.H. 1972). Difference in state interest mandates that detainees be treated better than convicts. Least restrictive alternative principles applies to detainees. (New Hampshire State Prison)

1973

- U.S. District Court
PUNISHMENT
CONDITIONS
DUE PROCESS
Inmates of Suffolk Co. Jail v. Eisenstadt, 360 F.Supp. 676 (D. Mass. 1973), aff'd, 494 F.2d 1196 (1st Cir. 1974). Where precious penal liberties of detainees are affected, the state bears the burden of justification. Detainees may not be punished. Detainees' conditions must be superior to those of convicts. If detainees are subjected to gratuitous and wholesale deprivation of rights which are unrelated to assuring their presence at trial, due process is violated. (Suffolk County Jail, Massachusetts)
- U.S. Appeals Court
DUE PROCESS
Johnson v. Glick, 481 F.2d 1028 (2nd Cir. 1973), cert. denied, 414 U.S. 1033. While it is doubtful that the cruel and unusual punishment clause applies to pretrial detainees, they are protected by the due process clause against acts of brutality by correction officers. However, protection is less extensive than that provided by common law torts. (Manhattan House of Detention, New York)

1974

- U.S. District Court
WORK Main Road v. Atych, 385 F.Supp. 105 (E.D. Penn. 1974). Unsentenced prisoners cannot be required to perform uncompensated labor. (Philadelphia Prison System, Pennsylvania)
- U.S. District Court
PARITY WITH
SENTENCED
RIGHTS RETAINED
"LEAST RESTRICTIVE
MEANS" Rhem v. Malcolm, 371 F.Supp. 594 (S.D. N.Y. 1974). Detainee may not be confined under conditions more rigorous than a convicted prisoner. Detainees retain all rights except where necessary to assure their appearance at trial, and conditions must be least restrictive means to achieve that end. (Manhattan House of Detention, New York)
- U.S. District Court
STATE INTEREST
"LEAST RESTRICTIVE
MEANS" Wilson v. Beame, 380 F.Supp. 1232 (E.D. N.Y. 1974). State's interest in interfering with the personal liberty of pretrial detainees is limited to the least restrictive "form of incarceration" consonant with the accused being available for trial. (House of Detention For Men, Brooklyn, New York)

1975

- U.S. District Court
SEPARATION 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. (Harris County Jail, Texas)
- U.S. District Court
CONDITIONS
PUNISHMENT Dillard v. Pitchess, 399 F.Supp. 1225 (C.D. Calif. 1975). The conditions under which unconvicted prisoners are detained may be so onerous as to constitute summary punishment without due process of law. (Los Angeles County Jail, California)
- U.S. District Court
STATE INTEREST 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
CONDITIONS
PARITY WITH
SENTENCED
EQUAL PROTECTION Miller v. Carson, 401 F.Supp. 835 (M.D. Fla. 1975), aff'd, 563 F.2d 741 (5th Cir. 1977). Conditions of pretrial detention which are worse than those experienced by sentenced prisoners deny equal protection. (Duval County Jail, Florida)
- U.S. District Court
PROGRAMS
STATE INTEREST
PUNISHMENT
CONDITIONS Padgett v. Stein, 406 F.Supp. 287 (M.D. Penn. 1975). Pretrial detainees should not be forced to participate in rehabilitative programs. The only legitimate purpose of pretrial detention is the detention itself. Although pretrial detainees may not be punished, conditions that may be viewed as punitive are constitutional if they further the purpose of maintaining custody, security, or internal order and discipline. (York County Prison, Pennsylvania)

1976

- U.S. District Court
SEPARATION
WORK Barnes v. Government of the Virgin Islands, 415 F.Supp. 1218 (D. V.I. 1976). Detainees are to be separated from convicted inmates in separate buildings if physically possible. Detainees are not required to work except to keep cell areas clean. (Golden Grove Adult Correctional Facility, Virgin Islands)
- U.S. District Court
STATE INTEREST Bell v. Manson, 427 F.Supp. 450 (D. Conn. 1976). Detainees "may be treated as prisoners only to the extent the security, internal order, health and discipline of the prison demand...considerations of rehabilitation, deterrence, and punishment are not relevant factors when an unconvicted inmate challenges on constitutional grounds a regulation or procedure governing prison life." (Community Correctional Center, Bridgeport, Connecticut)
- U.S. Appeals Court
STATE INTEREST
DUE PROCESS Duran v. Elrod, 542 F.2d 998 (7th Cir. 1976). As a matter of due process, pretrial detainees may suffer no more restrictions than are reasonably necessary to ensure their presence at trial. (Cook County House of Corrections, Illinois)
- U.S. Supreme Court
CLOTHING- COURT
APPEARANCES Estelle v. Williams, 425 U.S. 501 (1976), cert. denied, 426 U.S. 954 (1974). Williams, unable to post bond, was held while awaiting trial on a charge of assault. When Williams learned he was to go on trial, he requested his civilian clothes. The request was denied, but no objection was made at trial. Williams was convicted of assault with intent to commit murder with malice, a decision upheld by the Texas Court of Appeals.

Williams then petitioned the U.S. district court for a writ of habeas corpus on the ground that requiring him to stand trial in prison garb was unfair. While the district court agreed such practice was unfair, it denied relief on the ground that the error was harmless. The Fifth Circuit Court of Appeals reversed solely on the issue of harmless error. Defendant Estelle, Texas Corrections Director, sought certiorari from the U.S. Supreme Court. The decision was reversed.

HELD: "[A]lthough the state cannot, consistently with the fourteenth amendment, compel an accused to stand trial before a jury while dressed in identifiable prison clothes, the failure to make an objection to the court as to being tried in such clothes, for whatever reasons, is sufficient to negate the presence of compulsion necessary to establish a constitutional violation." 425 U.S. at 512. (Harris County Jail, Texas)

U.S. Appeals Court
DUE PROCESS
EQUAL PROTECTION

Hampton v. Holmesburg Prison Officials, 546 F.2d 1077 (3rd Cir. 1976). Protection of detainees is founded in due process and equal protection clauses, not the eighth amendment or the presumption of innocence. (Holmesburg Federal Penitentiary, Pennsylvania)

U.S. District Court
SEPARATION

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. (Escambia County Jail, Pensacola, Florida)

U.S. District Court
SEPARATION
STATE INTEREST

Moore v. Janing, 427 F.Supp. 567 (D. Neb. 1976). Housing of convicts and detainees together contributes to finding of unconstitutionality. Detainees may not be subjected to restrictions unrelated to securing appearance at trial and maintaining internal order and security. (Douglas County Jail, Nebraska)

U.S. District Court
VISITS
DUE PROCESS

Wolfish v. Levi, 406 F.Supp. 1243 (S.D. N.Y. 1976). Restrictions on visitation of pretrial inmates must be justified by compelling necessity. Prison officials have the ultimate burden of proof on this issue. Due process requires that the least restraint necessary to assure institutional security and administrative manageability be employed. (Metropolitan Correctional Facility, New York)

1977

U.S. District Court
INTAKE SCREENING
SEPARATION

Ahrens v. Thomas, 434 F.Supp. 873 (W.D. Mo. 1977), aff'd, 570 F.2d 288. 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)

U.S. District Court
CLOTHING
STATE INTEREST

Forts v. Malcolm, 426 F.Supp. 464 (S.D. N.Y. 1977). A prohibition on the wearing of pants by detainees is unconstitutional where its only justification is the administrative inconvenience of having one rule for detainees and another for sentenced prisoners. This justification is not rationally connected with assuring appearance at trial or jail security, which is the only legitimate purpose of detention. (New York City Correctional Institute for Women)

U.S. Appeals Court
STATE INTEREST
PUNISHMENT

Pugh v. Rainwater, 557 F.2d 1189 (5th Cir. 1977). The guiding principle of pretrial detention conditions cases is that prior to trial a defendant is presumed innocent. His incarceration during that period is permissible only to assure his appearance at trial, not to inflict punishment. (Dade County, Florida)

U.S. District Court
VISITS

Vest v. Lubbock County, 444 F.Supp. 824 (N.D. Tex. 1977). Pretrial detainees are ordered to be permitted daily visits, others at least twice a week. (Lubbock County Jail, Texas)

U.S. District Court
STATE INTEREST

Vieneau v. Shanks, 425 F.Supp. 676 (W.D. Wisc. 1977). Pretrial detainees may be subjected only to those deprivations reasonably necessary to ensure presence at trial. (Sauk County Jail, Wisconsin)

1978

U.S. Appeals Court
WORK

Bijeol v. Nelson, 579 F.2d 423 (7th Cir. 1978). Pretrial detainees may be required to perform general housekeeping tasks. (Metro Correctional Center, Chicago)

1979

U.S. Supreme Court
PUBLICATIONS
PACKAGES
SEARCHES
DUE PROCESS

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 States 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 confided 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 hrs. 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)

State Appeals Court
DUE PROCESS
CONTACT VISITS

Cooper v. Morin, 424 N.Y.2d 168 (1979), cert. denied, 100 S.Ct 2965 (1979).

The New York State Court of Appeals has ruled that state due process laws do allow for contact visitation rights for pretrial detainees when the government's only argument against such visitation centers on additional administrative costs. The court ruled that, although federal constitutional requirements would not dictate such a finding in light of the Bell v. Wolfish decision, state due process requirements called for an opposite finding. The court examined carefully the rationale that was the basis for the Supreme Court decision in the Bell case and made it clear that, at least in part, they felt the Supreme Court had erred:

While we are in agreement with the Supreme Court's holding in Bell v. Wolfish that due process forbids the punishment of pretrial detainees because punishment can only be imposed after conviction, we cannot agree that the validity of the regimen imposed upon such persons during detention turns no more than whether a regulation has a legitimate purpose other than punishment and is not excessive in relation to that purpose. So one-sided a concept of due process we regard as unacceptable. In our view what is required is a balancing of the harm to the individual resulting from the condition imposed against the benefit sought by the government through its enforcement.

In a dissenting opinion, two judges took the position that to find that state due process requirements were different from federal requirements was impossible, since the wording in the respective clauses is identical. Therefore, they claimed, the Bell case and its holding must dictate the state court's decision. (Monroe County Jail, New York)

U.S. Appeals Court
SEPARATION
DISCRIMINATION
VISITS
MAIL
LAW LIBRARY

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 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 was "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.

VISITATION. The court noted that convicted criminals do not have a constitutional right to visitation except for legal counsel, whereas pretrial detainees rights are limited in that they must yield, where necessary, to the needs of institutional security. In the Fifth Circuit, the courts have held that a pretrial detainee also does not have constitutional right to contact visitation. At the jail, visitation was officially limited to a brief period on Sundays, although jail officials often allowed visitation at other than regular hours. However, there had been a serious smuggling problem at the jail. When the officials ordered that visitors be searched before being allowed visitation to prevent smuggling, the inmates rioted, causing \$30,000 damage. The appellate court upheld the lower court's ruling that the existing visitation regulations were constitutionally adequate. The court specifically pointed out that depriving inmates of contact visitation was unconstitutional.

MAIL. The court clearly spelled out the rights of inmates with regard to mail: [P]rison officials may constitutionally censor incoming and outgoing general correspondence. No numerical limitations may be placed upon prison correspondence, but jail officials may employ a 'negative mail list' to eliminate any prisoner correspondence with those on the outside who affirmatively indicate that they do not wish to receive correspondence from a particular prisoner. Officials may not require prior approval of the names of individuals with whom prisoners may correspond. Finally, letters which concern plans for violations of prison rules or which contain a graphic presentation of sexual behavior in violation of the law may be withheld. Outgoing mail to licensed attorneys, courts, and court officials must be sent unopened, and incoming mail from such sources may be opened only in the presence of the inmate recipient, if considered necessary to determine authenticity or to inspect for contraband. Prisoners may be required to submit the names of attorneys reasonably in advance of proposed mailings so that officials can ascertain whether the named attorney is licensed. Prisoners have the same general rights as to media mail.

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.

SECURITY. While noting that an inmate is to be protected from assaults from other inmates, the court also stated that relief could be provided only where there was a showing of deliberate indifference to the inmates' security and protection. Here, there was no such showing, and the court refused to issue injunctive relief.

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.

LAW LIBRARY. Prisoners were able to acquire books by asking a public defender or private attorney to obtain the book for them from the County Law Library. The Court ruled that this was inadequate for convicted inmates who had exhausted their rights of direct appeal. However, the Court ruled, the State of Mississippi, and not the County of Jackson, was the proper party to remedy the situation, and since the State had not been named as a defendant, the Court refused to grant relief. The Court stated, however, that its order would not preclude the inmates from taking an appropriate action against the State of Mississippi in the future. The availability of public defenders and the ability of prisoners to "page" books from the County Law Library provided adequate access to the Courts for pretrial detainees. Where convicted prisoners were provided neither public defender assistance nor access to the law library, they were denied access to the Courts and their claims for relief could be heard. (Jackson County Jail, Pascagoula, Mississippi)

State Appeals Court
CONDITIONS
DUE PROCESS
PUNISHMENT

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)

1980

U.S. District Court
SEPARATION

Campbell v. Bergeron, 486 F.Supp. 1246 (M.D. La. 1980), aff'd, 654 F.2d 719 (5th Cir., 1981). Jail inmates have a right of personal safety when incarcerated. However, there is nothing inherent in a failure to separate sentenced and pretrial inmates which violates this right. (West Baton Rouge Parish Jail, Louisiana)

U.S. District Court
LAW LIBRARY

Delgado v. Sheriff of Milwaukee Co. Jail, 487 F.Supp. 649 (E.D. Wisc. 1980). Allegations that a pretrial detainee is denied the use of an adequate law library states a claim in which relief could be granted. (Milwaukee County Jail, Wisconsin)

U.S. District Court
COMMISSARY
PROTECTIVE
CUSTODY

Epps v. Levine, 484 F.Supp. 474 (D. Md. 1980). Pretrial detainees transferred to the state penitentiary and classified to protective custody shall have regular commissary privileges. (State Penitentiary, Maryland)

U.S. District Court
CONDITIONS
DUE PROCESS

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. Failure of county jail authorities to provide each inmate one hour per day of exercise outside cells was a constitutionally intolerable condition. (Clay County Jail, Missouri)

U.S. District Court
PSYCHOLOGICAL
SERVICES

Santori v. Fong, 484 F.Supp. 1029 (E.D. Penn. 1980). A statutorily established policy of provisions of psychiatric and psychological services to pretrial detainees does not create an enforceable entitlement to such services. (Chester County Farm Prison, Pennsylvania)

State Appeals Court
TRANSFER

State v. Grey, 602 S.W.2d 259 (Tenn. Crim. App. 1980). A pretrial detainee, about whom rumors of escape were abundant, could not be transferred to the state penitentiary under the Tennessee safekeeping statute. Barry Grey was incarcerated in the Davidson, Tennessee County Jail, unable to post bond after an arrest. Shortly after his arrest, based upon alleged rumors of an imminent escape attempt, the state sought to transfer him. The statute involved, (T.C.A. 41-1125) provides:

In all cases where the jail in which a prisoner is confined becomes insufficient from any cause, any circuit or criminal judge, upon the application of the sheriff and proof of the fact, may order the prisoner, by mittimus or warrant, to be removed to the nearest sufficient jail.

Based upon the above statute the trial judge before whom the motion was presented allowed the transfer, and an immediate appeal was taken. On appeal, the Court of Criminal Appeals of Tennessee held that the state penitentiary was not a "jail" as defined by the statute. The court noted that the stigma attached to confinement in the state penitentiary should not be imposed upon a pretrial detainee without specific statutory authorization. The court then ruled that this statute did not provide such authorization. (Davidson County Jail, Tennessee)

1981

U.S. Appeals Court
TRANSFER
DUE PROCESS

Cobb v. Atych, 643 F.2d 946 (3rd Cir. 1981). The U.S. Court of Appeals for the Third Circuit, sitting en banc, held that the sixth amendment right to counsel prohibits the transference of pretrial detainees to distant state prisons without first affording them notice and an opportunity to be heard in court. Such transfers, the court found, severely interfere with the inmates' access to counsel. A majority of the court also relied heavily on the speedy trial clause in its argument. Eighty percent of the pretrial detainees involved in the suit were represented by the public defenders, who were financially unable to make long trips to the state institutions. Due to the prolonging of the pretrial period due to continuances and other factors associated with the distance to the detention facility, some transferred inmates spent more time incarcerated pretrial than the eventual length of their sentences. Three of the judges also concluded that the right to counsel, speedy trial provisions and the bail clause of the eighth amendment create a federally protected interest in reducing pretrial incarceration and minimizing interference with a pretrial detainee's liberty. "The eighth amendment's prohibition against excessive bail bears plainly and directly upon the ability of charged persons to prepare for trial and upon the presumption of a right to be free from restraint which those persons enjoy. It should also be read as preventing not merely the fact of detention, but also those forms of detention that unnecessarily interfere with those liberty interests." The case also involved the transfer of sentenced prisoners and those who have been convicted but are still awaiting sentencing. The court found that no federally protected interests were involved for the sentenced population, but unsentenced prisoners have speedy-trial and counsel rights similar to those of pretrial detainees. (Philadelphia Prison System, Pennsylvania)

U.S. Appeals Court
CONDITIONS
RIGHTS RETAINED
DUE PROCESS

Jones v. Diamond, 636 F.2d 1364 (5th Cir. 1981). Prisoners being held in county jail brought an action challenging conditions of their confinement and seeking damages for violation of their civil rights. The United States District Court for the Southern District of Mississippi entered judgment generally favorable to county officials, and prisoners appealed. On rehearing, 594 F.2d 997, the court of appeals held that due process clause accords pretrial detainees rights not enjoyed by convicted inmates: while a sentenced inmate may be punished in any fashion not cruel and unusual, the due process clause forbids punishment of a person held in custody awaiting trial but not yet adjudged guilty of any crime. (Jackson County Jail, Pascagoula, Mississippi)

U.S. Appeals Court
CONDITIONS
PUNISHMENT
CROWDING
STATE INTEREST

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 further stated that the length of incarceration of pretrial detainees becomes relevant in such determination: "Conditions unacceptable for weeks 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
DUE PROCESS
PUNISHMENT
USE OF FORCE
CELLS
CONDITIONS
PARITY WITH
SENTENCED

Lock v. Jenkins, 641 F.2d 488 (7th Cir. 1981). The test for determining the constitutionality of treatment of pretrial detainees alleged to deprive them of liberty without due process of law is whether those conditions amount to punishment of the detainee. It is appropriate to consider together all the conditions of confinement in order to determine whether they amount to punishment. The use of tear gas to retrieve a metal food tray from a pretrial detainee or to stop others from shouting and uttering threats was found constitutionally impermissible. (Indiana State Prison, Michigan City, Indiana) 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. Appeals Court
STATE INTEREST
CLOTHING

Olgin v. Darnell, 664 F.2d 107 (1981). The restrictions and conditions placed on a pretrial detainee, particularly the removal of all his clothes but his underwear for one day, were not arbitrary and purposeless. Those steps were unreasonably related to the legitimate governmental objective of calming participants in the stabbing of a fellow prisoner, restoring order and protecting inmates from a fire hazard created by the pretrial detainee. (Midland County Jail, Texas)

U.S. Appeals Court
CONDITIONS
PUNISHMENT
DUE PROCESS
STATE INTEREST

Villanueva v. George, 659 F.2d 851 (1981). A majority of the U.S. Court of Appeals for the Eighth Circuit, sitting en banc, ruled that the allegations of a pretrial detainee raised a legitimate factual issue as to the constitutionality of the conditions to which he was subjected during his pretrial confinement. The court found, therefore, that the trial judge should have presented the case to the jury rather than directed the verdict against the plaintiff. The circuit court found that the jury might have concluded that the conditions of confinement were punitive in nature. Since the due process clause prohibits the punishment of persons prior to a judgment of conviction, plaintiff Robert Villanueva would have to persuade the jury that punitive conditions existed during his pretrial detention. According to the decision:

The question of whether there is sufficient evidence of the defendants' punitive intent is one for the jury. Moreover, the jury may 'infer that the purpose was punishment from the fact that the condition either bore no reasonable relation to a legitimate goal or exceeded what was necessary for attaining such a goal...'
Putnam v. Gerloff, 639 F.2d 415 at 420 (8th Cir. 1981). See also Bell v. Wolfish, 441 U.S. at 539. There is evidence in this record from which the jury could have reasonably concluded that Villanueva's conditions of confinement were unnecessarily excessive and bore no reasonable relation to a legitimate governmental interest...We emphasize that our decision is not based solely on the fact that Villanueva was confined in a cell measuring six feet by six feet, see Rhodes v. Chapman, 29 CrL 3061 (1981). It is rather based upon the totality of the circumstances, including cell size, time spent in the cell, lack of opportunity for exercise or recreation, general sanitary conditions, and the fact that the appellant's past behavior demonstrated an ability to be confined under less restrictive conditions without incident.

In dicta the court suggests that the classification procedure which resulted in the plaintiff's being placed in segregation while awaiting trial was valid. The procedure took into account the nature of the crime charged and particularly whether the crime was violent or aggressive, the prisoner's desire to remain in a particular classification, the psychological state of the individual and other similar factors. (St. Louis County Adult Correctional Facility, Missouri)

1982

U.S. District Court
SEPARATION
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
CELL CAPACITY
STAFFING

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. District Court
JUVENILES
CONDITIONS
PUNISHMENT

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
SEARCHES

Hunt v. Polk County, 551 F.Supp. 339 (S.D. Iowa 1982). Strip searches of pre-arraignment detainees charged with minor offenses are declared impermissible. A federal district court judge in Iowa found that no strip searches of pre-arraignment detainees charged with minor offenses would be permitted unless the offense is associated with weapons or contraband, or unless there is a basis for reasonable suspicion that the particular detainee is concealing a weapon or contraband.

Because these detainees are being held solely due to their inability to post cash bail, and because most are traffic violators, the court found that there was little reason to believe that a particular detainee would be concealing contraband or a weapon. (Polk County Jail, Iowa)

U.S. District Court
TEMPORARY
RELEASE

Samuals v. Department of Corrections, N.Y.C., 548 F.Supp. 253 (E.D. N.Y. 1982). Detainee does not have right to attend funeral. A federal district court has ruled that allowing a prisoner to be temporarily released to visit sick relatives or to attend a funeral is entirely within the discretion of the officials responsible for confinement. City officials denied a pretrial detainee permission to attend the wake of his twin children, and he filed suit. The court noted that pretrial detainees have no greater right to free movement than do convicted criminals. (Queens House of Detention, New York)

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."

U.S. District Court
TRANSFER
CROWDING

Black v. Delbello, 575 F.Supp. 28 (S.D. N.Y. 1983). Pretrial detainee's transfer left within the discretion of jail officials. A pretrial detainee was transferred to another jail by administrators who cited overcrowding as the reason for the transfer. The detainee sued, alleging that since there were many empty beds in the facility, there was no need for the transfer. The federal district court found that the transfer was authorized by New York statutes and an order by the New York State Commission of Corrections. Relying on Meachum v. Fano, 427 U.S. 215, 96 S.Ct. 2532 (1976), the court refused to interfere, finding that this matter was properly left within the discretion of jail officials. (Westchester County and Orange County, New York).

U.S. Appeals Court
PARITY WITH
SENTENCED
SEPARATION
STATE INTEREST

Drayton v. Robinson, 719 F.2d 1214 (3rd Cir. 1983). Appeals court orders the same protections for pretrial detainees as provided to sentenced offenders. Pennsylvania prison officials housed pretrial detainees, at the request of local officials, in state facilities with convicted offenders. At times, detainees were placed in administrative segregation without applying the same policies and procedures used for convicted offenders prior to placement.

The Third Circuit Court of Appeals disagreed with this practice, stating that "...to accept appellants' interpretation of the regulations would create an anomalous situation where inmates who were charged, tried, convicted and sentenced would have greater constitutional protection from segregated confinement than inmates who are merely being held awaiting trial, or convicted but unsentenced."

The court ruled that detainees had as much of a protectable interest in remaining out of administrative segregation as all other inmates at the facility and were entitled to the same protections. (Pennsylvania Bureau of Corrections)

U.S. Appeals Court
METHADONE
TREATMENT

Fredericks v. Huggins, 711 F.2d 31 (4th Cir. 1983). Pretrial detainees are not entitled to methadone treatment in jail. A federal circuit court has upheld the practices of the sheriff of Fairfax County with regard to the treatment of pretrial detainees who were participating in methadone detoxification programs prior to detention.

The sheriff had developed a procedure for handling inmates with drug withdrawal problems, and the procedure had been approved by the American Medical Association. The procedure required consistent monitoring of detainees during withdrawal.

The court found that the sheriff's security concerns about introducing drugs into the facility, even those administered on a controlled basis, were legitimate, and that subsequent refusal to detoxify detainees did not amount to unconstitutional punishment. (Fairfax County Jail, Virginia)

U.S. District Court
MAIL

Odom v. Tripp, 575 F.Supp. 1491 (E.D. Mo. 1983). Pretrial detainee in city jail is not entitled to receive mail on Saturday. A detainee at the St. Louis City Jail sued the city, alleging that the practice of not delivering mail to prisoners on Saturday amounted to punishment. Based on the reason presented by administrators (lack of personnel) and the lack of intent to punish, the federal district court found the practice "reasonably related" to a legitimate nonpunitive governmental objective, and therefore, found no violation of the plaintiff's constitutional rights. (St. Louis City Jail, Missouri)

U.S. District Court
SEPARATION
PROTECTION

Reynolds v. Sheriff, City of Richmond, 574 F.Supp. 90 (E.D. Va. 1983). Sheriff may be liable for pretrial detainee's beating while housed with convicted felons. The United States District Court for the Eastern District of Virginia has refused the motion of the defendant sheriff to dismiss him from a suit brought by a pretrial detainee.

The detainee alleges that he was beaten by convicted felons while he was detained at the sheriff's facility. He accuses the sheriff of directing the act or acquiescing to it after it happened. The court did not dismiss the sheriff from the suit because the plaintiff alleged that he established and maintained a policy of not segregating convicted felons from pretrial detainees. Because of a lack of separation, the plaintiff was attacked. Also, the court ruled that the case could be pursued under 42 U.S.C. Section 1983 because it alleged a violation of the plaintiff's right to be free from bodily injury, and that cruel and unusual punishment need not be alleged. (Richmond City Jail, Virginia)

U.S. Appeals Court
CONTACT VISITS
WINDOWS
CELL SEARCHES

Rutherford v. Fitchess, 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
PUNISHMENT
STATE INTEREST

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

U.S. Supreme Court
CONTACT VISITS
CELL SEARCHES

Block v. Rutherford, 104 S.Ct. 3227 (1984). U.S. Supreme Court reverses lower court rulings; pretrial detainees in Los Angeles Central Jail will not have contact visits and will not be allowed to be present when cells are searched.

Pretrial detainees at the Los Angeles County Central Jail brought a class action in Federal District Court in 1975 against the County Sheriff and other officials, challenging the jail's policy of denying pretrial detainees contact visits with their spouses, relatives, children and friends, and the jail's practice of conducting random, irregular "shakedown" searches of cells while the detainees were away at meals, recreation, or other activities. The district court concluded that the danger of permitting lower security risk inmates to have contact visits was not great enough to warrant deprivation of such contact and, with regard to cell searches, that allowing inmates to watch from a distance while their cells are searched would allay inmate concerns that their personal property would be unnecessarily confiscated or destroyed.

In a six to three decision, the Supreme Court relied upon its previous ruling in Bell v. Wolfish, 441 U.S. 520, to uphold practices at the Los Angeles County Central Jail. Writing for the majority, Chief Justice Burger stated that "...The principles articulated in Wolfish govern resolution of this case....We affirm that, 'proper deference to the informed discretion of prison authorities demands that they, and not the courts, make the difficult judgments which reconcile conflicting claims affecting the security of the institution, the welfare of the prison staff, and the property rights of the detainees.' 441 U.S. at 557. Accordingly, the judgment of the Court of Appeals is reversed."

Contact Visits. The Supreme Court based its decision on a narrow question: is the prohibition of contact visits reasonably related to legitimate governmental objectives? Finding, as in Wolfish, that there is no basis to conclude that pretrial detainees pose any less security risk than convicted inmates, the court noted that detainees may in fact present a greater risk to jail security. The district court had ordered: "Commencing not more than ninety days following the date of this order, the defendants will make available a contact visit once each week to each pretrial detainee that has been held in the jail for one month or more, and concerning whom there is no indication of drug or escape propensities; provided, however, that no more than fifteen hundred such visits need be allowed in any one week. App. to Pet. for Cert. 38.

The majority of the court held that the burden of identifying candidates for contact visits is made even more difficult by the brevity of detention. The majority criticized the district court for not ending its inquiry after the County had established reasons for denying them; the "balancing" that the district court attempted in its decision,

"resulted in an impermissible substitution of its view on the proper administration of Central Jail for that of the experienced administrators of the facility," according to the majority opinion. The opinion concluded, on this issue, by stating: "In rejecting the district court's order, we do not in any sense denigrate the importance of visits from family or friends to the detainee. Nor do we intend to suggest that contact visits might not be a factor contributing to the ultimate reintegration of the detainee into society. We hold only that the Constitution does not require that detainees be allowed contact visits when responsible, experienced administrators have determined, in their sound discretion, that such visits will jeopardize the security of the facility." In a separate concurring opinion, Justice Blackmun challenged the reasoning of the majority, stating that when a detainee attempts to demonstrate the punitive intent of a policy he is necessarily calling into question the good faith of the prison administrators: "Under those circumstances, it seems to me to be somewhat perverse to insist that a court assessing the rationality of a particular administrative practice must accord prison administrators' wide-ranging deference in the adoption and execution of policies and practices' ...such a requirement boils down to a command that when a court is confronted with a charge of administrative bad faith, it must evaluate the charge by assuming administrative good faith." The appeal presented to the Supreme Court the issue of whether detainees are entitled to observe jail staff when their cells are being searched according to jail policies which require irregular or random "(shakedown)" searches. The majority found the method of conducting searches virtually identical to that presented in Wolfish, and found no reason to reconsider the prior support of that method in light of a fourth amendment challenge and a due process challenge. (Los Angeles County Central Jail)

U.S. District Court
PROTECTION
MEDICAL CARE

Gibson v. Babcock, 601 F.Supp. 1156 (N.D. Ill. 1984). Supervisors liable for detainee beating. A federal district court has held supervisors responsible for failing to protect a detainee from an assault by another prisoner. The court found that knowledge of a history of violence within a jail, rather than a specific risk of harm to a particular prisoner, was enough to hold the supervisors liable. The court found that the eighth amendment proscription against cruel and unusual punishment does not apply to pretrial detainees, and that a detainee need not demonstrate deliberate indifference to state a claim for denial of medical care under the due process clause of the eighth amendment. (Lake County Jail, Waukegan, Illinois)

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 are 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. 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)

U.S. Appeals Court
MEDICAL CARE
PROTECTION

Matzker v. Herr, 748 F.2d 1142 (7th Cir. 1984). Appeals court reverses lower court ruling; finds that pretrial detainee's due process rights may have been violated by alleged denial of competent medical care, and section 1983 action possible for failure to protect. The plaintiff sought damages for injuries received while a pretrial detainee at the St. Clair County Jail in Belleville, Illinois. A federal magistrate had dismissed the action. The Seventh Circuit Court of Appeals reversed the decision. The plaintiff was admitted to the jail as a detainee. A Caucasian, he "had some trouble" with black inmates shortly after admission and was transferred to another cell block. In his new cell block he was involved in another interracial fight and was transferred to segregation. His attorney brought his assignment to segregation to the attention of the court, and he was subsequently transferred to cell block A. The plaintiff requested transfer from cell block A, fearing additional problems with black inmates. Four days later he was beaten by two black inmates and suffered the loss of three teeth, a fractured nose and an eye injury. The plaintiff alleged that he was beaten for over fifteen minutes before the corrections officer came to investigate. Although taken to a hospital the next day, injuries to his teeth and eye were not treated for three months, and he allegedly suffered permanent injury. The appeals court reversed the dismissal, ordering the case to proceed to trial. (St. Clair County Jail, Illinois)

U.S. Supreme Court
PREVENTIVE
DETENTION
JUVENILES

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)

U.S. District Court
CROWDING

Tyler v. United States, 602 F.Supp. 476 (E.D. Mo. 1984). Court praises city officials for reducing pretrial population. A U.S. District Court noted that although the City of St. Louis initially violated its order to limit the number of prisoners housed in the city jail, subsequent actions purged the city of its contempt of court responsibility.

An earlier order set limits on the city jail capacity. When excess prisoners were housed at other facilities, the court stated that those facilities must also meet the constitutional conditions ordered for the city jail. The court noted that staff levels at the city jail were maintained at a time when other city agencies were reducing their force, and efforts to expedite processing of cases showed the willingness of the city to comply with the court order. As a result, the pretrial population was steadily decreased, as was reliance on other facilities to house overflow populations. (St. Louis City Jail, Missouri)

1985

State Supreme Court
CROWDING
FACILITY PLANS

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)

State Supreme Court
TRANSFER

Cleveland v. Goin, 703 P.2d 204 (Ore. Sup. Ct., 1985). Prisoner ordered back to jail in county of trial. The plaintiff was transferred to a jail in another county because, according to the sheriff, his jail was overcrowded. After examining records and logs, the court determined that jail occupancy had not exceeded the limit set by federal court. As a result, the prisoner was ordered housed in the jail in which his upcoming trial would be held. (Clatsop County Jail, Oregon)

U.S. Appeals Court
INTAKE SCREENING
MEDICAL CARE

Garcia v. Salt Lake County, 768 F.2d 303 (10th Cir. 1985). Appeals court affirms \$147,000 judgment against county for admitting unconscious detainee who died after admission. 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)

U.S. Appeals Court
CONDITIONS

Goodson v. City of Atlanta, 763 F.2d 1381 (11th Cir. 1985). Detainee awarded \$50,000 damages for conditions of detention. The plaintiff was held as a rape suspect in the Atlanta jail. A jury concluded that he was subjected to unconstitutional conditions of confinement (sanitation, toilet facilities, medical care, lack of bedding, lack of heating, roach infested food). The jury believed that the City of Atlanta and the jail administrator knew of these conditions and had even made public statements to the media that the jail was "unfit for human habitation". Concluding that the administrator had failed to properly train and supervise staff, they held him liable for \$5,000 damages, and held the city liable for \$45,000 compensatory damages. (Atlanta City Jail, Georgia)

U.S. Appeals Court
CONDITIONS
STATE INTEREST

Hamm v. DeKalb County, 774 F.2d 1567 (11th Cir. 1985), cert. denied, 475 U.S. 1096. Eleventh circuit finds Wolfish statement inadequate for determining pretrial detainee conditions. The court asserted that the standard established in Bell v. Wolfish, 441 U.S. 520 (1979), does not produce a clear result when applied to a jail's provision of basic needs such as food, living space and medical care. The Wolfish test, developed for pretrial detainees in a federal detention center, asks if conditions are reasonable and related to a legitimate governmental objective, and whether conditions amount to "punishment." The court concluded that pretrial conditions be evaluated under the same standard that has been developed for eighth amendment analysis of conditions for convicted offenders.

As many county and city jails hold both detainees and convicted prisoners, applying the two separate standards necessarily requires courts to become "...enmeshed in the minutia of prison operations," which the Supreme Court has warned against.

Therefore, in addition to requiring pretrial conditions and practices to serve a legitimate governmental purpose, the court also held that jails must furnish the detainees with a reasonably adequate diet and living space, and with reference to medical needs that they must not be deliberately indifferent to detainee's serious medical needs. (DeKalb County Jail, Georgia)

U.S. Appeals Court
LAW LIBRARY
ACCESS TO COURTS

Love v. Summit County, 776 F.2d 908 (10th Cir. 1985), cert. denied, 479 U.S. 814. Detainee not denied access to courts because no access to law library. The Tenth Circuit Court of Appeals found that although the plaintiff's seven months detention triggered the right to petition the courts, his continuing access to counsel provided sufficient access. In addition, the court noted that his attorney, while declining to represent him in his civil claim, provided referral to others and appropriate forms to pursue the claim. The court also noted that there was no evidence that the defendants did anything to impede the detainee from contacting the courts or attorneys. (Summit Co. Jail, Utah)

U.S. District Court
CONDITIONS

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.

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. (Federal Correctional Institution at Danbury, Connecticut)

State Appeals Court
SEARCH

People v. Nagel, 38 CrL 2101 (Ill App. Ct. 4th Dist., October 1, 1985). Appeals court rules that police should not have conducted inventory search of detainee's locked briefcase. A police prisoner had more than enough cash to meet the 50 dollar bond set for the offense on which he had been arrested, but his locked briefcase was searched by police anyway. Although the Supreme Court has permitted inventory searches of prisoners' property as a valid exception to the fourth amendment's warrant requirements, the majority of the Illinois Appellate Court found that the search is permissible only if it is incident to the further incarceration of the prisoner. The state had argued that "incarceration" should be interpreted to mean any period of detention, no matter how short, including the booking process. The majority disagreed.

Incarceration must mean something more intrusive than simple detention for the purely administrative purpose of booking an individual who would otherwise be subject to immediate release on a non-substantial criminal charge. Simply put, the significant inquiry is whether there is a reasonable belief that the defendant will be subject to further incarceration. If he is, then the inventory search is legitimate... The focus must necessarily begin and end with an examination of the reasonableness of the police officer's necessarily ad hoc determination based on the facts and information available to the officer at the station house following arrest.

U.S. Appeals Court
PARITY WITH
SENTENCED
EQUAL PROTECTION
SUICIDE

Roberts v. City of Troy, 773 F.2d 720 (6th Cir. 1985). Pretrial detainees not protected by eighth amendment, but rights are analogized to those of detainees under fourteenth amendment to avoid extending greater constitutional protection to sentenced offenders. Shortly after admission to the City of Troy jail, a prisoner committed suicide. His mother sued the city under U.S.C. 42 Section 1983 and under state law, claiming that officials should have identified him as suicidal during admission and should have supervised him more closely. A federal jury found for the defendants. On appeal, the Sixth Circuit Court of Appeals upheld the jury verdict concerning section 1983 claims but reversed the prior summary judgment which released Chief of Police Fisher from liability for state claims. In reaching its conclusions, the appeals court noted that although pretrial detainees are not protected by the eighth amendment, those protections must be analogized under the fourteenth amendment. (Troy City Jail, Michigan)

U.S. Appeals Court
USE OF FORCE
MEDICAL CARE
INTAKE SCREENING

Rock v. McCoy, 763 F.2d 394 (10th Cir. 1985). City to pay \$100,000 damages to prisoner for excessive force and failing to provide treatment while detained. The plaintiff was arrested 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)

State Appeals Court
JUVENILES
DIVERSION

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)

U.S. Appeals Court
BAIL REFORM ACT

U.S. v. Alatishe, 37 CrL 1070 (D.C. Cir. 1985). Motion for pretrial detention may follow a temporary detention in spite of provision of bail reform act. In this complicated case, the U.S. Court of Appeals for the District of Columbia added another interpretation to the provisions of the Bail Reform Act of 1984 (USC 3141-56). After learning that the defendant who had been arrested on a serious drug charge was already on probation, the government requested the magistrate to detain the defendant for ten days under the provisions of the act at the time of presentment. The request was granted, allowing time for the court supervising his probation to revoke it.

Toward the end of the temporary detention period the magistrate allowed the government to move for pretrial detention, over the objections of the defendant. The appeals court found that while Section 3142(f), read literally, precludes a pretrial detention hearing if one is not held "immediately upon the person's first appearance," the court found that the provision for temporary detention and the legislative history dictate a different interpretation, ruling that under the confusing circumstances of this case, the detention hearing was timely.

U.S. Appeals Court
BAIL REFORM ACT

U.S. v. Al-Azzawy, 768 F.2d 1141 (9th Cir. 1985). Ninth circuit requires strict adherence to time requirements of bail reform act. Aligning itself with the Second and Fifth Circuits, the U.S. Court of Appeals for the Ninth Circuit has held that if the procedures under Section 3142(f) of the Bail Reform Act of 1984 are violated in any material way, unconditional pretrial detention may not be ordered. In this case, the hearing for indefinite pretrial detention did not occur, as required in the act, "immediately upon the defendant's first appearance before a judicial officer." This hearing followed the defendant's first appearance by nearly a month, during which time he was detained.

U.S. Appeals Court
BAIL REFORM ACT

U.S. v. Contreras, 776 F.2d 51 (2nd Cir. 1985). Indictment by grand jury establishes probable cause for purposes of bail reform act. The U.S. Court of Appeals for the Second Circuit has ruled that if an indictment alleging the offense has been returned, a district court facing bail decisions should rely on the indictment rather than making an independent assessment of probable cause in the context of the Bail Reform Act of 1984 (18 USC Section 3142-e). (Eastern District, New York)

U.S. District Court
DUE PROCESS

U.S. v. LoFranco, 620 F.Supp. 1324 (N.D. N.Y. 1985). Defendant ordered released from detention as federal court finds violation of due process clause. The continued detention of a defendant since May 1985, whose "complex case" will not come to trial until February, 1986, did not consider the defendant's due process rights and therefore was ordered discontinued by a federal district court. "In the absence of statutory limitations on pretrial detention in a complex case like this, there is no indication that the legislative and executive branches have considered the defendant's due process rights and therefore no basis for confidence that the detention is constitutional," observed the court. In weighing the defendant's liberty interest against society's interest in his continued detention, the court concluded that the defendant must be released, even though he "will create potential dangers to the public and to the integrity of his trial." (Northern District, New York)

U.S. Appeals Court
BAIL REFORM ACT

U.S. v. Maull, 768 F.2d 211 (8th Cir. 1985). Eighth circuit creates split in circuits over interpretation of "first appearance" requirement of bail reform act. Disagreeing with other circuits, the U.S. Court of Appeal for the Eighth Circuit has held that the requirement of subsection (f) of section 3142 of the Bail Reform Act of 1984 (detention hearing shall be held immediately upon the person's first appearance before the judicial officer) should not be interpreted literally. Rather, the majority says that reading the sentence in isolation is an error; when read in context and in the spirit of the act, the majority submits that the sentence indicates that the hearing is to be held promptly when one is ordered. (Eastern District, Massachusetts)

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; 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 city is responsible for the use of a bail schedule in violation of a rule of the New Jersey Supreme Court; (2) 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. (City of Wildwood, New Jersey)

U.S. Appeals Court
JUVENILES

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. (Volusia Reg. Juv. Detention, Florida)

U.S. Appeals Court
USE OF FORCE

Justice v. Dennis, 793 F.2d 573 (4th Cir. 1986). The source of constitutional protection against the use of excessive force on a pretrial detainee is the detainee's liberty interest in bodily security, grounded in the fifth and fourteenth amendments rather than the fourth amendment. The lower court's jury instruction, setting out a spectrum in which intentional conduct was contrasted with simple negligence and failing to suggest that conduct short of intentional wrongdoing, such as wantonness, recklessness, or gross negligence, was sufficient for imposition of liability, constituted reversible error in the pretrial detainee's action against a state highway patrol trooper for alleged unconstitutionally excessive force used while the detainee was held in the county courthouse jail. The fundamental inquiry in all excessive force cases, regardless of protected interest's fourth, fifth, or eighth amendment origins, is whether the degree of force used against the arrestee was necessary to protect legitimate state interest and, thus, was permissible under all the circumstances. (Onslow County, North Carolina)

U.S. District Court
CONDITIONS
SEPARATION

Morales Feliciano v. Romero Bercelo, 672 F.Supp. 591 (D. P.R. 1986). According to a federal court, prison overcrowding, inmate idleness, and the threat of violence among inmates, combined with the continuous frustrations of reasonable expectation produced by administrative incompetence, resulted in an ascertainable psychological deterioration in the Puerto Rican prison population. The psychological deterioration inflicted on inmates in the prison system was an unnecessary and wanton infliction of pain in violation of prisoners' Eighth Amendment protections against cruel and unusual punishment. Inmates of Puerto Rican jails were denied due process as a result of inefficient, inexperienced, and often incompetent social-penal counseling system, which had a severe negative impact on inmates' opportunities to establish eligibility for parole and to actually be heard in a timely manner by a parole board. Commingling of pretrial detainees with convicted prisoners, in conjunction with finding that conditions which prevailed in all institutions at which pretrial detainees were housed violated the Eighth Amendment rights of convicted inmates, was a sufficient basis for holding that pretrial detainees were being punished prior to conviction and that, therefore, they were deprived of liberty without due process of law. (Commonwealth of Puerto Rico)

U.S. District Court
CONDITIONS
SEPARATION

Reece v. Gragg, 650 F.Supp. 1297 (10th Cir. 1986). A pretrial detainee representing a class of all present and future pretrial detainees 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 eight 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. District Court
MEDICAL CARE
TELEPHONE

Robinson v. Moses, 644 F.Supp. 975 (N.D.Ind. 1986). The medical care given a pretrial detainee while he was incarcerated in a county jail did not violate his right to due process under the fourteenth amendment. The allegations of the complaint demonstrated that the detainee was treated on numerous occasions, had an ear, nose, and throat specialist appointed, and received medicine. The standard under the fourteenth amendment was the same as that applied to prisoners bringing claims under the eighth amendment.

A pretrial detainee did not establish that his being held in a city-county lockup rather than the county jail amounted to punishment without due process in violation of the fourteenth amendment, where the only difference between the city-county lockup and the county jail was the absence of television and a common area. The pretrial detainee's bare allegation that he was denied the use of a telephone for three days while in the city-county lockup was insufficient to create a genuine issue of material fact, precluding summary judgment, in view of the affidavit of the jail commander indicating that prisoners were permitted to use telephones while in the lockup and had direct access to phones while in holding cells. (Allen County Jail, Indiana)

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. District Court
BAIL

Talbert v. Kelly, 799 F.2d 62 (3rd Cir. 1986). Rule 3:4-1 of the Rules Governing Criminal Practice promulgated by the New Jersey Supreme Court allows supervising police officers present at a stationhouse to issue a summons to those arrested for misdemeanors and then release them or admit them to bail. However, the City of Newark's policy was to hold the accused until he appeared before a magistrate, rather than to allow bail at the stationhouse.

The trial judge called the city's procedure "absurd" and "ponderous" in that transportation arrangements had to be made for court appearances, among other "complexities." He held the city liable for "deviation from the procedure set forth in the court rules."

The federal appellate court upheld the city's procedure in light of the availability of magistrates on a twenty-four hour basis. Jail personnel were instructed to call them at home on weekends or after court hours to obtain a "telephone" hearing within twenty-four hours of an arrest. The fact that this procedure was not followed by an employee was not grounds to hold the city liable for what ended up to be a four-day detention after a magistrate left court early on a Friday. The statute of limitations had run before interrogatories were served seeking the names of individuals at the station house. (City of Newark, New Jersey)

U.S. District Court
BAIL

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)

U.S. Appeals Court
RELEASE

United States v. Frisone, 795 F.2d 1 (2nd Cir. 1986). The detention of the defendant for twelve months on federal charges was affected by the majority position in a second circuit case that rendered unconstitutional the continued pretrial detention of a defendant solely on the basis of dangerousness. Therefore, remand was necessary to determine whether there were conditions of release which would reasonably assure the defendant's appearance as required and, if so, to establish appropriate conditions of release. (New York)

U.S. Appeals Court
BAIL REFORM ACT

United States v. Himler, 797 F.2d 156 (3rd Cir. 1986). The Bail Reform Act does not authorize the detention of a defendant based on danger to the community from the likelihood that he will, if released, commit another offense involving false identification. Any danger which he may present to the community may be considered only in setting conditions of release. He may be detained only if the record supports a finding that he presents a serious risk of flight. The magistrate properly ordered the temporary detention of the defendant upon being informed that there was an outstanding Florida warrant for the defendant's arrest as well as a detainer lodged against him by the Pennsylvania Department of Probation and Parole, in order to give other officials time to take the defendant into custody, where the defendant appeared on charges involving production of a false identification document, being an international driving permit. The judicial officer must impose least restrictive bail conditions necessary to assure appearance and safety if judicial officer finds that release on personal recognizance or unsecured appearance bond will not provide requisite assurances. (Pennsylvania)

U.S. Appeals Court
RELEASE-CONDITION

United States v. Spilotro, 786 F.2d 808 (8th Cir. 1986). Imposing as a condition of pretrial release for a defendant in a prosecution for racketeering that he not associate with any person who has been convicted of a felony except when necessary for business purposes or the preparation of his defense was an abuse of discretion. The condition was imposed as a general matter without any statement of reasons why the condition was necessary to assure the defendant's appearance. (Missouri)

U.S. Appeals Court
SPEEDY TRIAL
DUE PROCESS

U.S. v. Melendez-Carrion, 790 F.2d 984 (2nd Cir. 1986). cert. denied 107 S.Ct. 562. A federal appeals court ruled that defendants' due process rights were not violated by their detention for more than 19 months prior to trial due to the risk of flight. There was evidence that the defendants were leaders of a paramilitary terrorist group dedicated to achieving independence for Puerto Rico and that they participated in a conspiracy surrounding the 7.6 million dollar Wells Fargo robbery, as well as the robbery itself. Both defendants had very limited ties to the community and had a record of prior flight.

U.S. Appeals Court
SEARCHES

Abshire v. Walls, 830 F.2d 1277 (4th Cir. 1987). \$7,000 Award upheld in strip search case. A jury award of \$7,000 in damages against three police officers who strip searched an arrestee without proper cause was upheld by a federal appeals court. Following his arrest by police in Baltimore, Maryland, for disorderly conduct, Thomas Abshire as taken to a police station and handcuffed to a railing. At trial, Abshire testified that he made numerous requests to use the telephone, all of which were denied. After Abshire became indignant, it was suggested by one of the officers that he be strip searched. Abshire was then unhandcuffed and escorted to a utility room, where he was forced to disrobe and subject himself to a strip search. Baltimore County strip search policy provides that arrestees should not be subjected to a strip search unless specific factors are present. Considering this testimony, the court of appeals found that there was a question as to the reasonableness of the search and the jury's resolution of that question was not clearly erroneous. Therefore, the award of \$2,000 in compensatory damages and \$5,000 in punitive damages against the three officers was upheld. However, the award of \$4,000 in attorney's fees was found to be too small and the court of appeals ordered the district court to recalculate this award. (Towson Precinct #6 of the Baltimore County Police Department, Maryland)

U.S. Appeals Court
CONDITIONS
MEDICAL CARE

Cupit v. Jones, 835 F.2d 83 (5th Cir. 1987). A pretrial detainee, who allegedly had a heart attack approximately three months prior to detention brought a 1983 civil rights action against parish prison officials. The federal district court granted summary judgment dismissing the action with prejudice. The pretrial detainee appealed. The appeals court ruled that the detainee was not entitled to a stress-free atmosphere while incarcerated. The court held that: (1) the pretrial detainee failed to establish that he had been denied reasonable medical care; (2) the magistrate did not abuse discretion by refusing to appoint counsel to assist the pretrial detainee; (3) the magistrate did not abuse discretion by refusing to subpoena witnesses; and (4) the magistrate did not abuse discretion by denying requests for production of jail documents. According to the court, pretrial detainees are entitled to reasonable medical care unless failure to supply that care is reasonably related to a legitimate governmental objective; furthermore, pretrial detainees are entitled to protection from adverse conditions of confinement created by prison officials for a punitive purpose or with punitive intent. (Richmond Parish Jail)

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)

State Appeals Court
PROTECTION

DeBow v. City of East St. Louis, 510 N.E.2d 895 (Ill. App. 1987), cert. denied, 116 Ill.2d 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)

U.S. District Court
PROTECTION

Gagne v. City of Galveston, 671 F.Supp. 1130 (S.D. Tex. 1987). Even though a departmental policy called for him to do so, an officer's failure to remove a belt of a prisoner who used it to hang himself, while a violation of policy, was not a constitutional violation. A Section 1983 lawsuit was brought against the city and the police department by the deceased prisoner's estate and surviving family members. There was nothing in the prisoner's behavior to notify the officer that there was a possibility of suicidal tendencies. Further, because there was no showing that the incident occurred pursuant to an official policy, even if there had been a constitutional violation in this case, there would be no city or departmental liability. This appeared to be a single, isolated incident, insufficient to demonstrate official policy. There was no showing of a wide-spread pattern of similar incidents. The plaintiffs' argument that understaffing of the facility resulted in this case in a deprivation of rights was also rejected by the court. (Galveston City Jail, Texas)

State Appeals Court
PROTECTION

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 Department of Corrections)

U.S. District Court
SEARCHES

Kennedy v. Los Angeles Police Dept., 667 F.Supp. 697 (D.C. Cal. 1987). The policy of the Los Angeles Police Department mandating a visual body cavity search for every pretrial detainee arrested on any felony charge is unconstitutional according to a federal district court. Some determination of reasonable suspicion is required for persons initially booked on felonies as well as those booked on misdemeanors. The classification by an offense alone is not sufficiently probative of the question of whether a particular arrestee is harboring contraband. The court ruled that body cavity searches of pretrial detainees cannot take place if they are arbitrary and purposeless. (Los Angeles Police Department)

U.S. District Court
SEPARATION
CONDITIONS

Ryan v. Burlington County, 674 F.Supp. 464 (D.N.J. 1987), cert. denied, 109 S.Ct. 1745. A pretrial detainee rendered quadriplegic by his cellmate, a State prisoner who had been awaiting transfer to a State run facility as a parole violator for 58 days alleged deprivation of a constitutional right in an action against various State and county defendants. The federal district court ruled that pretrial detainees had a constitutional right to be housed separately from known dangerous convicted inmates who posed a threat to their personal security unless physical facilities did not permit their separation and that the detainee could prove a constitutional violation if he could prove at trial that classification was feasible at the county jail. The court noted that while detained at a county jail, a pretrial detainee was entitled to rights granted to convicted persons as well as a right to be free of any practice or restriction placed on him as punishment. Whether overcrowding of prisons or jails arises to such a level as to violate prisoners' or pretrial detainees' constitutional rights, requires determinations as to whether conditions caused inmates to endure genuine deprivations and hardships over extended period of time and whether adverse conditions become excessive in relation to purposes assigned for them. Affirmed 860 F.2d 1199. (Burlington County Jail, New Jersey)

U.S. District Court
BAIL REFORM ACT

U.S. v. Gonzalez, 675 F.Supp. 208 (D. N.J. 1987). Defendants, charged with narcotics offenses, were subject to a rebuttable presumption that no condition or combination of conditions would reasonably assure their appearance and the safety of other persons in the community. One defendant overcame the presumption and was conditionally

released from pretrial detention pursuant to the Bail Reform Act. He offered about \$800,000 in security, lived in a local community where he owned a house and an antique business, and had previously been free on bail for a period of 18 months prior to another conviction.

U.S. Supreme Court
BAIL REFORM ACT
DUE PROCESS

U.S. v. Salerno, 107 S.Ct. 2095 (1987). The section of the Bail Reform Act of 1984 authorizing pretrial detention on the ground of future dangerousness is not facially invalid under the due process clause, ruled the United States Supreme Court. The provision does not violate substantive due process on the ground that it constitutes impermissible punishment before trial. Congress formulated the detention provisions not as punishment for dangerous individuals, but as a potential solution to the pressing problem of crimes committed by persons on release. The government's regulatory interest in community safety can, in appropriate circumstances, outweigh an individual's liberty interest. Moreover, the Act's extensive procedural safeguards are specifically designed to further the accuracy of the dangerousness determination, and are sufficient to withstand a facial challenge. The court noted that, to determine whether a restriction on liberty constitutes impermissible punishment or permissible regulation, the Supreme Court first looks to legislative intent. The due process clause does not categorically prohibit pretrial detention imposed as regulatory measure on ground of community danger, without regard to duration of detention. Although primary function of bail is to safeguard courts' role in adjudicating guilt or innocence of defendants, the Eighth Amendment does not categorically prohibit Government from pursuing other admittedly compelling interests through regulation of pretrial release. Finally, to determine whether Government's proposed conditions of release or detention are excessive, for Eighth Amendment purposes, the Supreme Court must compare Government's proposed conditions against interest Government seek to protect. The high Court has allowed court to essentially set bail at an infinite amount for reasons not related to risk of flight. The Eighth Amendment did not require release on bail when Congress had mandated detention on basis of compelling interest other than prevention of flight, as Congress had done through Bail Reform Act.

1988

U.S. Appeals Court
PROTECTION

Anderson v. Gutschenritter, 836 F.2d 346 (7th Cir. 1988). A pretrial detainee was stabbed by his cellmate. The detainee had informed the prison authorities that he had heard rumors that "someone was out to get him." The due process clause protects pretrial detainees from both deliberate exposure to violence, and from a failure to protect when prison authorities know of a strong likelihood that an inmate will be assaulted or injured. According to the appeals court, evidence presented by the pretrial detainee would have permitted a reasonable jury to conclude that a sheriff and a warden failed to protect the detainee. (Sangamon County Jail)

U.S. District Court
SUICIDE
INTAKE SCREENING

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. Appeals Court
SUICIDE
MEDICAL CARE
PSYCHOLOGICAL
SERVICES

Cabrales v. County of Los Angeles, 864 F.2d 1454 (9th Cir. 1988). A civil rights suit was brought against the county, the commander of the county jail, and others for the death of a pretrial detainee. Following a verdict against the county and jail commander, motion for judgment was denied by the U.S. District Court and attorney fees were awarded. The appeals court affirmed the lower court ruling, noting that the sufficiency of evidence could not be reviewed except for plain error absent a motion for directed verdict at the close of all the evidence.

There were issues of the fact as to the liability of the county and the jail commander on the ground of the policy of deliberate indifference to the detainee's medical needs. Even though the detainee was not denied access to medical and psychiatric help, but was in fact evaluated on several occasions by medical personnel, this did not preclude the finding of deprivation of constitutional rights without due process based on a deliberate indifference to medical needs, in light of the demonstration of inadequate staff such that psychiatric staff could only spend minutes per month with disturbed inmates, so that any psychological illness would go undiagnosed and untreated.

It was also found by the court that the plaintiff's unsuccessful claims against individual county officers were related to successful claims against the county and the commander of the county jail that inadequate psychiatric care led to the pretrial detainee's suicide. There was no abuse of discretion in reducing the attorney fee award by 25% to reflect limited success, where the plaintiff's overall relief was materially diminished for a failure to make out claims against individual defendants who could have been found individually liable for their own deliberate indifference to a detainee's medical and psychiatric needs. (Los Angeles County Jail, California)

U.S. Appeals Court
PROTECTION

Colburn v. Upper Darby Township, 838 F. 2d 663 (3rd Cir. 1988), cert. denied, 109 S.Ct. 1338. The estate of a detainee who committed suicide while incarcerated brought action against township and police officials; the district court dismissed the case and the plaintiffs appealed. The appeals court held that: (1) the allegation that custodial personnel knew or should have known that the detainee was a suicide risk was sufficient to state a Section 1983 claim against official; and (2) the allegation that the township had a custom of inadequately monitoring jail for potential suicides was sufficient to state a cause of action. Further, the court found that the fact that the deceased inmate was the third person to commit suicide while in custody of the same jail was reason to state a Section 1983 claim. Prior suicides could be viewed as providing a governing body with knowledge of its alleged custom. The appeals court ruled, however, that the police commissioner and mayor could not be held personally liable in a Section 1983 action arising out of suicide of a detainee absent allegations that either was personally involved in any activity related to detainee's death. (Upper Darby Police Department)

U.S. Appeals Court
SUICIDE

Estate of Cartwright v. City of Concord, Cal., 856 F.2d 1437 (9th Cir. 1988). A mother of a pretrial detainee who committed suicide by hanging himself in a city jail brought a Section 1983 action against the city and city employees for alleged violation of constitutional rights. The United States District Court entered judgment for the defendants following a bench trial, and the mother appealed. The appeals court, affirming the decision, found that the city jail employees did not violate the constitutional rights of the pretrial detainee in failing to prevent him from committing suicide. Although the jailers overheard him speaking of suicide, none of the detainee's other statements gave them reason to believe that he needed preventive care. The jailers took reasonable steps to safeguard him by taking away all his possessions except "soft clothing," and placed him in a cell with another detainee. He was also checked periodically. Finally, the city could not be held separately liable on the basis of its policies, customs and practices. The city's training program complied with relevant state laws and standards and there was no practice or pattern showing the city investigated jail deaths inadequately or destroyed evidence in a manner inconsistent with established policies. (Concord City Jail, Concord, California)

U.S. District Court
SUICIDE

Francis v. Pike County, Ohio, 708 F.Supp. 170 (S.D. Ohio 1988). The administrator and personal representative of a deceased arrestee brought a Section 1983 action against the city, county, and their law enforcement officers for the failure to remove a belt of the deceased arrestee who then committed suicide while in a cell. The defendants moved for a summary judgment. The district court found that the police officers did not use excessive force in arresting the arrestee. It was also found that neither the city nor its police officers were liable for the arrestee's suicide while in the county jail following the arrest assisted by the city officer. Since the arrestee was not in their custody or control at the time of the suicide, the county deputies' failure to remove the drunk driving arrestee's belt before placing him in a holding cell, without knowledge or reason to know that the arrestee would commit suicide, did not impose a civil rights liability on them after the arrestee committed suicide. The lack of allegations or evidence that the county was grossly negligent in training its law enforcement officers precluded its liability. (Pike County Jail, Ohio)

U.S. District Court
CONDITIONS
DUE PROCESS
MEDICAL CARE

Grim v. Moore, 745 F.Supp. 1280 (S.D. Ohio 1988). A city jail detainee brought an action against jail officials and others, alleging constitutional deprivations. On the motion of jail officials and others for summary judgment, the district court found that the restrictions placed upon the detainee during his detention in the city jail for 13 hours and 41 minutes did not amount to constitutional deprivation, in view of evidence that the restrictions amounted not to an express intent to punish, but rather were reasonably related to the

legitimate nonpunitive governmental objective of short term holding of prisoners. The detainee, who claimed that jail personnel confiscated his personal property upon his arrival at the jail, did not have a procedural due process claim redressable under Section 1983, given his ability to sue officials in tort, under state law; at best, the loss of his property appeared to be a random and negligent act of jail personnel. (City of Urbana Jail, Ohio)

U.S. Appeals Court
CONDITIONS
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, "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)

U.S. District Court
SEPARATION
SEARCHES

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)

U.S. District Court
SEARCHES

O'Brien v. Borough of Woodbury Heights, 679 F.Supp 429 (D. N.J. 1988). According to a federal district court, a municipality was liable under Section 1983 for causing arrestees to be subjected to unconstitutional strip/body cavity searches at the county jail, where it had a policy of bringing arrestees to the county jail and was aware of the county jail's policy of conducting strip/body cavity searches on all arrestees. Two arrestees filed claims against the Borough, County, and other law enforcement officials alleging that they were unlawfully detained and strip/body cavity searches were performed on them even though there was no suspicion that either arrestee was concealing contraband. The federal court held that the county jail's rule of performing routine strip/body cavity searches on anyone arrested, regardless of the offense, was unconstitutional. The court also denied a qualified immunity claim by officers, stating that the law against such searches was clearly established at the time of arrest. (Gloucester County Jail, New Jersey)

U.S. Appeals Court
SPEEDY TRIAL
DUE PROCESS

U.S. v. Gelfuso, 838 F.2d 358 (9th Cir. 1988). The due process limit on the length of pretrial detention requires assessment on a case-by-case basis. The length of confinement is considered in conjunction with the extent to which the prosecution bears responsibility for the delay that has ensued. In deciding whether a defendant's pretrial detention violates due process rights, a court should consider both length of confinement and extent to which prosecution bears responsibility for any delay. In this case, the defendants' ten-month confinement pending trial of racketeering and narcotics charges did not violate due process rights, where the defendants were responsible for the delay inasmuch as they had moved for continuance to enable them to prepare for trial.

U.S. District Court
CONDITIONS

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)

U.S. Appeals Court
PROBABLE CAUSE
SPEEDY TRIAL

Williams v. Ward, 845 F.2d 374 (2nd Cir. 1988), cert. denied, 109 S.Ct. 818. A majority of the U.S. Court of Appeals for the Second Circuit decided that judicial determination of probable cause within 24 hours is not constitutionally mandated, contrary to an earlier ruling by a New York federal district court. The court found that New York City's practice of delaying arraignment up to 72 hours and combining it with the probable cause hearing affords arrestees certain benefits not available at an immediate minimal hearing, such as the presence of counsel--improved opportunity to obtain pretrial release, and a chance to negotiate a plea. These advantages suggest that the "constitutional 'promptness' of a probable-cause hearing must be determined in light of the totality of the process afforded the defendant," said the court. (New York City Police Department)

1989

U.S. District Court
INTAKE SCREENING
MEDICAL CARE

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. District Court
DUE PROCESS
EQUAL PROTECTION
PUNISHMENT
WORK

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. According to the court, pretrial detainees do not stand on the same footing as convicted inmates. If pretrial detainees are subjected to restrictions and privations other than those inherent in their confinement itself or which are justified by compelling necessities of jail administration, their rights are violated under the due process and equal protection clauses of the fourteenth amendment. Placing the detainee in segregation was not reasonably related to a legitimate goal or purpose inasmuch as he did not pose a threat to security. The court found that he was entitled to nominal damages, since he suffered no actual harm as a result of his segregation for six days; thus, the plaintiff was awarded the sum of \$600 in damages for the six days in punitive segregation at \$100 per day. It was also stated that nothing in the Constitution requires that pretrial detainees be allowed contact visits when prison administrators had determined that such visits will jeopardize the security of the facility. 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
SUICIDE

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
INTAKE SCREENING
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 lulls 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
MAIL

Faulkner v. McLocklin, 727 F.Supp. 486 (N.D. Ind. 1989). A pretrial detainee brought a civil rights action against the county sheriff, alleging the opening of his legal mail outside of his presence. The district court found that the county jail, which had adopted no policy or procedure concerning the marking of legal mail, violated the pretrial detainee's civil rights by opening letters from the American Civil Liberties Union, legal services program, and the U.S. Senate committee outside of the detainee's presence. The letters were from attorneys or a senator and bore designations sufficient, absent specific requirements articulated by the jail, to alert the jail personnel to their privileged nature. Inmate mail from elected officials or government agencies is entitled to the same protection from opening outside of the inmate's presence as mail from attorneys. Just as attorney mail touches upon the sixth amendment right to counsel and the first amendment right to access to courts, mail from elected officials and government agencies touches upon

the inmate's first amendment. The court found that the pretrial detainee was entitled only to nominal damages. Jail officials had honored the detainee's rights more scrupulously than necessary with respect to the vast majority of the detainee's legal mail, and there was no showing of actual damage. (Fulton County Jail, Indiana)

U.S. Appeals Court
MEDICAL CARE
PSYCHOLOGICAL
SERVICES
PUNISHMENT

Green v. Baron, 879 F.2d 305 (8th Cir. 1989). A pretrial detainee brought a civil rights action against the staff of a mental facility. The U.S. District Court granted the inmate's a motion for judgment n.o.v. or, in the alternative, new trial, and, following a separate trial and damages, the defendants appealed. The appeals court found that the trial court properly granted judgment n.o.v. based on erroneous instructions. It was also found by the court that a pretrial detainee could not be punished, and the issue of whether he is punished depended upon whether deprivations he suffered were reasonably related to a legitimate government purpose and not excessive and, the jury could find that the treatment of a pretrial detainee in a mental health institute did not constitute punishment, even though he was deprived of bedding and clothing and hot meals. In view of the evidence that he was not placed in the treatment program until all other treatment efforts had failed, the staff believed that the deprivation were vital to the success of his behavioral modification program. The program was structured and supervised by medical personnel, and deprivations were medically supervised, limited in degree, and restricted in duration. (Security and Medical Facility, Oakdale, Iowa)

U.S. Appeals Court
RELEASE
BAIL

McConney v. City of Houston, 863 F.2d 1180 (5th Cir. 1989). An arrestee for public intoxication brought a civil rights suit against the city and its chief of police. The U.S. District Court entered a judgment on the jury verdict in favor of the arrestee, and the city appealed. The appeals court, affirming in part and reversing in part, found that the city chief of police was entitled to qualified immunity from liability, but some evidence supported the finding that the city had an unconstitutional policy for detaining the warrantless arrestee for public intoxication for four hours even after determining that the arrestee was sober and had not been intoxicated. A policy requiring the continued detention of a public intoxication arrestee and denial of otherwise available bail after the determination beyond a reasonable doubt that the arrestee is in fact not intoxicated and that probable cause no longer exists raises obvious constitutional concerns, but the arrestee is not constitutionally required to be released immediately upon the ascertainment that he is clearly not intoxicated. It is permissible for the detaining authority to take a reasonable amount of time for administrative processing, the return of property, and making bail if appropriate. (Houston City Jail, Texas)

U.S. District Court
USE OF FORCE

Mosier v. Robinson, 722 F.Supp. 555 (W.D. Ark. 1989). An arrestee who was allegedly beaten by an intoxicated sheriff sued the sheriff, deputy sheriff, and the county which employed them. In his complaint, the plaintiff alleged that he was taken into custody and transported to the county jail. The plaintiff stated that upon his arrival at the jail, the sheriff beat and choked him without provocation, that the plaintiff offered no resistance, and that the arresting officer made no attempt to stop the attack. The plaintiff further contended that at the time of the attack, the sheriff was under the influence of alcohol, and that he had acted in his official capacity as sheriff while under the influence of alcohol on previous occasions. The county moved for summary judgment. The district court found that the county was not subject to tort liability or liability for punitive damages, and the county was potentially liable for the arrestee's Section 1983 claim. The county policy of condoning violations by the sheriff could be inferred from the failure to take action on the sheriff's alleged violations of department policies occurring over a period of time. (Ashley County Jail, Arkansas)

U.S. Appeals Court
SUICIDE
INTAKE
SCREENING

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)

U.S. Appeals Court
INTAKE SCREENING
MEDICAL CARE
PROTECTION

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
INTAKE SCREENING
PSYCHOLOGICAL
SERVICES
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
MEDICAL CARE

Davis v. Village of Calumet Park, 737 F.Supp. 1039 (N.D. Ill. 1990), reversed, 936 F.2d 971. A defendant brought a Section 1983 action alleging that village officials unconstitutionally denied the defendant, while a pretrial detainee, access to adequate medical care. After a trial by jury, the defendant was awarded \$1 in compensatory damages and \$1,500 in punitive damages. The federal appeals court reversed the decision, finding that an objectively reasonable officer would not have thought the injuries were serious. (Village of Calumet Park, Illinois Jail)

U.S. District Court
OBSERVATION BY
STAFF

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
MEDICAL CARE
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
PROTECTION
SUICIDE
INTAKE SCREENING

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
CONDITIONS
MEDICAL CARE
RIGHTS RETAINED

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. District Court
CONDITIONS

Lyons v. Powell, 729 F.Supp. 1404 (D. N.H. 1990). A pretrial detainee, who had been at a state prison and was transferred to a federal facility, filed a civil rights lawsuit complaining that he was confined to a cell for 22-23 hours per day during a 27 day period at the federal facility, during which time he was forced to sleep on a mattress on the floor. The federal prison officials filed a motion, stating that they were entitled to qualified immunity. The court denied the motion, noting that the defendants had a duty to check on the institutions where federal pre-trial detainees were lodged and were also responsible for any omissions they made in a supervisory capacity. (New Hampshire State Prison)

U.S. District Court
SUICIDE

McDay v. City of Atlanta, 740 F.Supp. 852 (N.D. Ga. 1990). The daughter of an arrestee who committed suicide brought a civil rights action against the city and police officers. The district court found that there was no basis for imposition of liability on the city or police chief and at the time of the arrest in 1986, the police officers were not deliberately indifferent to the needs of the pretrial detainee even though they left him in a position where he was able to obtain a gun and kill himself. He had never previously attempted suicide or threatened suicide on the night of his arrest. In the absence of any allegation that the arrestee had attempted suicide previously or that he was threatening suicide on the night he was arrested, police officers were not deliberately indifferent in their treatment. Gross negligence is not a ground for imposing municipal liability for failure to train. (Homicide Task Force Office, Somerset Terrace, Georgia)

U.S. Appeals Court
ADEQUACY OF CARE
FAILURE TO
PROVIDE CARE

Pedraza v. Meyer, 919 F.2d 317 (5th Cir. 1990). An inmate at a county jail appealed an order of the U.S. District Court dismissing his pro se civil rights action. The court of appeals found that the allegation in the inmate's action, that jail officials failed to give him medical attention for his withdrawal symptoms while he was being held as a pretrial detainee, was sufficient to state an Eighth Amendment inadequate medical attention claim, where the allegation was not contradicted by a portion of the official prison medical records. (Victoria County Jail, Texas)

U.S. Appeals Court
DUE PROCESS
PROTECTION
SEPARATION

Redman v. County of San Diego, 896 F.2d 362 (9th Cir. 1990). A pretrial detainee who was raped during confinement brought a Section 1983 action against the sheriff, the supervisor of the detention facility, the second in command at the facility, the shift supervisor, the station deputy, and the county. The U.S. District Court directed a verdict in favor of the defendants, and the detainee appealed. The court of appeals affirmed the lower court decision and found that the jail officials were not deliberately indifferent to the detainee's due process right to personal security. Transferring the 18-year-old pretrial detainee from the "young and tender" unit to a cell with a homosexual and investigating an alleged rape of the detainee by questioning him in front of the cellmate and other inmates was not "deliberate indifference" to the detainee's due process right to personal security, even though the jail officials knew that the cellmate had a history of trying to coerce others into sexual favors. The knowledge about the cellmate and the detainee's profile merely gave jailors a suspicion of a possible attack. (San Diego County's South Bay Detention Facility, California)

U.S. District Court
ESCAPE
USE OF FORCE

Wright v. Whiddon, 747 F.Supp. 694 (M.D. Ga. 1990). A civil rights action was brought to recover damages for the wrongful death of and deprivation of the constitutional rights of a pretrial detainee, who was fatally shot while attempting to escape, against a city police officer, a city police chief, the city, and the county sheriff. On the defendants' motions for summary judgment, the district court found that the Fourth Amendment, rather than the Eighth Amendment, provided the standard for analyzing a claim that the pretrial detainee who was fatally shot while attempting to escape was subjected to unconstitutional use of excess force. The pretrial detainee had the status of a presumptively innocent individual, so was more akin to suspect than a convicted prisoner, and the Fourth Amendment's objective reasonableness standard accordingly applied. It was also found that genuine issue of material fact existed as to whether a reasonable police officer could believe the pretrial detainee who was attempting an escape posed a serious threat, thus rendering lawful the officer's action in fatally shooting the detainee, so as to preclude summary judgment on the issue of whether the officer was entitled to qualified immunity with respect to constitutional claims asserted under the civil rights statute Section 1983. The county sheriff who ordered the city police officer to shoot the pretrial detainee who was attempting the escape was not liable for violation of the fatally wounded detainee's constitutional rights, although it was argued that the sheriff intentionally authorized the commission of the unlawful act which resulted in the death and violation of constitutional rights. The sheriff did not have authority to command the police officer, and the police officer did not act pursuant to any command from the sheriff, but in reliance on his own training and city policy, in deciding to draw his gun and fire at the detainee. (Turner County, Georgia)

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
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
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. Appeals Court
PROTECTION

Bell v. Stigers, 937 F.2d 1340 (8th Cir. 1991). The guardian for a prisoner who attempted to hang himself with a belt that the jailer had not detected during a pat search filed a civil rights suit against an Iowa county and individual employees, alleging violations of the prisoner's constitutional rights. The district court granted summary judgment in favor of the county sheriff and communications operator on duty but denied summary judgment for the jailer, who appealed. The appeals court found that the jailer did not violate the civil rights of the prisoner, absent a showing that the jailer possessed a level of knowledge required under the deliberate indifference standard that would alert him to a strong likelihood that the prisoner would attempt suicide; the prisoner's offhand comment during the booking procedure "well I think I'll shoot myself" could not reasonably constitute a serious suicide threat when no gun was available, and there was no evidence that the jailer was familiar with a "suicide profile" or that he was under any duty to be. (Washington County Jail, Iowa)

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
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. Appeals Court
PROTECTION

Colburn v. Upper Darby Tp., 946 F.2d 1017 (3rd Cir. 1991). The administratrix of the estate of a pretrial detainee who committed suicide in jail brought a civil rights action against the township and police officials. The U.S. District Court dismissed the complaint and the court of appeals affirmed in part, reversed and remanded in part. On remand, the district court granted summary judgment in favor of the defendants and the plaintiff appealed. The court of appeals found that the municipality was not liable for the suicide of the pretrial detainee. Two components of the concept of serious medical needs of prisoners, as to which deliberate indifference by prison officials violates the Eighth Amendment's proscription of cruel and unusual punishment, are that the detainee's condition must be such that failure to treat can be expected to lead to substantial and unnecessary suffering, injury or death, and that the condition be one that has been diagnosed by a physician as requiring treatment or one that is so obvious that a lay person would easily recognize the necessity for a doctor's attention. (Upper Darby Township Police Department, Pennsylvania)

U.S. Appeals Court
MEDICAL CARE

Davis v. Jones, 936 F.2d 971 (7th Cir. 1991). A pretrial detainee who suffered a scraped elbow and a one-inch cut in his temple during the course of an arrest brought a civil rights action against police. The U.S. District Court found that by not immediately taking the detainee to a hospital or offering him the option of going to a hospital, the police violated the detainee's due process rights, and appeal was taken. The court of appeals found that police must offer medical care to a pretrial detainee if there is reason to suspect that an injury to the detainee is serious, but because an objectively reasonable officer would not have thought that the detainee's injuries were serious, failure to offer medical care was not improper. (Calumet Park Police, Illinois)

U.S. District Court
LENGTH
PRIVACY

Doe v. City of Cleveland, 788 F.Supp. 979 (N.D. Ohio 1991). An arrestee brought a civil rights action against a city. The district court found that the arrestee's fourth amendment rights were not violated by 27-hour detention, as a jurisdiction providing judicial determinations of probable cause within 48 hours of arrest, as a general matter, did not violate a persons Fourth Amendment rights. The court also found that regulations which permitted the disclosure of the fact that the prisoner was suspected of having AIDS only to certain persons did not violate the prisoner's constitutionally-protected privacy rights; and evidence did not show that the city had a policy of deliberately failing to train itself with respect to confidentiality of booking records when the fact that the prisoner was suspected of having AIDS was improperly disclosed. (Sixth Police District Headquarters, Cleveland Police Department, Ohio)

U.S. District Court
SEARCHES

Draper v. Walsh, 790 F.Supp. 1553 (W.D. Okl. 1991). A pretrial detainee who was subjected to a visual strip search in a county jail filed suit against the county sheriff. On the sheriff's motion for summary judgment, the district court found that the county's policy of subjecting detainees arrested for traffic violations or other minor offenses to a visual strip search at the discretion of a police officer was unconstitutional on its face, making qualified immunity an unavailable defense. (Cleveland County Detention Center, Oklahoma)

U.S. Appeals Court
PRISONER SUICIDE

Elliott v. Cheshire County, N.H., 940 F.2d 7 (1st Cir. 1991). The father of a detainee who committed suicide while in a county jail brought a civil rights action against the county, individual correctional officers, and the arresting officer. The U.S. District Court entered summary judgment in favor of all defendants and the father appealed. The court of appeals found that fact issues existed on the question of whether jail personnel knew or reasonably should have known of the detainee's suicidal tendencies. The detainee made suicide threats to fellow inmates, and whether inmates reported such threats to jail personnel in such a manner as to be taken seriously, and whether jail personnel responded reasonably or with deliberate indifference, precluded summary judgment for them. The arresting officer was not deliberately indifferent to the detainee's medical needs; although the officer was informed of the detainee's mental illness, he was not informed that the detainee had previously threatened suicide, and there was no reason to suspect from the detainee's demeanor or actions that such danger existed. The county could not be held liable absent an indication of inadequately training its officers or maintaining an unsafe jail. (Cheshire County House of Corrections, New Hampshire)

U.S. District Court
INTERROGATION
CONDITIONS OF
CONFINEMENT
SPEEDY TRIAL
CONDITIONS

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
TRAINING
FAILURE TO
PROVIDE CARE

Hinkfuss v. Shawano County, 772 F.Supp. 1104 (E.D. Wis. 1991). The personal representatives and survivors of a pretrial detainee who committed suicide brought a Section 1983 action against the county and jail officials who moved for summary judgment. The U.S. District Court found that the county could not be held liable for the suicide based on the claim of deliberate indifference to the right of detainees to medical attention. There was no contention that the county's policy of giving jailers discretion in determining medical conditions and needs of detainees was one of deliberate indifference. The jailers' failure to provide the detainee with emergency medical attention did not show that the

jailers were inadequately trained pursuant to policies or customs of the county, and the detainee's request for medical attention was not specific or urgent. The court also found that the jail officials were entitled to qualified immunity from liability; there was nothing which indicated that the conduct of the jailers was deliberately indifferent to the medical needs of the detainee nor was there anything on the record to indicate a strong likelihood that the detainee would commit suicide. (Shawano County Jail, Wisconsin)

U.S. District Court
ACCESS TO COURT
LAW LIBRARY

Kaiser v. County of Sacramento, 780 F.Supp. 1309 (E.D.Cal. 1991). Jail inmates brought an action seeking access to legal materials. The district court found that the pretrial detainees and convicts who alleged denial of access to the law library but who did not allege that they were denied access to alternative legal assistance had standing to challenge the adequacy of the law library. It was also found that an incarcerated pretrial detainee is entitled to limited access to law books and other legal materials, but the county is not obligated to facilitate nonlawyer legal assistance for pretrial detainees who are proceeding pro se. The "paging" or "slip" system for convicted inmates to obtain legal materials, standing alone, is unconstitutional. Finally, the court would not grant preliminary injunctive relief requiring the county to provide additional legal assistance to convicts held in jail. It was unclear whether the combination of paging assistance and legal assistance met constitutional requirements. The court did require the posting of a copy of reference materials available. (Sacramento County Jail and Rio Cosumnes Correctional Center, California)

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
PSYCHOLOGICAL
CARE
SUICIDE

Leshore v. County of Worcester, 945 F.2d 471 (1st Cir. 1991). A civil rights action was brought against a county and county officials in connection with a suicide of a pretrial detainee. The U.S. District Court entered judgment on the verdict in favor of the defendants, and the plaintiff appealed. The court of appeals found that the U.S. District Court did not abuse its discretion in removing default against the county two weeks before trial, on the grounds that failure to respond was due to an illness of the defendant county's attorney, despite the plaintiff's contention that the short interval between the removal of default and trial precluded discovery against the county. The plaintiff was not prejudiced where she never moved to continue the case to conduct a discovery and had already deposed several county officials in preparing her case against individual defendants, who were themselves county officers. In addition, it was found that there was no plain error in instructing the jury to consider whether the detainee was in need of psychiatric care "particularly" at the time of the suicide, or in a comment concerning the lack of evidence that a suicidal person remains forever suicidal, in light of evidence that the detainee's condition did appear to have changed following an earlier suicide watch, and since the jury was not precluded from finding that earlier manifestations were so severe that the defendants should have known that the detainee continued to need treatment on the date of the suicide. (Worcester House of Correction, Worcester, Massachusetts)

U.S. Appeals Court
DUE PROCESS
PLACEMENT

Martucci v. Johnson, 944 F.2d 291 (6th Cir. 1991). A former pretrial detainee filed a Section 1983 action alleging various constitutional violations by sheriff's department officials in concert with a State Bureau of Investigation agent. The U.S. District Court entered summary judgment against the detainee, and he appealed. The court of appeals found that conditions imposed on the pretrial detainee during his segregated confinement were reasonably related to legitimate governmental objectives and aborting his escape and ensuring his presence at trial and, thus, the segregation did not amount to unconstitutional "punishment" and, consequently, his placement in segregated confinement did not, in and of itself, violate due process. In addition, the pretrial detainee was not denied procedural due process by the lack of a hearing at which he could contest reasons for his confinement, as he was not subjected to "discipline" for violation of a prison rule and, thus, could derive no liberty interest from a regulatory provision requiring jailers to provide for disciplinary hearings in cases of alleged violations of prisoner conduct rules. (Anderson County Jail, Tennessee)

U.S. Appeals Court
PROTECTION FROM
HARM
PRISONER ON
PRISONER
ASSAULT

Redman v. County of San Diego, 942 F.2d 1435 (9th Cir. 1991). A pretrial detainee sued a county and county jail personnel under Section 1983 after he was placed in a holding cell with a homosexual resulting in his rape. The U.S. District Court directed a verdict in favor of all defendants, and the detainee appealed. The court of appeals affirmed. After granting rehearing en banc, the court of appeals found that the pretrial detainee established a violation of his right to personal security under the due process clause of the Fourteenth Amendment by demonstrating either that prison officials acted with deliberate indifference or that their conduct was so reckless as to be tantamount to desire to inflict harm. In addition, a jury question was presented as to whether jail officials were acting pursuant to county policies or customs when placing the pretrial detainee in a cell with the alleged "aggressive homosexual," who subsequently raped him, and whether that policy or custom exacerbated the danger posed by the aggressive homosexual to the general prison population to such an extent that it amounted to deliberate indifference to the pretrial detainee's personal security in violation of Section 1983. A second jury question was presented as to whether the county sheriff was deliberately indifferent to the pretrial detainee's personal security rights by allowing overcrowding of the county jail and whether the sheriff acquiesced in the deficient policy which was the moving force behind the pretrial detainee's rape by his cellmate and which repudiated the detainee's constitutional right to personal security. A final jury question was presented as to whether the police captain in charge of the county jail facility developed and implemented policies that were deliberately indifferent to the pretrial detainee's personal security and were the moving force in violation of the detainee's constitutional rights and as to whether the captain's assumption that heterosexual inmates were more able to protect themselves from "aggressive" homosexuals than "passive" homosexuals exhibited deliberate indifference to the potential security risk posed by placing an "aggressive" homosexual in a cell with a heterosexual inmate. (San Diego County's So. Bay Detention Facil., Calif.)

U.S. Appeals Court
MEDICAL CARE

Salazar v. City of Chicago, 940 F.2d 233 (7th Cir. 1991). An administrator of the estate of a pretrial detainee who died following his arrest on DWI charges brought federal civil rights and state law claims. The U.S. District Court directed verdict on the civil rights claims against the arresting and lockup officers and against the city based on police department policy and entered judgment on jury verdict in favor of the paramedics on the federal civil rights claims. The district court then dismissed the remaining state law claims for want of prosecution after denying the administrator's motion to dismiss those claims without prejudice for lack of subject matter jurisdiction, and the administrator appealed. The court of appeals found that the deliberate indifference standard applied to determining whether the police officers and paramedics deprived the pretrial detainee of his life without due process of law. However, it was found that the police officers did not exhibit deliberate indifference to the pretrial detainee's medical needs such that they could be held liable for depriving him of his life without due process of law when he died several hours after being arrested for DWI following a traffic accident. There was no evidence that the detainee displayed any obvious external signs of injury or complained about pain or injury, the officers knew that he had refused further treatment at the accident scene and officers saw the detainee walk under his own power. Although the detainee staggered and vomited at one point, the behavior was consistent with the fact that he was drunk. In addition, the paramedics could not be held liable for violating the civil rights of the pretrial detainee, where there was no evidence that they exhibited deliberate indifference to his serious medical needs. Prior to refusing further treatment, the detainee allowed paramedics to conduct a preliminary examination which revealed that his vital signs were normal and that his skin color and skin moisture were normal and that his pupils were responsive and equal, and the paramedics were not required to take the detainee to the hospital to check for internal injuries simply because he was intoxicated. It was also found that the district court had discretion to retain jurisdiction over pendent state law claims where both federal and state law claims had been tried, and the state law claims remained for retrial after the jury in the first trial failed to return verdicts on the state law issues. (19th District Police Station, Chicago, Illinois)

U.S. Appeals Court
SUICIDE
MEDICAL CARE

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)

- U.S. District Court
SUICIDE
- Trask v. County of Strafford, 772 F.Supp. 42 (D. N.H. 1991). The mother of a pretrial detainee who committed suicide brought a Section 1983 action against correctional officers and the officers moved for summary judgment. The U.S. District Court found that the allegation that a classification specialist, who interviewed the pretrial detainee and perceived no signs that he would injure himself, and contravened county policy when he failed to contact a doctor or nurse after learning of the detainee's dependency on alcohol, would only have supported a negligence claim and did not amount to the deliberate indifference that would have required remedy under Section 1983. (Strafford County Jail, New Hampshire)
- U.S. Appeals Court
PRO SE LITIGATION
APPOINTED
ATTORNEY
- Tucker v. Randall, 948 F.2d 388 (7th Cir. 1991). A pretrial detainee filed a pro se civil rights complaint against officers at a jail. The U.S. District Court dismissed the complaint, and the detainee appealed. The court of appeals found that the appointment of counsel would be appropriate in the action brought by the indigent pretrial detainee against officers of the jail, where the detainee had presented a colorable claim of deliberate indifference to his serious medical needs, the detainee's incarceration in a facility different from that in which the alleged conduct took place rendered him unable to investigate crucial facts, it was clear that the detainee could not present his case properly, and the detainee's complaint raised numerous complex constitutional issues. (Kendall County Jail, Illinois)
- U.S. District Court
PLACEMENT
- U.S. v. Gotti, 755 F.Supp. 1159 (E.D. N.Y. 1991). Pretrial detainees obtained an order directing the warden of a federal facility and the United States Attorney to show cause why an order releasing them, or in the alternative, modifying the conditions of their pretrial detention, should not be entered. The U.S. District Court found that the fact that pretrial detainees who were charged with multiple murders, conspiracy and solicitation to murder, and obstruction of justice, including witness tampering, did not justify their placement in administrative detention, in absence of evidence that since the detainees had been in custody they committed an act or omission which posed a serious threat to inmates or to the security of the institution. (Metropolitan Correction Center, New York)
- U.S. Appeals Court
ACCESS TO COURT
- Wayland v. City of Springdale, Ark., 933 F.2d 668 (8th Cir. 1991). A civil rights action was brought for fatal injuries sustained by an arrestee who hung himself in a cell. The U.S. District Court granted the defendants' motion for summary judgment, and appeal was taken. The court of appeals found that material question of fact, as to whether the arrestee was detained in jail for an unreasonable period of time without being taken before a judicial officer, precluded entry of summary judgment for the defendants on the Section 1983 claim. The officials in the municipal police department could be liable under Section 1983 for detaining the arrestee, even though they were not responsible for the delay in the arraignment. The officers were under no obligation to continue to hold the arrestee for an unreasonable period of time. (Springdale Police Department, Arkansas)
- 1992
- U.S. Appeals Court
SUICIDE
- Barber v. City of Salem, Ohio, 953 F.2d 232 (6th Cir. 1992). An administrator of a pretrial detainee's estate brought a Section 1983 action against police officers and a city based on the detainee's suicide. The United States District Court granted summary judgment in favor of the police officers and the city, and the administrator appealed. The appeals court, affirming the decision, found that there was no clearly established right to suicide prevention screening or facilities in 1982 when the pretrial detainee hanged himself; therefore, the law enforcement officers were entitled to qualified immunity from liability in the action. The city could not be held liable for any failure to better train personnel to detect and deter jail suicides. Although the pretrial detainee expressed concern over his job, his engagement, and his ability to obtain custody of his young son due to his arrest, such a reaction to arrest for driving under the influence of alcohol could not be considered abnormal and would not have alerted jail authorities to a strong likelihood that the detainee would commit suicide in such a manner that failure of the city to take precautions amounted to deliberate indifference to the detainee's serious medical needs. (Salem City Jail, Salem, Ohio)
- U.S. District Court
SUICIDE
MEDICAL CARE
- 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
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. Appeals Court
FAILURE TO
PROVIDE CARE
PRETRIAL
DETENTION

Hall v. Ryan, 957 F.2d 402 (7th Cir. 1992). The estate of a detainee who committed suicide while being held in jail brought a Section 1983 action against police officers. The U.S. District Court denied the officers' motion for summary judgment, and appeal was taken. The court of appeals found that a jury question existed as to whether the police officers had treated the detainee, who had committed suicide in his cell, with wilful neglect, so as to lose the benefit of qualified immunity, when they neglected to consult his file after observing him cursing, flinging his shoes, urinating in his cell, and repeatedly flushing the toilet. (City of Decatur Police Department, Illinois)

U.S. District Court
CONDITIONS
CROWDING
MEDICAL CARE

Lile v. Tippecanoe County Jail, 844 F.Supp. 1301 (N.D. Ind. 1992). Pretrial detainees sued a county jail and jail officials under Section 1983 alleging violations of the Eighth and Fourteenth Amendments. The district court found that allegations that pretrial detainees were asked to watch another inmate who had allegedly been brought to the jail because of mental problems, that another inmate twice attempted to commit suicide, and that the detainees were required to clean up after an initial suicide attempt, failed to state a Section 1983 claim against any of the county jail officials under the prevailing standard of deliberate indifference. The court found that there was no evidence that the actions of the officials were intended to punish the detainees, or that their conduct toward the detainees amounted to criminal recklessness. The court also found that the conditions of detention, including overcrowding and lack of ventilation, either alone or in combination, were not a result of deliberate indifference by jail officials or a policy or custom designed to punish pretrial detainees. In addition, a pretrial detainee's allegation that the county sheriff refused to have the county pay for removal of nose polyps could not be characterized as a deliberate effort to punish the detainee in violation of the Fourteenth Amendment, because it was entirely possible that the surgery could not have been scheduled within the time the detainee had left at the county jail. Also, there was no indication that the proposed surgery was a matter of urgency or that the detainee's condition was serious. Finally, it was found that a county jail official's refusal to open windows after an inmate started a fire in a cell block allegedly resulting in a detainee passing out was not intended to punish the detainee in violation of the Eighth Amendment. There was no medical evidence suggesting that the detainee suffered any injury resulting from the fire or the presence of smoke in the unit. The officials responded to and extinguished the fire, and there was no indication as to the length of time smoke was present or that any other inmates complained about the presence of smoke or suffered any discomfort or injury. (Tippecanoe County Jail, Indiana)

U.S. Appeals Court
SUICIDE

Manarite v. City of Springfield, 957 F.2d 953 (1st Cir. 1992). The estate and minor daughter of a detainee who committed suicide while in protective custody sued the police chief and the city under Section 1983 for their alleged failure to prevent the suicide. The U.S. District Court granted summary judgment for the defendants, and the plaintiffs appealed. The court of appeals found that the police chief's failure to insist that officers who implemented the suicide prevention policies remove shoelaces from persons in protective custody was not "deliberate indifference" that would permit holding the chief liable for suicide of a person in protective detention. Although four detainees tried to hang themselves with shoelaces in the preceding nine months, the chief's conduct might have been negligent, but not deliberately indifferent. In addition, the city's failure to

provide training and education for police officers in suicide detection and prevention was not "deliberate indifference" in violation of Section 1983, as the city's training and policies regarding suicide prevention were in accord with requirements of state law at the time of the detainee's suicide, and there was no basis for finding that his suicide was closely related to the city's failure to train officers in suicide prevention. The prison official's failure to prevent the suicide of the detainee did not violate the detainee's minor daughter's right of familial associational privacy, and thus, afforded her no right of recovery under Section 1983; the daughter had no liberty interest protected by the due process clause in her familial relationship with her father. (Springfield Police Station, Springfield, Massachusetts)

U.S. Appeals Court
MEDICAL CARE
SUICIDE ATTEMPT

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
PROTECTION

Swofford v. Mandrell, 969 F.2d 547 (7th Cir. 1992). A pretrial detainee brought an action against a sheriff to recover for a beating and sexual assault by other inmates. The U.S. District Court dismissed the complaint for failure to state a claim, and the detainee appealed. The court of appeals, reversing and remanding, found that a due process claim was stated against the sheriff by the pretrial detainee's allegations that he was arrested on suspicion of aggravated sexual assault, placed in a holding cell with ten inmates, and was jumped on, beat, kicked, urinated on, and sodomized with a broom handle. Neither the sheriff nor the deputy came to the detainee's aid despite repeated screams, no one inspected or guarded the cell for eight hours, and the sheriff "had to know" that the actions put the detainee's life in great danger. The court also found that the pretrial detainee was entitled to appointed counsel for the meritorious Section 1983 action as the state of mind required for a due process violation was difficult and subtle, the detainee had been unable to investigate crucial facts during his incarceration, the detainee's claim was likely to turn on the credibility of witnesses, and the detainee was unable to present the case adequately without counsel. (Franklin County Jail, Benton, Illinois)

U.S. District Court
CONDITIONS
PUNISHMENT
RIGHTS RETAINED

Washington v. Tinsley, 809 F.Supp. 504 (S.D. Tex. 1992). Pretrial detainees challenged a city ordinance prohibiting smoking in public buildings, including the county jail. The district court found that the city ordinance did not violate the Constitution and impermissibly punish pretrial detainees without a trial; the city's ban affected all public buildings, the ordinance did not disproportionately affect the inmates, and the ban protected the health of smoking and nonsmoking workers and visitors, and eliminated a fire hazard. (Harris County Jail, Texas)

U.S. District Court
CROWDING
EQUAL PROTECTION
PARITY WITH
SENTENCED

Young v. Keohane, 809 F.Supp. 1185 (M.D. Pa. 1992). A pretrial detainee brought a *Bivens* civil rights action alleging that prison officials violated the detainee's constitutional rights. Cross motions for summary judgment were made. The district court found that the prison officials were not entitled to qualified immunity on claims that overcrowding violated the detainee's due process rights. The detainee was confined to one room with up to eleven other people between twenty-two and twenty-four hours per day without a wash basin, toilet, table or chairs, or drinking fountain under more restrictive conditions than those placed upon convicted prisoners. (United States Penitentiary, Lewisburg, Pennsylvania)

1993

U.S. District Court
SUICIDE ATTEMPT

Camps v. City of Warner Robins, 822 F.Supp. 724 (M.D. Ga. 1993). The administrators of an arrestee's estate brought a civil rights action against city, county, and various law enforcement officers, alleging they were deliberately indifferent to the psychological needs of the arrestee, who lapsed into a coma after a suicide attempt and died approximately one year later. On motions for summary judgment, the district court found that the decision of a municipal holding facility supervisor to transport the arrestee to a county jail rather than the hospital or a psychiatric facility was, at most, negligent, rather than deliberately indifferent to the arrestee's serious psychological needs. Although the supervisor was aware that the arrestee had attempted suicide while at the detention facility, the supervisor directed officers who transferred the arrestee to inform jail officials that the arrestee was acting suicidal. Triable issues existed regarding whether deputies and a supervising officer at the county jail were aware that the arrestee was suicidal but were deliberately indifferent to his psychological needs. However, absent any allegation that

the sheriff was personally involved in any way with the arrestee's suicide attempt while in custody at the county jail, or that any failure to train by the sheriff caused this injury, the sheriff was not subject to supervisory liability. The administrators of the arrestee's estate failed to create a genuine issue of material fact that the county jail's suicide prevention policy was inadequate, as would preclude summary judgment for the county of the civil rights municipal liability claim, where the administrators made only general allegations that policies regarding suicide prevention were grossly inadequate, and otherwise charged violations of county policy. (Houston County Jail, Georgia)

U.S. Appeals Court
SEARCHES

Chapman v. Nichols, 989 F.2d 393 (10th Cir. 1993). Detainees brought a civil rights action against a sheriff to recover damages after they were subjected to strip searches at a jail following arrest. The U.S. District Court denied the sheriff's motion for summary judgment on grounds of qualified immunity, and the sheriff appealed. The appeals court, affirming and remanding, found that it was clearly established law in late 1991 and early 1992 when the arrests took place, that a blanket policy of strip searches for detainees was unconstitutional, so that the sheriff was not entitled to qualified immunity. (Creek County Jail, Sapulpa, Oklahoma)

U.S. Appeals Court
MEDICAL CARE

Davis v. Hall, 992 F.2d 151 (8th Cir. 1993). A pretrial detainee brought a Section 1983 action against jail officials for their alleged deliberate indifference to his medical condition. The U.S. District Court dismissed, and the detainee appealed. The appeals court, affirming the decision, found that the pretrial detainee's allegations that he was denied access to his crutches and to the jail's infirmary, despite a broken ankle, did not state a deliberate indifference claim under the due process clause. (St. Louis County Jail, Missouri)

U.S. District Court
EQUAL PROTECTION
PROGRAMS
RIGHTS RETAINED

Donnell C. v. Illinois State Bd. of Educ., 829 F.Supp. 1016 (N.D.Ill. 1993). School-aged pretrial detainees in a county jail filed an action against the state Board of Education concerning alleged inadequate education. The state filed a motion to dismiss. The district court found that the allegation of inadequate education by the pretrial detainees sufficiently stated a claim of violation of substantive due process to overcome a motion to dismiss. The detainees alleged that only about 40% of the detainees in need of special educational services were receiving the needed services, and that instruction was lacking on the educational basics of reading and math, or even lacking altogether. The allegations of inadequate education also sufficiently stated a claim of violation of equal protection to overcome a motion to dismiss, absent a showing by the state of a rational relationship between the lack of education and maintaining security. The state merely made apocryphal claims that the county jail's actions were justified to avoid burdensome litigation by the prisoners. The detainees had a constitutionally protected due process property interest in participation in educational programs during detention, and the interest was not diminished by a probable cause hearing or indictment process undertaken before confinement. Finally, the court found that the Individuals with Disabilities Education Act (IDEA) applied to the school-aged pretrial detainees' claims of inadequate education, in light of the application of the Act to state correctional facilities by the Department of Education's Office of Special Education and Rehabilitative Services, and absent any showing that the Department's regulations were arbitrary or capricious. (Cook County Jail, Illinois)

U.S. Appeals Court
ACCESS TO COURT
SPEEDY TRIAL

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
SUICIDE

Hare v. City of Corinth, Miss., 814 F.Supp. 1312 (N.D. Miss. 1993). The estate of a 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
EQUAL PROTECTION
PUBLICATIONS
WORK

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. Requiring the detainee to participate in the cleaning of a cell-block was not inherently punitive and was related to a legitimate governmental interest in prison cleanliness, and thus was not a violation of the detainee's right not to be punished before conviction for some crime. (Horry County Detention Center, Conway, South Carolina)

U.S. District Court
SUICIDE

Hood v. Itawamba County, Miss., 819 F.Supp. 556 (N.D. Miss. 1993). In an action arising out of a suicide by a detainee, the county moved for summary judgment on Section 1983 claims. The district court found that, assuming that the detainee had shown suicidal tendencies, the county was not liable under Section 1983 for the detainee's suicide on the theory of inadequate training, where the sheriff's office did have a policy regarding custodial confinement of detainees who exhibited a possible inclination to self-injury. The negligence of a county law officer in not adhering to a county policy for custodial care of the detainee did not support county liability under Section 1983. It was the deviation from policy and standard practice that contributed to the detainee's suicide, not the policy or practice itself. (Itawamba County Jail, Mississippi)

U.S. District Court
CONDITIONS
MEDICAL CARE
PUNISHMENT
SUICIDE ATTEMPT
USE OF FORCE

Jones v. Thompson, 818 F.Supp. 1263 (S.D. Ind. 1993). A pretrial detainee filed a Section 1983 civil rights action arising from the use of three-way restraints on the detainee following his suicide attempt. The district court found that the extended use of three-way restraints on the detainee, coupled with the absence of medical review or treatment and the denial of even basic amenities such as personal hygiene and toilet usage constituted deprivation of his due process rights. Various officers at the jail were found liable for \$5,000 compensatory damages in their individual capacities. In addition, an officer responsible for management of the jail was liable for \$2,000 punitive damages in her individual capacity and the county was liable for \$5,000 compensatory damages. (Madison County Jail, Indiana)

U.S. District Court
SEARCHES

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
CELLS
SEARCHES
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)

U.S. District Court
SPEEDY TRIAL

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
SUICIDE

Russell v. Knox County, 826 F.Supp. 20 (D.Me. 1993). A Section 1983 action was brought against a county, the sheriff and county corrections department officials' for an inmate's death by suicide. On the defendants' motion for judgment as a matter of law at the close of the plaintiff's case, the district court found that the county was not liable for the inmate's death, based on an alleged county policy of allowing all involuntary detainees to retain their shoelaces. In addition, the actions of a line corrections officer at the county jail, in allegedly delaying his inspection of the inmate's cell as part of a suicide watch for four minutes while he went to the bathroom, did not manifest any "deliberate indifference" to the inmate's constitutional rights, such as might support a Section 1983 action against the officer when the inmate hanged himself in his cell. The officer had never been told anything by the inmate suggesting that he intended to commit suicide, and the officer was surprised that the inmate committed suicide. (Knox County Jail, Maine)

U.S. District Court
ACCESS TO COURT
CONDITIONS
MEDICAL CARE
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 medical care, inadequate access to the telephone and illegal taping of phone conversation, and inadequate jail conditions. The district court dismissed, and the detainee appealed. The appeals court found that the officers did not act with "deliberate indifference" to the pretrial detainees' medical needs, even if they failed to treat him with ice and aspirin as instructed by a doctor or delayed over two months in having the injuries viewed again. A reasonable person would not have viewed the detainee's injuries as being life threatening or serious. The detainee was transported to a hospital prior to booking and the hospital doctor did not treat the injuries as serious or life threatening. In addition, the inmate did not complain of injuries to the booking officer upon arrival. The 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. The alleged intensely cold and hot temperatures in the detainee's cell, and alleged lack of food in the jail, did not meet "deliberate indifference" or "malicious motives" standards so as to defeat the qualified immunity defense asserted by the sheriff's department officials. Attempts to remedy prison conditions, including the use of a space heater, giving the defendant an extra blanket and clothes to wear, installing fans and opening windows, and giving the detainee extra snacks, showed something less than a criminally reckless or malicious state of mind. (Kendall County Jail, Illinois)

U.S. Appeals Court
USE OF FORCE

Valencia v. Wiggins, 981 F.2d 1440 (5th Cir. 1993), cert. denied, 113 S.Ct. 2998. A pretrial detainee brought a civil rights action against a jail official, alleging that the official used excessive force against him during a jail disturbance. The U.S. District Court entered judgment in favor of the detainee, and the official appealed. The appeals court, affirming the decision, found that the substantive due process standard, rather than the Fourth Amendment excessive force standard, applied to the pretrial detainee's excessive force case, where the alleged use of excessive force occurred three weeks after the initial arrest. The court also found that the jail official's use of a choke hold and other force to subdue the nonresisting pretrial detainee during the jail disturbance was a malicious and sadistic use of force to cause harm, rather than a good-faith effort to maintain or restore security, violating due process. The use of force rendered the detainee temporarily unconscious. The officer then struck the detainee while the detainee was handcuffed, kneeling, and nonresisting. The court found that the jail official's use of force was not objectively reasonable, so that the official was not entitled to qualified immunity in the detainee's civil rights action, where the detainee suffered severe injuries as a result. The detainee was awarded damages in the amount of \$2,500 from the jail official, and was also granted approximately \$27,600 in attorneys' fees and costs. (Brewster County Jail, Texas)

U.S. Appeals Court
USE OF FORCE

Vineyard v. County of Murray, Ga., 990 F.2d 1207 (11th Cir. 1993), cert. denied, 114 S.Ct. 636. An arrestee brought a Section 1983 action against deputies and a sheriff, alleging that the defendants violated the arrestee's constitutional rights by beating him. The U.S. District Court entered judgment on a jury verdict for the arrestee, and the defendants

appealed. The court of appeals found that the evidence supported a finding that the county's deliberate indifference to the rights of arrestees to be free from use of excessive force by the county's deputies was a moving force of the violation of the arrestee's constitutional rights resulting from the beating by deputies. An expert witness testified that, assuming the arrestee's version of the beating was true, the beating would not have occurred if county policies were such that officers knew they must report any confrontations, that others would call the sheriff's department to report complaints to the department, and that the department would investigate complaints. (Murray County Sheriff's Department)

1994

U.S. District Court
DUE PROCESS
PUNISHMENT

Collazo-Leon v. U.S. Bureau of Prisons, 855 F.Supp. 530 (D. Puerto Rico 1994). A pretrial detainee who was placed in solitary confinement as a disciplinary sanction applied for a writ of habeas corpus. The district court granted the application, finding that the disciplinary segregation imposed on the pretrial detainee as a sanction for an escape attempt constituted punishment and served no legitimate regulatory purpose, in violation of substantive due process. (M.D.C. Guaynabo, Puerto Rico)

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
MEDICAL CARE
SUICIDE

Hare v. City of Corinth, MS, 36 F.3d 412 (5th Cir. 1994). The estate of a pretrial detainee who committed suicide brought a Section 1983 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 found that when the pretrial detainee committed suicide in 1989, jail officials were under a clearly established constitutional duty to provide reasonable care for serious medical needs, unless the deficiency reasonably served a legitimate governmental objective. The court ruled that whether the officials denied reasonable medical care for the pretrial detainee and whether a legitimate governmental objective justified the denial were questions of fact precluding summary judgment on the issue of qualified immunity. (Corinth City Jail, Mississippi)

U.S. District Court
CONDITIONS
DUE PROCESS

Hines v. Sheahan, 845 F.Supp. 1265 (N.D.Ill. 1994). A pretrial detainee brought a Section 1983 action for alleged constitutional deprivations suffered while incarcerated. On the defendants' motion to dismiss for failure to state a claim, the district court found that the pretrial detainee's complaint alleging that he was required to sleep on a mattress on the floor with rats and roaches failed to state a due process claim based on unconstitutional conditions of confinement. The complaint did not set forth facts that would support a claim of deliberate indifference, and failed to allege facts indicating what harm the detainee suffered. (Cook County Jail, Illinois)

U.S. District Court
MEDICAL CARE
METHADONE
TREATMENT

Messina v. Mazzeo, 854 F.Supp. 116 (E.D.N.Y. 1994). An arrestee brought a federal civil rights action against a correctional facility physician. 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. District Court
USE OF FORCE

Newsome v. Webster, 843 F.Supp. 1460 (S.D. Ga. 1994). Jail detainees brought a Section 1983 action against various officers, alleging excessive use of force. Motions were made to dismiss and for summary judgment. The district court found that the jail detainees failed to establish the liability of the sheriff, either individually or officially. The detainees did not allege that the sheriff had personally participated in any force inflicted upon them, and their conclusory statements as to the inadequacy of training and policies towards the use of force did not show that force was excessive. The detainees had not stated a cause of action for excessive force against personnel who had arrested them or personnel responsible for their jail confinement. (Richmond County Jail, Georgia)

U.S. District Court
RELIGION
VISITS

Pippins v. Adams County Jail, 851 F.Supp. 1228 (C.D. Ill. 1994). A pretrial detainee brought a civil rights action against a jail and a jail administrator for violating his constitutional rights. The district court found that the jail's denial of a hard-cover Koran, because of legitimate security interests of preventing weapons and smuggling, and its failure to provide a substitute main course when serving pork did not support the detainee's claim of religious discrimination. The pretrial detainee's right to exercise religious freedom was not violated by the jail's refusal to permit a visit from his Imam minister, who was on parole. Obvious concerns dictate against allowing paroled felons to meet with incarcerated people, and jail officials never barred any other Imam from visiting the jail. (Adams County Jail, Illinois)

U.S. District Court
SUICIDE

Plasko v. City of Pottsville, 852 F.Supp. 1258 (E.D. Pa. 1994). The estate of a pretrial detainee brought claims against a city and city officials under Sections 1983, 1985, and 1986, under the Eighth and Fourteenth Amendments, and under Pennsylvania law, to recover damages resulting from the pretrial detainee's suicide. On motions to dismiss, the district court found that the estate of the pretrial detainee did not state a claim under Section 1983 against jail officials for failure to prevent the detainee's suicide, absent an allegation of facts concerning the mental history of the detainee or other facts showing that jail officials knew or should have known the detainee posed a particular risk of suicide and that they disregarded those risks. Without any reason to believe that the detainee was potentially suicidal, the fact that officials did not take a belt from the detainee while he was in a holding cell amounted to nothing more than negligence. The state law claims were also dismissed without prejudice to the plaintiff's right to reassert them as supplemental claims in an amended complaint in district court or in state court if no amended complaint was filed. (Pottsville Police Department, Pennsylvania)

U.S. District Court
VISITS

Young v. Larkin, 871 F.Supp. 772 (M.D. Pa. 1994), affirmed, 47 F.3d 1163. A pretrial detainee filed a civil rights action against prison officials complaining about treatment during pretrial detention. On the defendants motion for summary judgment the district court found that the prisoner, who was confined in a restrictive housing unit, was not denied constitutional rights by the fact that he was allowed fewer visits with family than other prisoners in the general population and that he had to visit family with handcuffs on, unlike prisoners in the general prison population. The restrictions were justified by valid security concerns. (State Correctional Institution, Dallas, Pennsylvania)

1995

U.S. Appeals Court
CELLS
CONDITIONS
SUICIDE ATTEMPT

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
CONDITIONS
SANITATION

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, a physician for the jail, and the county for insufficient medical care. On motions for summary judgment by the county and the physician, the district court found that the physician under contract to provide medical services to the county jail was not liable to the detainee for alleged insufficient medical treatment. The detainee was given reasonable medical care and suffered no adverse effects from the time spent in jail. In addition, the physician was not liable to the detainee for alleged medical negligence because the detainee was not harmed by any alleged shortcomings of treatment, and any failure by the infirmary staff to properly provide the detainee with AZT treatment was not conduct which could be imputed on the physician. The physician was not liable to the detainee for intentional infliction of emotional distress regarding allegedly insufficient medical treatment. The administration of a placebo did not constitute extreme or outrageous conduct and significant care was provided by the infirmary staff in coordination with the care provided by the detainee's private physician. The detainee's private physician testified that the confinement had not affected the detainee's medical conditions or his mental health. (Cameron County Jail, Texas)

U.S. Appeals Court
DISCIPLINE
PUNISHMENT
SEPARATION
TELEPHONE
VISITS

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. District Court
SEARCHES
PRIVACY

Ellis v. Meade, 887 F.Supp. 324 (D.Me. 1995). A pretrial detainee filed a § 1983 action against a jail officer and jail administrator seeking compensation for alleged mistreatment while confined at the jail. The district court entered judgment for the defendants, finding that the male officer's comments to the detainee, "How are you doing little boy," and "How's the little guy doing," did not constitute sexual harassment. The court also held that the officer's patting of the detainee on the buttocks did not constitute a "search" for Fourth Amendment purposes and did not violate the detainee's right to privacy, nor did it constitute "punishment" in violation of the detainee's due process rights. The court found that the officer's actions of patting the detainee were immune from liability on an assault and battery claim and that the officer's observation of the detainee while naked did not violate the detainee's Fourth Amendment privacy rights. The court noted that the officer's purpose in patting the inmate was not to punish, but to placate the detainee, which was rationally connected to the officer's stated purpose and was not excessive. The court commented that while the officer's actions were possibly mistaken and ill-advised, they were not so egregious that they exceeded as a matter of law the scope of any discretion the officer could have possessed. (Penobscot County Jail, Maine)

U.S. District Court
PROTECTION
USE OF FORCE

Fickes v. Jefferson County, 900 F.Supp. 84 (E.D.Tex. 1995). A pretrial detainee brought a § 1983 action against a county, sheriff, and corrections officials. The district court granted summary judgment for the defendants in part and denied it in part. The court found that a corrections officer was at most negligent in leaving mops and brooms in a cell; the detainee alleged that other inmates beat him with the mops and brooms. The court noted that bringing an end to the flood that had disrupted several cells was a legitimate government purpose that justified bringing the mops, brooms and squeegees into the cell. The court held that genuine issues of fact remained as to whether an officer knew of the ongoing attack when he made his rounds and chose to do nothing or whether the altercation erupted after the officer made his rounds, precluding summary judgment. The court held that genuine fact issues remained as to whether officers used excessive force when removing the detainee to another cell by continuing to exert force directly on the detainee's neck by means of a headlock after the detainee announced he had injured his neck, precluding summary judgment. (Jefferson County Jail, Texas)

U.S. District Court
VISITS

Flournoy v. Fairman, 897 F.Supp. 350 (N.D.Ill. 1995). A pretrial detainee brought § 1983 actions against a director of a county department of corrections and a social worker at a county jail. The district court held that denial of visitation when the visiting room was overcrowded, when visitors refused to produce identification, when visitors did not know on which tier the detainee was housed, or when insufficient time remained during visiting hours, did not violate the detainee's right to due process. The court found that such policies and practices were perfectly sensible and were reasonably related to the need to maintain internal security at the jail. The court also noted that an Illinois statute governing visitation at state correctional facilities did not apply to county jails and therefore did not give rise to any protected liberty interest. (Cook County Jail, Illinois)

U.S. District Court
SUICIDE ATTEMPT

Litz v. City of Allentown, 896 F.Supp. 1401 (E.D.Pa. 1995). The guardian of a pretrial detainee who had attempted suicide brought a civil rights action against a city and its police officials. The district court found that evidence did not show that the detainee had a particular vulnerability to suicide necessary for liability under § 1983 and that even if individual officers were liable, the municipality was not liable absent some showing that it somehow communicated a message of tacit approval or acquiescence in attempted suicides. The court also found that any improper action by the police chief was at most negligence, which would not support a § 1983 claim. The court noted that the actions of the detainee, who was intoxicated and was asking why he could not go home, did not indicate a possibility that he was going to harm himself for the purpose of showing a strong likelihood--rather than a mere possibility--that self-inflicted harm would occur. The court also noted that the city had taken measures to prevent suicides. The detainee had attempted to hang himself using his socks in a holding cell at the police department. (Allentown Police Department, Pennsylvania)

U.S. District Court
RELIGION

Muslim v. Frame, 891 F.Supp. 226 (E.D.Pa. 1995). A former pretrial detainee brought a § 1983 action alleging that a county prison rule prohibiting inmates from wearing head gear in common areas unconstitutionally restricted the Muslim detainee from wearing his prayer cap in an expression of his faith. The district court granted summary judgment for the defendants in part, and denied it in part. The court found that state law did not give prisoners a liberty interest in the unrestricted wearing of religious ornamentation, and that the prison head gear rule was not the result of religious discrimination. But the court denied summary judgment on

the issues of whether the ban on head gear substantially burdened the detainee's free exercise of religion, in violation of the Religious Freedom Restoration Act, and whether the head gear restrictions were the least restrictive means of achieving safe prisons. The court noted that prison officials failed to establish that allowing head gear would unduly increase their administrative costs, that allowing head gear would permit a means of expressing gang affiliation, and that allowing head gear would impede the need to visually identify prisoners during movement. (Chester County Prison, Pennsylvania)

U.S. District Court
MEDICAL CARE
FAILURE TO PROVIDE
CARE

Neville v. True, 900 F.Supp. 972 (N.D.Ill. 1995). A pretrial detainee brought a pro se § 1983 action against officials alleging denial of adequate medical care. The district court granted summary judgment for the officials, finding that although the inmate's heart condition, pacemaker and poor circulation provided evidence of a serious medical need, the officials were not deliberately indifferent. The court noted that the inmate was given medical attention, had several appointments with outside doctors at three different hospitals, the inmate repeatedly refused the doctor's advice to undergo pacemaker surgery, and the inmate caused certain injuries to himself and hindered treatment by re-opening healing wounds. (Metropolitan Correctional Center, Chicago, Federal Bureau of Prisons)

U.S. District Court
SEARCHES
USE OF FORCE

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
SUICIDE
USE OF FORCE
BAIL

Pyka v. Village of Orland Park, 906 F.Supp. 1196 (N.D.Ill. 1995). The estate of an arrestee who committed suicide while in detention brought a civil rights action against a village and police officers. An eighteen-year-old youth in police custody committed suicide by hanging himself from the bars of his cell with his t-shirt. The court found that the defendants were entitled to qualified immunity on claims against them in their official capacity, but the officer who put the arrestee in a chokehold was not entitled to immunity on the claim of excessive force, nor was immunity available for an officer who failed to intervene in the first officer's takedown of the arrestee. The court also found that the officers were not entitled to immunity on the claim that they struck the arrestee in violation of his right to be free from pretrial detention that constituted punishment; a videotape showed no sign of aggression or violence by the arrestee before the officer grabbed him and placed him in a chokehold. The court found that the officers were entitled to immunity on the claim of failure to provide medical care and that the village had no policy of deliberate indifference as to measures to prevent suicide. The municipality was not liable for the suicide of the arrestee based on its alleged failure to train police officers regarding suicide awareness absent any evidence that the municipality had a large suicide problem which it was ignoring or that statutes or regulations required officers either to perform CPR upon the arrestee after he was discovered hanging in his cell or to take suicide awareness classes. The court ruled that the arrestee's sister lacked standing and could not recover under § 1983 for loss of society and companionship. The court left the proximate cause issue to be determined by a jury. The court ruled that the officers were entitled to qualified immunity on the claim that they failed to process the arrestee for bail or allow bail to be posted in a timely fashion, because the right to bail was not a clearly established right at the time of the incident. (Overland Park Police Department, Illinois)

U.S. District Court
LAW LIBRARIES
CONDITIONS
EXERCISE

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. The court held that while regular exercise of some type is crucial for the psychological and physical fitness of inmates, determining what is adequate exercise will depend on the circumstances of each case, including the physical characteristics of the cell and jail, and the average length of stay of inmates. The court found no violation from the denial of outdoor exercise because the detainee had access to printed instructions for calisthenics, the jail made some recreational materials available to detainees, the average stay of a detainee was seven days (although the plaintiff in this case spent nearly six months in confinement), the jail was not crowded during his stay at the jail, and the detainee exercised in his cell at least part of the time he was confined. The court noted that where a prisoner has a reasonable opportunity for exercise and does not allege any significant physical deterioration, there is no Eighth Amendment violation. The court held that the detainee's rights were not violated by the refusal of the jail to allow him access to the county law library, which was located in the same building but which was not secure. The detainee was represented by counsel throughout his pretrial detention, removing any need for the county jail to allow him access to materials in the law library to prepare his defense. The county also granted the detainee's requests for copies of legal materials. (Harvey County Jail, Kansas)

U.S. District Court
CONDITIONS
SANITATION
EXERCISE
CROWDING

Stone-El v. Sheahan, 914 F.Supp. 202 (N.D.Ill. 1995). A pretrial detainee brought a § 1983 civil rights action against a sheriff, executive director of the county department of corrections, and the superintendent of the county jail. The detainee alleged that various conditions of his confinement violated his right to due process. The district court granted the defendants' motion to dismiss. The court found that the defendants had not personally caused the conditions at the jail, nor could they limit the number of pretrial detainees assigned there or appropriate funds to improve conditions. The court also found that the detainee failed to allege conditions of confinement serious enough to violate the objective component of a due process claim. The detainee had asserted that he had slept on the floor without a mattress, that the jail was noisy, that the jail lacked showers, that he was not able to maintain his personal hygiene, that ventilation was poor, and that inadequate security permitted gangs to intimidate him. The detainee also alleged a lack of exercise opportunities, but the court found that even dramatic restrictions on outdoor exercise do not violate due process as long as detainees have ample opportunities to participate in indoor activity. The court noted that the detainee failed to allege any harm caused by the poor ventilation or any adverse health effects from the alleged lack of exercise. (Cook County Jail, Illinois)

U.S. District Court
ACCESS TO COURTS
LAW LIBRARY

Turiano v. Schnarrs, 904 F.Supp. 400 (M.D.Pa. 1995). A § 1983 action was filed by an inmate alleging he was denied meaningful access to courts while a pretrial detainee in a county jail. The district court found that genuine issues of material fact precluded summary judgment in favor of the jail officials. The county jail law library did not contain volumes one through 700 of the Federal Supplement, volumes one through 800 of the Federal Reporter Second Series, contained only two volumes of the Supreme Court Reporter, and contained no volumes of Title 42 of the United States Code or any federal indices; the court found this to be inadequate to provide meaningful access to courts. The court also found the county's paging system inadequate; the system allows inmates to obtain law books or copies of cases and other legal reference materials upon request from the county courthouse library, but no list of books available was ever provided to inmates and officials did not make inmates aware of the system. (Huntingdon County Jail, Pennsylvania)

U.S. District Court
CONDITIONS
MEDICAL CARE
STAFFING

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 failure to allege remedial injury warranted the dismissal of claims alleging overcrowding, inadequate staffing, inadequate opportunity for exercise, and inadequate grievance procedures. However, the 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. The detainee's allegation that the facility lacked adequate ventilation was sufficient to state a claim for due process violation. The detainee's allegation that the detention facility failed to treat the detainee's back injury and that the facility's officials were aware that the detainee's sleeping conditions could adversely affect the injury also stated a claim for violation of due process. The pretrial detainee's allegation 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. The detainee's allegation that the board of commissioners failed to appropriate and provide funds sufficient to improve the conditions at the detention facility, despite its knowledge of unconstitutional conditions at the facility, and that the board was deliberately indifferent to the excessive risk created by the conditions, adequately stated a due process claim against the board. (Cook County Jail, Illinois)

U.S. Appeals Court
PROTECTION
SEPARATION

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
ACCESS TO COURTS

Casteel v. Pieschek, 944 F.Supp. 748 (E.D.Wis. 1996). Detainees brought a § 1983 action against a county jail and jail officials, alleging violation of their right to meaningful access to courts and other claims. The district court granted summary judgment for the defendants, finding that providing the detainees with weekly access to law library materials and letter access to legal assistance organizations did not violate the detainees' right to meaningful access to courts. The court noted that physical access to a law library was not provided and that the detainees were not provided with assistance of counsel for various civil claims. (Brown County Jail, Wisconsin)

U.S. District Court
DISCIPLINE
DUE PROCESS
PROTECTION

Cephas v. Truitt, 940 F.Supp. 674 (D.Del. 1996). A pretrial detainee who had been placed in administrative segregation for 18 days pending a disciplinary hearing brought a federal civil rights action against a jail official, alleging violation of his due process rights. The district court granted summary judgment to the defendants, finding that the imposition of administrative segregation prior to a disciplinary hearing did not violate a protected liberty interest. The court held that the 15-day isolation sanction given to the detainee following a disciplinary hearing did not violate a protected liberty interest and that the punishment was reasonably related to legitimate objectives and was permissible; nothing indicated that the sanction was arbitrary or disproportionate to the offense. The court also found that the detainee, who was assaulted by other inmates while in administrative segregation, failed to establish that the jail official had been deliberately indifferent to the risk that the detainee would be assaulted. According to the court, nothing indicated that the official was actually aware of any risk prior to the assault or that the risk was apparent, nor that the delay of the disciplinary hearing, during which time the detainee was kept in segregation, was unreasonable. (Sussex Correctional Institution, Delaware)

U.S. District Court
PROTECTION
INTAKE SCREENING

Clark v. McMillin, 932 F.Supp. 789 (S.D.Miss. 1996). A wrongful death suit alleging state law and federal civil rights claims was brought against a sheriff, a county, and an unnamed defendant seeking damages for the death of a pretrial detainee who was assaulted and killed by his cellmate. The district court remanded the state law claims and dismissed the federal claims. The court found that the sheriff's policy of checking cells containing pretrial detainees on suicide watch every 15 minutes was not deliberate indifference, even though 15 minutes was more than enough time for one inmate to kill another. The court found that although the sheriff did have constructive knowledge of the perpetrator's violent propensities from county records, the sheriff did not have actual knowledge of a substantial risk of serious harm to the victim. The plaintiffs had alleged that the county had no policy to safeguard inmates from attacks from other inmates, that the sheriff failed to place the perpetrator in a unit for violent felons, that the county failed to properly screen inmates for violent propensities, and that the county failed or refused to provide adequate medical care to the victim after the assault. (Hinds County Detention Center, Mississippi)

U.S. District Court
MEDICAL CARE
USE OF FORCE
PROTECTION

Dorsey v. St. Joseph Co. Jail Officials, 910 F.Supp. 1343 (N.D.Ind. 1996). A former pretrial detainee brought a civil rights action under § 1983 against county jail officials, alleging they failed to protect him, used excessive force, and failed to meet his medical needs. The court found that the inmate failed to show that jail officials failed to provide adequate medical treatment for his diabetes and his broken arm; medical records indicated that he was treated by a physician but that he was belligerent and uncooperative and that he refused treatment on several occasions. The court found that jail officials did not fail to protect the inmate from other prisoners, as all inmates could not be accommodated in single cell housing to ensure their safety. When jail officials attempted to transfer the inmate to a single cell for his own protection the inmate became recalcitrant and belligerent; the court found that jail officials did not use excessive force when transferring him to the single cell. (St. Joseph County Jail, Indiana)

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
SUICIDE

Estate of Cole by Pardue v. Fromm, 94 F.3d 254 (7th Cir. 1996). The estate and mother of a pretrial detainee who committed suicide in a psychiatric ward brought a civil rights action in state court against nurses and a psychiatrist who assisted in the detainee's treatment. After removal by the defendants to federal court the district court granted them summary judgment. The appeals court affirmed, finding that allegations of medical malpractice were not sufficient to sustain a § 1983 action. The court also held that the plaintiffs failed to demonstrate that the defendants were subjectively aware that the detainee would try to commit suicide. The court found that the plaintiffs failed to demonstrate deliberate indifference by the psychiatrist's classification of the detainee as a potential suicide risk rather than a high suicide risk. Although the defendants conceded that plastic bags such as the one the detainee used to asphyxiate himself posed a substantial risk to a patient intent on suicide, the court found that the fact that the detainee was placed on the lower of two levels of suicide precautions showed a subjective conclusion that the detainee did not intend to kill himself. The court noted that determining the point at which a detainee's right under the due process clause to be free from bodily restraint during psychiatric hospitalization intersects with the right to be restrained so he will not harm himself is a matter of medical judgment. (Marion County Jail and Wishard Memorial Psychiatric Ward, Indiana)

U.S. District Court
SUICIDE

Estate of Frank v. City of Beaver Dam, 921 F.Supp. 590 (E.D.Wis. 1996). The personal representative of the estate of a detainee who committed suicide in jail brought a § 1983 action against police officers who had contact with the detainee prior to his suicide. The district court

found that the officers enjoyed qualified immunity and dismissed the case. The court noted that although one officer was told that the detainee had exhibited severe mood swings on his way to jail, the detainee did not make any threats, cause any disturbances, stagger, slur his speech or do anything bizarre which would have lead the officer to believe he was suicidal. The court also noted that the only contact a jail officer had with the detainee was while escorting him to his cell and the officer only observed that the detainee was quiet and did not respond to a question she asked him. According to the court, the detainee's behavior did not suggest that he was in imminent danger to himself since he answered questions directly and clearly, walked to his cell without problems, ate breakfast and engaged in a telephone conversation. (Dodge County Jail, Wisconsin)

U.S. District Court
MEDICAL CARE
CLOTHING
VISITS

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
CONDITIONS
ACCESS TO COURTS
RECREATION
MAIL
TELEPHONE

Hamilton v. Lyons, 74 F.3d 99 (5th Cir. 1996). A parolee who was detained for an alleged new offense brought a § 1983 action challenging conditions of confinement at a city jail. The district court dismissed the case as frivolous and the parolee appealed. The appeals court affirmed, ruling that the alleged conditions did not violate the Eighth or Fourteenth Amendments. The parolee had alleged that he was denied visitation, recreation, mail, legal materials, sheets, and showers for a three-day period, but the court found that the conditions were not unconstitutional and that the parolee presented no evidence that the defendants intended to punish the parolee for his pending charges. (DeSoto City Jail, Texas)

U.S. Appeals Court
SUICIDE

Hare v. City of Corinth, MS, 74 F.3d 633 (5th Cir. 1996). The estate of a detainee who committed suicide while in custody brought a § 1983 action against a city and its officials. The district court denied the officials' motion for summary judgment on qualified immunity grounds and the officials appealed. The appeals court dismissed the appeal, but after rehearing the case en banc the appeals court vacated and remanded, finding that an episodic act or omission of a jail official does not violate a pretrial detainee's due process right to medical care or protection from suicide unless the official acted or failed to act with subjective deliberate indifference. (City Jail, Corinth, Mississippi)

U.S. District Court
FAILURE TO
PROTECT

Hare v. City of Corinth, Miss., 949 F. Supp. 456 (N.D. Miss. 1996). The estate of a detainee who committed suicide brought a § 1983 action against the City of Corinth and police officers. The district court denied the police officers' motion for summary judgment on qualified immunity grounds and the appeals court dismissed the appeal. Hearing the case en banc, the court of appeals vacated and remanded. On remand, the district court denied the officers' motion for summary judgment, finding that genuine issues of material fact existed as to whether the officers had actual knowledge of an objectively substantial risk of harm to the detainee, and whether they responded to that risk with deliberate indifference. The court noted that law was clearly established in 1989 that the officers had a minimum duty to the detainee not to be subjectively aware of a substantial risk of harm to the detainee and then be deliberately indifferent to her serious medical needs. (City of Corinth, Mississippi)

U.S. District Court
MEDICAL CARE

Kaufman v. Carter, 952 F.Supp. 520 (W.D.Mich. 1996). A parole violator who was a bilateral amputee had been confined in a county jail while awaiting trial on new charges. The detainee brought a § 1983 action against county officials and staff alleging deliberate indifference to his serious medical needs in violation of the Fourteenth Amendment, violation of the Rehabilitation Act and violation of the Americans with Disabilities Act (ADA). The district court held that the sheriff and county were entitled to summary judgment on the deliberate indifference claim, but that issues remained as to whether nurses failed to provide the inmate with materials needed to maintain the stumps of his amputated legs in a condition that would accept prostheses. The detainee had requested rubbing alcohol so that he could clean his prosthetic limbs and "ace wraps" so that he could maintain the size of his leg stumps

while not wearing his prosthesis. As a result of being denied these materials, the detainee was not able to walk until he was able to obtain new prostheses to fit his enlarged stumps. The court found that the Rehabilitation Act and ADA applied to state correctional facilities, and that summary judgment on qualified immunity grounds was precluded with respect to Rehabilitation Act and ADA claims. (Kalamazoo County Jail, Michigan)

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. Appeals Court
TRANSFER
PUNISHMENT

Laza v. Reish, 84 F.3d 578 (2nd Cir. 1996). A prisoner brought a § 1983 action against a warden alleging that he had been subjected to unlawful punishment as a pretrial detainee when he was transferred from state prison and held in a federal prison to await trial on federal charges. The district court dismissed the suit and the appeals court affirmed, ruling that since the prisoner had not completed his state sentence at the time he was held, he had not been a pretrial detainee with a due process right to freedom from punishment under Bell v. Wolfish. The prisoner assaulted a counselor who was attempting to conduct a routine search of his cell and was transferred two days later from a federal metropolitan correctional facility to a federal correctional institution where he was placed in administrative detention. (Metropolitan Correctional Center, Federal Bureau of Prisons, New York)

U.S. District Court
USE OF FORCE

Mathie v. Fries, 935 F.Supp. 1284 (E.D.N.Y. 1996). A former inmate of a county correctional facility brought an action against the facility's Director of Security alleging that the director sexually abused him while he was confined as a pretrial detainee. The district court entered judgment for the inmate, finding that evidence was sufficient to support findings that the director repeatedly sexually abused the inmate and that the director sodomized the inmate while he was handcuffed to pipes in the security office. The court found that these acts violated the inmate's due process rights and that the director was not qualifiedly immune from § 1983 claims, awarding compensatory damages of \$250,000 and punitive damages of \$500,000. The court noted that evidence showed that the inmate sustained physical injury to his anal area and suffered from post-traumatic stress disorder as a result of sexual abuse by the director. The court called the director's action an outrageous abuse of power and authority. (Suffolk County Correctional Facility, New York)

U.S. District Court
SEARCHES

Richerson v. Lexington Fayette Urban County Government, 958 F.Supp. 299 (E.D.Ky. 1996). A pretrial detainee brought a civil rights action challenging a strip search that was conducted when he returned from a courtroom. The district court entered judgment for the defendants, finding that it was reasonable to have a policy of strip searching detainees, even those held for minor, nonviolent traffic offenses, upon their return from a courtroom to the general population of the detention center. According to the court, when pretrial detainees, including those charged with minor, nonviolent offenses, are kept in the detention center's general population prior to arraignment and are then put in a position where exposure to the general public presents a very real danger of contraband being passed, the policy of strip searching is justified and reasonable. (Fayette County Detention Center, Kentucky)

U.S. District Court
FAILURE TO
PROTECT

Robey v. Chester County, 946 F.Supp. 333 (E.D.Pa. 1996). The mother and the minor children of a pretrial detainee who committed suicide after being taken off of a suicide watch brought civil rights and state law claims against the county, its board of prison inspectors, two wardens, a prison counselor and a psychologist who treated the detainee. The district court granted the defendants' motion for summary judgment in part and denied in part. The court ruled that the wardens' failure to institute disciplinary proceedings following the detainee's suicide did not constitute knowing acquiescence so as to preclude qualified immunity. The court also held that the prison counselor's failure to respond to requests to see the detainee was not a violation of clearly established rights so as to preclude qualified immunity, if the counselor had not known of the detainee's prior suicide attempt until after the detainee's death. However, the court ruled that reasonable jurors could find that the psychologist acted with deliberate indifference to the detainee's psychological needs so as to be liable under a § 1983 civil rights claim, precluding summary judgment. The psychologist knew when the detainee entered the prison of his prior suicide attempt and that the detainee was diagnosed upon entering the prison as suffering from major depression as well as impaired insights and judgment. The psychologist apparently ordered the discontinuation of the suicide watch and failed to perform a promised follow-up check. The court found evidence supporting a punitive

damage claim only against the psychologist and that the county and board of prison directors had sovereign immunity from state law claims. (Chester County Prison, Pennsylvania)

U.S. Appeals Court
CONDITIONS
SANITATION

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)

U.S. District Court
SEARCHES

Swain v. Spinney, 932 F.Supp. 25 (D.Mass. 1996) reversed in part 117 F.3d 1. A female arrestee brought a § 1983 action against a city and several of its police officials alleging that her rights were violated by a strip search conducted by a female officer. The court granted summary judgment for the defendants, finding that the search did not violate the arrestee's constitutional rights and that the defendants were entitled to qualified immunity. The court also found that the arrestee failed to show that the city was deliberately indifferent to the constitutional rights of its citizens. Before her arrest, an officer witnessed the arrestee try to discard concealed contraband (marijuana) and police legitimately discovered rolling papers in her pocketbook after her arrest. The strip search was conducted out of public view in front of only one person of the same sex, and the arrestee was never touched during the procedure. (North Reading Police Station, Massachusetts)

U.S. Appeals Court
TELEPHONE
PRIVACY

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)

U.S. District Court
PRIVACY

U.S. v. Walton, 935 F.Supp. 1161 (D.Kan. 1996). A defendant in a criminal case who was a detainee in a correctional institution moved to suppress a letter which was seized by a correctional officer. The district court ruled that the detainee did not have a reasonable expectation of privacy in the contents of an envelope he gave to an officer to be delivered to a visitor. The court found that the detainee's Fourth Amendment rights were not violated when the officer opened the envelope and read the letter it contained, where the envelope was not sealed, was not properly marked as legal mail, was addressed to the detainee rather than a court or his lawyer, and where the detainee knowingly and voluntarily gave the envelope to the officer. (Corrections Corporation of America's Leavenworth Detention Center, Kansas)

U.S. Appeals Court
USE OF FORCE

Wilson v. Williams, 83 F.3d 807 (7th Cir. 1996). A pretrial detainee brought a civil rights action against a correctional officer for use of allegedly excessive force. The district court granted summary judgment for the officer and an appeals court reversed the decision. On remand, the district court entered judgment on a jury verdict in favor of the officer and the detainee appealed. The appeals court reversed the district court decision. The appeals court found that a jury could properly consider objective factors in determining intent, particularly where the court listed a variety of factors that could be used to infer an intent to punish. The detainee alleged that the correctional officer attacked him without provocation, continued to beat him while he was restrained by other correctional officers, and attacked him again when he was restrained in a different area of the jail. The appeals court ruled that the jury instruction constituted an error. The jury was instructed to determine, through objective means, whether the prohibited punitive intent was present, but was then told even if this was found, a reasonable good faith punitive intent would excuse it. (Cook County Jail, Illinois)

1997

U.S. District Court
DISCRIMINATION
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 nulled. 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
SUICIDE

Barrie v. Grand County, Utah, 119 F.3d 862 (10th Cir. 1997). A detainee's heirs brought a civil rights action against a county and various individuals after the pretrial detainee committed suicide in a county jail. The district court entered summary judgment for the defendants and the appeals court affirmed. The appeals court held that the defendants' duty to the detainee was based on the deliberate indifference standard, not objective reasonableness, and that the defendants did not act with deliberate indifference. The detainee was placed in the jail's "drunk tank" after being booked, and a deputy noted that he had been drinking alcohol. The detainee was allowed to retain the clothes he was wearing at the time of his arrest, which included a pair of sweat pants containing a cloth cord to cinch the waist of the sweat pants. The detainee was checked about four hours after he was placed in the cell, and again about two hours later. An hour later the cell was checked and the detainee was found hanging from the 38-inch draw cord. (Grand County Jail, Utah)

U.S. District Court
CONDITIONS
ACCESS TO COURT
MEDICAL CARE

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. The officials had paid only \$50,000 of the \$155,000 attorney fees that the court had ordered paid to the National Prison Project of the American Civil Liberties Union. The court found inmates' were denied meaningful access to courts where the law library at the facility lacked recent volumes of legal reference materials and was not comprehensive, and because officials at times allowed library access on an ad hoc basis to sentenced inmates only.

The court found that conditions in the criminal justice complex continued to violate the Eighth Amendment, where the complex housed an average of 168-190 prisoners in a facility designed 51 short-term detainees, five or six persons were often housed in a single cell, single cells housed two or more prisoners, and prisoners slept on mattresses on the floor. Crowding was so severe that prisoners sleeping on the floor often had to sleep with their heads against a toilet, resulting in inmates urinating on one another during the night. The disrepair of plumbing, heating, ventilation and showers effected the sanitation and health of inmates in violation of the Eighth Amendment.

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.

The court cited "abominable" treatment of mentally ill inmates at the facility. Mentally ill inmates were housed together in clusters with often four or five inmates per cell, the majority of inmate assaults occurred in the clusters, and correctional staff taunted mentally ill inmates, rewarding them with cigarettes after instructing them to pull down their pants and hold their crotch, or crawl across the floor. According to the court, when overcrowding and commingling of mentally ill inmates with the general population contributes to inmate-to-inmate violence, the failure to remedy the situation constitutes deliberate indifference to the inmates' basic safety and security in violation of the Eighth Amendment. The court held that officials may not use restraints on mentally ill inmates as matter of course, but may restrain them only under special circumstances.

The court also cited the failure of officials to house inmates according to an objectively based classification system and the failure to maintain separate housing for violent inmates. (Criminal Justice Complex, St. Thomas, Virgin Islands)

U.S. District Court
USE OF FORCE
CONDITIONS

Casaburro v. Giuliani, 986 F.Supp. 176 (S.D.N.Y. 1997). A pretrial detainee alleged that he was subjected to cruel and unusual punishment because he was handcuffed in a holding cell for over 7 hours. According to the detainee, he was placed in a holding cage "that had no seats, no water, poor ventilation." He had notified officers that he was under a chiropractor's care for back problems but was allegedly tightly handcuffed behind his back anyway. After he complained he was re-handcuffed to a hook approximately 12 inches off of the floor. After complaining about this he was allegedly cuffed to the front of the cell in a standing position. The district court found that the detainee stated a § 1983 claim against officers, the police department and the city. (City of New York)

U.S. District Court
SEX OFFENDERS
RIGHT OF PRIVACY

Cutshall v. Sundquist, 980 F.Supp. 928 (M.D.Tenn. 1997). A sex offender brought an action which challenged the constitutionality of the Tennessee Sexual Offender Registration and Monitoring Act. The district court found that the Act's requirement that offenders register with the Tennessee Bureau of Investigation (TBI) did not trigger protections of procedural due process. But the court also held that the Act's discretionary disclosure provisions violated due process. According to the court, the additional injury to a convicted sex offender's reputation which would result from the disclosure of registry information to the public under the provisions of the Act, coupled with the loss of rights to privacy and employment, satisfied the "stigma plus" test and thus the offender deserved the protection of procedural due process before law enforcement could disclose information about him to those not involved with law enforcement. The court found that the state's interest in public safety did not outweigh the offender's interest in not having false information disseminated. The Act allowed dissemination of information from the registry without the control of anyone other than local law enforcement and without an opportunity for a hearing. The court found that when a person's good name, reputation, honor, or integrity is at stake because of what a government is doing to him, notice and the opportunity to be heard are essential. (Tennessee)

U.S. District Court
ACCESS TO COURT
TRANSFER

Dodson v. Reno, 958 F.Supp. 49 (D.Puerto Rico 1997). An inmate in a federal pretrial detention facility brought a *Bivens* action against facility officials challenging his proposed transfer to a segregated wing of a federal penitentiary which also housed members of a gang that posed a threat to his life. The district court granted summary judgment for the officials, finding that the proposed transfer did not violate the inmate's Eighth Amendment rights and that the inmate was not entitled to an injunction preventing prison officials from transferring him to any penitentiary in the United States. The court noted that the proposed facility offered an unusually high level of security for inmates whose lives were threatened by other inmates, making the transfer a reasonable measure designed to ensure the inmate's safety. The court also held that denying the inmate physical access to a prison law library did not deny him his right of access to courts. (Metropolitan Detention Ctr., Puerto Rico)

U.S. District Court
PRISONER ON
PRISONER ASSAULT
STAFFING
SUPERVISION

Earrey v. Chickasaw County, Miss., 965 F.Supp. 870 (N.D.Miss. 1997). An inmate detained in a county jail as the result of an alleged parole violation sued the county because he was beaten by other inmates while detained. The district court held that the detained parolee could not avail himself of Fourteenth Amendment claims, but could pursue a failure to protect claim under the Eighth Amendment. The court denied summary judgment for the county, finding it was precluded by genuine issues of material fact as to the existence of subjective knowledge of risk on the part of the jail and the sheriff. The parolee and most other persons housed at the jail were allowed to leave the jail during the day to work and returned in the evenings. According to jail policy, only one jailer was provided for the facility, and he was required to be present at the jail twenty-four hours a day, seven days a week. The jailer was only allowed to leave the jail when deputy sheriffs were present at the facility. Policy required the jailer to check on prisoners every hour during the day, but nighttime checks were not made. The jailer could monitor inmates electronically in two ways: an intercom, and an emergency switch available to inmates. The parolee alleged he was severely beaten by other inmates, who prevented him from reaching the emergency switch. (Chickasaw County Jail, Okolona, Mississippi)

U.S. Appeals Court
SEARCHES

Foote v. Spiegel, 118 F.3d 1416 (10th Cir. 1997). A motorist sued state highway patrol officers alleging she was illegally detained and subjected to a strip search. The district court denied the officers' motion for summary judgment on qualified immunity grounds and the officers and plaintiff appealed. The appeals court held that one of the troopers was not entitled to qualified immunity for the strip search because undisputed facts known to the trooper did not justify the strip search under clearly established law. The motorist had been arrested for driving under the influence and tested negative for alcohol on a breathalyzer. She was not placed in the general population of a detention facility, had no opportunity to hide anything beneath her clothing after her vehicle was stopped, and a thorough pat-down search of her lightweight summer clothing at the jail revealed no drugs. The county jail's policy of conducting strip searches of all persons arrested on drug charges had been held unconstitutional by a federal appeals court in 1993, but a jail officer testified that all persons arrested on drug charges were subjected to strip searches. (Davis County Jail, Utah)

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. Appeals Court
MEDICAL CARE

Haslar v. Megerman, 104 F.3d 178 (8th Cir. 1997). A county detainee brought a § 1983 action after a guard refused to loosen or remove shackles from his swollen leg while he was being treated in an outside hospital. The district court dismissed the complaint and the detainee appealed. The appeals court affirmed, finding that keeping the detainee shackled while receiving treatment at an outside facility did not display indifference to the medical needs of the detainee, nor did it constitute punishment in violation of the detainee's Fourteenth

Amendment rights. According to the court, the shackling was necessary to prevent the detainee from overpowering the single guard who was watching him, and there were safeguards against applying the shackles so as to cause pain and other medical problems. (Jackson County Detention Center, Missouri)

U.S. District Court
PROTECTION

Heisler v. Kralik, 981 F.Supp. 830 (S.D.N.Y. 1997). A pretrial detainee sued a county, the county sheriff's department, the medical department of a correctional facility, and various individual correctional officers, alleging deliberate indifference to his safety and medical needs. The district court found that the detainee adequately stated a claim for municipal liability under § 1983, and that the existence of a substantial risk of serious harm to the detainee did not depend on the seriousness of the injuries actually received in an assault. The court noted that the detainee's constitutional right to be protected from a risk of harm from inmates was clearly established at the time he was assaulted. The detainee was charged with sexual assault of a minor and feared that he would be harmed by other prisoners when he was transferred to another jail. The detainee claimed that he witnessed a telephone call by a police detective to the receiving county's sheriff's department advising them that the detainee desired protective custody. The detainee said he was told that the sending sheriff contacted the receiving sheriff to advise him of the need for extra security. Six days after his transfer the detainee was assaulted by another inmate and suffered contusions and swelling. The detainee alleged that officers witnessed the actual assault but did nothing to stop it and that he was not given adequate pain medication following the assault. (Rockland County Correctional Center, New York)

U.S. Appeals Court
CELL CAPACITY
CONDITIONS

Inmates of Suffolk County Jail v. Rouse, 129 F.3d 649 (1st Cir. 1997). A sheriff moved to terminate a 1979 consent decree pursuant to the Prison Litigation Reform Act (PLRA). The decree arose from a class action challenging conditions of confinement. The district court granted the sheriff's motion in part, but denied the Massachusetts Commission of Correction's motion to vacate the decree. The appeals court held that PLRA did not violate the separation of powers principle, the detainees' due process rights, or the detainees' equal protection rights. The appeals court found that PLRA mandates the termination of extant consent decrees unless the district court makes specific findings that are necessary to keep a particular decree alive. The court also found that the district court was not required to conduct an inquiry into whether violation of a federal right currently existed, or would come into existence, before it terminated a consent decree governing confinement conditions for pretrial detainees. The district court determined that double-bunking of the county jail's pretrial detainees did not violate the federal rights of detainees, given that such conduct, in and of itself, was not a constitutional violation. (Suffolk County Jail, Massachusetts)

U.S. District Court
CELL CAPACITY
STAFFING
CONDITIONS
CROWDING
EXERCISE
PRIVACY
ACCESS TO 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 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.

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.

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.

The court found that questions of fact precluded summary judgment on the claims that the jail's video conferencing system did not permit confidential attorney-client discussions, and whether a substantial number of inmates could easily utilize the system. The court held that to establish a constitutional violation for lack of privacy for attorney-client consultations, it was enough that harm appeared imminent, to the extent that any inmate might be hesitant to disclose names and information relevant to his or her attorney's investigation and necessary to secure advice.

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 found that the detainees' rights were not violated by the jail's outdoor recreation conditions which were substantially improved by the defendants. Detainees were offered approximately six hours of outdoor exercise per year and the defendants had hired a recreation coach to ensure safe and healthy exercise habits. Although clothing remained inadequate for cold weather, the shortage of suitable garments typically did not prevent inmates from using the yard.

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. Appeals Court
MEDICAL CARE

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. The detainee was tested upon his admission to the jail, where he registered blood alcohol contents of .324 and .323. He was placed in the holding cell, or the "drunk tank" as it was called, which was the normal practice for DUI detainees. Relatives of the detainee informed jail officers and the sheriff that the detainee was a chronic alcoholic who had been in the hospital recently with grand mal seizures. The relatives repeatedly attempted to secure treatment for the detainee, or to have him released to them so that they could secure treatment. The detainees cellmates reported that no jail officers or officials made any cell checks for several hours during the night. The following morning the detainee was shaking, and he fell when he attempted to sit up. He fell backwards out of his upper bunk and landed on his back on the floor where his head struck the floor and he began bleeding from the mouth. According to the cellmates, it took at least ten minutes for anyone to arrive at the cell after they called for help. When an officer did arrive, she did not enter the cell to provide assistance because of a jail policy that prevented a jailer from entering a cell without a deputy being present. More than 30 minutes after he fell from his bunk, the detainee was transported to the hospital by ambulance, where he later died from an intracranial hemorrhage. (Monroe County Jail, Alabama)

- U.S. District Court
PROTECTION
- 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. Appeals Court
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. District Court
FAILURE TO
PROTECT
- Morris v. City of Alvin, Tex., 950 F. Supp. 804 (S.D.Tex. 1997). The representative of the estate of an arrestee who died in jail from a drug overdose brought a § 1983 action against the city. The district court dismissed the case, finding that allegations were insufficient to establish the existence of a municipal policy with regard to detainees who exhibited possible signs of a drug overdose. The court found that as a matter of law, the city's policies neither deprived the arrestee of adequate medical assistance nor violated the Fourteenth Amendment's required level of care. The court noted that the arrestee had already taken the overdose at the time of her arrest, and that the city was not constitutionally required to train jailers to recognize the ambiguous signs of a drug overdose. According to the court, the city had provided prompt medical care on two occasions during the arrestee's brief one-day stay at the jail, and the arrestee was immediately transferred to a hospital when she exhibited physical symptoms of a serious medical problem. (Alvin City Jail, Texas)
- U.S. District Court
VISITS
- N.E.W. v. Kennard, 952 F.Supp. 714 (D.Utah 1997). Pretrial detainees and their children brought a § 1983 action challenging a county jail policy restricting visitation by persons younger than eight years of age, alleging violation of due process and equal protection. The district court held that the restrictions did not violate due process or equal protection. The court also held that the plaintiffs were not entitled to attorney fees, despite the claim that their suit was the catalyst for a change in visitation policy. The court noted that a policy in effect since 1992 was clarified by the county, allowing visits with children under eight years of age with the permission of the jail command. (Salt Lake County Metro Jail, Utah)
- U.S. District Court
MEDICAL CARE
- Nelson v. Prison Health Services, Inc., 991 F.Supp. 1452 (M.D.Fla. 1997). The personal representative of an inmate who died of an acute myocardial infarction while awaiting trial in a county jail brought a § 1983 action against a county, county sheriff, the private company that provided medical services to the jail, and individual nurses employed by the company. The district court held that the sheriff was protected from individual liability under the qualified immunity doctrine, but that the nurses were not entitled to raise a defense of qualified immunity even though they were considered state actors under § 1983. The court held that the evidence was sufficient to establish that the nurses were deliberately indifferent to the inmate's medical needs and failed to provide treatment. According to the court, the nurses delayed giving the inmate her prescription medication for her cardiac condition for 36 hours, failed to verify her medications after she disclosed them to the screening nurse, failed to examine the inmate when she complained of chest pains, and failed to call for an emergency response team until the inmate had stopped breathing. The court held that reports of a court appointed monitor regarding the pervasive failure of the private medical service company to provide medical care to the inmates of the county jail, and the company's own internal memoranda characterizing the attitude of the nurses at the jail as one of deliberate indifference, were sufficient to establish a custom of violating inmates' constitutional rights to medical treatment. (Pinellas County Jail, Florida)
- U.S. Appeals Court
MEDICAL CARE
ASSESSMENT OF
COSTS
- Reynolds v. Wagner, 128 F.3d 166 (3rd Cir. 1997). Inmates brought a class action suit against a county prison and warden challenging the constitutionality of a program under which the prison charged inmates a small fee (\$5) when they sought certain types of medical care. The district court entered a judgment in favor of the defendants and the

appeals court affirmed. The appeals court held that the program was not per se unconstitutional under the Eighth Amendment and did not violate the Eighth Amendment as implemented. The court found that Spanish-speaking inmates did not receive deficient notice of the program due to the absence of a written Spanish translation of the program description. The program was explained in Spanish by officers and counselors to all Spanish-speaking inmates during orientation, the prison always had a Spanish-speaking employee on duty, and the medical department employed at least three nurses who were fluent in Spanish. The court held that the program did not violate procedural due process as the result of providing for fee deductions from an inmate's account even when the inmate did not sign an authorization form. The inmates had alleged that the program charged higher fees than the state Medicaid program, but the court found that the fees charged under Medicaid did not represent the maximum that could be constitutionally charged against a prisoner. According to the court, the failure of the prison to define the terms "chronic" and "emergency" which described in the inmate handbook conditions for which no fees would be assessed, did not make the program unconstitutionally vague. The court found no violation of the inmates' right of access to courts in response to the inmates' claim that the program reduced their funds available for legal mail and photocopying, where the inmates failed to establish actual or imminent interference with their access to court. (Berks County Prison, Pennsylvania)

U.S. Appeals Court
USE OF FORCE

Riley v. Dorton, 115 F.3d 1159 (4th Cir. 1997). A pretrial detainee brought a § 1983 action against a police officer, alleging the use of excessive force during an interrogation after his arrest. The district court granted summary judgment for the officer and the detainee appealed. The appeals court affirmed, finding that the Fourth Amendment did not extend protection from excessive force to pretrial detainees, and that the alleged use of force did not violate the Eighth Amendment. According to the court, the Fourth Amendment applies to the initial decision to detain the accused, not to conditions of confinement after that decision has been made. The court also held that the officer's alleged use of force did not violate due process where any injury suffered by the detainee was de minimis. The court found that the detainee's encounter with police officers did not amount to "interrogation" within the meaning of the Fifth Amendment because officers did not directly question the detainee and their other conduct (exchanging insults with the detainee and requesting that the detainee sign a waiver form for genetic testing) was not reasonably likely to elicit an incriminating response. The detainee alleged that the officer used handcuffs, inserted the tip of a pen into the detainee's nose, threatened the detainee and slapped the detainee across the face. (Henrico County Public Safety Building, Virginia)

U.S. District Court
USE OF FORCE

Santiago v. Semenza, 965 F.Supp. 468 (S.D.N.Y. 1997). A pretrial detainee brought an action claiming excessive force against a United States marshal who struggled with the detainee during a commotion in a holding cell area. The district court granted summary judgement for the marshal, finding that the marshal was not liable for the alleged use of excessive force and had qualified immunity. The court found that the marshal's actions were necessary to secure the detainee, safeguard other marshals, and restore security to the holding cell area. According to the court, there was no indication that the marshal's actions, which may have been the cause of the detainee's bruise or scratch, were disproportionate to the situation. (Holding Cell Area, United States Courthouse, Southern District of New York)

U.S. District Court
MEDICAL CARE

Schreter v. Bednosky, 963 F.Supp. 216 (E.D.N.Y. 1997). A former pretrial detainee filed a pro se § 1983 action against the warden of a county facility and the county, alleging violation of his due process rights. The district court found that the pretrial detainee did not experience a sufficient delay in medical treatment for a kidney stone to support his claim of violation of due process based on a county policy requiring transportation to a hospital by sheriff's deputies rather than by on-site corrections officers. The court noted that the detainee was moved from his cell to the medical unit, examined, and transferred to a hospital, all within 35 to 45 minutes of informing county personnel about his condition. (Suffolk County Correctional Facility, New York)

U.S. Appeals Court
PROTECTION
STAFFING

Scott v. Moore, 114 F.3d 51 (5th Cir. 1997). A pretrial detainee who alleged she was sexually assaulted by a correctional officer brought a § 1983 action against a city and its police chief. The district court entered summary judgment for the defendants, but the appeals court remanded the case on the claim of inadequate staffing. On remand, the district court again entered summary judgment for the defendants and the detainee appealed. The appeals court vacated and remanded. On rehearing en banc, the court of appeals affirmed, holding that the detainee met the burden of establishing a constitutional violation but that the city's failure to adopt a policy of adding jail staff did not constitute deliberate indifference. According to the majority of the appeals court, there was no showing that the city had actual knowledge that its staffing policy created a substantial risk of harm to female detainees. As a condition of employment, jailers underwent background investigations, medical examinations and polygraph tests, none of which revealed any concerns about the jailer who allegedly sexually assaulted the detainee. The majority noted that the jailer had been a commissioned police officer for four years prior to his employment with the jail, without incident, and that he had been trained in the official policies of jail management by experienced jailers. The detainee had been arrested for public intoxication, assault and resisting arrest, and was taken to a city

jail, processed by a female jailer who was on duty at the time, and placed in a holding cell pending arraignment. A male jailer subsequently replaced the female officer, entered the detainee's cell, and sexually assaulted her repeatedly during the course of his eight-hour shift. The jailer resigned and pleaded guilty to criminal charges. The majority of the appeals court rejected the detainee's argument that constitutionally adequate staffing would have included, at a minimum, a female jail officer, or at least two male officers, whenever a female pretrial detainee is in custody. The majority noted that the jail is located on the first floor of the police department, in the patrol division area, and a patrol duty sergeant periodically checks on jail personnel. However, four appeals judges dissented, suggesting that the city's policy of inadequate staffing enabled the harm to be committed and actually facilitated the sexual assault. While the majority asserted that the assault was episodic--by definition incidental or occasional, rather than regular and systematic. The minority argued that the long established custom of inadequate staffing was far from episodic, and that the city only offered financial justifications for its staffing policy. In the dissenting opinion, the judges stated they were unwilling to "classify the issues in this case as 'minutia.'" (City of Killeen Police Department, Texas)

U.S. District Court
JUVENILES

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
ACCESS TO COURT
LAW LIBRARIES
MAIL

U.S. v. Beckwith, 987 F.Supp. 1345 (D.Utah 1997). An indigent defendant who was detained prior to trial on bank robbery charges elected to proceed pro se. The district court held that the defendant was entitled to access to a satellite law library in the federal courthouse, with his hands free, for two hours per day for five consecutive days, and for two hours per day three days a week thereafter. The court noted that no special security problems regarding the inmate's hands had been shown, notwithstanding the contention that the inmate was a martial arts expert. The court also held that the detainee must be afforded unlimited mail access to court, standby counsel, and prosecution, unless he abused that privilege. (Salt Lake County Jail, Utah)

U.S. District Court
BAIL REFORM ACT

U.S. Jones, 980 F.Supp. 359 (D.Kan. 1997). The government sought a review of a magistrate judge's order releasing a defendant on bond pending trial. The district court held that the detention of the defendant pending trial was appropriate under the criteria set forth in the Bail Reform Act because the defendant had a prior conviction for solicitation to commit murder, had a history of violence and a history of narcotics related arrests, and the weight of evidence against the defendant was substantial. (U.S. District Court, Kansas)

U.S. District Court
BAIL
BAIL REFORM ACT

U.S. v. Wray, 980 F.Supp. 534 (D.D.C. 1997). The government moved to detain a defendant prior to trial and the district court granted the motion. The court found that there was clear and convincing evidence that supported detention, including the defendant's criminal history and his committing crimes while on parole for violent offenses. (U.S. District Court, District of Columbia)

U.S. Appeals Court
WORK

Villarreal v. Woodham, 113 F.3d 202 (11th Cir. 1997). A pretrial detainee who was allegedly required by correction officials to perform translation services for other inmates, medical personnel, and court personnel, filed suit in federal court. The detainee alleged violation of the Fair Labor Standards Act (FLSA) and violation of his civil rights because he was not paid for his services. The district court dismissed the claim and the detainee appealed. The appeals court affirmed, finding that the detainee was not an "employee" within the meaning of FLSA and that the detainee's forced performance of translation services was not cruel and unusual punishment. The court held that the four-factor standard for determining whether labor falls within the Fair Labor Standards Act does not apply in the prison context, but that a broader approach is applied to inmate labor, focusing on the economic situation as a whole. The court noted that although there was no question that the sheriff's intent in requesting that the detainee perform translation services was punitive in nature, the cerebral task of language translation posed no risk to the detainee's safety or welfare, and presumably the performance of the services served to occupy the detainee's time, keep him out of trouble, and allow him interaction with others. (Gadsden County Correctional Facility, Florida)

U.S. District Court
 USE OF FORCE
 SEARCHES
 FALSE IMPRISON-
 MENT

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
 USE OF FORCE
 MEDICAL CARE

Boyer v. City of Mansfield, 3 F.Supp.2d 843 (N.D. Ohio 1998). An arrestee brought § 1983 claims against a police officer, corrections officer and city who allegedly used excessive force and failed to provide medical care. The district court granted summary judgment in favor of the defendants, finding that the city was not liable for a custom or policy of using excessive force or for not properly investigating, supervising, training or disciplining its officials. The city's police officers had reviewed the policy on use of force regularly, the night watch commander placed a hold on the videotape of the incident and issued a personal complaint against the police officer who allegedly used excessive force. The city's safety service director eventually fired the officer for his actions, and the city saw to it that the officer was charged and convicted on a misdemeanor assault charge. The court held that the corrections officer was entitled to qualified immunity, where he helped the police officer restrain the arrestee by holding the arrestee's legs and carrying the arrestee to a padded cell. The corrections officer said that he entered the booking room and found the arrestee kicking away at the police officer who was the only officer in the room, and the corrections officer denied that he saw the police officer mistreating the arrestee until he subsequently viewed the video tape of the booking. (Mansfield Police Department and City Jail, Ohio)

U.S. Appeals Court
 RELIGION

Canell v. Lightner, 143 F.3d 1210 (9th Cir. 1998). A pretrial detainee brought a § 1983 action against a correctional officer, sheriff and county detention center alleging violation of his First Amendment rights arising from the officer's alleged proselytizing activities. The district court granted summary judgment for the defendants and the appeals court affirmed. The appeals court held that the sheriff was not liable under the theory of failure to train. According to the court, the officer's actions did not violate the First Amendment's establishment clause absent evidence of endorsement by government. The court concluded that the officer's activities did not impermissibly interfere with the detainee's free exercise of religion. The detainee alleged that the officer had brought Christian literature to work, engaged in mock-preaching, and belittled other religions. The officer was a licensed minister of the Church of God. (Multnomah County Detention Center, Oregon)

U.S. Appeals Court
 SUICIDE
 MEDICAL CARE
 RELEASE

Collignon v. Milwaukee County, 163 F.3d 982 (7th Cir. 1998). An arrestee's parents and estate sued county and village officials after the arrestee, who had a mental illness and some criminal history, committed suicide after he was released on bail. The district court granted judgment on pleadings for the village and granted summary judgment for the county defendants. The appeals court affirmed, finding that the treatment of the arrestee by a county psychiatrist while he was in pretrial detention did not violate substantive due process. The court also found that neither the police officers' failure to commence emergency detention proceedings, nor their return of the arrestee to his parents, amounted to a substantive due process violation. The court held that due process was not violated by the alleged refusal of a police officer to provide the arrestee with access to medical personnel capable of assessing the arrestee's condition. The appeals court held that the treatment of the arrestee by a county psychiatrist did not violate the arrestee's substantive due process rights because the psychiatrist exercised professional judgment in the face of the known serious medical needs of the arrestee. The psychiatrist, who was principally responsible for deciding the course of the arrestee's treatment at the jail, prescribed a nontherapeutic dosage of an antipsychotic drug with the intention of forming a "therapeutic alliance" with the arrestee, planning to slowly increase the dosage so that the arrestee could gradually overcome his aversion to side effects. The arrestee was able to lead a productive life while on his prescribed medication to treat his schizophrenia, but he stopped taking his medication and was arrested for damaging property and placed in a county jail for 17 days. He was released on bail to his parents, and shortly thereafter was temporarily detained by village police officers, who also released him to his parents. The next day he committed suicide. (Shorewood Police Department and Milwaukee County, Wisconsin)

U.S. Appeals Court
CROWDING
CELL CAPACITY
EXERCISE
SANITATION
CONDITIONS OF
CONFINEMENT

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. Appeals Court
HOME DETENTION

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. (Fed. Bur. Pris.)

U.S. Appeals Court
PROTECTION
RELEASE

Davis v. Brady, 143 F.3d 1021 (6th Cir. 1998). An arrestee brought a § 1983 action against police officers who allegedly left him in an inebriated condition on a dark, unfamiliar highway where he was subsequently hit by an automobile. The district court denied summary judgment for the officers and the appeals court affirmed and remanded. The appeals court held that the officers had a duty to not place the arrestee in danger once he had been in custody, and that the arrestee's right not to be abandoned by police was clearly established at the time of this incident. According to the court, once the police officers took the affirmative act of restraining the arrestee's freedom to act on his own behalf by taking him into custody, the officers imposed on themselves the duty to ensure that they were not placing the arrestee in danger, and that duty existed even after the arrestee was released from custody. The arrestee had been arrested for intoxication and disorderly conduct and was taken to a police station and subsequently transferred to a county jail, but the jail was full. The desk sergeant instructed the officers to release the arrestee "at the county jail if he was not so drunk that he would be a hazard to himself." The officers then drove the arrestee to a road just outside the city limits and released him in an area with a 55-mile-per-hour speed limit with few street lights and no sidewalks. The officers alleged that the arrestee requested this release site but the arrestee denied this. About seven minutes after he was released by the officers, the arrestee was struck by a car, sustaining serious permanent injuries, resulting in the amputation of one of his legs. (Flint Police Department, Michigan)

U.S. Appeals Court
JUVENILE
PROTECTION
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
FALSE IMPRISON-
MENT
FALSE ARREST
SEARCH

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 found that although the probationer failed to allege that strip searches to which he was subjected had been performed pursuant to a pattern or practice, his allegations regarding strip searches were sufficient to state a due process claim against officers of the facility. The individual was subjected to strip searches at least once daily for no apparent reason, even though he had no access to contraband or visitors. 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
SUICIDE

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
USE OF FORCE

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
FAILURE TO
PROTECT

Falcon v. City of Philadelphia, 18 F.Supp.2d 537 (E.D.Pa. 1998). A pretrial detainee who had been stabbed by another inmate sued city officials and correction officers alleging failure to protect, failure to supervise and failure to train under the Eighth Amendment. The district court granted summary judgment to the defendants, finding that the facility's policy of keeping pretrial detainees in the same housing unit as convicted inmates did not constitute deliberate indifference to a substantial risk of harm. The court also held that the lack of guidelines or training procedures regarding segregation of convicted inmates was insufficient to support claims for failure to supervise or failure to train. According to the court, a state statutory provision that indicated that sentenced prisoners should be housed separately from detainees was merely a recommended guideline rather than a mandatory requirement. (Philadelphia Industrial Correctional Center, Pennsylvania)

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. Appeals Court
CONDITIONS
HANDICAP
CLASSIFICATION
MEDICAL CARE

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. The appeals court held that the detainee failed to establish a § 1983 claim that he was improperly classified as a close custody inmate, absent any showing that the jail's classification system was not reasonably related to legitimate penological interests.

The appeals court remanded the case to the district court to determine whether the detainee was administered a psychotropic drug without proper procedural safeguards. The detainee alleged that he was tricked into taking amitriptyline by a nurse who told him that it was a pain medication. He asserted that he would not have taken the medication if he had known that it had "antipsychotic" effects.

According to the appeals court, the detainee failed to establish a § 1983 claim based on his contention that he was denied the opportunity to participate in outdoor recreation because evidence indicated that he was denied recreation only once because officials misunderstood a note in his file. The court found that an accidental, one-time denial of recreation could not support a constitutional claim.

The appeals court held that the detainee failed to establish a § 1983 due process claim based on alleged delays in the administration of his pain medication, treating his broken nose, and providing him with a replacement crutch. The court found that while the jail officials may have acted negligently, the detainee did not establish that they acted with deliberate indifference to his medical needs. (Madison Street Jail, Maricopa County, Arizona)

U.S. Appeals Court
TELEPHONE
PROTECTIVE
CUSTODY

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
TELEPHONE
BAIL
PRIVACY
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. District Court
MEDICAL CARE

Higgins v. Correctional Medical Services of Ill., 8 F.Supp.2d 821 (N.D.Ill. 1998). A pretrial detainee brought a § 1983 action against medical personnel and a correctional medical provider for allegedly denying him his constitutional right to medical care. The district court granted summary judgment in favor of the defendants. The court found that medical personnel's failure to order x-rays of the inmate's shoulder based on the inmate's claim that it was dislocated was an exercise of medical judgment and did not amount to deliberate indifference. The court found that evidence was insufficient to establish that medical personnel strongly suspected that the inmate's shoulder was dislocated. The court also found that the inmate failed to establish that the correctional medical service provider had conspired to deny medical treatment to inmates who were soon to be transferred. The court noted that the provider was contractually obligated to provide inmates with medical

care mandated by the Eighth Amendment and therefore could be held liable for constitutional violations under § 1983. (Kane County Correctional Center, Illinois)

U.S. District Court
MEDICAL CARE

Jones v. St. Tammany Parish Jail, 4 F.Supp.2d 606 (E.D.La. 1998). A pretrial detainee brought a § 1983 action against a sheriff, warden, captain and parish based on alleged failure to provide adequate medical care. The district court found that the captain, sheriff and warden could not be held individually liable for the alleged unconstitutional conduct and that the parish could not be held liable for alleged constitutional deprivations related to the management of the jail. But the court found that genuine issues of fact precluded summary judgment for the sheriff in his official capacity, as to whether the sheriff had a policy or practice of maintaining an inadequate number of wheelchairs at the jail and whether any such practice was reasonably related to a legitimate governmental purpose. At the time of his arrest, the 57-year-old detainee was disabled due to a prior injury to his back. He was assigned to the top bunk in his dorm, which had no ladder. Fourteen days after his arrest the detainee fell from the top bunk and sustained several serious injuries, including a fractured leg in three places, a partially severed finger, broken ribs and a concussion. He was placed in a full leg cast up to his hip and an arm cast. A week after he returned to the jail from the hospital, he suffered another fall when his crutches slipped out from under him. The detainee claimed that officials ignored his repeated requests to be assigned a lower bunk, and his repeated requests for a wheelchair because he could not walk safely on crutches due to his arm and rib injuries. (St. Tammany Parish Jail, Louisiana)

U.S. Appeals Court
SUICIDE

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
BAIL
RELEASE

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. District Court
MEDICAL CARE

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
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. 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
USE OF FORCE

McClanahan v. City of Moberly, 35 F.Supp.2d 744 (E.D.Mo. 1998). A pretrial detainee alleged that she was the victim of excessive force used in connection with her transfer from a police department to a county jail. The district court granted summary judgment for the defendants, finding that the detainee's allegations of being slapped three times, without any evidence of any resulting injury, was at most a de minimis injury that did not implicate the Due Process Clause of the Fourteenth Amendment. (Moberly Police Department and Shelby County, Missouri)

U.S. District Court
MEDICAL CARE

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 immunodeficiency 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 County Jail, Maine, and Prison Health Services, Inc.)

U.S. Appeals 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
PROTECTION
PRIVACY
USE OF FORCE

Moore v. Hosier, 43 F.Supp.2d 978 (N.D.Ind. 1998). A former pretrial detainee sued a county sheriff's department and individual law enforcement officers alleging civil rights violations arising out of his treatment while he was being held in county confinement. The district court held that the restraint of the detainee by officers for the purposes of decontaminating him after a pepper spray cannister malfunctioned did not amount to assault and battery under state law. The detainee alleged that officers strapped him to a chair with his arms tied behind his back and beat him about his face and body, and placed his face and mouth in front of a shower. The court held that even if these allegations were true, they did not amount to an invasion of privacy under Indiana law. The court denied summary judgment for officers who did not participate in the beating of the detainee but witnessed it and had the opportunity to stop it. The court held that the sheriff's department did not negligently train its employees in the use of force, where the department had developed and maintained detailed procedures for training incoming officers in handling inmates, and the department policy specifically stated that officers were expected to use force only in a lawful and justifiable manner. The detainee admitted that he was intoxicated when officers arrived at the scene and that he fled on foot when they arrived. The detainee was involved with altercations with officers at a detention center, and was strapped into a restraining chair and was sprayed with pepper spray. (Allen County Confinement Center, Indiana)

U.S. Appeals Court
USE OF FORCE

Moore v. Novak, 146 F.3d 531 (8th Cir. 1998). An arrestee brought a civil rights action against correctional officers under § 1983, alleging the use of excessive force and violations of equal protection and due process. The district court entered judgment for the officers and the appeals court affirmed. The appeals court held that the finding that excessive force was not used was not clearly erroneous, even if the fact that a videotape of the incident was missing raised the inference that the videotape would have supported the arrestee's version of the incident. The court noted that a supervisor's testimony sufficiently rebutted this inference. The arrestee was intoxicated, agitated, and refused to comply with commands, kicked the arresting officer, continued to struggle and attempt to get away, and posed an immediate threat to his own safety and to the safety of the officers. (Lancaster County Jail, Nebraska)

U.S. District Court
JUVENILES
SUICIDE

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
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. Appeals Court
SEARCHES

Nelson v. City of Irvine, 143 F.3d 1196 (9th Cir. 1998). Two arrestees brought a § 1983 action on behalf of themselves and others similarly situated against city officials, alleging that they were coerced into submitting to blood tests to determine their alcohol levels following arrest for driving under the influence. The arrestees alleged that they were deprived of the option to take breath or urine tests instead. The district court granted summary judgment in favor of the defendants but the appeals court affirmed in part, reversed in part, and remanded. The appeals court held that arrestees who were forced to undergo blood tests after requesting or consenting to breath tests stated Fourth Amendment claims. According to the court, requiring the arrestees to submit to warrantless blood tests after they have consented to available breath or urine tests violates the Fourth Amendment warrant requirement. The court found that arrestees who consented to breath tests did not impliedly consent to blood tests. (City of Irvine, California)

U.S. District Court
SUICIDE

Owens v. City of Philadelphia, 6 F.Supp.2d 373 (E.D.Pa. 1998). The administratrix of a pretrial detainee's estate and his surviving children brought a § 1983 action against prison guards and officials and the City of Philadelphia to recover for the detainee's suicide. The district court found that fact questions precluded summary judgment in favor of the guards on questions of qualified immunity, deliberate indifference and the adequacy of the City's training program. According to the court, the detainee's statement to a guard that he felt "schizy" and that he was "going to hurt myself" raised questions of fact on issues of knowledge and deliberate indifference. According to the court, it was not necessary to show that a guard believed that harm would actually befall the detainee; rather, the detainee's children only needed to show that the official acted or failed to act despite his knowledge of a substantial risk of serious harm. The guard called a psychiatrist knowing she intended to

issue a pass for the detainee to go to the psychiatric unit but failed to note in the prison log the detainee's statement about hurting himself in order to inform the incoming officers and his superiors. There was nothing in the record that indicates that the pass was ever issued. The court also found that the officials' alleged conduct as policy-makers with respect to inadequate training to prevent suicide by pretrial detainees was actionable under § 1983 in a suit against them as individuals. The court held that whether the jail guards acted with objective reasonableness after they learned that the pretrial detainee was hanging in his cell involved questions of fact, precluding summary judgment. (Philadelphia Detention Center, Pennsylvania)

U.S. Appeals Court
SUICIDE

Payne for Hicks v. Churchich, 161 F.3d 1030 (7th Cir. 1998). The children and estate of an arrestee who committed suicide in a city jail brought a state court action and a § 1983 action asserting wrongful death and survival claims. The district court dismissed the case. The appeals court affirmed in part, reversed in part and remanded. The appeals court held that allegations that the arrestee was subjected to maltreatment while in custody as a pretrial detainee were properly treated as claims arising under the Due Process Clause. The court found that a deputy sheriff who transported the arrestee to a city jail did not violate the due process rights of the arrestee. According to the court, the arrestee's intoxication, his tattoo questioning life, and his angry cursing did not indicate an obvious, substantial risk of suicide. The court found that failing to monitor the arrestee or recognize the risk of suicide was, at most, negligence. The arrestee was admitted to the holding cell of a city police department at 1:00 a.m. and died of suffocation after hanging himself with a blanket sometime between 1:00 a.m. and 4:04 a.m. (Madison County Sheriff's Department, City of Madison Police Department, Illinois)

U.S. Appeals Court
PROTECTION
SEPARATION

Perkins v. Grimes, 161 F.3d 1127 (8th Cir. 1998). A pretrial detainee, who was raped by another inmate, sued jail officials under § 1983 for failing to protect him. The district court entered judgment for the officials and the detainee appealed. The appeals court affirmed, finding that jailers were not deliberately indifferent to the detainee's safety when they housed him with an inmate who raped him. The court noted that although jailers were on notice that the inmate was easily provoked, they also knew that the detainee and the inmate had previously been housed together without incident, and the jailers neither knew, nor had reason to know, that the inmate was a violent sexual aggressor. The detainee had been arrested for public intoxication and was booked at a county facility and placed in a holding cell for approximately five and one-half hours. During the final hour of his time in the holding cell, the detainee shared the cell with an inmate who was also booked for public intoxication. The detainee was subsequently raped by the inmate, who was larger and heavier. The detainee alleged that a jail officer was aware of the assault and did not intervene. (Sebastian County Adult Detention Center, Arkansas)

U.S. District Court
MEDICAL CARE

Petrazzoulo v. U.S. Marshals Service, 999 F.Supp. 401 (W.D.N.Y. 1998). A pretrial detainee alleged that the U.S. Marshals Service (USMS) and a county which housed the detainee under contract to the USMS failed to provide him with dentures, in violation of his Eighth Amendment rights. The district court held that the USMS was not deliberately indifferent to the detainee's dental needs and that the detainee failed to state a § 1983 claim against county officials. The inmate's teeth had been extracted to treat a broken jaw, and a dentist had "recommended" that the detainee obtain dentures. The USMS concluded that the dentist's recommendation was not a prescription and that the dentures were an elective treatment. The detainee received prompt treatment for his broken jaw, pain medication and a soft food diet. The court also held that the detainee could not bring an action under the Federal Tort Claim Act. (Chautauqua County Jail, New York)

U.S. Appeals Court
PROTECTIVE
CUSTODY
PROTECTION
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. District Court
SUICIDE

Sanders v. Howze, 50 F.Supp.2d 1364 (M.D.Ga. 1998). The estate of a prisoner who committed suicide while in a county jail brought a § 1983 action against jail officials. The district court denied summary judgment for the officials finding it was barred by fact issues as to whether the officials were deliberately indifferent to the prisoner's known suicidal propensity and whether the county had adequate policies for dealing with potential suicides. The court also found a material issue of fact as to whether county jail officials were properly trained in dealing with potential suicides. After being confined in the jail for six weeks the prisoner removed a razor blade from a disposable razor and cut his wrists. He was transferred to a state hospital for a psychological evaluation but returned to the jail two

months later. He was placed in an isolation cell near the jailer's office, where he hung himself a week later from a light fixture with a bed sheet. A few days earlier a judge had ordered a psychiatric evaluation which was in the process of being arranged by the sheriff. (Dougherty County Jail, Georgia)

U.S. District Court
CONDITIONS
MEDICAL CARE

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)

U.S. Appeals Court
HANDICAP
CONDITIONS

Tesch v. County of Green Lake, 157 F.3d 465 (7th Cir. 1998). An arrestee who was wheelchair-bound brought a § 1983 action against officials, alleging violation of his constitutional rights during his arrest and detention. The district court granted summary judgment for the defendants and the appeals court affirmed. The appeals court held that the disabled detainee's inability to put on his jail-issued pants, obtain drinking water from his cell sink, and get into the bed in his cell, during 44 hours of detention, were insufficiently severe to amount to punishment in violation of the detainee's substantive due process rights. According to the court, the detainee was not deprived of any of his basic necessities, but rather did not receive the level of comfort he had demanded. The court noted that correctional officials are not required to provide comfortable jails, even for pretrial detainees. The detainee suffered from muscular dystrophy and was confined to a wheelchair, but was physically unable to function fully in a jail cell that was equipped for handicapped inmates. (Green Lake County Jail, Wisconsin)

U.S. Appeals Court
PROTECTION
SEPARATION

Turquitt v. Jefferson County, Ala., 137 F.3d 1285 (11th Cir. 1998). The estate of a pretrial detainee who was killed during an altercation with another inmate at a county jail filed a civil rights action against the county. The district court denied the county's motion to dismiss and the county appealed. The appeals court vacated and remanded, finding that an Alabama county cannot be liable in a civil rights case for harms that befall jail inmates due to improper operation of the jail or negligent supervision of its inmates because the county has no responsibility in that area. According to the court, the sheriff, not the county, is responsible for jail conditions under Alabama law; counties have no duties with respect to daily operation of county jails and have no authority to dictate how jails are run. The deceased inmate was fatally injured in a fight with another inmate, who was a convicted felon, in the dayroom of the jail. (Jefferson County Jail, Alabama)

U.S. Appeals Court
DUE PROCESS
PSYCHOLOGICAL
SERVICES
MEDICAL CARE

U.S. v. Brandon, 158 F.3d 947 (6th Cir. 1998). A pretrial detainee sought a judicial hearing on the issue of whether he could be forcibly medicated with antipsychotic drugs to render him competent to stand trial. The district court held that an administrative hearing would be sufficient to satisfy due process, and the detainee appealed. The appeals court reversed and remanded, finding that due process required a judicial hearing and that the detainee should be allowed to present his own rebuttal testimony on the issues involved. The court also found that the strict-scrutiny standard of substantive due process review applied, and that the government must prove its case with clear and convincing evidence. (Federal Medical Center, Rochester, Minnesota)

U.S. District Court
BAIL
BAIL REFORM ACT

U.S. v. DeBeir, 16 F.Supp.2d 592 (D.Md. 1998). The government moved for pretrial detention under the Bail Reform Act for a defendant who was charged with interstate travel for the purpose of engaging in a sexual act with a minor. The district court denied the motion, finding that the defendant did not pose a serious risk of flight and that the offense was not a crime of violence. (Maryland)

U.S. District Court
BAIL
BAIL REFORM ACT

U.S. v. Floyd, 11 F.Supp.2d 39 (D.D.C. 1998). A defendant moved to revoke a magistrate's order of detention pending trial. The district court held that the charge of possession of a firearm by a felon is a crime of violence and that evidence was sufficient to warrant pretrial detention. (U.S. District Court, District of Columbia)

U.S. District Court
RELEASE-CONDITION

U.S. v. Herrera, 29 F.Supp.2d 756 (N.D.Tex. 1998). After a defendant who was on pretrial release tested positive for the use of a controlled substance, a pretrial services officer petitioned the court for revocation of release. A U.S. Magistrate dismissed the motion, and the district court affirmed. The district court noted that only an attorney for the government, not a pretrial services officer, may initiate a proceeding for revocation of release. (U.S. District Court, Northern District, Texas)

U.S. District Court
ELECTRONIC
MONITORING

U.S. v. Malloy, 11 F.Supp.2d 583 (D.N.J. 1998). A defendant charged with violating the Arms Export Control Act moved to modify his bail conditions. The district court granted his motion, finding that the defendant was entitled to have his bail conditions modified from 24-hour house arrest with electronic monitoring to the use of a satellite tracking system. The

court found that the satellite tracking system provided a sufficient level of control over the defendant's whereabouts to assure that the defendant would appear at trial. (U.S. District Court, New Jersey)

U.S. District Court
SUICIDE

Vinson v. Clarke County, Ala., 10 F.Supp.2d 1282 (S.D.Ala. 1998). A § 1983 action was brought by the administrator of the estate of an intoxicated arrestee who had committed suicide while being held in a county jail. The district court granted summary judgment in favor of the defendants, finding that the sheriff and jailer acted within the scope of their discretionary authority and did not violate clearly established law. The court held that the county was not deliberately indifferent to the risks of suicide. According to the court, it was not clearly established in October 1994 that a county sheriff's failure to train jail personnel in the care of intoxicated inmates amounted to deliberate indifference. The court found that the risk of suicide among a class of intoxicated detainees at the county jail was not so obvious that the county's failure to remedy conditions of confinement which gave detainees the opportunity to commit suicide could be seen as showing deliberate indifference. The detainee committed suicide within 30 minutes of his admission by hanging himself from the bars of his jail cell. An autopsy revealed that the detainee's blood contained .205 percent alcohol, which was well over the maximum of .1 allowed under state DUI law. (Clarke County Jail, Alabama)

U.S. Appeals Court
PROTECTION

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
RECREATION
EXERCISE
CONDITIONS
LAW LIBRARIES

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. The court noted that the detainee's stay at the facility was relatively brief. (Montgomery City Jail, Alabama)

U.S. District Court
CELL SEARCH
ACCESS TO COURT
LAW LIBRARIES

Zimmerman v. Hoard, 5 F.Supp.2d 633 (N.D. Ind. 1998). A state prisoner brought a § 1983 action concerning events that occurred while he was a pretrial detainee at a county jail. The district court held that state directives and recommendations did not provide the basis for § 1983 claims. The inmate had alleged that the county officials failed to implement the Indiana Jail Standards and Rules and comply with the recommendations of the State Jail Inspector. The court held that the Fourth Amendment did not apply to cell searches. According to the court, the inmate's allegations that the county jail failed to have an adequate collection of legal materials and its prohibition against defendants receiving incoming legal publications stated a claim that would survive dismissal at the pleading stage. The inmate alleged that the county had a blanket policy of prohibiting inmates from receiving any type of publication through the mail. The court also found that a pro se inmate could not claim violation of attorney-client confidentiality. The inmate had complained that he was forced to conduct attorney-client consultations in a room equipped with a two-way intercom speaker that allowed jail personnel to breach confidentiality. (Carroll County Jail, Indiana)

U.S. District Court
ACCESS TO COURT
COMMISSARY
SEPARATION
PRIVACY
MEDICAL CARE
USE OF FORCE

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 found that the sheriff's decision to order the prisoner to be held in a disciplinary segregation unit of the jail without a disciplinary hearing did not violate the prisoner's due process rights because the decision was administrative and was made in response to the prisoner's previous escape attempt. The court held that a jail physician's failure to refer the prisoner to a dentist for emergency treatment of an abscess and bone fragmentation did not violate the Fourteenth Amendment because the prisoner did not state that he was in pain or had any discomfort when the physician examined him. According to the court,

the fact that the prisoner failed to receive one of his commissary orders did not constitute a disciplinary action without due process, even if the prisoner was unable to purchase stamps and materials with which to correspond with his family and his attorney. The court noted that the prisoner had received regular commissary orders, including a large order with correspondence materials placed just before his missed order, and he received regular orders after the missed order. 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
FALSE IMPRISON-
MENT
FALSE ARREST

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
CONDITIONS
CLOTHING
MEDICAL CARE

Anton v. Sheriff of DuPage County, Ill., 47 F.Supp.2d 993 (N.D.Ill. 1999). A pretrial detainee brought a § 1983 action against a county and county officials alleging that he was subjected to unconstitutional conditions of confinement at a county jail. The district court refused to dismiss the case, finding that his alleged exposure to low temperature in a detention cell while naked and with no alternative means of protecting himself from the cold supported a claim of inadequate shelter against the county. The detainee allegedly repeatedly complained to jail officers for hours and they responded with jeers and laughter, and he was not provided with medical care until he threatened litigation. When a nurse finally attended to the detainee, his body temperature was three degrees below normal. The detainee had just attempted suicide and had been placed in a rubberized cell without clothing and was observed every 15 minutes. The court also found that deputies' alleged thwarting of medical treatment given to the detainee supported a claim of violation of his right to medical attention. The officers allegedly removed a blanket that was given to the detainee by the nurse, which the court held supported a claim for deliberate indifference. The court denied qualified immunity for the officers, finding that it was clearly established at the time of this incident that pretrial detainees had a constitutional right to adequate heat and medical attention. (DuPage County Jail, Illinois)

U.S. District Court
USE OF FORCE

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 County Jail, New York)

U.S. Appeals Court
CONDITION

Benjamin v. Jacobsen, 172 F.3d 144 (2nd Cir. 1999). Officials who had entered into a consent decree governing New York City jail conditions moved for immediate termination of the decree under provisions of the Prison Litigation Reform Act (PLRA). Pretrial detainees opposed the motion. The district court vacated the decree and the appeals court affirmed in part and reversed in part. A rehearing en banc was granted and the appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the detainees were entitled to present evidence of current and ongoing violations of federal rights and of the need for continuation of the prospective relief provided in the decrees. According to the court PLRA provides for decrees to be terminated, but it does not require that decrees be vacated. The appeals court found that the PLRA termination provision does not violate the Constitutional separation of powers principle nor does it strip the courts of their Article III power and duty to remedy constitutional wrongs. (New York City Department Correction)

U.S. Appeals Court
MEDICAL CARE

Davis v. Dorsey, 167 F.3d 411 (8th Cir. 1999). A former pretrial detainee who allegedly was injured when he fell in a jail shower brought a § 1983 action against jail officials and a hospital. The district court granted summary judgment for the defendants and the appeals court affirmed in part and reversed in part. The appeals court held that material fact issues precluded summary judgment for correctional officers and jail medical staff. The detainee fell in the shower, hitting the back of his head and his left arm. He was not seen by medical staff following the fall but he was given three Tylenol. For several days he requested medical attention but correctional officers refused to process his requests or complete an incident report that would enable him to receive emergency medical treatment. After five days the detainee was seen by a nurse, who made disparaging remarks and did not clean his wounds or give him any medication. The appeals court reversed the district court's grant of summary judgment for the officers and jail medical staff, finding that they "utterly failed to address many of the allegations in [the detainee's] verified complaint." (St. Louis City Jail, Missouri)

U.S. Appeals Court
MEDICAL CARE

Dunigan ex rel. Nyman v. Winnebago County, 165 F.3d 587 (7th Cir. 1999). Survivors of an detainee who died in a county jail brought a § 1983 action against county officials alleging failure to provide proper medical care to the detainee. The district court granted summary judgment for the officials and the appeals court affirmed. The appeals court found that the officials were not deliberately indifferent to the detainee's serious medical needs, despite their alleged failure to consult medical personnel or actively administer medication when the inmate's condition deteriorated during the days preceding his death. The court noted the officials' three-month record of treating the detainee's medical condition and their lack of knowledge about the detainee's specific condition of myasthenia gravis (MG). Treatment of the detainee began immediately after he was admitted to the jail, when he complained of blurry vision as the result of a car accident several weeks earlier. The detainee received various services and tests in the following three months and was tentatively diagnosed by a specialist with MG, which had intermittent symptoms of fatigability and muscle weakness. Jail medical staff were not familiar with MG, nor were they aware of the specialist's diagnosis. Several weeks later jail staff found the detainee lying on his cell floor with his head resting on his bunk, claiming he had fallen and hurt his neck. Officers could find no signs of an injury and the detainee was able to move his limbs easily, so arrangements were made for close observation of the detainee. The detainee was seen several times by jail medical staff in the next few days, but his condition gradually worsened and he was found dead in his cell. (Winnebago County Jail, Wisconsin)

U.S. Appeals Court
SUICIDE

Ellis v. Washington County and Johnson City, Tenn., 198 F.3d 225 (6th Cir. 1999). A mother and a minor child of a deceased pretrial detainee brought a wrongful death action under § 1983 against a city, county, and jailers after the detainee committed suicide in a county jail. The district court entered summary judgment for all defendants except for one jailer and the plaintiffs and jailer appealed. The appeals court affirmed, finding that the county's alleged failure to train jailers on suicide prevention was not the proximate cause of the detainee's injury absent any circumstances from which a reasonable jailer would have foreseen the suicide. The appeals court also found that one of the jailers was entitled to qualified immunity even though he made a mistake in assessing the detainee's suicidal tendencies because he was not deliberately indifferent toward the detainee and exhibited a genuine concern for the detainee's welfare while confined. But the appeals court refused to grant summary judgment for one jailer because of his alleged delay in informing an emergency medical team of his alleged observation of the detainee tying a noose in his cell. The detainee committed suicide by hanging himself in a county jail three hours after his transfer from a city jail. The cell in which the detainee hung himself had a monitor camera at one end but was not designed as a suicide prevention cell. The detainee had been held overnight at a city jail after he was arrested because he was believed to be drunk or under the influence of drugs. After his arraignment the following morning he was taken to the county jail where, during the three hours preceding his suicide, "nothing occurred that would put reasonable jailers on notice of a possible suicide attempt" according to the appeals court. The detainee was asked about possible suicidal tendencies when he was admitted to the jail and responded that he "loved life." A few minutes later a jailer who had gone to high school with the detainee came on duty and was concerned about his mental health. The jailer found the detainee talking on the phone to his mother and seemingly crying. After the call the jailer asked the detainee if he was feeling suicidal and the detainee responded "Hell no, I've got a baby on the way that I've got to take care of." But most persuasive to the court was the statement of the mother in a letter two months after the death of her son that her son was "not suicidal at 11:30 when I talked to him [on the phone]...knew he was getting out [of jail]." The detainee's mother was an experienced, practicing, licensed clinical psychologist who held a Ph.D., and the court considered her statement to be an expert opinion. The appeals court held that it was "unreasonable to attribute fault to the County or its jailers for failing to predict suicide." (Johnson City Jail and Washington County Jail, Texas)

U.S. Appeals Court
SPEEDY TRIAL
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
MEDICAL CARE

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. District Court
WORK
FORCED LABOR

Ford v. Nassau County Executive, 41 F.Supp.2d 392 (E.D.N.Y. 1999). A pretrial detainee brought an action against a county correctional facility and county executive alleging violation of his constitutional rights because he was required to serve as a "food cart worker" without payment. The district court granted summary judgment in favor of the defendants. The court held that making the detainee choose between distributing food to inmates and being segregated in "lock in" could not be deemed punishment, and therefore did not deprive the detainee of liberty without due process. The court also held that requiring the detainee to work without payment as a food cart worker did not violate the Thirteenth Amendment; according to the court, to sustain a claim under the Thirteenth Amendment the detainee would have to demonstrate he was subjected to compulsory labor "akin to African slavery." The court found that the detainee's own alleged assistance in the distribution of food, for which he received at least some consideration, did not rise to the level of the indignity and degradation that accompanied slavery. As a food cart worker the detainee was required to push a pre-loaded food cart approximately 125 yards to an elevator, and occasionally to hand out certain foods such as milk, bread or oranges. He was also sometimes required to perform other tasks, such as sweeping a guard walk or emptying garbage. According to the detainee, he was required to work seven days per week, for all three meals. The detainee was required to take medication to control his epileptic seizures and was accordingly assigned to a "workers and medical dorm," which involved him in work activities. The court held that there was no evidence that the detainee's chores, despite his medical status, were overly burdensome to him. (Nassau County Correctional Center, New York)

U.S. Appeals Court
FAILURE TO
PROTECT

Giroux v. Somerset County, 178 F.3d 28 (1st Cir. 1999). A jail inmate who had been assaulted by another inmate sued a jail employee, sheriff and county alleging violations of § 1983. The district court granted summary judgment for the defendants and the inmate appealed. The appeals court vacated and remanded, finding that summary judgment was precluded by a factual dispute about the scope of the jail shift supervisor's responsibility and whether he abdicated his responsibility. The inmate was threatened by a cellmate when he left his cell to meet with a detective. After the meeting the inmate was moved to a different cell, apparently in response to the threat. The inmate was threatened again the next day when he was escorted past his former cell, and was allegedly threatened by other inmates while dining. The inmate requested protective custody. Although he was not moved, he was placed on "cell feed" status which eliminated his contact with other inmates in the common dining area. Several days later the inmate was involved with a visit which required him to use a common visiting area. While in the visiting area he was assaulted by his former cellmate who was also involved with a visit. The inmate suffered a broken nose, torn shoulder ligaments and a head laceration which required stitches. (Somerset County Jail, Maine)

U.S. Appeals Court
PROTECTION
USE OF FORCE
MEDICAL CARE

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 judgement 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. The appeals court held that the officers did not use excessive force against the detainee, but rather that they applied the force necessary in a good faith effort to restore discipline. The court also found that there were no actionable deficiencies in the sheriff's policies, customs or training. According to the court, "...the appellant's own expert penologist conceded that [sheriff] Peed's policies met the standards of both the Virginia Board of Corrections and the American Correctional Association." The court also concluded, "...claims that [sheriff] Peed provided inadequate training for his employees must also fail. As of the time of this incident, the ADC had been accredited for more than ten years by both the American Correctional Association and the National Commission on Correctional Health Care, two organizations whose training requirements often surpass minimal constitutional standards." (Fairfax County Adult Detention Center, Virginia)

U.S. Appeals Court
MEDICAL CARE

Hall v. Thomas, 190 F.3d 693 (5th Cir. 1999). An arrestee brought a § 1983 action alleging that a jail was deliberately indifferent to his kidney condition, his orthopedic pains, his diabetes and his epilepsy. The district court dismissed the action and the appeals court affirmed. The appeals court held that any discrimination that may have occurred against the arrestee was not "because of" his alleged disability, within the meaning of the Americans with Disabilities Act (ADA) and that jail physicians were not deliberately indifferent to his serious medical needs. The court noted that even if the defendants had failed to administer or provide the arrestee's medication on some occasions, the arrestee refused to take his seizure medication several times and refused to appear to receive his medication on some occasions. (Harris County Jail, Texas)

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. District Court
CONDITIONS
CROWDING
PRIVACY

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
USE OF FORCE
MEDICAL CARE

Harris v. Morales, 69 F.Supp.2d 1319 (D.Colo. 1999). An inmate brought a § 1983 action alleging excessive force and deliberate indifference to his serious medical needs while he was confined in a county jail. The district court denied summary judgment for the defendants, finding that the allegations that the inmate was unnecessarily subjected to pepper spray and was then denied medical attention stated Eighth Amendment claims. (Summit County Jail, Colorado)

U.S. Appeals Court
CONDITIONS

Henderson v. Sheahan, 196 F.3d 839 (7th Cir. 1999). U.S. Cert. Den. at 120 S.Ct. 2691. A pretrial detainee who was held in a county jail for four-and-one-half years brought a § 1983 action against the sheriff and corrections officials claiming injuries allegedly sustained as the result of his exposure to second-hand smoke. The district court dismissed the action. The appeals court affirmed, finding that the inmate's alleged present injuries were not sufficiently serious to support a due process claim and that the detainee could not recover for future injuries absent a showing to a reasonable medical certainty that he faced an increased risk of developing a future injury attributable to the alleged exposure. The detainee alleged present injuries that included breathing problems, chest pains, dizziness, sinus problems, headaches, and loss of energy. Although the jail had a non-smoking policy the detainee claimed that inmates routinely violated it. (Cook County Jail, Illinois)

U.S. Appeals Court
USE OF FORCE
SUICIDE

Lambert v. City of Dumas, 187 F.3d 931 (8th Cir. 1999). The family of a detainee who died in his jail cell brought a § 1983 action against a city and police officers, asserting claims for unlawful arrest, excessive force and wrongful death. The district court denied the defendants' motion for summary judgment and the appeals court affirmed in part, reversed in part, and remanded. The appeals court held that summary judgment was precluded by factual issues regarding the amount and degree of force used during the detainee's arrest, but that the officers were not liable for wrongful death, absent any evidence that the officers were subjectively aware of any risk that the detainee would inflict harm on himself. The detainee did not threaten to

commit suicide during his incarceration or otherwise indicate that he might do so, he was never classified as a suicide risk, and the officers were not shown to have knowledge of a prior incident when the detainee swallowed a metal crack pipe. The court noted that a showing that a jailer was negligent in failing to recognize a prisoner's suicidal tendencies is insufficient to satisfy the § 1983 deliberate indifference standard. (Dumas Police Department, Arkansas)

U.S. Appeals Court
FAILURE TO PROTECT
MEDICAL CARE

Lopez v. LeMaster, 172 F.3d 756 (10th Cir. 1999). A pretrial detainee who was beaten by other inmates while confined in a jail brought a § 1983 action against the county sheriff individually and in his official capacity. The district court granted summary judgment in favor of the sheriff and the detainee appealed. The appeals court affirmed in part, reversed in part and remanded. The detainee was arrested and placed in a general population cell in the county jail where he was threatened by another inmate. A jail officer took the detainee to an office where he prepared a written statement about the threat. But the officer returned the detainee to the general population cell where he was attacked and beaten by several inmates. The officer returned later and the detainee asked to be taken to the hospital. The officer took the detainee to an office, called an unknown person to ask for instructions, and then told the detainee "you are still conscious, we don't have to take you." The detainee was given aspirin, placed in a different cell and was released the next day. He went to the hospital after his release and was diagnosed with a severe contusion to the skull with post-concussion syndrome and a severe strain to the cervical, thoracic and lumbosacral spine. The appeals court held that the detainee failed to establish a claim for failure to provide adequate training and supervision of jail personnel because he failed to identify specific deficiencies that were closely related to his injuries. The court noted that evidence which showed that the jailers were generally poorly trained was insufficient to support the training and supervision claims. But the appeals court found that material issues of fact precluded summary judgment on the claim that the county maintained an unconstitutional policy of understaffing the jail and failing to monitor inmates, with deliberate indifference to inmate health or safety. The court noted that a suit against the sheriff in his official capacity is the equivalent of a suit against the county. The appeals court found that fact issues precluded summary judgment for the sheriff in his individual and official capacities on the detainee's failure to protect claims. The appeals court also held that summary judgment was precluded on the detainee's claim alleging that the sheriff was deliberately indifferent to his serious medical needs. (Jackson County Jail, Oklahoma)

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
EQUAL PROTECTION
WORK
SENTENCE
REDUCTION
GOOD TIME

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
PUBLICATIONS

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
MEDICAL CARE

Olabisiomotosho v. City of Hudson, 185 F.3d 521 (5th Cir. 1999). A pretrial detainee brought a § 1983 action alleging she suffered damages because of negligence, cruel and unusual punishment, and deliberate denial of medical treatment for her asthma. The district court granted summary judgment for all defendants. The appeals court affirmed, finding that the detainee failed to show that her medical needs were "serious" while she was in custody, and that officers were not deliberately indifferent to her medical needs. (City of Houston, Texas)

U.S. District Court
USE OF FORCE

Peters v. City of Biloxi, Mississippi, 57 F.Supp.2d 366 (S.D.Miss. 1999). An arrestee brought a § 1983 claim challenging the use of force during his arrest. The district court found that the arresting officer's conduct in handcuffing, shackling and verbally harassing the arrestee was objectively reasonable and was not clearly excessive. The court noted that there was no evidence that the officer hit or otherwise physically injured the arrestee. (City of Biloxi, MS)

U.S. District Court
CONDITIONS
FAILURE TO
PROTECT
SANITATION

Preval v. Reno, 57 F.Supp.2d 307 (E.D.Va. 1999). A detainee of the Immigration and Naturalization Service (INS) filed a pro se action under § 1983 alleging violation of his constitutional rights. The district court found that loud noise, constant light, bad odor and low room temperature could not be characterized as "punishment" unrelated to the detainee's detention. The district court also found that the detainee failed to state a due process claim based on INS staff failure to protect him from an assault by another inmate, where there was no allegation that any official or staff member was aware of the potential for the specific altercation before it took place. (Piedmont Regional Jail, Virginia, under contract to the Immigration and Naturalization Service)

U.S. Appeals Court
INTAKE SCREENING
MEDICAL CARE
FALSE IMPRISON-
MENT/ARREST

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. Appeals Court
COMMISSARY
DISCIPLINE
PUNISHMENT
RELIGION
SEGREGATION

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. The court also 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. District Court
PUNISHMENT
DISCIPLINE

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
CONDITIONS
MEDICAL CARE
CROWDING
EXERCISE

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
CONDITIONS
ADA-Americans with
Disabilities Act
EXERCISE
SANITATION
MEDICAL CARE
SEGREGATION

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. The court held that evidence raised an issue of material fact as to whether the inmate's medical condition required that he be treated differently from other inmates in jail, in violation of ADA. The inmate had informed jailers that he was HIV-positive upon his arrival at the jail and he was given an initial medical assessment. According to the inmate, he was told that because of "your medical condition, and you having AIDS, you're going to be locked down." He was initially housed by himself in an old shower room, which had a working shower but no flushable toilet. After five days he was moved to a solitary cell located close to the jail's command module, where there was no toilet or shower in the cell. The court found that the fact that the inmate was required to sleep on a floor mattress for an extended period of time and was not provided with a bunk while detained in the jail was not a constitutional deprivation under the Eighth Amendment. The court also found no constitutional violation in the alleged lack of ability to exercise while in the county jail, since he could have done sit-ups or push-ups in his cell and was only in jail for 30 days. 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)

U.S. Appeals Court
MEDICAL CARE
USE OF FORCE

Ruvalcaba v. City of Los Angeles, 167 F.3d 514 (9th Cir. 1999). An arrestee brought a § 1983 action against a city, police chief, police officer, and physician alleging excessive force during his arrest and deliberate indifference to his serious medical needs. The court entered judgment against the police officer upon jury verdict, granted a directed motion for the physician, and dismissed the remaining claims. The district court found that the physician's failure to take the arrestee's medical history while treating him at the jail, and his failure to diagnose the arrestee's broken ribs, did not establish a claim of deliberate indifference under § 1983. The arrestee was brought to a jail dispensary for treatment after he was arrested. He was moaning, almost incoherent, and complained of severe pain in his chest. The jail physician did not take a medical history. The appeals court affirmed in part, reversed in part and remanded. The appeals court held that whether the officer's use of force was in furtherance of the city's allegedly unconstitutional dog-bite policy was an issue for the jury for the purposes of the arrestee's claims against the city and the chief. The court noted that although the arrestee could not recover further compensatory damages from the city or the chief, nominal damages were available. (City of Los Angeles, California)

U.S. District Court
USE OF FORCE
MEDICAL CARE

Samuel v. City of Chicago, 41 F.Supp.2d 801 (N.D.Ill. 1999). A detainee sued a city alleging excessive use of force and denial of medical care. The district court denied the defendants' motion to dismiss, in part, finding that the detainee stated a conspiracy claim against two police who removed him from his vehicle and allegedly beat him and took him to the station house. The court also held that the detainee stated a claim that the police showed deliberate indifference to his medical needs, where the detainee alleged that he was denied insulin over an 11 hour period of confinement at the police station house, even though he informed the police he was a diabetic. The detainee allegedly suffered an aggravation of his pre-existing heart condition and diabetic condition as a result of the City's actions. The detainee also allegedly suffered contusions,

lacerations and other injuries about his legs, abdomen and chest. He remained at a local hospital for six weeks. (Fourth District Police Station, City of Chicago, Illinois)

U.S. Appeals Court
SUICIDE
SUPERVISION

Sanders v. Howze, 177 F.3d 1245 (11th Cir. 1999). The administratrix of a detainee's estate sued jailers alleging violation of the detainee's Eighth and Fourteenth Amendment rights arising from the detainee's suicide in jail. The district court denied summary judgment for the jailers and they appealed. The appeals court reversed and remanded with directions. The appeals court held that the jailers were entitled to qualified immunity, absent any preexisting Eleventh Circuit caselaw clearly establishing that the suicide prevention measures taken by the jailers were so inadequate as to constitute deliberate indifference. Several weeks after he was arrested and placed in the jail, the detainee removed a razor blade from a disposable razor and cut his left wrist. Following jail policies, staff transported the detainee to a local hospital's emergency room for treatment and evaluation. He was then transferred to a state hospital where he remained for several months. He returned to the jail and was placed in the general population where two days later he used a pencil to reopen his wrist wound. He was treated at the local hospital and returned to the jail the same day, where he was placed in an isolation cell near the jailers' office to prevent his access to items that might be used to injure himself. The next day he reopened the wound, was treated at the hospital, and returned to the isolation cell. He was transferred to a state hospital for several weeks and was placed in an isolation upon his return. The state hospital gave no special instructions concerning his care. The county petitioned the court for a psychiatric evaluation of the detainee but before the evaluation could be conducted the detainee was found dead, hanging from a light fixture in his cell by a bedsheet. Two jailers were on duty the night the detainee died but they did not detect his death for four to six hours after it occurred, despite a jail policy requiring lights in isolation cells to remain on at all times and for inmates in isolation are to be visually monitored every 30 minutes. (Dougherty County Jail, Georgia)

U.S. District Court
SEARCHES

Shain v. Ellison, 53 F.Supp.2d 564 (E.D.N.Y. 1999). A detainee sued a county challenging its policy of strip searching all detainees regardless of the nature of the crime for which they were detained. The district court entered summary judgment in favor of the detainee, finding that the Fourth Amendment prohibited strip searches in the absence of reasonable suspicion that a detainee was concealing weapons or other contraband. The court held that the county's policy violated the Fourth Amendment and that a qualified immunity defense was not available as the unconstitutionality of the practice was known for years. (Nassau County Corr'l Center, New York)

U.S. District Court
FAILURE TO PROTECT
MEDICAL CARE

Snell v. DeMello, 44 F.Supp.2d 386 (D.Mass. 1999). A jail inmate brought a § 1983 suit against a sheriff and various prison officials alleging failure to protect him from an attack by another inmate. The district court granted summary judgment for the defendants finding that the inmate failed to state a claim for supervisory liability and that the defendants provided adequate medical care. The court noted that the inmate was immediately treated after the attack by the another inmate, the next day he was again treated by a physician and three days later was taken to a hospital for X-rays which showed no injury. The inmate had allegedly reported being threatened by other inmates but the court held that the inmate failed to show that the sheriff, prison superintendent or state commissioner for corrections either knew of a substantial risk to the inmate or harbored a subjective belief that he faced potential injury from other inmates. The inmate testified that he had conversations with the sheriff and jail administrator in which he indicated that he had received threats of bodily harm from other inmates and that he sent a letter through the internal mail system addressed to the sheriff and others asking to be moved to an alternate housing unit "to prevent any further aggression or physical assault." (Barnstable County Jail and House of Correction, Massachusetts)

U.S. Appeals Court
TRANSPORT
RESTRAINTS
PROTECTION

Spencer v. Knapheide Truck Equipment Co., 183 F.3d 902 (8th Cir. 1999). A pretrial detainee who had suffered injuries that rendered him quadriplegic after he was placed with his hands cuffed behind his back in a police transport vehicle, and was thrown forward into the bulkhead of the passenger compartment, brought a § 1983 action against city officials. The district court granted summary judgment for the defendants and the appeals court affirmed. The appeals court held that neither the purchase of patrol wagons which lacked safety restraints, nor the manner of transporting arrestees in those wagons, showed deliberate indifference to the rights of the pretrial detainee. (Kansas City Police Department, Missouri)

U.S. District Court
MEDICAL CARE

Tapp v. Banks, 72 F.Supp.2d 739 (E.D.Ky. 1999). An arrestee brought a civil rights action against state police officers and county jail officials, alleging that he was denied proper medical care for an injury to his knee. The district court granted summary judgment for the defendants, ruling that the fact that the arrestee remained in the county jail for 20 days with a broken patella did not amount to deliberate indifference to his serious medical needs. The court noted that the arrestee was taken to a hospital after his arrest, that the hospital did not diagnose any knee problems, and that the arrestee subsequently did not ask to see a physician. (Perry County Jail, Kentucky)

U.S. District Court
SUICIDE
MEDICAL CARE

Thornton v. City of Montgomery, 78 F.Supp.2d 1218 (M.D.Ala. 1999). The relatives of a jail inmate who committed suicide while in custody filed a wrongful death action. The district court granted summary judgment for the defendants, finding that the jail officials' failure to prevent the suicide did not violate sections 1985 and 1986 and that the city could not be held liable under § 1983. The court found that whether the jail officials handled the inmate under a mental health policy or under their suicide risk policy, they were no less diligent and were adequately trained in both

policies. The court found that the city and the jail officials were not deliberately indifferent to the detainee's medical needs. The court held that the officials were not liable for failing to train jail officers and staff. The detainee died of asphyxiation and a spoon was found in his mouth. He had been placed in a cell reserved for inmates with mental health problems after he repeatedly claimed he was going to die during the admission process. (Montgomery City Jail, Alabama)

U.S. Appeals Court
WORK

Tourscher v. McCullough, 184 F.3d 236 (3rd Cir. 1999). A detainee brought a pro se § 1983 action against state prison officials alleging that his constitutional rights were violated by being compelled to work in a prison cafeteria while he was a pretrial detainee. He also alleged he was denied meaningful access to courts by being compelled to work in the cafeteria while preparing an appeal from his conviction. The detainee asserted that he was entitled to compensation pursuant to the minimum wage provisions of the Fair Labor Standards Act (FLSA). The district court dismissed the complaints. The appeals court held that the detainee failed to state a claim for meaningful access to court, and that prisoners and pretrial detainees who perform intra-prison work are not entitled to minimum wages under FLSA. (Pennsylvania Department of Corrections)

U.S. Appeals Court
GRIEVANCE
ACCESS TO COURT

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)

U.S. District Court
BAIL REFORM ACT
BAIL

U.S. v. Battle, 59 F.Supp.2d 17 (D.D.C. 1999). In a criminal proceeding the district court held that a defendant who had a history of committing crimes while on pretrial release represented a serious risk of flight and was thus subject to pretrial detention. The court noted that the defendant had been convicted of two violations of the Bail Reform Act for failing to appear when required. (U.S. District Court, District of Columbia)

U.S. District Court
SPEEDY TRIAL
BAIL REFORM ACT

U.S. v. Enriquez, 35 F.Supp.2d (D.Puerto Rico 1999). A defendant challenged his pretrial detention and sought dismissal of his indictment alleging failure to comply with speedy trial requirements. The district court held that the defendant should be detained, noting that his alleged offense was serious and was punishable by up to life imprisonment, the weight of evidence against him was strong, and although he had family ties he also had a prior record of seven felonies. The court also found that the defendant's Sixth Amendment speedy trial rights were not violated, even though the earliest trial date was in July 1997, and the trial had not commenced as of January 1999. (United States District Court, Puerto Rico)

U.S. District Court
PRIVACY
MAIL

U.S. v. Heatley, 41 F.Supp.2d 284 (S.D.N.Y. 1999). A pretrial detainee moved to suppress evidence seized from his nonlegal correspondence. The district court denied the motion, finding that although the detainee had an expectation of privacy in his nonlegal mail, the evidence was secured under a valid warrant. The court noted that even though the detainee had signed a form acknowledging that prison staff could open and read his general correspondence, the detainee was not "signing away any remnant of protection the law otherwise might have afforded him." (Metropolitan Correctional Center, New York)

U.S. Appeals Court
MEDICAL CARE

U.S. v. Morgan, 193 F.3d 252 (4th Cir. 1999). A pretrial detainee who was found incompetent to stand trial sought a review of an administrative order that permitted medical personnel to forcibly treat the detainee with antipsychotic medication. The district court upheld the order and the detainee appealed. The appeals court vacated the order and remanded the case. The appeals court found that the detainee was not entitled to an evidentiary hearing before the district court before being forcibly medicated, but that remand was required to determine whether a correctional officer had sufficient education and experience to act as the detainee's staff representative. According to the appeals court, medical personnel had an affirmative obligation to ensure that the detainee was represented by a qualified staff member. (United States Medical Center for Federal Prisoners, Springfield, Missouri)

U.S. District Court
PRIVACY
SEARCHES

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. District Court
HOME DETENTION

U.S. v. Rudisill, 43 F.Supp.2d 1 (D.D.C. 1999). A detainee who had been committed to the custody of the U. S. Department of Justice was brutally attacked by eight other inmates while detained at the Central Detention Facility of the District of Columbia Department of Corrections. He remained comatose in a hospital for nearly a month and was eventually released to his mother's care for outpatient treatment under a home detention program. The federal district court determined that the detainee was no longer competent to stand trial and that he would not become competent in the foreseeable future. The court noted that the detainee appeared to have benefitted from his home confinement. (District of Columbia Central Detention Facility)

U.S. Appeals Court
USE OF FORCE
PUNISHMENT

U.S. v. Walsh, 194 F.3d 37 (2nd Cir. 1999). A corrections officer who was convicted of violating an inmate's constitutional rights appealed his conviction on three counts of violating 18 U.S.C. § 42, that makes it a criminal act to willfully deprive a person of rights protected by the Constitution or laws of the United States while acting under the color of law. The appeals court affirmed, finding that the officer's acts constituted punishment and rose to the level of a constitutional violation. The corrections officer was found to have stepped on an inmate's penis and to have perpetrated other assaults on inmates. The officer, who was six feet two inches tall and weighed over 300 pounds, instructed an inmate to kneel and put his penis on a horizontal bar of his cell, and then stood with his full weight on the penis for a few seconds. The court concluded that the officer was acting under the color of state law, noting that the officer was "on duty and in full uniform, was acting within his authority to supervise and care for inmates under his watch when the assaults occurred." (Orleans County Jail, New York)

U.S. District Court
MEDICAL CARE

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)

U.S. District Court
MEDICAL CARE
PROTECTION

Wilson v. City of Chanute, 43 F.Supp.2d 1202 (D.Kan. 1999). The parents of a detainee who died of a drug overdose shortly after being released from police custody brought a § 1983 action alleging conspiracy and violations of the Fourth and Fourteenth Amendments. The defendants moved for summary judgment, which was granted in part and denied in part by the district court. The court held that the police officers were not entitled to qualified immunity because there was sufficient evidence of deliberate indifference to the detainee's serious medical needs. The court also held that there was sufficient evidence that the police chief failed to properly direct or supervise officers. Summary judgment was also denied for the city because the court found fact questions as to whether municipal policy or custom was the moving force behind the officers' alleged violation of the detainee's due process rights. The court found sufficient evidence to create an inference that two police officers and a detective had agreed to deprive the detainee of his due process rights by releasing him rather than providing medical treatment, for the purposes of a § 1983 conspiracy claim. (City of Chanute, Kansas)

2000

U.S. District Court
MEDICAL CARE

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. District Court
GRIEVANCE

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. Appeals Court SUICIDE	<u>Anderson v. Simon</u> , 217 F.3d 472 (7 th Cir. 2000). A widow of a county prisoner brought a § 1983 action against a prosecutor alleging that he violated the prisoner's Fourth and Fourteenth Amendment rights by failing to approve charges against him and ordering police to keep him in custody until a lineup could be arranged, leading to his death from suicide. The district court dismissed the action and the appeals court affirmed. The appeals court held that the prosecutor was absolutely immune from the claim predicated on a delay in charging. The prisoner had been held in a police lockup pending charging. During the night the prisoner began to experience heroin withdrawal symptoms and told officers on duty that he was becoming depressed and wanted to kill himself. A lineup was held the next afternoon and the prisoner was found dead in his cell, hanging from a noose, early that evening. (25th District Police Station, Chicago, Illinois)
U.S. District Court PUNISHMENT	<u>Benjamin v. Kerik</u> , 102 F.Supp.2d 157 (S.D.N.Y. 2000). Corrections officials who had entered into consent decrees governing the conditions of New York City jails moved for immediate termination of the decrees under the Prison Litigation Reform Act (PLRA). The district court terminated provisions of the decree that addressed several operational issues. The court held that city jail officials did not inflict punishment upon pretrial detainees by subjecting them to restrictive housing, because disciplinary due process was required within 72 hours of an infraction leading to the housing assignment. The court found that jail practices with respect to inmate correspondence did not constitute a current and ongoing violation of federal court relief under the provisions of PLRA, where mail was transmitted in a timely manner, without intrusion on the property rights of the inmates and occasional problems were only isolated incidents of negligence. (New York City Department of Corrections)
U.S. District Court COMMISSARY GRIEVANCE	<u>Bowman v. City of Middletown</u> , 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 CELLS CONDITIONS	<u>Brown v. Bargery</u> , 207 F.3d 863 (6 th 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 MEDICAL CARE INTAKE SCREENING	<u>Butler v. Coitsville Tp. Police Dept.</u> , 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. District Court SEPARATION PROTECTION	<u>Burciaga v. County of Lenawee</u> , 123 F.Supp.2d 1076 (E.D.Mich. 2000). A pretrial detainee brought a civil rights action against county officials, alleging harm as the result of housing him with an assaultive prisoner. The district court granted summary judgment for the defendants. The court held that the county did not violate the detainee's due process rights by housing him with another detainee or by improperly classifying both inmates as medium-security inmates. Both inmates had been previously incarcerated for assault. (Lenawee County Jail, Michigan)
U.S. Appeals Court MENTAL HEALTH	<u>Charles W. v. Maul</u> , 214 F.3d 350 (2 nd Cir. 2000). A prisoner who had been confined for up to 72 hours after he was found incompetent to stand trial on a misdemeanor charge to allow for a determination of the need for a civil commitment brought a § 1983 action. The district court dismissed the action and the prisoner appealed. The appeals court reversed and remanded. The appeals court held that the confinement did not violate the prisoner's due process rights but that the prisoner had an equal protection right not to receive treatment that was more onerous than

that given to candidates for civil commitment. (New York State Office of Mental Health)

U.S. Appeals Court
MEDICAL CARE

Chavez v. Cady, 207 F.3d 901 (7th Cir. 2000). A former pretrial detainee brought a § 1983 action against a sheriff, jail administrator, correctional officers and nurse practitioner who supervised the jail clinic, alleging deliberate indifference to his medical needs. The district court granted summary judgment in favor of the defendants and the detainee appealed. The appeals court affirmed in part and reversed and remanded in part. The appeals court held that issues of fact precluded summary judgment for the nurse practitioner and the correctional officers. According to the court, the actions of the nurse practitioner in the treatment of the detainee who had a ruptured appendix may have represented a substantial departure from accepted professional judgment. The appeals court also found that the correctional officers may have been deliberately indifferent by failing to follow the directives of the nurse practitioner. The court noted that the county jail did not have its own written manual of policies for operation of the jail but rather relied on the Illinois County Jail Standards which are issued by the Illinois Department of Corrections. (Henry County Jail, Illinois)

U.S. District Court
MEDICAL CARE

Cornelia v. Laib, 117 F.Supp.2d 754 (N.D.Ill. 2000). A detainee alleged that medical personnel were deliberately indifferent to his diabetic condition. The district court granted partial summary judgment to the defendants, finding that a nurse did not display deliberate indifference by declining to send the detainee to a hospital, and a physician was not deliberately indifferent by not authorizing the administration of insulin. The court noted that the nurse took the detainee's vital signs and monitored his blood sugar level while she attempted to confirm the details of his insulin regimen. The physician had refused to authorize the administration of insulin until the detainee's insulin regimen could be confirmed. (Correctional Medical Services, Will County Adult Detention Facility, Illinois)

U.S. Appeals Court
PROTECTION
SUPERVISION

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. Appeals Court
MEDICAL CARE

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. District Court
MEDICAL CARE

Douglas v. Stanwick, 93 F.Supp.2d 320 (W.D.N.Y. 2000). A pretrial detainee brought a § 1983 action against a jail physician and nurse alleging that he received inadequate medical care when he was denied narcotic pain medication. The district court granted summary judgment for the defendants, finding that the prisoner did not show sufficient culpability on either the physician or nurse's part to support his Fourteenth Amendment claim. The court noted that a mere disagreement over proper medical treatment does not create a constitutional claim. The jail physician had instructed the nurse to hold the detainee's narcotic prescription from an outside doctor until nurses could determine if non-narcotic pain control medications would adequately address the detainee's hand pain. (Monroe County Jail, New York)

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
DISCIPLINE

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
SUICIDE

Estate of Novack Ex Rel. Turbin v. County of Wood, 226 F.3d 525 (7th Cir. 2000). The estate and mother of an inmate who committed suicide filed a § 1983 action against a county. The district court granted summary judgment to the county and the appeals court affirmed. The appeals court held that mere knowledge that an inmate is behaving violently or "acting in a 'freaky' manner" is not sufficient to impute an awareness of a substantial risk of suicide for Eighth Amendment purposes. The court found that jail personnel were not subjectively aware that the inmate posed a high risk of suicide and there was not a pattern of suicides that led to the inference that the county was aware that policies for treating mentally ill inmates were inadequate and chose to do nothing. (Wood County Jail, Wisconsin)

U.S. Appeals Court
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
RESTRAINTS
PRE-SENTENCE
DETENTION

Fuentes v. Wagner, 206 F.3d 335 (3rd Cir. 2000). An inmate who had been detained in a county prison while awaiting sentencing sued corrections officers and prison officials under § 1983 for the alleged use of excessive force. A district court jury returned a verdict in favor of the defendants and the inmate appealed. The appeals court affirmed, finding that whether the inmate was placed in a restraint chair to stop his disruptive behavior and maintain prison order or for purposes of punishment was a jury question and that placement of the inmate in a restraint chair for eight hours did not violate substantive due process under the Eighth Amendment. The court noted that the inmate was not kept in the chair any longer than was authorized, his physical condition was checked every fifteen minutes and he was released every two hours for ten minutes to allow stretching, exercise, and use of the toilet. He was examined by a nurse at the end of the eight-hour period. According to the court, an inmate awaiting sentencing had the same status under the Constitution as a pretrial detainee and the Due Process Clause protected him from the use of excessive force amounting to punishment. (Berks County Prison, Pennsylvania)

U.S. District Court
SUICIDE ATTEMPT
USE OF FORCE

Garcia v. City of Boston, 115 F.Supp.2d 74 (D.Mass. 2000). A pretrial detainee brought an action against a city, a hospital and the hospital's emergency psychiatric services program, alleging excessive force and denial of medical and psychological care. The district court granted summary judgment for the defendants. The detainee had been arrested by the city police following a domestic disturbance and was taken to a police station where he was booked and placed in a cell. That evening the detainee made an apparent attempt to commit suicide by cutting his left wrist with the aluminum top of a juice container that had been given to him with his dinner. An ambulance was summoned but the detainee refused treatment. He was placed on the suicide list at the station and handcuffed to a bar on the wall in the booking area, where he could be closely monitored. The following evening the detainee again attempted to commit suicide when he obtained a book of matches and set fire to his own clothing while still handcuffed to the bar. He sustained burns and was taken to a hospital. Hospital personnel explored various mental health alternatives for the detainee but he was eventually returned to the police station and handcuffed to the bar, where he lit his shirt on fire fifteen minutes after returning from the hospital. The

detainee's clothes were taken away and he remained in the booking area. Later that day the detainee pulled an officer's gun out of its holster, shot the officer and another prisoner, and was then shot by another officer. The district court held that the officials and hospital staff were not negligent in their failure to place the detainee in a state mental facility since the detainee was not eligible for placement while charges were pending. The court also held that firing of a gun at the detainee was not an excessive use of force because there was a clear need for the use of force, only one round was fired, and the detainee sustained only a limited injury. (Boston Police Department, Area B, District 2 Police Station, Massachusetts)

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. Appeals Court
SEPARATION

Janes v. Hernandez, 215 F.3d 541 (5th Cir. 2000). A traffic offender sued a county to recover for alleged violation of his civil rights based upon a sheriff's policy of confining all manner of arrestees, including those with prior felony records, in one large cell. The district court entered judgment in favor of the offender and awarded attorney fees. The appeals court affirmed, finding that the sheriff, as the county policymaker, did not have to know that specific felons and other inmates with whom the traffic offender was confined posed a risk of harm to him, in order to be liable for violation of the offender's civil rights. The appeals court found that the section of the Prison Litigation Reform Act (PLRA) that limited attorney fees that may be awarded in suits by inmates did not reply to the offender, who was not a prisoner when his complaint was filed. (Bastrop County Jail, Texas)

U.S. District Court
SEARCHES

Kelleher v. New York State Trooper Fearon, 90 F.Supp.2d 354 (S.D.N.Y. 2000). An arrestee brought a § 1983 action against a police officer, alleging that he was subjected to an unlawful strip search. The district court held that the issue of whether the officer had an objectively reasonable suspicion to strip search the arrestee was for the jury, but that the jury award of damages in the amount of \$125,000 as compensation for emotional distress were excessive to the extent that they exceeded \$25,000. According to the court, although the unlawful strip search in which the arrestee was touched by the officer was an "egregious intrusion" on the arrestee's person, there was no corroborating medical evidence concerning the arrestee's emotional distress. The officer had transported the arrestee to a state police barracks and conducted the strip search in a bathroom. (State Police Barracks in Brewster, New York)

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
MEDICAL CARE
RESTRAINTS
ACCESS TO COURT
EQUAL PROTECTION

May v. Sheahan, 226 F.3d 876 (7th Cir. 2000). A pretrial detainee who suffered from Acquired Immune Deficiency Syndrome (AIDS) and was hospitalized brought an action against a county and county officials. The district court denied summary judgment for the sheriff on qualified immunity grounds and the sheriff appealed. The appeals court affirmed, finding that the detainee stated an equal protection claim by alleging that the sheriff, for no legitimate reason, treated hospitalized detainees differently from jail detainees by shackling them to their beds and not taking them to court on their assigned court dates. The appeals court found that the allegation that the sheriff's restrictive policies caused the detainee to miss scheduled court appearances and impeded access to his attorney stated a claim for violation of his right of access to court. The appeals court found that the allegation that the sheriff implemented a policy that required him to be shackled to his bed around the clock, despite his weakened state and despite being watched by armed guards, was sufficient to state a substantive due process claim. (Cook County Jail, Illinois)

U.S. Appeals Court
STRIP SEARCH

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 Co. and Knox Co., Maine)

U.S. District Court
CROWDING
CONDITIONS
MEDICAL CARE

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 detainee was transferred before his request to see a dentist could be processed, finding issues of material fact and noting that even a convicted inmate has a right of ready access to dental care. 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. 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. The court denied summary judgment to the officials on the issue of whether denial of a mattress during the initial part of his detention, which the court characterized as a "basic human need," violated the due process rights of the detainee. 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
SAFETY
CONDITIONS
SANITATION

Oladipupo v. Austin, 104 F.Supp.2d 643 (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 found that the fact that INS detainees held at the parish jail had fewer privileges than INS detainees held at a federal detention center did not violate the Equal Protection Clause. The court also found that housing INS detainees with convicted prisoners did not violate the Due Process Clause. The court denied summary judgment for the officials on the allegation that the housing unit at the jail had serious sewage problems that created unsanitary conditions. The court also denied summary judgment to the officials on the allegation that the jail had an inadequate number of emergency exits. (Avoyelles Parish Jail, Louisiana)

U.S. District Court
CONDITIONS
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)

U.S. District Court
MEDICAL CARE

Ralk v. Lincoln County, GA., 81 F.Supp.2d 1372 (S.D.Ga. 2000). A pretrial detainee brought an action alleging deliberate indifference to his medical needs. The district court granted summary judgment for the defendants, finding that the county jail physician had not been deliberately indifferent to the detainee's serious medical needs. The detainee had alleged that the physician failed to see him to treat his back pain but the court noted that even if the physician had been told about the detainee's condition, he had previously prescribed medication for the pain. (Lincoln County Jail, Georgia)

U.S. Appeals Court
PRE-SENTENCE
DETENTION

Resnick v. Hayes, 213 F.3d 443 (9th Cir. 2000). A federal prisoner brought a § 1983 action claiming that a warden and correctional officers violated his constitutional rights when they confined him in the prison's special housing unit. The district court dismissed the action and the prisoner appealed. The appeals court affirmed, finding that the prisoner who had been convicted but not yet sentenced had no liberty interest in not being confined in a special housing unit pending a disciplinary hearing. The court noted that the prisoner should be treated as a sentenced inmate rather than as a pretrial detainee. (Federal Detention Center, Dublin, California)

U.S. District Court
FAILURE TO
PROTECT

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)

U.S. District Court
USE OF FORCE

Santiago v. C.O. Campisi Shield #4592, 91 F.Supp.2d 665 (S.D.N.Y. 2000). A pretrial detainee brought a § 1983 action against a city corrections department alleging that an officer assaulted him in his cell. The district court granted summary judgment for the defendants, finding that a corrections officer's alleged open-handed slap of the detainee after an altercation was de minimis where the detainee suffered no physical injury. The court found that the slap was not sufficiently repugnant to the conscience of mankind to constitute a due process violation. (Bronx County Courthouse, New York)

U.S. Appeals Court
RELEASE
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 Co. Detention Center, New Mexico)

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
SUICIDE ATTEMPT

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. Appeals Court
MEDICAL CARE

Taylor v. Adams, 221 F.3d 1254 (11th Cir. 2000). In an action arising from the death of a pretrial detainee, the district court denied summary judgment to three firemedics and a jail nurse and they appealed. The appeals court reversed and remanded. The appeals court held that the firemedics were not deliberately indifferent because they acted on whatever knowledge they had of the detainee's condition and tried to check him out and administer aid, questioned him repeatedly regarding his desire for treatment but the detainee declined treatment. (Mobile County

Jail, Alabama)

U.S. District Court
MEDICAL CARE

Taylor v. Plousis, 101 F.Supp.2d 255 (D.N.J. 2000). A former county jail detainee brought a § 1983 action against a county, county officials and a private health services provider alleging inadequate medical treatment. The district court found that the detainee's deteriorating prosthesis which caused pain and mobility problems was a serious medical need and that fact issues needed to be resolved concerning a doctor's efforts to seek a replacement and a nurse's alleged delayed delivery of the replacement. (Cape May County Jail, New Jersey, and Correctional Health Services, Inc.)

U.S. District Court
SUICIDE
MEDICAL CARE

Thornhill v. Breazeale, 88 F.Supp.2d 647 (S.D.Miss. 2000). Survivors of a pretrial detainee who committed suicide while in custody brought a § 1983 and wrongful death action. The district court held that a sheriff and deputy did not act with deliberate indifference by placing the detainee in a cell with a non-breakaway shower rod and neglecting to remove his shoes. But the court denied summary judgment on the issue of whether the jail's lack of a written policy for suicide prevention was reasonably related to a legitimate governmental interest. The plaintiffs challenged the lack of a policy relating to the administration of cardiopulmonary resuscitation (CPR) to detainees who attempt suicide, and the lack of a written policy for detection and prevention of suicide. The detainee was jailed awaiting trial for allegedly raping his estranged wife. The sheriff and his staff were aware of the detainee's troubled mental history and that he had threatened suicide on two prior occasions. He was initially placed in the jail's mental holding cell where he was isolated from other inmates. He was placed on suicide watch which, according to an unwritten policy, required him to be checked approximately every fifteen minutes. Items with which he could injure himself, including his shoes, were taken from him. After three days without incident the detainee was moved to a juvenile cell in the same section of the jail that was equipped with a toilet and shower and had a non-breakaway shower rod. He remained on suicide watch. He was given his shoes and allowed to leave his cell to exercise and watch television one morning but a deputy forgot to remove his shoes when placing the detainee back in the cell. The detainee hung himself with his shoelaces from the shower rod. He had been observed alive approximately ten minutes before he was found hanging. After he was found hanging it took a period of time for the officers to open the cell and he was eventually cut down and checked for vital signs. Finding no vital signs no attempts were made to revive him. (Lamar County Jail, Mississippi)

U.S. District Court
MEDICAL CARE
INTAKE 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. The court also held that the inmate's complaint, which alleged a series of failures to attend to his medical needs by several different county officials over a period of several weeks, adequately pleaded that county officials had a widespread custom of failing to provide care for the prisoner's serious medical needs. (Anoka County Jail, Minnesota, and United States Marshals Service)

U.S. Appeals Court
DUE PROCESS
CONDITIONS
SEGREGATION

U.S. v. El-Hage, 213 F.3d 74 (2nd Cir. 2000). A defendant who was an alleged member of an international terrorist organization moved to be released on bail and for modification of his conditions of pretrial detention. The detainee was separated from the general population and limited to only three telephone calls per month to his family. The district court denied the motions and the detainee appealed. The appeals court affirmed, finding that the detainee's conditions were reasonably related to the government's asserted security concerns given ample evidence of the detainee's extensive terrorist connections. (U.S. District Court, Southern Dist. of New York)

U.S. District Court
DUE PROCESS
MENTAL HEALTH

U.S. v. Keeven, 115 F.Supp.2d 1132 (E.D.Mo. 2000). A detainee sought judicial review of a determination that psychotropic medication could be administered involuntarily because she was a danger to herself and others, and to render her competent to stand trial. The district court held that the detainee was not entitled to an evidentiary hearing prior to the forcible administration of medication and that her due process rights were adequately protected. The court also found that a psychiatrist who conducted an administrative hearing qualified as a neutral hearing officer because he was not currently involved with the diagnosis or treatment of the detainee at the time of the hearing. (Federal Medical Center, Carswell, Texas)

U.S. Appeals Court
MEDICAL CARE

U.S. v. Weston, 206 F.3d 9 (D.C.Cir. 2000). A district court upheld the decision of the federal Bureau of Prisons to involuntarily administer psychotropic medication to a pretrial detainee. The detainee appealed and the appeals court reversed and remanded, finding that the record did not support the district court's conclusion that the medication was essential for safety. (Federal Correctional Institution in Butner, North Carolina)

U.S. Appeals Court
USE OF FORCE
MEDICAL CARE

Wagner v. Bay City, Tex., 227 F.3d 316 (5th Cir. 2000). Survivors of an arrestee who died in police custody brought a § 1983 action against police officers, alleging the use of excessive force and deliberate indifference to the need for medical attention. The district court denied summary judgment for the officers. The appeals court reversed, entered judgment for the officers, and

remanded. The appeals court held that the officers did not act with deliberate indifference to a risk of harm. The arrestee had resisted arrest and struck an officer with his fists. The arrestee stopped breathing and died after officers sprayed him with pepper spray, placed him face down on the pavement to handcuff him, placed a shin across his back to hold him down, and placed him on his stomach in the back of a patrol car to transport him to the jail. The officers said that they heard the arrestee groaning on the way to the police station and therefore believed he was still breathing. Although the officers did not take the arrestee to the hospital, the court noted that pepper spray decontamination could effectively be done in jail and the officers believed the arrestee was still breathing. (Bay City, Texas)

U.S. Appeals Court
PROTECTION
SEPARATION

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. District Court
PRIVACY
CONDITIONS

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)

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 County Jail, Alabama)

U.S. Appeals Court
SUICIDE

Yellow Horse v. Pennington County, 225 F.3d 923 (8th Cir. 2000). The administrator for the estate of an inmate who hanged himself in a county jail brought a § 1983 action against a county, correctional officer and deputy sheriff. The district court granted summary judgment for the defendants and the appeals court affirmed. The appeals court held that the corrections officer who removed the inmate from a suicide watch was entitled to qualified immunity because she followed the routine practice for removing an inmate from a suicide watch, which included reviewing the contact journal for information on the inmate's eating, sleeping and social habits, and interviewing and evaluating the inmate. The appeals court found that the officer on duty at the time of the suicide was not deliberately indifferent to the risk of suicide when she failed to make more timely cell checks, despite learning from other prisoners that the inmate was upset and talking about heaven and hell. According to the court, the county's suicide prevention policy did not show deliberate indifference to the rights of others because it included inmate screening, officer training, and annual policy review and was reasonable and comprised an effort to prevent suicide. (Pennington County Jail, South Dakota)

U.S. Appeals Court
MEDICAL CARE

Zentmyer v. Kendall County, Ill., 220 F.3d 805 (7th Cir. 2000). A pretrial detainee brought a civil rights action to recover for his jailers' alleged indifference to his serious medical needs. The district court granted summary judgment for the defendants and the appeals court affirmed. The appeals court held that guards' failure to dispense the detainee's medication for a middle ear infection consistently on schedule did not manifest any conscious disregard for the detainee's health of the kind needed to support a Fourteenth Amendment claim, where guards administered medication of various forms to the detainee 162 times over a 20-day period and were not shown to

have any knowledge that serious medical consequences might result from occasionally missing the prescribed dosage. (Kendall County Jail, Illinois)

2001

U.S. Appeals Court
ATTORNEY VISITS
RESTRAINTS
PRIVACY

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. The appeals court held that the restraints used when moving certain detainees within, or outside, the jail, had a "severe and deleterious effect" on the detainees given that such restraints were often painful and could result in injury. The appeals court agreed with the district court that detainees were entitled to reasonable after-the-fact procedural protections to ensure that such restrictions were terminated reasonably soon if they were not justified. These procedures include a hearing, written decision, timely review of appeal from placement in special restraint status, and the opportunity to seek further review based on good cause. (New York City Department of Correction)

U.S. Appeals Court
SUICIDE
INTAKE SCREENING

Boncher ex rel. Boncher v. Brown County, 272 F.3d 484 (7th Cir. 2001). The estate of a prisoner who had committed suicide brought a § 1983 action against jail officials alleging deliberate indifference to the risk of the prisoner's suicide. The district court granted summary judgment for the jail officials and the appeals court affirmed. The appeals court held that evidence was insufficient that jail officials were deliberately indifferent, even though intake officers had little training and relied on a checklist that was deficient in several areas. The court noted that the officers were making a judgment that was not likely to be assisted by special training and that the jail was in compliance with the state's minimum standards for suicide prevention. The prisoner had been arrested after a domestic altercation, and had a long history of alcoholism and had attempted suicide at least three times, but this history was not known to the arresting officers or the personnel of the jail. The prisoner was joking with officers during his admission to the jail and the officers thought him to be a "happy drunk." He was placed in a regular cell instead of the jail's suicide-watch cell, and he died within 45 minutes by hanging himself with a bedsheet. The appeals court also held that the evidence offered by an expert witness was "useless" and should have been excluded. The criminologist had testified that the rate of suicide in the jail (five suicides in the preceding five years) was unusually high. (Brown County Jail, Wisconsin)

U.S. Appeals Court
SUICIDE

Brown v. Harris, 240 F.3d 383 (4th Cir. 2001). The father of a detainee who committed suicide in a jail brought state tort claims and § 1983 claims against county officials. The district court granted judgment as a matter of law to the defendants and the father appealed. The appeals court affirmed. The appeals court held that the adult detainee committed common law suicide under Virginia law, precluding the estate of the detainee from recovering on wrongful death and gross negligence claims. The court found that even if the jail supervisor was informed that the detainee was suicidal, he did not act with deliberate indifference to the detainee's medical needs because he placed the detainee on "medical watch" which established constant video surveillance of the detainee's cell. The court noted that although the supervisor failed to place the detainee in a paper gown or have him examined by medical staff, his failure amounted to, at most, negligence, not deliberate indifference. (Virginia Beach General Jail, Virginia)

U.S. Appeals Court
CONDITIONS
CROWDING

Castillo v. Cameron County, Tex., 238 F.3d 339 (5th Cir. 2001). Pretrial detainees and convicted inmates held at a jail brought a class action under § 1983 against a county, state and various individuals, alleging that overcrowding at the jail resulted in cruel and unusual punishment. The state moved to terminate previously-entered injunctions and the district court dismissed the state from the action and ordered continuation of injunctive relief designed to reduce the jail population. The appeals court vacated the decision and remanded the case. The appeals court found that the order continuing injunctive relief was a "prisoner release order" within the meaning of the Prison Litigation Reform Act (PLRA) and that the state had standing to appeal the continuation of injunctive relief. The appeals court held that on remand, the district court must determine if a continuing and ongoing constitutional violation exists, and if so, whether the remaining requirements of PLRA are met. (Cameron County Jail, Texas)

U.S. District Court
CONDITIONS

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. Appeals Court
HANDICAP
ADA- Americans with
Disabilities Act

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
CONDITIONS OF
CONFINEMENT

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
USE OF FORCE

Craw v. Gray, 159 F.Supp.2d 679 (N.D.Ohio 2001). An arrestee sued law enforcement officers under § 1983 asserting claims for use of excessive force. The district court granted partial summary judgment in favor of the officers, finding that the allegations did not support a claim for inadequate training of an officer and that past "use of force" incident reports did not support the claim for inadequate supervision of the officer. According to the court, the assertion that a particular officer may be unsatisfactorily trained does not alone "suffice to fasten § 1983 liability" on a municipality for failure to train. The court noted that none of the reports showed that the deputy acted improperly. The officer had brought the arrestee to a county jail and during the booking process an altercation between the arrestee and the officer resulted in a right hip fracture and dislocation for the arrestee. (Mercer County Jail, Ohio)

U.S. District Court
CONDITIONS
SANITATION

Curry v. Kerik, 163 F.Supp.2d 232 (S.D.N.Y. 2001). A pretrial detainee brought a § 1983 action against corrections officials alleging violation of the due process clause arising out of dangerous conditions. The court held that the detainee stated a due process violation by alleging that he was exposed to an unsanitary and hazardous showering area for over nine months. The court found that the detainee's allegation that officials negligently appointed, trained and supervised employees and failed to enforce rules requiring facility inspections and addressing repair complaints were sufficient to show the personal involvement of the officials. The detainee alleged that he had alerted the officials to dangerous conditions on several occasions, and the conditions led to his injury when he fell in a shower, which stated a claim of deliberate indifference according to the court. The inmate alleged that the shower facility in his unit leaked, tiles were falling off the wall, and there were no shower curtains or floor mats. (North Infirmary Command, Correctional Facility, New York City Department of Correctional Services)

U.S. District Court
USE OF FORCE

Davis v. Hill, 173 F.Supp.2d 1136 (D.Kan. 2001). An arrestee brought a § 1983 action against a county, sheriff, and employees alleging that he was the victim of excessive force while detained.

The defendants moved for summary judgment and the district court granted the motion in part, and denied it in part. The court held that fact issues as to whether sheriff's deputies beat the arrestee senseless in his cell precluded summary judgment on the detainee's Fourth Amendment excessive force claim. The court also found that the arrestee could maintain a suit against deputies who were near the cell at the time, despite his inability to identify the two who allegedly administered the beating. The arrestee was allegedly handcuffed in his cell during a staff shift change. The arrestee was yelling and kicking his cell door and alleged that an officer entered the cell and hit him behind his ear, knocking him into the steel bed and against a steel wall, and then ground his thumb behind the arrestee's ear. According to the arrestee, another officer entered and the two "proceeded attacking and torturing me on every joint in my body..." (Sedgwick County Adult Detention Facility, Kansas)

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
SUICIDE

Ellis ex rel. Lanthorn v. Jamerson, 174 F.Supp.2d 747 (E.D.Tenn. 2001). The mother and the minor child of a pretrial detainee who committed suicide in jail brought a § 1983 action against county jail officials. The district court dismissed the case, finding that the county jailor who was on duty at the time of the detainee's suicide was entitled to qualified immunity. The plaintiffs attempted to introduce evidence that the jailor was watching video surveillance monitors and saw the detainee fashion a noose and place it around his neck but did not summon help immediately. The court refused to allow a statement made by the county sheriff to the media to be used as evidence, even though it might support the assertion that jail staff did not act expediently to prevent the detainee's death. (Washington County Jail, Tennessee)

U.S. District Court
PROTECTION

Gailor v. Armstrong, 187 F.Supp.2d 729 (W.D.Ky. 2001). The estate of a deceased pretrial detainee brought a § 1983 action against a county and correctional officers for the beating death of the detainee by officers. The district granted summary judgment in favor of the county, finding that there was insufficient evidence to hold the county liable, but denied summary judgment for the officers. The court held that fact issues remained as to whether the officers' use of force was excessive. The court ruled that the officers and their supervisor were not entitled to qualified immunity. The court held that the county was not liable under § 1983 because evidence that the officers failed to follow the county's use of force policy, officials allegedly falsified reports, and evidence that some officers received only limited use of force training, did not demonstrate custom or usage necessary to support a § 1983 claim. The court denied summary judgment for a supervisor who allegedly failed to intervene when she saw excessive force being used against the detainee. (Jefferson County Department of Corrections, Kentucky)

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 the circumstances of the arrest. (City of Schenectady, New York)

U.S. Appeals Court
RESTRAINTS
USE OF FORCE

Hawkins v. Comparet-Cassani, 251 F.3d 1230 (9th Cir. 2001). A convicted prisoner who had a "stun belt" placed on him, and activated, when he appeared in court for sentencing, brought a § 1983 action. The district court certified a class action and granted a preliminary injunction. The appeals court reversed in part and remanded. The appeals court held that the class of all persons in the custody of the county sheriff was improperly certified since the convicted prisoner could not serve as a representative for those prisoners who had not yet been convicted. The appeals court also found the district court injunction against the use of the belt was overbroad because it did not allow for use of the belt to protect courtroom security, such as restricting violence or preventing escape. But the court noted that even at sentencing, where a defendant's guilt is no longer in dispute, shackling is inherently prejudicial and detracts from the dignity and decorum of the proceeding, and impedes the defendant's ability to communicate with his counsel. (Los Angeles County, California)

U.S. District Court
PROTECTION

Hedrick v. Roberts, 183 F.Supp.2d 814 (E.D.Va. 2001). Pretrial detainees who were assaulted and injured by other inmates brought separate actions in state court against a sheriff. The cases were consolidated. The district court granted summary judgment in favor of the sheriff. The court held that the detainees were exposed to a substantial risk of harm in violation of the Eighth and

Fourteenth Amendments, but that the sheriff was not deliberately indifferent and was entitled to qualified immunity. The court noted that the sheriff took immediate and reasonable measures to alleviate problems associated with the overcrowded jail and provided medical treatment to detainees who were injured. (Hampton Jail, Virginia)

U.S. District Court
FAILURE TO PROVIDE
CARE
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. District Court
RELEASE

Johnson v. Herman, 132 F.Supp.2d 1130 (N.D.Ind. 2001). A detainee who was incarcerated beyond his release date brought a § 1983 action against jail authorities, alleging violation of his substantive due process rights. The district court denied summary judgment for the defendants, finding that a jailer's record notations that a judge had ordered the detainee to remain in jail and later had ordered the detainee released, were admissible as non-hearsay evidence that the jailer did not act with deliberate indifference in retaining custody. The court held that summary judgment was precluded by an issue of material fact as to whether the jail's "Inmate Request Form" policy, which was used to correct defects in its "will call" policy for holding detainees following their appearances in court, was being implemented in a manner suggesting deliberate indifference to the right of detainees to be timely released. The court noted that the jailers were not entitled to qualified immunity because the right of a detainee not to be held without a court order was clearly established at the time of the incident. (Allen County Jail, Indiana)

U.S. District Court
USE OF FORCE

Jordan v. Cobb County, Georgia, 227 F.Supp.2d 1322 (N.D.Ga. 2001). A pretrial detainee brought a § 1983 action against a jail officer and a county, alleging excessive force, wrongful seizure, and assault and battery. The district court held that the officer was not entitled to qualified immunity and that a fact issue as to whether the officer violated the detainee's substantive due process rights, precluded summary judgment. The court found that the county could not be held liable for the officer's alleged conduct. The detainee had been arrested for suspicion of driving under the influence of alcohol and was detained in a holding cell at a police precinct. While in the holding cell, the detainee allegedly resisted being handcuffed by the officer. After a struggle or altercation, the detainee was shot twice in the abdomen by the officer. There were no witnesses to the shooting. The court noted that "virtually all of the facts and circumstances surrounding the altercation and shooting are in dispute." (Cobb County Police Department, Precinct One, Georgia)

U.S. Appeals Court
RESTRAINTS

Kostrzewa v. City of Troy, 247 F.3d 633 (6th Cir. 2001). An arrestee sued a city and police officers asserting claims for use of excessive force. The district court dismissed the case but the appeals court reversed and remanded. The appeals court held that the allegations supported a claim for use of excessive force and that the officers were not entitled to qualified immunity. The appeals court found that the city's handcuff policy, that required all detainees to wear handcuffs, supported a § 1983 claim of the arrestee who allegedly suffered pain and injury from being restrained with handcuffs that were too small for his wrists, despite being arrested for a non-violent misdemeanor offense. (City of Troy, Michigan)

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
USE OF FORCE

Lewis v. Board of Sedgwick County Com'rs., 140 F.Supp.2d 1125 (D.Kan. 2001). A detainee brought a federal civil rights suit against a county alleging that jail officers used excessive force against him. A jury returned a verdict of \$500,000 in favor of the inmate and the county asked for a new trial or for judgment as a matter of law. The district court granted judgment as a matter of law, finding that evidence was insufficient to show that the county had been deliberately indifferent to the use of excessive force against detainees at the county detention facility. According to the court, the size of the damage award suggested that the jury was excessively or

improperly motivated by its desire to punish the county. The court held that the county was not deliberately indifferent to the rights of the detainee because it provided training designed to prevent the use of excessive force at both a training academy and on-the-job, and had established a use-of-force policy of which its detention officers were aware. The court found that it was not a "glaring omission" to fail to instruct detention officers during training that they were prohibited from standing on a detainee's back in an effort to restrain a person. The court held that it was not deliberate indifference by the county to state in county training manuals that it was permissible to use pressure point tactics when inmates were being placed in a restraint chair, where the manuals cautioned that the tactics were to be used with the minimal amount of force necessary to gain compliance. The court noted that the county had encountered only 22 complaints of excessive force in its jail from approximately 90,000 detainees who went through the facility. (Sedgwick County Adult Detention Facility, Kansas)

U.S. District Court
MEDICAL CARE
INTAKE 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)

U.S. Appeals Court
FAILURE TO PROTECT
CLASSIFICATION

Mayoral v. Sheahan, 245 F.3d 934 (7th Cir. 2001). A pretrial detainee who was severely injured in a gang-instigated jailhouse riot brought a civil rights suit against a county sheriff and jail officers, alleging they were deliberately indifferent to his safety. The district court granted summary judgment for the defendants and the detainee appealed. The appeals court affirmed in part, reversed in part and remanded. The appeals court held that the failure of the jail to segregate inmates by gang affiliation was not a constitutional violation, given the high number of gang members housed in the jail and the burden that would be placed on administrators by such a policy. The court found that summary judgment was precluded by fact issues as to whether the detainee had asked an officer for protective custody and was ignored, and whether an officer delayed in summoning help when fighting broke out. (Cook County Jail, Illinois)

U.S. District Court
SEARCHES

McGregor v. City of Olathe, KS, 158 F.Supp.2d 1225 (D.Kan. 2001). An arrestee brought a pro se action against a city and city police officers challenging the removal of her keys from her pantyhose as an illegal search. The arrestee was arrested and transported to a police station where she was taken into a room to be searched. A female officer told the arrestee that they were looking for some keys and the arrestee responded that the keys were in her pantyhose because she did not want to be searched. The officer removed the keys from the arrestee's pantyhose. The district court held that the search was not illegal. (Olathe Police Department, Kansas)

U.S. District Court
USE OF FORCE

Morris v. Crawford County, Ark., 173 F.Supp.2d 870 (W.D. Ark. 2001). A detainee in a county jail brought a § 1983 action and state law battery claims against the county, sheriff and deputies. The defendants moved for summary judgment and the district court granted the motion in part and denied it in part. The court held that genuine issues of material fact existed as to the type of force used by a deputy against the detainee, and whether the detainee sustained injuries, precluding summary judgment. The court also found that the deputy was not entitled to qualified immunity for his alleged use of force on the detainee, who was allegedly not resisting. There was evidence that the deputy used a "knee drop" on the detainee, thereby severing his intestine. (Crawford County Detention Center, Arkansas)

U.S. Appeals Court
MEDICAL CARE

Napier v. Madison County, KY., 238 F.3d 739 (6th Cir. 2001). An arrestee who suffered from complete kidney failure and who was kept from scheduled dialysis treatment during his period of detention, brought a § 1983 action against a county and jail officials. The district court granted summary judgment to the defendants and the appeals court affirmed. The appeals court held that the detainee failed to show any detrimental effects from the delay in treatment. The court noted that the detainee, prior to his confinement, had missed over 40 treatments during the same year, and did not go directly to the hospital after his release from confinement. (Madison County Detention Center, Kentucky)

U.S. District Court
SUICIDE

Naumoff v. Old, 167 F.Supp.2d 1250 (D.Kan. 2001). A mother whose son had committed suicide while confined in a jail brought a § 1983 action against a county sheriff. The sheriff moved for summary judgment and the court granted the motion, finding that the mother failed to allege an injury to her own constitutional rights. The court held that the mother lacked standing to bring the § 1983 action because she brought the action in her individual capacity rather than as representative of her son's estate. The mother did not make a claim for deprivation of familial association or otherwise allege injury to her own constitutional rights. (Wabaunsee C. Jail, Kansas)

U.S. District Court
USE OF FORCE

Pittman v. Kurtz, 165 F.Supp.2d 1243 (D.Kan. 2001). An inmate brought an action against jail officials and a county jail alleging that he was physically assaulted by staff while he was

incarcerated at the jail, in violation of his Eighth Amendment rights to be free from cruel and unusual punishment. The district court granted summary judgment in favor of the defendants, finding that the force applied by jail officials to restrain the inmate did not violate his rights. The inmate had refused to go to his cell after multiple orders to do so, and struck at one official with a pencil, hitting him in the neck and shoulder area between six and ten times. The altercation lasted only a few seconds and the inmate's injuries were minor. (Sedgwick County Jail, Kansas)

U.S. District Court
MEDICAL CARE
RELEASE
PROTECTION FROM
HARM

Ramsey v. Schauble, 141 F.Supp.2d 584 (W.D.N.C. 2001). A former detainee whose finger tip was severed after a sheriff's deputy allegedly shut a cell window on it, brought a pro se complaint against the deputy and the sheriff. The district court held that the detainee stated a cognizable civil rights complaint against the sheriff, and the detainee pled a cause of action under a state law that provided that a keeper of a jail must pay treble damages if he/she does any wrong or injury to a detainee, and is guilty of a Class 1 misdemeanor. The court found that jail officials ignored the detainee's cries for help after he was injured by the deputy and displayed deliberate indifference to his need for quick medical attention to preserve the possibility of reattaching the finger. The detainee was released from custody several hours after he was returned from the hospital, but officials refused to give the detainee pain medication prescribed by the hospital, requiring him to return to the jail periodically over the next several days to receive each pill individually. (Watauga County Law Enforcement Center, North Carolina)

U.S. Appeals Court
SEARCHES

Shain v. Ellison, 273 F.3d 56 (2nd Cir. 2001). A misdemeanor detainee in a local correctional facility sued a county and various individuals, challenging the policy of requiring strip searches of all detainees regardless of the nature of the crime for which they were detained. The district court granted summary judgment for the detainee and awarded \$1 in nominal damages. The appeals court affirmed in part and remanded in part. The appeals court held that the county's strip search policy violated the Fourth Amendment and its illegality was clearly established in 1995, but the detainee was not entitled to a new trial on the question of damages. The court noted that the searching officer did not have reasonable suspicion to conduct the search of the detainee, and that even if other officers had information that may have justified the search, the information was not relayed to the searching officer. (Nassau County Correctional Center, New York)

U.S. District Court
MEDICAL CARE

Spencer v. Sheahan, 158 F.Supp.2d 837 (N.D.Ill. 2001). A former pretrial detainee brought a § 1983 action alleging deliberate indifference to serious medical needs. The district court denied summary judgment for the defendants. The detainee was a known diabetic who suffered from a cut between two toes on his right foot and subsequently developed an infection that resulted in two amputations and stump revision surgery. The court noted that there was a seven-day delay between the time that a physician observed "positive skin changes" on the detainee's foot and the time of diagnosis and treatment. (Cook County Jail, Illinois)

U.S. Appeals Court
RELEASE
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)

U.S. Appeals Court
MEDICAL CARE
ALCOHOL/DRUGS

Thompson v. Upshur County, TX, 245 F.3d 447 (5th Cir. 2001). Parents whose son had died of medical conditions associated with his delirium tremens while he was a pretrial detainee in a county jail, sued under § 1983. The district court denied the defendants' motion for summary judgment on qualified immunity grounds and the defendants appealed. The appeals court affirmed in part and reversed in part. The appeals court held that the sheriff of the jail to which the detainee was first admitted was entitled to qualified immunity in connection with the death of the detainee, which occurred following his transfer to another county jail that had the detoxification facilities that his jail lacked. The sheriff of the jail in the receiving county did not violate any clearly established right in failing to instruct his staff on the potentially life-threatening nature of medical conditions associated with delirium tremens and was entitled to qualified immunity, according to the appeals court. But the appeals court found that a sergeant at the jail in which the detainee died was not entitled to qualified immunity because of fact questions as to whether she had instructed her subordinates not to disturb her at home unless a detainee was on the verge of death, or whether she had otherwise interfered with the detainee's receipt of medical care. (Upshur County Jail and Marion County Jail, Texas)

U.S. District Court
MEDICAL CARE
TRANSFER

U.S. v. Wallen, 177 F.Supp.2d 455 (D.Md. 2001). A defendant who was charged with importation of cocaine moved to be held at an alternative detention facility because he was allegedly being provided with poor medical care. The district court granted the motion, noting that the defendant's medications were dispensed irregularly and incompletely, leading to his collapse in his cell. The court ordered the defendant to be detained in an infirmary or hospital and that he be

provided with medical care that complied with the relevant standard of care that applied to that facility. (Maryland Correctional Adjustment Center)

U.S. District Court
MENTAL HEALTH

U.S. v. Weston, 134 F.Supp.2d 115 (D.D.C. 2001). An appeals court affirmed the decision of the federal Bureau of Prisons to administer antipsychotic medication to a detainee who allegedly killed Capitol police officers. On remand to the district court, the court held that the government would be permitted to treat the defendant involuntarily with such medication because it was appropriate and essential in order to render the defendant non-dangerous based on medical/safety concerns, and to restore the defendant's competency to stand trial. (Federal Corr'l Institute, Butner, N.C.)

U.S. District Court
USE OF FORCE

Watford v. Bruce, 126 F.Supp.2d 425 (E.D.Va. 2001). The district court held that a pretrial detainee stated a claim for cruel and unusual punishment under § 1983 against a deputy sheriff who allegedly assaulted him with such force that he sustained bruising, scarring and swelling, despite the claim that the injuries were de minimis. (Virginia Beach Corr'l Center, Virginia)

U.S. Appeals Court
PROTECTION
MEDICAL CARE

Watkins v. City of Battle Creek, 273 F.3d 682 (6th Cir. 2001). The personal representative of the estate of a prisoner who died in jail custody, after denying that he had ingested cocaine and refusing medical treatment, brought a federal civil rights suit against a city, county and various officials and employees. The district court entered summary judgment for the defendants and the appeals court affirmed. The appeals court held that the arresting officers and jail personnel were not deliberately indifferent to the detainee's rights in violation of the Fourteenth Amendment, and that the detainee was not punished in violation of the Fifth Amendment. The court found that the city and county could not be held liable for failure to train, in the absence of a constitutional violation by individual defendants. According to the court, jail personnel were not deliberately indifferent to the medical needs of the detainee even though he exhibited some behavioral symptoms at the time of intake, where the personnel asked the detainee whether he had swallowed drugs, stated that they would get him medical help if he had and that he would not face additional charges, and generally kept him under observation even though one officer failed to do so. The court noted that detainee repeatedly denied ingesting drugs, refused medical treatment, and offered an alternative explanation for his symptoms. (Battle Creek Police Dept., and Calhoun County Jail, Michigan)

U.S. District Court
FAILURE TO PROVIDE
CARE

Wells v. Jefferson County Sheriff Dept., 159 F.Supp.2d 1002 (S.D.Ohio 2001). A former inmate filed a § 1983 action against a county sheriff's department, sheriff and two deputy officers employed at a county jail. The district court granted summary judgment for the defendants. The court found that jail officers were not liable for failing to protect the inmate from another prisoner who had previously attacked him. The officers moved the former inmate to a different cell block upon learning of the history between the inmates, and the former inmate did not allege that he experienced any physical injury as the result of being attacked a second time. The court held that the former inmate's allegations that the single blanket he was allowed in a holding cell was not adequate to keep him warm, and that cockroaches climbed on him while he slept, did not state Eighth Amendment claims where he did not complain to any officers or officials that the cell was uncomfortable or unsanitary. (Jefferson County Jail, Ohio)

U.S. Appeals Court
SEARCHES
SEPARATION

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. Appeals Court
PROTECTION FROM
HARM
USE OF FORCE

Young v. City of Mount Ranier, 238 F.3d 567 (4th Cir. 2001). The parents of a boy who died in custody brought state law negligence and wrongful death claims, and constitutional claims under § 1983, arising from the death of their son. Following removal from state court, the federal district court dismissed the complaint and the parents appealed. The appeals court affirmed in part and dismissed in part. The appeals court held that the conduct of officers who took the boy into custody for emergency psychiatric evaluation fell within the "middle range of culpability," between gross negligence and intentional misconduct, noting that the boy was owed the same duties owed to a more typical pretrial detainee. The appeals court held that the conduct of the officers fell short of deliberate indifference, as needed to establish § 1983 liability. The boy had resisted when officers tried to take him into custody. The officers used pepper spray to subdue him and then handcuffed him and placed him face down in the back seat of their police car. He was transported to a local hospital where he was found to have no pulse and where efforts to resuscitate him failed. An autopsy revealed that he had PCP in his system. His parents alleged that he died from "positional asphyxiation." (Mount Ranier Police Dept., Maryland)

U.S. Appeals Court
RELEASE
INITIAL APPEARANCE

Alkire v. Irving, 305 F.3d 456 (6th Cir. 2002). An arrestee brought a § 1983 action against a sheriff, county, and county judge, alleging violation of his Fourth, Thirteenth and Fourteenth Amendment rights. The district court denied the arrestee's motion for class certification and granted summary judgment for the defendants on the remaining issues. The appeals court affirmed in part, and reversed and remanded in part. The appeals court held that the Sheriff's policy of detaining persons in the county jail until their initial appearance was the type of "policy or custom" under which the county could be held liable under § 1983. As the result of the policy, persons arrested without warrants from late Friday afternoon through Sunday morning would not likely appear in court before Tuesday morning, in violation of a requirement that a probable cause hearing be held within 48 hours of a warrantless arrest. The appeals court held that the county, sheriff and county clerk's office had quasi-judicial immunity and qualified immunity from § 1983 liability for failing to allow credit toward fines and costs for time served. (Holmes County Jail, Ohio)

U.S. District Court
ASSESSMENT OF
COSTS
DUE PROCESS

Allen v. Leis, 213 F.Supp.2d 819 (S.D. Ohio 2002). A former pretrial detainee brought a class action under § 1983 challenging the constitutionality of a county jail's pay-for-stay program. The district court granted summary judgment in favor of the plaintiffs. The court held that the jail's policy of appropriating cash immediately upon a pretrial detainee's arrival at jail to cover the "booking fee" was not statutorily authorized, and that the jail's policy violated due process. The court noted that a detainee could obtain a refund of funds paid if the charges were subsequently dismissed or if the detainee was acquitted, but the court found this post-deprivation remedy to be inadequate. The county had adopted a \$30 book-in fee in order to defray a portion of the booking cost. Incoming prisoners were asked to sign a Release of Funds Waiver, but they were also advised that their refusal to sign the waiver had no effect because the book-in fee was taken from the prisoner with or without his signature on a waiver. In 1999, the county collected over \$468,000 under the program, from 50,134 inmates. (Hamilton County Justice Center, Ohio)

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. District Court
USE OF FORCE
MEDICAL CARE

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. According to the court, the facility provided adequate training in the proper use of deadly force, including warnings on the dangers of positional asphyxia, and was therefore not liable under § 1983 for failing to supervise staff. The court found that summary judgment in favor of the county was precluded by a genuine issue of material fact on the allegation that officers were deliberately indifferent to the medical needs of the detainee by failing to resuscitate him after they realized that he was not breathing. (Montgomery Co. Det. Fac., Alabama)

U.S. Appeals Court
SEPARATION
PROTECTION
CELL CAPACITY

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
PROTECTION

Butera v. Cottey, 285 F.3d 601 (7th Cir. 2002). A pretrial detainee brought a § 1983 action against a county sheriff after the detainee was sexually assaulted by other detainees. The district court granted summary judgment in favor of the sheriff and the appeals court affirmed. The appeals court held that the detainee was required to show a deliberate action attributable to the sheriff, not just any jail employee. According to the court, the detainee's statements to jail officers that he was having unspecified problems and needed to be moved from his cellblock, and the detainee's mother's telephone call to an unknown jail employee advising that the detainee had been threatened with sexual assault, were not sufficient to give the sheriff actual notice of a specific risk of serious harm. The appeals court also found that violence at the jail was not so prevalent as to put the sheriff on notice of a substantial risk of harm to the detainee. The court noted that the sheriff implemented policies to prevent violence by requiring jail officers to undergo annual training, requiring officers to patrol cellblocks regularly, by allowing detainees to post anonymous complaints, and by separating the most violent detainees from the rest of the population. (Marion County Jail, Indiana)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE

Calderon-Ortiz v. Laboy-Alvarado, 300 F.3d 60 (1st Cir. 2002). A former pretrial detainee brought a § 1983 action against officials, alleging failure to protect him from other inmates. The district court dismissed the action. The appeals court reversed and remanded, finding that the detainee's complaint sufficiently stated a claim. The detainee alleged he had been forcibly sodomized by other inmates, that officials were aware that inmates were being housed without adequate regard to their custody and security needs, and that staff did not provide adequate supervision. (Bayamon Regional Metropolitan Detention Center, Puerto Rico)

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
ACCESS TO COURT
DISCIPLINE
PARITY WITH
SENTENCED
EQUAL
PROTECTION
PUNISHMENT
RESTRAINTS

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." The court found that the detainee's allegations that he was subjected to corporal punishment and that he was provided with no medical attention during the ordeal, were not frivolous. The detainee alleged that he had been placed in painful physical restraints in a hot cell in retaliation for a complaint he had recently filed against a jail officer. The court held that the detainee's claim that he had to pay too much for postage on his letters because the jail had no meter mail service to weigh them, was frivolous. 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. The court found that the detainee's allegations that pretrial detainees such as himself were treated worse than convicted prisoners in a number of ways, including being given less time out of their cells, was a non-frivolous claim of violation of equal protection. (Milwaukee County Jail, Wisconsin)

U.S. District Court
FOOD
SANITATION

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
CROWDING
MEDICAL CARE
SUPERVISION
RELEASE

Foster v. Fulton County, Georgia, 223 F.Supp.2d 1292 (N.D.Ga. 2002). Inmates at a county jail, who had tested positive for human immunodeficiency virus (HIV), brought an action complaining of their conditions of confinement and inadequate medical care. The parties entered into a settlement agreement. Two years later the district court responded to a report that described ten areas in which the county had failed to comply with the terms of the settlement. The court held that continued overcrowding at the jail deprived the HIV-positive inmates of their constitutional right to minimal civilized measures of life's necessities. The court ordered the county to institute additional measures to reduce crowding, including: providing counsel within 72 hours of arrest to all persons accused of minor offenses who could not make bail; expanding the authority of Pretrial Services to include supervision of persons arrested for misdemeanor offenses; eliminating any unreasonable factors used to exclude persons charged with felonies from pretrial release; ensuring persons charged with misdemeanors were offered a reasonable bond; and imposing additional restrictions on the length of time a person could remain in jail without accusation or indictment, or accused or indicted but untried. The court found the county had violated the settlement agreement by failing to refer HIV-positive inmates to outside specialists in a timely manner when the jail's own staff lacked the resources to provide timely care. The court noted that even though the county had eliminated its financial review procedures, other bureaucratic problems remained and resulted in delays of three weeks to six months. The court held that the county failed to employ sufficient numbers of trained correctional staff to meet the health needs of HIV-positive inmates. The court ordered the county to immediately develop and implement a plan to increase security staffing at the jail to the level necessary to provide timely access to medical care for the current population of inmates. The court also ordered the county to avoid unreasonable disruption in the continuity of new inmates' medication, noting that only half of the inmates with a credible history of HIV medications were receiving their first doses of medication within 24 hours after admission. (Fulton County Jail, Georgia)

U.S. District Court
RELEASE
ACCESS TO COURT
BAIL

Foster v. Fulton County, 223 F.Supp.2d 1301 (N.D.Ga. 2002). Inmates at a county jail, who had tested positive for human immunodeficiency virus (HIV), brought an action complaining of their conditions of confinement and inadequate medical care. The parties entered into a settlement agreement. Two years later the district court responded to a report that described ten areas in which the county had failed to comply with the terms of the settlement by ordering remedies. The county moved to stay the corrective actions that were ordered and the district court denied the motion. The court affirmed its requirement that the county develop a unified system for providing counsel within 72 hours of arrest to persons arrested on state law misdemeanor charges. The court also ordered the county to develop a meaningful discharge planning process for physically and mentally ill inmate. (Fulton County Jail, Georgia)

U.S. Appeals Court
CONDITIONS
SANITATION

Frye v. Pettis County Sheriff Dept., 41 Fed.Appx. 906 (8th Cir. 2002). A pretrial detainee brought a § 1983 action against county officials, alleging unsafe and hazardous living conditions at a county jail. The district court granted summary judgment for the defendants and the appeals court affirmed. The appeals court held that the detainee failed to show that jail officials were deliberately indifferent to his health and safety because the toilet in his cell leaked both sewage and water. Jail staff frequently provided blankets or towels to absorb the water and a plumber had attempted to fix the toilet after the detainee slipped and fell. (Pettis County Jail, Missouri)

U.S. District Court
BAIL

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
MEDICAL CARE
MEDICATION

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
MEDICAL CARE
PROTECTION

Gonzalez v. Cecil County, Maryland, 221 F.Supp.2d 611 (D.Md. 2002). The widow of a pretrial detainee who died while in custody filed a § 1983 action against a county, sheriff, and detention center medical personnel. The district court denied the defendants' motion to dismiss, in part, finding that fact issues remained as to whether the care provided to the detainee amounted to deliberate indifference. The detainee was admitted to a county detention center at approximately 5:00 p.m. Shortly after his admission he identified himself as a heroin user during a standard intake medical screening. He told three nurses employed by the detention center, upon his arrival, that he was likely to undergo acute heroin withdrawal symptoms. The only treatment provided to him at this time was to be placed on twice-daily doses of Clonidine, a blood pressure medication. The detainee allegedly became violently ill and progressed to acute pulmonary distress, disease and pneumonia during the night and during the next day. He complained to the nurses but was only given an over-the-counter stomach remedy, Kaopectate. Two days later he was found in his cell, unresponsive, and was pronounced dead twenty minutes later. His body was taken to a nearby hospital where an autopsy revealed he died from "pneumonia, complicating narcotics abuse." The district court held that the fact that the nurses were acting in conformity with the county's established protocol in treating the inmate did not entitle them to qualified immunity from liability under § 1983. (Cecil County Detention Center, Maryland)

U.S. District Court
MEDICAL CARE

Gonzalez-Mercado v. Municipality of Guaynabo, 206 F.Supp.2d 257 (D.Puerto Rico 2002). A plaintiff brought a § 1983 action following her arrest and indictment, alleging violations of her right to medical assistance and malicious prosecution. The district court dismissed the action, in part. The court held that the plaintiff's allegations were insufficient to establish a violation of her Eighth Amendment right to medical assistance, even though her initial request for assistance was denied. The court noted that the plaintiff was eventually examined by two paramedics while she was detained in a police lockup. She was detained for seven hours and the indictment against her was later dismissed. (Guaynabo Mun. Police Station, Puerto Rico)

U.S. District Court
PROTECTION FROM
HARM
MEDICAL CARE

Gullett v. Haines, 229 F.Supp.2d 806 (S.D.Ohio 2002). A pretrial detainee brought an action against a sheriff, corrections officer, and a jail inmate asserting claims under §1981 and §1983. The detainee had been assaulted by other prisoners and alleged that he was not protected from harm and was denied adequate emergency medical care. The district court held that the jail's emergency medical care policy was not unconstitutional on its face because the policy accounted for any emergency and left medical decisions, subject to an obvious security concern, to a health care staff member. The court denied summary judgment to one corrections officer, finding it was prevented by genuine issues of material fact as to whether the officer knew that other prisoners were likely to assault the detainee and whether he was responsible for preventing an assault. (Montgomery County Jail, Ohio)

U.S. District Court
PROTECTION
SAFETY

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. Appeals Court
TELEPHONE

Hanuman v. Groves, 41 Fed.Appx. 7 (8th Cir. 2002). An inmate brought a civil rights action alleging that, while he was a pretrial detainee, prison officials violated his First and Fourteenth Amendment rights by placing him in segregation, where his telephone privileges were limited.

The district court entered summary judgment in favor of the prison officials and the appeals court affirmed. The appeals court held that the limitations placed on phone privileges did not give rise to First and Fourteenth Amendment violations, where the inmate did not demonstrate any actual injury from having to use the telephone while it was noisy or in the evening. (Pulaski Co. Det. Facil., Arkansas)

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. Appeals Court
DISCIPLINE
PUNISHMENT
SEGREGATION

Higgs v. Carver, 286 F.3d 437 (7th Cir. 2002). A pretrial detainee brought a civil right action alleging due process violations and retaliation. The district court dismissed the complaint and the detainee appealed. The appeals court affirmed in part, vacated in part, and remanded. The district court held that issues of fact existed as to the reason for the detainee's segregation, and that the detainee's retaliation allegations sufficiently stated a claim. The appeals court was unable to determine from the record whether the detainee was placed in lockdown segregation for preventive purposes or for punishment. (Indiana)

U.S. Appeals Court
PRIVACY
RESTRAINTS

Hill v. McKinley, 311 F.3d 899 (8th Cir. 2002). A prisoner brought a § 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
MEDICAL CARE
TRANSPORT

Jackson v. Illinois Medi-Car, Inc., 300 F.3d 760 (7th Cir. 2002). A pretrial detainee who was transported to a police station by a private transportation service at the request of a police department, brought a § 1983 action against the service and one of its drivers, alleging denial of adequate medical care. The district court granted summary judgment against the detainee and the appeals court affirmed. The appeals held that the decision of the driver to transport the detainee to a police station, rather than taking him to a hospital, did not amount to deliberate indifference to the detainee's objectively serious medical needs. The detainee collapsed from an overdose of medication shortly after reaching the police station. The court noted that primary authority for the detainee rested with the police officers, who had last determined that he should be taken to the police station, and the driver lacked medical training or any realistic control over the detainee. According to the court, "deliberate indifference" is simply a synonym for intentional or reckless conduct, and "reckless" describes conduct so dangerous that the deliberate nature of the defendant's actions can be inferred. (City of Chicago, Illinois)

U.S. District Court
SEARCHES

Loeber v. County Of Albany, 216 F.Supp.2d 20 (N.D.N.Y. 2002). An arrestee who was strip searched several times after being arrested brought an action under § 1983, alleging numerous constitutional violations and state law claims. The arrestee had been arrested pursuant to a contempt order that was later expunged. The district court held that the county jail's strip search policy was constitutional. The policy only called for strip searches upon admission to the jail where there was a reasonable suspicion that the arrestee possessed contraband, including the cigarettes and candy that the arrestee had in his possession. The court noted that the Fourth Amendment prohibits a blanket policy under which all misdemeanor or minor offense arrestees are strip-searched when admitted to a jail. The court found that a strip search could also be conducted based on the crime charged, the particular characteristics of an arrestee, and/or the circumstances of the arrest. The arrestee had been strip searched when he was admitted to a courthouse holding cell, again when he was admitted to the county jail, and once again when he was taken to a Special Housing Unit for possessing cigarettes and candy, which were considered to be contraband. (Albany County Penitentiary, New York)

U.S. Appeals Court
FAILURE TO
PROTECT
USE OF FORCE

Morris v. Crawford County, 299 F.3d 919 (8th Cir. 2002). A county detention center detainee brought § 1983 and state law battery claims against a sheriff, county, and deputies. The district court granted summary judgment for the defendants, in part, and the remaining claims were voluntarily dismissed. The appeals court affirmed, finding that there was not a strong causal connection between a deputy sheriff's background and the specific constitutional violation alleged by the detainee. The detainee had been arrested and charged with driving while intoxicated and disorderly conduct. After arriving at a county detention center, he refused to take a breathalyzer test and began to yell and bang on his cell door. Four deputies responded, and according to the detainee, they repeatedly assaulted him as they dragged him to another cell. One deputy allegedly used excessive force on the detainee by utilizing a "knee drop" on him, which severed the detainee's intestine. The court noted that the only violent act in the deputy's record was an incident in which he slapped an inmate, although ex parte protective orders were obtained against the deputy by both his ex-wife and girlfriend. The appeals court held that the sheriff and the county were not liable under § 1983 on the theory of deliberate indifference in hiring the deputy. (Crawford County Detention Center, Arkansas)

U.S. District Court
CIVIL COMMITMENT

Munoz v. Kolender, 208 F.Supp.2d 1125 (S.D.Cal. 2002). A civil detainee who was confined in a county jail under the provisions of California's Sexually Violent Predator Act brought a § 1983 action against a county sheriff, challenging his confinement and the conditions of his confinement. The district court granted summary judgment in favor of the sheriff. The court held that the Act had a dual purpose, to remove dangerous sexually violent predators from society and to provide them with treatment, and that confinement pursuant to the Act was civil in nature, rather than criminal and punitive. The court found that the prisoner's allegations that he was handcuffed while speaking with his lawyer, subjected to strip searches, provided with poor food and with clothes in poor condition, were insufficient to support a § 1983 Eighth Amendment violation. (San Diego County Jail, California)

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. District Court
SEARCHES

Murcia v. County of Orange, 226 F.Supp.2d 489 (S.D.N.Y. 2002). A detainee filed a § 1983 action alleging that a county violated his constitutional rights by strip searching him, under a policy of strip searching all detainees upon arrival at the correctional facility. The district court granted qualified immunity for the county sheriff, finding that the detainee's right to be free from strip searches without reasonable suspicion was not clearly established at the time. The court noted that the county's policy of subjecting all new felony detainees to visual body cavity searches required further scrutiny, although such searches for misdemeanor detainees had been clearly established as unconstitutional in 1994. (Orange County Correctional Facility, New York)

U.S. Appeals Court
CONDITIONS
LENGTH
FAILURE TO PROTECT
CROWDING

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. Detention Ctr., Nevada)

U.S. Appeals Court
SUICIDE
INTAKE 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. Appeals Court
BAIL

Payton v. County of Kane, 308 F.3d 673 (7th Cir. 2002). Arrestees brought an action against two county jails that charged a bond fee, above and beyond the set bail amount, as a condition of their release. The district court dismissed the action and the arrestees appealed. The appeals court reversed and remanded. The appeals court held that the arrestees sufficiently satisfied their standing requirement by alleging violation of their Eighth and Fourteenth Amendment rights. The court noted that the arrestees suffered monetary injury when they were required to make the extra payments, and that these injuries could be traced to the policy of each jail. A 1999 Illinois law allowed a bond fee to be added to the required bond and set the fee at \$1. The law empowered county boards to increase the statutory fee by ordinance if the increase is justified by an acceptable cost study that demonstrates that the \$1 fee is not sufficient to cover the costs of providing the service. Nineteen of Illinois's 102 counties charged a bail fee at the time of the appeal. The plaintiff arrestees were charged \$11 on one jail and \$15 in another. (Kane County Jail and DuPage County Jail, Illinois)

U.S. District Court
FALSE
IMPRISONMENT

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. Detention Center, Maryland)

U.S. District Court
FALSE
IMPRISONMENT

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
PROTECTION
TRANSPORT

Proffitt v. Ridgway, 279 F.3d 503 (7th Cir. 2002). The estate of an arrestee brought a § 1983 action alleging excessive force on the part of a police officer and a private citizen. The district court granted summary judgment in favor of the defendants and the appeals court affirmed. The appeals court held that the death of the arrestee from a choke hold administered by a bystander, where the arresting officer made no effort to use deadly force against the arrestee, was not deliberate indifference. The appeals court noted that the officer could not have foreseen that the small unarmed man would kill the "hefty" arrestee, even though it was later learned that the man was a martial-arts expert. The officer took reasonable efforts, according to the court, to protect the arrestee from excessive force by telling the bystander to ease up on the choke hold. (City of Pana, Illinois)

U.S. District Court
FAILURE TO PROTECT
SUICIDE

Rapier v. Kankakee County, Ill., 203 F.Supp.2d 978 (C.D.Ill. 2002). The wife of a detainee who committed suicide while in jail filed a § 1983 suit individually, and as the special administrator of the detainee's estate. The district court granted summary judgment for the defendants, finding that the county was not liable for alleged deliberate indifference toward the prevention of suicide by detainees. The court found that the county's policy of placing potentially suicidal detainees in a special needs cell, along with its policy to require checks of these inmates every 15 minutes, was an effective way to prevent suicides. The court also found that the county's failure to adequately deal with the problem of understaffing at the jail was not the cause of the detainee's suicide, because an officer saw or spoke to the detainee 15 to 20 minutes prior to the time he was found hanging in his cell. The sheriff has stated that seven staff members were working at the jail at the time of the suicide, the jail's census was lower than usual at the time, and that he did not think that having additional staff would have made a tremendous difference. (Kankakee Co. Detention Ctr., Illinois)

U.S. Appeals Court
SEARCHES
DRUG TEST

Saulsberry v. Arpaio, 41 Fed.Appx. 953 (9th Cir. 2002). A detainee brought an action against a county sheriff alleging violation of his Fourth and Eighth Amendment rights. The district court entered judgment for the sheriff and the appeals court affirmed. The appeals court held that a physician working for the sheriff's office ordered catheterization and drug screening for the detainee solely for medical purposes, not for any administrative or investigative reasons, and therefore the tests did not violate the Fourth Amendment. (Maricopa Co. Sheriff's Office, Arizona)

- U.S. District Court
TELEPHONE
MAIL
DISCIPLINE
- 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. District Court
ACCESS TO COURT
TELEPHONE
MAIL
DISCIPLINE
- Simpson v. Gallant, 231 F.Supp.2d 341 (D.Me. 2002). A pretrial detainee brought an action against county officials, alleging violations of his right of access to telephone and mail services as the result of disciplinary actions taken against him. The district court held that the detainee's claim was properly characterized as a claim that jail disciplinary sanctions violated his constitutional right to make bail and to prepare his defense while he was a pretrial detainee. The court declined to determine, at the motion to dismiss phase of the case, if sanctions restricting access to mail and telephone were imposed to enforce reasonable disciplinary requirements. The court held that the detainee's allegations supported a claim that the officials interfered with his right to counsel, bail, and access to courts. The detainee alleged that the officials' restrictions forced his trial to be postponed, and that soon after his release from detention he was cleared of the charges. The detainee also alleged that he was able to make bail soon after he was able to contact his associate. (Penobscot County Jail, Maine)
- U.S. District Court
FAILURE TO PROTECT
MEDICAL CARE
- Smith v. Lejeune, 203 F.Supp.2d 1260 (D.Wyo. 2002). Following the death of her husband who had been detained at a county detention facility, a wife brought an action against a physician, nurses and others, alleging deliberate indifference in violation of § 1983. The district court granted summary judgment in favor of the defendants, finding that the physician had trained nurses regarding alcohol withdrawal, and the nurses did not have the requisite state of mind, knowledge and disregard of possible risks to sustain a deliberate indifference claim. According to the court, the physician did not fail to train the nurses, where he provided the nurses with protocols and policies to deal with alcohol and alcohol withdrawal, and conducted monthly meetings during which the policies were discussed. The nurses had not identified any signs that the detainee was suffering from alcohol withdrawal, and the detainee had denied any history of suffering from alcohol withdrawal. The detainee had been arrested for driving under the influence of alcohol, and a breath alcohol test identified a level of .317. (Laramie County Detention Facility, Wyoming)
- U.S. District Court
PUNISHMENT
MENTAL HEALTH
PSYCHOLOGICAL
SERVICES
SPEEDY TRIAL
- Terry Ex Rel. Terry v. Hill, 232 F.Supp.2d 934 (E.D.Ark. 2002). Pretrial detainees brought a class action against the Arkansas Department of Human Services, claiming that inordinate delays in providing evaluation and treatment of detainees who were referred by the court to determine their fitness to stand trial, violated their Constitutional rights. The district court entered judgment for the detainees. The court held that the inordinate delays amounted to prohibited punishment that violated the detainee's due process rights. The court also found that the officials displayed deliberate indifference to the detainees' circumstances, violating their Eighth Amendment rights. According to the court, the Arkansas Constitution speaks of the State's duty toward the mentally ill, and the Arkansas State Hospital, a division of the Department of Human Services, has responsibility for treating citizens committed by civil courts or by criminal courts for evaluation. (Arkansas State Hospital, Arkansas Department of Human Services)
- U.S. Appeals Court
CIVIL COMMITMENT
- Troville v. Venz, 303 F.3d 1256 (11th Cir. 2002). A civilly committed detainee filed a § 1983 action challenging his conditions of confinement. The district court dismissed the case for failure to state a claim and the detainee appealed. The appeals court reversed and remanded, finding that the civil detainee is not a "prisoner" for purposes of the Prison Litigation Reform Act (PLRA) and therefore the PLRA provision requiring full payment of the filing fee on appeal did not apply. The appeals court held that the district court should have permitted the detainee to amend his complaint. According to the court, the definition of "prisoner" in the in forma pauperis statute applies only to persons incarcerated as punishment for a criminal conviction, and a civil detainee is not a "prisoner." (South Bay Detainee Unit, South Bay Correctional Facility, Florida)
- U.S. District Court
SEARCH
MEDICAL CARE
USE OF FORCE
- 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)

U.S. District Court
SEARCHES

Turner v. Kight, 217 F.Supp.2d 680 (D.Md. 2002). A detainee who was arrested on an outstanding warrant brought a civil rights and state tort suit arising out of her arrest and the conditions of her detention. The district court held that the detainee was entitled to reconsideration of the court's determination that she was a "pretrial detainee" at the time of an allegedly unconstitutional strip search. The detainee claimed that she was a "temporary detainee" at the time of the search, which exempted her from a strip search according to county jail policy. (Montgomery County Detention Center, Maryland)

U.S. District Court
SEGREGATION
MAIL
TELEPHONE
VISITS

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. District Court
BAIL
BAIL REFORM ACT
RELEASE-
CONDITIONS

U.S. v. Hammond, 204 F.Supp.2d 1157 (E.D.Wis. 2002). A defendant moved to modify his bail and conditions of release. The U.S. Magistrate reduced bail and set conditions of release and the government moved for revocation of the order. The district court denied the motion, finding that the government failed to show that the defendant was dangerous and that no conditions of release would reasonably assure the safety of the community, and that the conditions of release were insufficient. The defendant's bail was reduced to \$135,500 (from \$150,000) and he was required to submit to electronic monitoring, travel restrictions, random urine tests, and reporting to pre-trial services. He was also ordered not to associate with the Outlaws Motorcycle Club. (East. Dist., Wisc.)

U.S. Appeals Court
SPEEDY TRIAL
LENGTH

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
ACCESS TO COURT
TRANSFER

U.S. v. Johnson, 225 F.Supp.2d 982 (N.D.Iowa 2002). A pretrial detainee charged with murder while engaged in a conspiracy moved to be transferred to a different facility. The district court denied the motion, finding that denial of the transfer motion was not clearly erroneous, absent a showing that detention at the current facility had interfered with the detainee's right to counsel. The court noted that one of the detainee's lead attorneys had an office in the same city as the current detention facility. The court also found that transfer was not warranted absent a showing that conditions at the current facility amounted to unconstitutional "punishment." (Linn County Jail, Iowa)

U.S. District Court
ACCESS TO COURT

U.S. v. McKinley, 228 F.Supp.2d 1158 (D.Or. 2002). A defendant charged with murder was arrested and detained at 10:40 a.m. on Friday and was not arraigned until the following Monday. The district court held that the delay in bringing the defendant before a magistrate was not excessive. The court noted that it was 100 miles to the nearest magistrate and that authorities spent all day Friday conducting an investigation needed to support the charge. (Warm Springs Correctional Facility, Warm Springs Indian Reservation, Oregon)

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. Appeals Court
PROTECTION
CROWDING

Washington v. LaPorte County Sheriff's Dept., 306 F.3d 515 (7th Cir. 2002). A pretrial detainee brought a § 1983 due process claim against a jail and its officers, alleging that injuries he suffered when he was attacked by another inmate were caused by the jail's cell assignment policy. The district court granted summary judgment in favor of the defendants and the detainee appealed. The appeals court affirmed, finding that the jail's cell assignment policy did not demonstrate deliberate indifference on the part of officials to a substantial risk of serious harm to the detainee. The policy allowed inmates to choose their own cell assignments. The detainee was charged with driving with a suspended license and he was detained at the jail pending trial, as he was unable to post bond. He was assigned to a cell block originally designed to hold ten inmates, but which actually housed seventeen. The detainee was allowed to choose his own cell assignment within the housing unit. The court noted that the detainee shared a cell with the inmate who eventually assaulted him for two weeks without incident prior to the attack, and did not inform jail officers he had fought with the inmate or that he feared harm. (LaPointe County Jail, Indiana)

U.S. Appeals Court
FAILURE TO PROTECT

White v. Crane, 45 Fed.Appx. 552 (8th Cir. 2002). A county jail inmate brought a civil rights action against a sheriff, jail administrators, and jail officers, seeking compensation for injuries incurred when he was placed in a cell with another inmate who assaulted him. The appeals court granted summary judgment in favor of the jail officers, but the appeals court reversed and remanded, finding that the officers could not reasonably believe they were not violating the inmate's right to be free from attack. Upon admission to the jail, the plaintiff inmate had notified an officer that the other inmate should be put on his enemy-alert list because of a problem he had just had with his wife. When officers placed plaintiff inmate in the same housing unit with the other inmate, the plaintiff had asked them to at least handcuff the other inmate before opening the door and the officers refused. When the door was opened the attack immediately occurred. (Hempstead County Detention Facility, Arkansas)

U.S. Appeals Court
USE OF FORCE
RESTRAINTS

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
RELEASE

Brass v. County of Los Angeles, 328 F.3d 1192 (9th Cir. 2003). An arrestee brought an action against a deputy and county, alleging that the county violated his constitutional rights by failing to timely release him from jail. The district court granted summary judgment for the defendants and the arrestee appealed. The appeals court affirmed. The appeals court held that a 39-hour delay in releasing the detainee was not unreasonable and did not violate his constitutional rights. The court found that the arrestee did not have a constitutional right to have his release papers processed in any particular order, or ahead of other prisoners whose papers the sheriff's department received the same day as his. According to the court, the order in which the department handled prisoner releases was an administrative matter primarily within the department's discretion. The court held that the county's policy of not starting to process the day's releases until it received all information relating to prisoners scheduled for release, including wants and holds, was justified and reasonable in light of its responsibilities. (Los Angeles County Sheriff's Department, California)

U.S. Appeals Court
SUICIDE
SUPERVISION

Cagle v. Sutherland, 334 F.3d 980 (11th Cir. 2003). The personal representative of the estate of a pretrial detainee who hung himself in his cell brought a § 1983 action, alleging that officials failed to prevent his suicide. The district court denied summary judgment in favor of the defendants and they appealed. The appeals court vacated and remanded. The appeals court held that the county's violation of a consent decree that arose out of a voluntary settlement of a prior jail conditions lawsuit, did not establish a violation of the pretrial detainee's constitutional rights actionable under § 1983. The consent decree required the county to provide a second nighttime jailer to staff the jail during the hours that the detainee committed suicide, but the court noted that the prior lawsuit was not concerned with the risk of prisoner suicides. According to the court, the county's failure to fund the second jailer did not rise to the level of deliberate indifference to the strong likelihood that a suicide would result. The court also found no deliberate indifference on the part of the jailer who waited for one hour and forty-six minutes after his last cell check, even though the detainee had expressly threatened suicide. The court noted that the jailer was aware that the detainee's belt, shoelaces and the contents of his pockets had been confiscated, the cell had been stripped of implements that might assist suicide, and the jailer regularly observed the detainee through a closed circuit monitor that viewed the majority of the cell. The detainee was able to commit suicide by tearing the elastic band from his underwear, tying it around his neck, and hanging himself from the top bunk. (Winston County Jail, Alabama)

U.S. Appeals Court
PROTECTION
SEPARATION

Cardenas v. Lewis, 66 Fed.Appx. 86 (9th Cir. 2003). [unpublished] A pretrial detainee brought a pro se § 1983 action against a county, alleging deliberate indifference to a substantial risk to his safety. The district court granted summary judgment in favor of the defendants and the detainee appealed. The appeals court affirmed in part and reversed and remanded in part. The appeals court held that officers who placed the detainee in a holding tank with an inmate, from whom the detainee was supposed to be kept separated, were not acting with deliberate indifference, even if the officers were negligent in failing to check the detainee's "keep separate" wristband. The court found that the detainee was deprived of due process in disciplinary proceedings in which he was allegedly not allowed to call witnesses, to have his exculpatory statement read, or to tape the hearings, and was placed in segregation without a hearing. (Yakima County Department of Corrections, Washington)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE
SUICIDE ATTEMPT

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
BAIL

Clynch v. Chapman, 285 F.Supp.2d 213 (D.Conn. 2003). An arrestee filed a § 1983 action arising from his arrest for driving under the influence. The district court granted summary judgment for the defendants, in part. The court held that city police officers' roles in setting the arrestee's bail were functionally comparable to that of a judge, and that the officers were entitled to absolute immunity from liability, even if they did not consider individualized circumstances. Under state law, officers were required to attempt to conduct an interview with the arrestee to obtain information relevant to the terms and conditions of his release from custody, before setting bail. The arrestee was a 69-year-old man who had lived his entire life in the same house, who was charged with Driving Under the Influence. He was taken to a police station where he was detained in a holding cell. The police officer ordered him held on a \$500 surety bond and set a court date. (City of Derby, Connecticut)

U.S. Appeals Court
SUICIDE

Coleman Ex Rel. Coleman v. Parkman, 349 F.3d 534 (8th Cir. 2003). The administratrix of a pretrial detainee's estate brought an action, alleging that prison officials had been deliberately indifferent to the risk that the detainee would commit suicide. The district court granted summary judgment for the defendants in part, and the parties appealed. The appeals court affirmed in part and dismissed in part. The appeals court held that summary judgment was precluded by genuine issues of material fact as to whether the arresting officer knew that the detainee presented a substantial suicide risk, and whether a jailer recklessly failed to take reasonable measures. The arresting officer had been told by someone who was with the detainee before his arrest, that the detainee had been carrying a rifle and threatening suicide. After interviewing the detainee, the officer concluded he was not a suicide risk. Jail records stated that the detainee had threatened suicide and needed to be placed in isolation and monitored. The detainee was placed in the jail's drunk tank, instead of the holding cell that was usually used for suicidal inmates. The drunk tank had eighteen exposed bars, while the holding cell had none. The drunk tank was difficult to observe because it was upstairs in the jail, unlike the holding tank. Because the detainee was assigned to the drunk tank, and in spite of his being on a suicide watch, an officer issued the detainee the usual items, including a bed sheet. The officer checked on the detainee at 1:30 a.m.; the detainee was found hanging from the exposed bars by a bed sheet at 1:42 a.m. (St. Francis County Jail, Arkansas)

U.S. Appeals Court
PROTECTION

Cottone v. Jenne, 326 F.3d 1352 (11th Cir. 2003). The personal representative of the estate of a pretrial detainee who was killed by a mentally-ill co-inmate, brought a § 1983 action. The district court denied qualified immunity for the defendants and they appealed. The appeals court affirmed in part and reversed in part. The appeals court held that officers were not entitled to qualified immunity because they failed to monitor a known violent inmate that was housed in a unit for mentally ill inmates. The court held that supervisory officials were entitled to qualified immunity from § 1983 liability for their failure to train and supervise officers on duty at the time of the murder, absent an allegation of a constitutional violation on their part. (North Broward Detention Center, Florida)

U.S. District Court
SUICIDE

Crocker v. County of Macomb, 285 F.Supp.2d 971 (E.D.Mich. 2003). The personal representative of the estate of deceased arrestee brought a § 1983 action against a county and officials, alleging they were deliberately indifferent to the serious medical needs of the inmate, who committed suicide in a holding cell. The court granted summary judgment in favor of the defendants, finding

that the arrestee did not demonstrate a strong likelihood of taking his own life, as required to trigger a due process right to reasonable protection. The arrestee was brought to the county jail on an outstanding warrant. The admitting officer noted that the arrestee smelled like alcohol but saw that he was able to walk and talk without difficulty, remember telephone numbers, and use the telephone. The arrestee was placed in a holding cell with a telephone where he made more than twenty calls during the two hours he was held. He was discovered hanging from the telephone cord approximately two hours after he was admitted. The court noted that the arrestee's behavior while confined indicated an awareness of the present and a concern for the future, indicative of a person wanting to live, not die. (Macomb County Jail, Michigan)

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

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
SEARCHES

Dodge v. County of Orange, 282 F.Supp.2d 41 (S.D.N.Y. 2003). A suit sought a permanent injunction against a county jail's policy of strip searching newly arrived pretrial detainees upon their initial admission. The district court held that the policy, in its initial form and in two subsequent revisions, violated the Fourth Amendment to the extent that it allowed a strip search without individualized reasonable suspicion that a detainee was carrying contraband. The court granted a permanent injunction against the unconstitutional aspects of the policy. The banned policy allowed strip searches for factors such as being a known gang member or having prior escape charges. (Orange County Correctional Facility, New York)

U.S. District Court
USE OF FORCE

Eberle v. City of Newton, 289 F.Supp.2d 1269 (D.Kan. 2003). An arrestee brought a § 1983 action against a city and city officials and staff, alleging that she was subjected to excessive force while in police custody. The district court granted summary judgment in favor of the defendants, in spite of finding violations, because the arrestee had signed a waiver of all civil rights claims. The court found that an officer's use of violence against the arrestee during questioning at a police station violated the arrestee's clearly established right to be free from excessive force, and that the officer was not entitled to qualified immunity. The arrestee had attempted to leave an interrogation room and the officer grabbed her by the arm, throwing her in the direction of a chair and causing her to fall, and then the officer kicked the arrestee even though she posed no threat to him. (City of Newton Police Department, Kansas)

U.S. District Court
LENGTH

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 detainee 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 there was no evidence of negligence or malice. (Virginia Beach City Jail, VA)

U.S. District Court
MEDICAL CARE

Engelleiter v. Brevard County Sheriff's Dept., 290 F.Supp.2d 1300 (M.D.Fla. 2003). A pretrial detainee who as an insulin-dependent diabetic brought a civil rights action against a county sheriff's department, claiming deliberate indifference to his serious medical condition. The district court granted summary judgment in favor of the department. The court held that even if jail officials were deliberately indifferent to the detainee's serious medical condition by giving him only one shot of insulin during a period of approximately 48 hours, the detainee did not establish the existence of a "policy or custom" based on treatment decisions by the department or the jail nurses. (Brevard County Detention Center, Florida)

U.S. Appeals Court
MEDICAL CARE

Estate of Allen v. City of Rockford, 349 F.3d 1015 (7th Cir. 2003). A pretrial detainee sued a city and several police officers under § 1983, alleging due process violations stemming from unwanted medical treatment received at a hospital following her arrest for driving under the influence of drugs. The district court granted summary judgment in favor of the defendants. The appeals court affirmed. The appeals court held that the officers owed the detainee a duty of care and safety during the time that the detainee was at the hospital, and that the officers' failure to intervene with the forcible medical treatment of the detainee did not violate her due process rights. The officers had taken the detainee to a hospital for the purpose of obtaining a urine sample. An emergency room physician stated that the detainee was not competent to make medical decisions regarding her health and might suffer a potentially life-threatening drug overdose if a drug screen was not conducted. The officers did not prevent the forcible extraction of blood and urine samples. (City of Rockford, Illinois)

U.S. District Court
MEDICAL CARE

Gaines v. Choctaw County Com'n., 242 F.Supp.2d 1153 (S.D.Ala. 2003). Administrators of a deceased inmate's estate asserted state and federal law claims against a sheriff and county,

alleging that the inmate's death resulted from the denial of medical treatment while the inmate was a pretrial detainee in a county jail. The district court held that the county could not be held liable for any alleged lack of training or supervision of the sheriff, or sheriff's employees. The court found that allegations failed to support a claim against the county based on its statutory duty to maintain a jail, but that the allegations supported a claim against the county for an alleged breach of duty to fund medical care, where the alleged failure to provide adequate funding to meet the medical needs of inmates supported a claim for deliberate indifference under § 1983. The court noted that although the county did not have a duty to appoint a physician, but merely had the authority to do so, the county had the authority to act and its failure to do so could be construed as a county policy. The court held that the allegations stated a § 1983 claim under the Fourteenth Amendment against the sheriff in his individual capacity, based on his direct participation. The sheriff allegedly removed the inmate from the hospital against medical advice, failed to provide adequate treatment during his subsequent incarceration, and refused to readmit the inmate to the hospital. At the time of his arrest, the inmate was a patient at an infirmary where he was being treated for acute renal failure and pneumonia. The sheriff personally removed the inmate from the hospital, over the strenuous objections of the inmate's physician. He was placed in jail, where his condition deteriorated to the point that he was unable to walk or to feed himself. His family found him in worsening condition during their visits and eventually paid other inmates to help bathe and feed the inmate. Jail staff allegedly refused to administer prescription medication because, according to the family, the Sheriff's policies did not require them to do so. The sheriff finally took the inmate to a nearby medical clinic where the treating physician recommended that the inmate be hospitalized, but the sheriff refused. The family contacted the state human resources agency, which intervened and caused the inmate to be admitted to the hospital. Upon admission, he was found to be dehydrated and malnourished and his illness had become irreversible; he died a few days later. The court held that the alleged conduct of the county in failing to equip the jail with audiovisual equipment to monitor inmates failed to support a claim against the county, absent an allegation that the failure caused, or in any way contributed to, the inmate's death. (Choctaw County Jail, Alabama)

U.S. District Court
SUICIDE

Gray v. Tunica County, Mississippi, 279 F.Supp.2d 789 (N.D.Miss. 2003). The estate of a jail inmate and his relatives brought a suit against a county and a jailer, alleging federal civil rights claims and state law claims. The inmate had committed suicide in a jail holding cell. The district court granted summary judgment, in part, for the defendants. The court held that the county had no civil rights liability for jail conditions or policies related to the suicide of the pretrial detainee who was placed in a new "lunacy" cell under a suicide watch. The detainee apparently managed to strangle himself with a ripped-off piece of his jail jumpsuit. The court found that the holding cell was new and safe and that the method of suicide was unforeseeable. The court noted that it was doubtful that the detainee could have been helped, even if a jailer had entered the cell immediately upon noticing that the detainee had removed his jumpsuit and was lying nude in a peculiar position. According to the court, the jail policies involving intermittent checks were reasonably related to the legitimate purpose of protecting inmates from harm. The jailer had decided to finish feeding other inmates before he returned to check on the welfare of the detainee in the holding cell. The detainee had been checked about an hour after being placed in the new holding cell, and the jailer returned 30 minutes later to discover the detainee unconscious in the cell. (Tunica County Jail, Mississippi)

U.S. District Court
INITIAL APPEARANCE

Hayes v. Faulkner County, Ark., 285 F.Supp.2d 1132 (E.D.Ark. 2003). An arrestee brought a § 1983 action against a county, sheriff and jail administrator, complaining of his long detention prior to an initial court appearance. The district court entered judgment in favor of the arrestee, finding that the county's detention policy was deliberately indifferent to the arrestee's constitutional rights. The court held that the sheriff did not possess the requisite level of personal knowledge to be individually liable, but that the jail administrator was not entitled to qualified immunity. The sheriff and jail administrator were responsible for the policy under which the sheriff's office submitted the names of those confined in jail to the court, and then waited for the court to schedule a hearing. The policy resulted in a 38-day delay for the arrestee, in violation of his Fourth Amendment right to a judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest. The court held that it would enter an order awarding compensatory damages and attorney fees and costs, if the parties were unable to settle the amounts between them. The court found that the arrestee was entitled to compensatory damages because his reputation in the community was compromised as the result of his confinement, he suffered mental anguish, emotional distress and physical pain while incarcerated, and he was financially injured when his home and property were left unattended for the 38 days he was confined. The arrestee had been brought to the jail when two outstanding warrants were discovered during a traffic stop. (Faulkner County Detention Center, Arkansas)

U.S. District Court
JUVENILES

Hedgpeth 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, D.C.)

U.S. District Court
DUE PROCESS

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. District Court
MEDICAL CARE

Joseph Ex Rel. Estate of Harbin v. City of Detroit, 289 F.Supp.2d 863 (E.D.Mich. 2003). The personal representative of the estate of an arrestee brought a § 1983 action in state court, alleging deliberate indifference to his serious medical needs. The representative alleged that jailers delayed attending to the arrestee when he repeatedly complained of chest pain. The arrestee was eventually taken to a hospital where he died 12 hours later. The district court granted summary judgment for the defendants, finding that the police department's alleged five-hour delay in taking the arrestee to the hospital did not rise to the level of an objective, serious harm. The court noted that there was no evidence that any officer actually perceived, or knew of, a substantial risk of serious harm, nor that his death could have been avoided if he had received more prompt medical treatment. (Sixth Precinct Station House, Detroit Police Department, Michigan)

U.S. Appeals Court
USE OF FORCE
MEDICAL CARE

Lolli v. County of Orange, 351 F.3d 410 (9th Cir. 2003). A pretrial detainee filed a § 1983 action alleging the use of excessive force, and deliberate indifference to his serious medical needs. The district court entered judgment in favor of the defendants. The appeals court affirmed in part, and reversed in part and remanded. The appeals court held that there were genuine issues of material fact, precluding summary judgment, as to whether sheriff's department officers were aware that the detainee was diabetic and was showing signs of a ketoacidic condition, but failed to provide him with food. The court also held that summary judgment was precluded on the issue of whether sheriff's department officers employed excessive force against the detainee. The detainee claimed that a deputy grabbed him and pulled him to the ground and that several deputies then kicked him, punched him, hit him with batons or similar objects, twisted his arms and legs, poked his face, knuckled his ear, and pepper sprayed him. The detainee had been arrested for an outstanding warrant on an unpaid parking ticket. The detainee told the arresting officer that he was diabetic and needed to eat as soon as possible. Upon admission to the jail the detainee's blood was tested and a nurse told him that he would receive food promptly. The nurse's records indicated that the detainee was not combative, verbally abusive, or agitated at intake. (Orange County Men's Jail, California)

U.S. Appeals Court
MEDICAL CARE
RESTRAINTS

Lumley v. City of Dade City, Fla., 327 F.3d 1186 (11th Cir. 2003). An arrestee who was wounded in a shoot-out brought a suit against police officials. The district court granted summary judgment in favor of the defendants on the arrestee's Sixth Amendment claim, but rejected their qualified immunity defense, and both sides appealed. The appeals court affirmed in part and reversed in part. The court held that a law enforcement officer's decision while he was present in the hospital watching the arrestee as he awaited surgery for a bullet wound, that the arrestee should be strapped to the hospital bed in order to minimize the risk of flight, did not rise to the level of a substantive due process violation. The court found that the officers who took no part in a doctor's decision to remove a bullet from the arrestee's jaw but not to treat a fracture of his right cheek bone, could not be held vicariously liable for the doctor's conduct. (Dade City Police Dept., Florida)

U.S. District Court
SEARCHES

Lynn v. O'Leary, 264 F.Supp.2d 306 (D.Md. 2003). An arrestee sued state prison officials, alleging that he was subjected to an unlawful arrest, excessive force, and an illegal cavity search. The district court granted summary judgment for the defendants in part, and denied it in part. The court held that officials were not entitled to governmental official immunity, under state law, in light of allegations that the officials acted with malice or were grossly negligent when they allegedly searched the arrestee's cavities while he was attempting to visit his son, after the officials informed the arrestee that a drug dog had falsely alerted on him. The arrestee had arrived at a state prison with his wife, intending to visit his son who was an inmate. While he was waiting to be admitted to the visiting area, a search dog was brought into the area and canvassed the room on a long leash. The dog gave a positive alert for drugs and the arrestee was subjected to a pat down search and his visitor locker was searched. No drugs were found on his person or in his locker and he was told that the dog had made a false alert. But he was not allowed to visit, and waited in lobby while his wife visited their son. After the visit prison officials ordered the arrestee into a side room where his wife heard him scream in pain. He informed the officials that he suffered from a medical condition. He was informed that he was under arrest and that he would be subjected to a strip and body cavity search, and the arrestee demanded that a warrant be produced. His clothes were forcibly removed and no contraband was found. \$2,000 was taken from his wallet and divided among the prison officials. His person was then searched, including a body cavity examination. While he was dressing after the search one officer jerked up the arrestee's left leg, causing him to fall off a chair and hit his head against a wall, and he was knocked unconscious. He was taken to a hospital where he was found to be suffering from a contusion to his brain, and injury to his back, shoulder and arm. He was permanently banned from visiting his son. (Maryland House of Corrections Annex, Jessup, Maryland)

U.S. Appeals Court MEDICAL CARE	<u>Mace v. City of Palestine</u> , 333 F.3d 621 (5th Cir. 2003). The estate of a suspect who was fatally injured during a standoff with police officers brought a § 1983 action. The district court granted summary judgment for the defendants and the estate appealed. The appeals court affirmed. The court held that a police chief's decision to require an officer to drive an ambulance, so that both medical personnel could attend to the wounded suspect during the drive to the hospital, did not violate the suspect's due process right to medical care. The court noted that the suspect subsequently died at the hospital and the driving arrangement had caused a delay at the arrest scene, but found that there was no evidence that the chief was deliberately indifferent to the suspect's medical needs. (City of Palestine, Texas)
U.S. District Court CONDITIONS SANITATION	<u>Mitchell v. Newryder</u> , 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)
U.S. District Court USE OF FORCE MEDICAL CARE	<u>Mladek v. Day</u> , 293 F.Supp.2d 1297 (M.D.Ga. 2003). An arrestee brought a suit against county officials alleging they violated his Fourth, Eighth and Fourteenth Amendment rights when they used excessive force during and after his arrest, and when they denied him medical attention as a pretrial detainee. The district court dismissed the suit in part, and denied dismissal in part. The court held that allegations that a deputy violently handcuffed the arrestee with no justification, and that the handcuffing caused physical injury to the arrestee, were sufficient to state an excessive force claim under the Fourth Amendment. The court held that the alleged denial of medical attention for the detainee's injuries during the one day he was detained was insufficient to assert a constitutional violation. (Walton County, Georgia)
U.S. District Court PROTECTION SEPARATION	<u>Mooring v. San Francisco Sheriff's Dept.</u> , 289 F.Supp.2d 1110 (N.D.Cal. 2003). A county jail inmate brought a pro se § 1983 action alleging deliberate indifference to his safety when he was housed unwillingly with gang rivals who assaulted him. The court granted summary judgment for the defendants. The court held that a deputy sheriff did not violate the inmate's due process right to protection from violence, absent any evidence that the deputy knew the inmate's particular gang affiliation or that the deputy could have learned the inmate's gang affiliation from information on the inmate's housing records. (San Francisco County Jail, California)
U.S. Appeals Court MEDICAL CARE	<u>Natale v. Camden County Correctional Facility</u> , 318 F.3d 575 (3rd Cir. 2003). A detainee who was an insulin-dependent diabetic, brought claims under § 1981 and § 1983 in state court, alleging that he suffered a stroke due to a delay in the administration of insulin during his first twenty-one hours of incarceration. The case was removed to federal court, where summary judgment was granted to the defendants. The detainee appealed. The appeals court reversed and remanded, finding that fact questions precluded summary judgment on the detainee's claim that his right to adequate medical care was violated, and to whether the actions of private prison health service employees could be attributed to their employer. The court noted that the employees failed to call the detainee's treating physician to determine how often he needed insulin, and that they did not even ask the detainee. (Camden County Correctional Facility, Prison Health Services, Inc., New Jersey)
U.S. District Court RELIGION SEARCH	<u>Omar v. Casterline</u> , 288 F.Supp.2d 775 (W.D.La. 2003). A detainee brought a <i>Bivens</i> 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 PROTECTION	<u>Palmer v. Marion County</u> , 327 F.3d 588 (7th Cir. 2003). A pretrial detainee who was severely beaten by other inmates at a county jail, brought a § 1983 claim alleging deliberate indifference to his safety and failure to properly train and supervise jail officials. The district court granted summary judgment in favor of the defendants and the appeals court affirmed. The appeals court held that the detainee's affidavit that stated he personally observed the county jail's practices of segregating inmates by race, placing gang members with non-gang members, not segregating inmates who feel threatened, and not intervening to stop inmate-on-inmate violence in cell blocks

occupied predominantly by non-white inmates, was insufficient to show that the county had either a widespread practice of allowing jail inmates to fight or segregating them by race. (Marion County Jail, Indiana)

U.S. District Court
STRIP SEARCH
MEDICAL CARE
USE OF FORCE

Perkins v. Brown, 285 F.Supp.2d 279 (E.D.N.Y. 2003). An inmate brought a pro se § 1983 action alleging use of excessive force by corrections officers and failure to provide medical care. The district court held that the inmate would be treated as a pretrial detainee. The court granted summary judgment in favor of the officers. The court held that the officers did not use excessive force against the detainee when they forcibly undressed and searched him in a courthouse holding cell. The court found that the detainee's injuries were minor and noted that he was taken to the courthouse infirmary immediately after he was injured. (New York City Department of Correction, Brooklyn Criminal Courthouse)

U.S. District Court
MEDICAL CARE

Richardson v. Nassau County, 277 F.Supp.2d 196 (E.D.N.Y. 2003). A jail inmate sued a county and sheriff, alleging deliberate indifference to his glaucoma condition. The district court granted summary judgment in favor of a jail nurse, sheriff, and county. The court denied summary judgment for medical officials, finding that it was precluded by fact issues as to whether the worsening of the glaucoma condition could be the result of the withdrawal of medication. The inmate alleged that there was a 51-day delay in the provision of an eye exam and the resumption of his medication. (Nassau County Correctional Center, New York)

U.S. Appeals Court
ACCESS TO COURT
TRANSPORT

Simmons v. Sacramento County Superior Court, 318 F.3d 1156 (9th Cir. 2003). A state prisoner brought a § 1983 action after a default judgment was issued against him in a civil personal injury action because he failed to appear due to his detention in jail on an unrelated criminal action. The district court dismissed the case and the appeals court affirmed. The appeals court held that a sheriff's refusal to transport the pretrial detainee from a jail to a courthouse for his civil personal injury trial did not violate the prisoner's due process right of access to courts. The court noted that the detainee did not claim that the sheriff's failure to transport him was intended to punish him, and the court found that punitive intent could not be inferred. The court held that the sheriff's refusal was rationally related to a legitimate penological interest in keeping detainees in jail unless absolutely necessary. (Sacramento County Jail, California)

U.S. District Court
STRIP SEARCH

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)

U.S. District Court
DISCIPLINE
PUNISHMENT
PRE-SENTENCE
DETENTION

Tilmon v. Prator, 292 F.Supp.2d 898 (W.D.La. 2003). A state inmate who was held in a county jail awaiting sentencing filed a § 1983 action, alleging civil rights violations when he was punished for possessing contraband in his cell. The district court dismissed the complaint and the inmate appealed. The appeals court reversed and remanded. On remand, the district court dismissed the action, finding that the inmate who had been convicted, but not yet sentenced, was not entitled to a hearing before being punished. The court held that the inmate had no liberty interest in not being placed in disciplinary segregation, and was therefore not entitled under the Due Process Clause to a hearing before such placement. The inmate was punished for possessing contraband in his cell. His punishment included eight hours confinement in a punitive cell, loss of telephone privileges, loss of visitation privileges, and loss of recreation privileges. (Caddo Correctional Center, Shreveport, Louisiana)

U.S. District Court
CLASSIFICATION
GOOD TIME

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. Appeals Court
PRIVACY
TELEPHONE

U.S. v. Gangi, 57 Fed.Appx. 809 (10th Cir. 2003) [unpublished]. A defendant who was convicted for bank fraud challenged the taping of his jail telephone calls. The appeals court held that it was not objectively reasonable for the detainee to have any expectation of privacy in his outgoing calls from jail, and that the detainee impliedly consented to the taping of his calls from jail. The court noted that the detainee was cognizant of detention settings, which permitted a strong inference that he fully understood the fact that jail telephones were monitored. According to the court, the detainee was a "keen observer of detail" and was presumed to have seen signs above other telephones that provided notice of telephone monitoring. The court held that the Fourth Amendment is not triggered by the routine taping of outgoing jail calls. (Uinta Co. Det. Ctr., Wyoming)

U.S. District Court
TELEPHONE
PRIVACY

U.S. v. Roy, 349 F.Supp.2d 60 (D.Mass. 2003). A detainee charged with drug, firearms and witness tampering offenses moved to suppress the contents of his telephone conversations that were recorded when he was in custody. The district court denied the motion, finding that the detainee impliedly consented to the recording of his telephone conversations because he was informed that his calls were subject to monitoring and recording, he chose to proceed with the conversations, and those to whom the defendant made the calls expressly consented to participate in possibly recorded telephone conversations. (Worcester County House of Corrections, Massachusetts)

U.S. Appeals Court
USE OF FORCE

Walters v. County of Charleston, 63 Fed.Appx. 116 (4th Cir. 2003) [unpublished]. The personal representative of a detainee who died in custody brought a § 1983 action, alleging that the detainee's death was the result of officers' use of excessive force. The district court entered summary judgment in favor of the defendants and the plaintiff appealed. The appeals court affirmed, finding that the officers' use of force in restraining the detainee was not excessive, even though the detainee died as the result of a compression injury to his neck sustained while officers attempted to subdue him. The court noted that the detainee was an exceptionally large man who became violent while in his cell and after he was let out of his cell, and that there was no evidence that the officers intentionally choked the detainee. The detainee had been housed in a temporary detention facility pursuant to a civil contempt order of a family court, for refusing to pay back child support. (Charleston County Detention Center, South Carolina)

U.S. Appeals Court
STRIP SEARCH
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 appeals court held that the strip searches of the detainees were unlawful, absent individualized suspicion or probable cause, and that the law on this matter was clearly established at the time of the searches. 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)

U.S. District Court
SEARCH

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 Co. Jail, Maine)

U.S. Appeals Court
SEARCH

Wood v. Hancock County Sheriff's Dept., 354 F.3d 57 (1st Cir. 2003). A jail inmate sought damages under § 1983, alleging he was unconstitutionally strip searched on three separate occasions by correctional officers. The district court entered judgment in favor of the defendants and the inmate appealed. The appeals court affirmed in part, vacated in part, and remanded for a partial new trial. The appeals court held that a jury instruction that incorrectly defined a strip search, improperly limited the jury's deliberations on the nature of the searches of the misdemeanor detainee. The court found the district court's use of the term "deliberate," when describing a strip search, unduly directed the jurors to the officers' subjective intent, and that other elements of the definition (scrutiny of the mouth and armpits) were not prerequisites for finding that a strip search took place. The court noted that an individual detained on a misdemeanor charge may only be strip searched as part of the booking process if officers have

reasonable suspicion that he is either armed or carrying contraband. According to the court, a blanket policy of strip-searching inmates after contact visits is constitutional, except in atypical circumstances. (Hancock County Jail, Maine)

2004

U.S. District Court
SPEEDY TRIAL
CONDITIONS
DUE PROCESS

Atwood v. Vilsack, 338 F.Supp.2d 985 (S.D.Iowa 2004). Pretrial detainees who were awaiting hearings on their sexually violent predator (SVP) petitions, brought a class action against a state corrections department alleging denial of speedy justice. The district court granted summary judgment for the defendants in part and denied it in part. The court held that the failure of the corrections department to initiate proceedings for civil commitment of sexually violent predators until immediately prior to discharge of their criminal sentences did not violate their speedy trial rights, because the department was under no duty to minimize time in custody by ensuring that commitment proceedings overlapped substantially with criminal incarceration. The court found that a seven-month average time for trying an SVP case after appointment of defense counsel was not presumptively prejudicial. According to the court, a civil commitment candidate does not have a speedy trial right, until such time as he is identified by the statutory process to be a candidate for commitment. The court held that even though the SVP Act stated that the purpose of pretrial detention was for evaluation, and the detainees were held for periods exceeding the time needed for evaluation, the Act also provided for a safekeeping component. The court concluded that denial of bail for the detainees did not violate their due process rights, where the detention was premised upon a judge's probable cause finding and a determination of mental abnormality and dangerousness was made at the outset of confinement. The court held that the conditions of the detainees' confinement violated their due process rights because the conditions were not reasonably related to the government's objective of preventing them from harming themselves or others. The detainees were kept in lockdown the majority of the day, denied reasonable access to visitors, telephones, educational programming, mental health treatment, recreation, exercise, religious services, medical care, and hygiene. The court noted that when the detainees' conditions are harsher than the conditions of criminal inmates, due process cannot be satisfied unless the conditions are reasonably related to the purpose of confinement. The court found that the implementation of the act, which resulted in an additional period of "dead time" incarceration, violated the double jeopardy rights of detainees who had previously served criminal sentences. (Iowa Department of Corrections)

U.S. District Court
RELEASE
BAIL

Barham v. Ramsey, 338 F.Supp.2d 48 (D.D.C. 2004). Persons who were arrested during a demonstration at the World Bank in Washington, D.C., brought a § 1983 action alleging that their arrests and detentions violated their constitutional rights. The district court dismissed the action, in part. The court held that failure to provide the arrestees with citation release, or a post and trial release option, did not constitute a deprivation of due process or equal protection, even though the arrestees were detained for a lengthy period. According to the court, the unavailability of citation release was due to unintended technological failures, and there was no evidence that the arrestees were treated differently than other groups of arrestees regarding the availability of a post and trial release option. The court noted that there were incompatibility problems with the cameras used to photograph arrestees and computer software. (Metropolitan Police Department, Washington, D.C.)

U.S. Appeals Court
RELEASE

Berry v. Baca, 379 F.3d 764 (9th Cir. 2004). In three separate actions, arrestees who had been detained in a county jail for periods ranging from 26 to 29 hours after courts had authorized their release following resolution of their charges, brought § 1983 claims against a county sheriff in his official capacity. The district court consolidated the cases and dismissed them. The appeals court reversed and remanded, finding that summary judgment was precluded by fact issues as to whether the application of county policies which resulted in the detentions was unreasonable under the circumstances and thus amounted to a policy of deliberate indifference to the arrestees' constitutional rights. The court found that as a matter of law, a county's system of administrative processing of jail inmates could not be immune from allegations that, in practice, it amounts to deliberate indifference. (Los Angeles County Sheriff's Department)

U.S. Appeals Court
MEDICAL CARE

Blackmore v. Kalamazoo County, 390 F.3d 890 (6th Cir. 2004). A former detainee brought an action under § 1983 asserting claims under the Eighth and Fourteenth Amendments for failure to provide prompt medical treatment during his detention. The district court granted summary judgment in favor of the defendants, and the detainee 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 the officials' delay in treatment posed a substantial risk of serious harm, where the seriousness of the detainee's appendicitis could be discerned without competent medical proof, and the detainee's manifestations of pain and injury during his detention were so obvious that even a layperson could have easily recognized the necessity for a doctor's attention. The court also found unresolved fact issues as to the officials' culpable state of mind, where the detainee had complained of stomach pain within an hour of his arrest, and officials were aware that the detainee was subsequently experiencing sharp abdominal pain and vomiting. The detainee received no medical attention until more than 50 hours after his arrest. (Kalamazoo County Jail, Michigan)

<p>U.S. District Court MENTAL HEALTH ADA-Americans with Disabilities Act</p>	<p><u>Bolden v. Stroger</u>, 306 F.Supp.2d 792 (N.D.Ill. 2004). Pretrial detainees brought an action challenging a county's policy of barring individuals with mental illness from various pre-release programs, and its policy of discharging mentally ill individuals without providing them with medication and referrals necessary to manage their illnesses. The district court dismissed the action, finding that a court monitoring consent decree that had created pre-release programs at the jail was the proper forum for claims regarding eligibility for the programs, and for challenging the treatment of mentally ill detainees, even though the Americans with Disabilities Act (ADA) was not in existence at the time the decree was originally entered. (Cook County Jail, Illinois)</p>
<p>U.S. Appeals Court ACCESS TO COURT</p>	<p><u>Bourdon v. Loughren</u>, 386 F.3d 88 (2nd Cir. 2004). A pretrial detainee in a county jail who sought replacement of his court-appointed attorney, brought a § 1983 due process and equal protection action against county officials. The detainee alleged denial of access to courts because he was denied access to law library materials. The district court granted summary judgment for the defendants, and the detainee appealed. The appeals court affirmed, finding that the detainee was not denied access to the courts when he was allegedly denied materials from the jail law library, because the detainee had unrestricted access to an attorney. The court noted that there was no evidence of denial or restriction of the detainee's access to his attorney, and that he never requested the same law library reference materials from his attorney. (Chenango County Jail, New York)</p>
<p>U.S. District Court ACCESS TO COURT</p>	<p><u>Brewster v. Nassau County</u>, 349 F.Supp.2d 540 (E.D.N.Y. 2004). A detainee brought a § 1983 action. The district court dismissed the complaint, finding that the detainee failed to state a § 1983 conspiracy claim against a legal aid society, which had sent three successive attorneys work with the detainee. The court considered these to be state law malpractice claims and declined to exercise jurisdiction. The court found that even if the detainee suffered all of the psychological and emotional injuries that he alleged, the Prison Litigation Reform Act (PLRA) precluded recovery against corrections officials under § 1983 because the detainee did not allege any physical injury. (Nassau County Correctional Facility, and Nassau County Legal Aid Society, New York)</p>
<p>U.S. District Court BAIL INITIAL APPEARANCE SPEEDY TRIAL</p>	<p><u>Bunyon v. Burke County</u>, 306 F.Supp.2d 1240 (S.D.Ga. 2004). A detainee brought a § 1983 action stemming from his arrest and the alleged refusal of jail authorities to release him on bail. The court denied summary judgment for the defendants on the issue of whether the sheriff's department failed to bring the detainee before a judicial officer within 72 hours after his arrest. The court held that the sheriff's department contravened state statutes and violated the detainee's procedural due process rights by refusing to release the detainee, despite his proffer of sufficient funds to post the amount of bail that had been set. (Burke County Jail, Georgia)</p>
<p>U.S. District Court RELIGION</p>	<p><u>Byar v. Lee</u>, 336 F.Supp.2d 896 (W.D.Ark. 2004). A former county jail detainee filed an action against a former county sheriff, alleging violations of her constitutional rights arising out of the sheriff's promulgation of a set of detainee rules for the county jail. The district court held that the rules, which were modeled on the Ten Commandments, were excessively and impermissibly entangled with religion and constituted an endorsement or advancement of religion. The court found that a sufficient nexus existed between the requirement that the detainee read, sign, and agree to follow the rules and the imposition suffered by the detainee by having religious tenets forced upon her in the guise of secular rules of behavior. The detainee alleged that she considered it offensive to have the government direct her to obey particular religious tenets and she was fearful that she might be perceived as violating the rules and therefore be disciplined. The court denied the sheriff qualified immunity from liability, finding that he knew, or reasonably should have known, that his actions violated the Establishment Clause. The court noted that the sheriff had previously been sued about the rules and was given notice that posting the Ten Commandments in any form would violate the Establishment Clause. The court found that the use of the Ten Commandments as a model for detainee rules served no secular purpose and that the primary effect of the rules was to advance religion. (Benton County Jail, Arkansas)</p>
<p>U.S. District Court PROTECTION SEPARATION</p>	<p><u>Carmichael v. Richards</u>, 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)</p>
<p>U.S. Appeals Court LENGTH</p>	<p><u>Chortek v. City of Milwaukee</u>, 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</p>

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. Appeals Court
TELEPHONE
CROWDING
CONDITIONS

Collins v. Ainsworth, 382 F.3d 529 (5th Cir. 2004). Persons who were detained at police license checkpoints after a concert brought a civil rights action. The district court denied summary judgment for the defendants and they appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that even if the arrestees were detained without phone calls or mattresses for a period of less than 24 hours in a crowded jail, such conditions would be in the nature of a *de minimis* imposition that did not rise to a violation of the detainee's due process rights. (Copiah County Jail, Mississippi)

U.S. District Court
MEDICAL CARE

Cooper v. Office of Sheriff of Will County, 333 F.Supp.2d 728 (N.D.Ill. 2004). A pretrial detainee's surviving father brought an action against a county, sheriff, and deputies after his son died as the result of an asthma attack while he was incarcerated. The district court held that state law did not preclude the possibility of respondeat superior liability on the sheriff for a deputy's intentional or willful conduct. According to the court, the father's allegations were sufficient to state a § 1983 claim against the deputies based on deliberate indifference to the detainee's serious medical condition. The court noted that the central allegation in the complaint was that the deputies failed to provide timely medical care and treatment to the detainee. The detainee had been placed in the general population of the jail, and had previously had an asthma attack that required inhaler medication. When the detainee had a subsequent attack, he and other inmates informed deputies on duty that immediate medical care was necessary, but the deputies failed to act in a timely manner and the detainee died. (Will County Jail, Illinois)

U.S. District Court
MEDICAL CARE
SAFETY

Davis v. Reilly, 324 F.Supp.2d 361 (E.D.N.Y. 2004). A prisoner who was injured when he slipped and fell on a wet floor outside of a shower area brought a pro se § 1983 action, alleging failure to remedy the wet shower area and inadequate medical care. The district court dismissed the action. The court held that the inmate failed to exhaust administrative remedies, and that the injuries the inmate sustained did not constitute a serious medical condition. The inmate had sprained his back and neck, and experienced pain in his left testicle. The court found that failure to provide mats for the wet shower area did not rise to the level of a constitutional violation. (Nassau County Correctional Center, New York)

U.S. Appeals Court
PRIVACY
PUNISHMENT

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. District Court
BAIL

Galen v. County of Los Angeles, 322 F.Supp.2d 1045 (C.D.Cal. 2004). A detainee arrested for domestic violence brought a § 1983 Eighth Amendment action alleging that bail of \$1 million was excessive. The district court granted summary judgment in favor of the defendants. The court held that bail of \$1 million, enhanced from the \$50,000 bail listed in the county's felony bail schedule, was not excessive. The court noted that the alleged victim had both older and more recent injuries, including a seven-inch laceration, and allegedly feared for her safety. The detainee was a local attorney who had obtained bail within hours by paying \$50,000 to post bond, and the option of denying bail was unavailable under state law. (Los Angeles County Sheriff's Department, California)

U.S. District Court
SEARCHES

George v. City of Wichita, 348 F.Supp.2d 1232 (D.Kan. 2004). An arrestee brought a § 1983 action against a city and a city detective alleging violations of his constitutional rights. The district court granted summary judgment in favor of the defendants. The court held that the strip search to which the arrestee was subjected after being arrested for a violent felony and booked into jail, did not violate his Fourth Amendment or due process rights. There was no evidence that the arrestee was subjected to anything beyond a visual examination or that he was intrusively touched by jail officials as part of the search. The court noted that the search was apparently conducted in an appropriate room and in an appropriate manner, and that the facility had a legitimate interest in

preventing detainees charged with violent felonies from bringing weapons or contraband into the facility. (Sedgwick County Detention Facility, Kansas)

U.S. District Court
MEDICAL CARE

GINEST v. Board of County Com'rs. of Carbon County, 333 F.Supp.2d 1190 (D.Wyo. 2004). County jail inmates brought a class action against a county and sheriff, alleging deliberate indifference to the inmates' medical needs, and seeking declaratory and injunctive relief. Following the entry of a consent decree governing medical care, the inmates sought a contempt order, alleging specific violations of the decree's terms. The defendants moved to terminate the consent decree. The district court held that the county was potentially liable, and the sheriff was potentially liable for failure to train. The court found that the constitutional rights of the inmates were violated by inadequate medical care and inadequate medical records at the jail, including lack of training in suicide prevention. According to the court, jail medical records that are inadequate, inaccurate and unprofessionally maintained are actionable under the Eighth Amendment. The court found that many physician progress notes and other medical records were missing, there was no written definition of a medical emergency requiring immediate care, there were numerous delays in responding to inmate requests for medical care, there was no suicide prevention training nor written policies, and potentially suicidal inmates were often isolated physically and provided with little or no counseling. (Carbon County Jail, Wyoming)

U.S. Appeals Court
MEDICAL CARE
FAILURE TO PROTECT

GRAHAM ex rel. Estate v. County of Washtenaw, 358 F.3d 377 (6th Cir. 2004). The estate of an arrestee, who died after secretly ingesting cocaine upon his arrest, brought a § 1983 action alleging that a county policy regarding provision of medical care to prisoners in the county jail contributed to the arrestee's death. The district court granted summary judgment in favor of the county and the estate appealed. The appeals court affirmed, finding that the county policy of giving responsibility for the provision of medical care to its contractual medical provider, was not the cause of the alleged unconstitutional denial of adequate medical care to the arrestee. The court noted that even if the policy required jail personnel to defer all medical decisions to the medical provider's employees, and even if the medical care received by the arrestee constituted deliberate indifference, there was no showing that the county policy was the moving force behind the violation. (Washtenaw County Jail, Michigan)

U.S. District Court
RELEASE

GREEN v. Baca, 306 F.Supp.2d 903 (C.D.Cal. 2004). An arrestee sued a county sheriff, seeking damages for his alleged over-detention. The district court denied summary judgment for the sheriff, in part. The court held that fact issues as to the reasonableness of a twelve and one-half hour delay, between receipt of an order authorizing release of the arrestee and the execution of the order, precluded summary judgment. The court found that Fourteenth Amendment due process standards, rather than the Fourth Amendment search and seizure principles, governed the question of whether the constitutional rights of the arrestee were violated when, following a legal arrest for a parole violation, he was detained for several days after a hearing that ended with a determination that he had not violated parole. (Los Angeles County Jail, California)

U.S. Appeals Court
USE OF FORCE
RESTRAINTS

GUERRA v. Drake, 371 F.3d 404 (8th Cir. 2004). A pretrial detainee brought civil rights claims seeking damages from correctional officers, alleging they used excessive force and left him in a "restraint" chair for prolonged periods. The district court entered judgment against a Captain for \$1,500 on the restraint chair claim and against another officer for \$500 on the excessive force claim. The district court refused to award punitive damages and the detainee appealed. The appeals court affirmed, finding that the district court's refusal to award punitive damages was not an abuse of discretion. The inmate had alleged that during his first six days of detention he was subjected to unprovoked beatings and was placed in a "torture chair" for long periods. (Benton County Detention Center, Arkansas)

U.S. Appeals Court
MEDICAL CARE

HARTSFIELD v. Colburn, 371 F.3d 454 (8th Cir. 2004). A pretrial detainee brought a § 1983 action asserting that jail personnel were deliberately indifferent to his medical needs. The district court granted summary judgment in favor of the defendants and the detainee appealed. The appeals court affirmed in part and reversed in part, finding that fact issues precluded summary judgment on the deliberate indifference claim and whether a jail custom or policy contributed to the alleged deliberate indifference. The jail personnel allegedly failed to arrange for dental treatment until about six weeks after the detainee's written request for it, causing him to suffer further pain and infection. (Scott County Jail, Iowa)

U.S. Appeals Court
ACCESS TO COURTS
SPEEDY TRIAL

HAYES v. Faulkner County, Ark., 388 F.3d 669 (8th Cir. 2004). An arrestee brought a § 1983 action against a county, sheriff and jail administrator, stemming from his 38-day detention prior to an initial court appearance. The district court entered judgment in favor of the arrestee and the defendants appealed. The appeals court affirmed. The court held that the county's detention policy was deliberately indifferent to the substantive due process rights of the arrestee and that the 38-day detention of the arrestee shocks the conscience. The county's detention policy involved the sheriff's office submitting names of those confined in jail to the court, and then waiting for the court to schedule a hearing. The court found that the policy improperly delegated the responsibility of bringing arrestees promptly to court for first appearance, and ignored the lack of authority for long-term confinement. The court held that the jail administrator was deliberately indifferent because he did nothing about the lengthy detention, even after he received four separate grievances from the arrestee. The administrator testified that he would have continued to wait for the court to schedule an appearance, even if the arrestee were held for 99 days.

According to the court, a reasonable official would know that detentions of less than 38 days violated a state criminal procedural rule and the constitutional rights of the arrestee. The arrestee had been ticketed for not having automobile tags and insurance and had failed to appear in municipal court, resulting in the issuance of a bench warrant. When he was stopped for a traffic violation he was arrested on the warrant and did not post the \$593 cash-only bond at the jail. (Faulkner County Jail, Arkansas)

U.S. Appeals Court
JUVENILES

Hedgpeeth 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. District Court
FALSE IMPRISONMENT
FALSE ARREST

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. Appeals Court
CONDITIONS
PUNISHMENT
CIVIL COMMITMENT

Jones v. Blanas, 393 F.3d 918 (9th Cir. 2004). A jail detainee brought a civil rights against a sheriff and county for violations of his constitutional rights during the period he was civilly confined awaiting adjudication and eventual commitment under the California Sexually Violent Predator Act (SVPA). The district court entered summary judgment in favor of the defendants and the detainee appealed. The appeals court affirmed in part, reversed in part, and remanded with instructions. The court held that fact issues as to whether the restrictive conditions of confinement were justified by legitimate, non-punitive interests and were not excessive, precluding summary judgment on the detainee's conditions of confinement claim. The court held that the year-long confinement of the civil detainee who was held in the general criminal population of a county jail pending commitment proceedings, created a rebuttable assumption that the confinement was punitive in violation of the detainee's substantive due process rights. (Sacramento County Jail, California)

U.S. District Court
SUICIDE

Kelley v. County of Wayne, 325 F.Supp.2d 788 (E.D.Mich. 2004). A pretrial detainee's survivor brought a civil rights action against two deputy marshals, alleging they were deliberately indifferent to a detainee's serious medical needs stemming from his heroin withdrawal, and that they proximately caused his suicide. The district court granted summary judgment in favor of the deputy marshals. The court held that the failure of the deputy marshals to notify county authorities who had the resources to care for the inmate, that the detainee was suffering from heroin withdrawal, did not create a known risk of suicide or other serious harm. The court noted that the suicide occurred more than four days after the detainee's arrest, and the deputy marshals did not know of any correlation between heroin withdrawal and suicide. According to the court, the deputy marshals' failure to comply with a judge's instructions to transport the detainee to a particular detention center so that the detainee could be treated for his heroin withdrawal did not manifest deliberate indifference to the detainee's serious medical needs, because had the marshals taken the detainee to the requested center, the detainee either would not have been accepted or, if accepted, would not have been treated due to a lack of treatment resources at that institution. (Wayne County Jail, Michigan)

U.S. District Court
MEDICAL CARE

Kramer v. Gwinnett County, Georgia, 306 F.Supp.2d 1219 (N.D.Ga. 2004). A pretrial detainee filed a § 1983 action alleging that jail officials were deliberately indifferent to his serious medical needs. The district court granted summary judgment in favor of the defendants. The court held that the officials did not act with deliberate indifference to the detainee's psoriasis and related conditions, even if the detainee's condition greatly deteriorated from the time of his arrival at the facility until his release. The court noted that the detainee missed some of his appointments, and that he was seen by jail physicians seven times, and by jail nurses at least fifteen times. (Gwinnett County Detention Center, Georgia)

<p>U.S. District Court FAILURE TO PROTECT MEDICAL CARE</p>	<p><u>Layman Ex Rel. Layman v. Alexander</u>, 343 F.Supp.2d 483 (W.D.N.C. 2004). A detainee who had suffered a serious head or brain injury following a blow from another prisoner, brought § 1983 claims against a sheriff and sheriff's department officers. The district court denied summary judgment in favor of the sheriff with respect to the detainee's failure to train claim, finding genuine issues of material fact as to whether the department's training of new detention officers properly and thoroughly trained them to respond to and appreciate the dangers associated with injuries and other medical conditions of inmates. The court held that summary judgment for a detention officer was precluded by a genuine issue of material fact as to whether the officer acted with deliberate indifference when she did not ensure that the detainee was taken to an emergency room following a display of abnormal behavior after he suffered a serious head or brain injury following a blow. (Haywood County Detention Center, North Carolina)</p>
<p>U.S. Appeals Court ACCESS TO COURT TELEPHONE</p>	<p><u>Lynch v. Leis</u>, 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)</p>
<p>U.S. Appeals Court CONDITIONS SEGREGATION DUE PROCESS</p>	<p><u>Magluta v. Samples</u>, 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)</p>
<p>U.S. Appeals Court MEDICAL CARE STAFFING</p>	<p><u>McDowell v. Brown</u>, 392 F.3d 1283 (11th Cir. 2004). A former inmate of a county jail brought a § 1983 Eighth Amendment action against a county, alleging improper failure to treat his emergency medical condition. The inmate also asserted negligence claims against the jail's health services subcontractor and against a nurse employed by the subcontractor. The district court dismissed the claims against the subcontractor and nurse and the inmate appealed. The appeals court affirmed. The court held that the county jail's staffing problems, allegedly resulting from the county board's custom of inadequate budgeting for the sheriff's office and jail, did not satisfy the "custom or policy" requirement of the inmate's § 1983 action. The inmate alleged that the county failed to transport him to a hospital during a medical emergency. The court noted that the jail had a policy to call an ambulance to transport inmates with emergency medical needs if jail personnel were unable to do so. The inmate's transport to the hospital emergency room was delayed by nearly twelve hours as jail staff accomplished other transports. By the time the inmate arrived at the hospital he was experiencing paralysis in his legs. (DeKalb County Jail, Georgia, and Wexford Health Sources, Inc.)</p>
<p>U.S. Appeals Court SEARCHES PRIVACY</p>	<p><u>Mills v. City of Barbourville</u>, 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)</p>
<p>U.S. District Court MEDICAL CARE RESTRAINTS USE OF FORCE</p>	<p><u>Munera v. Metro West Detention Center</u>, 351 F.Supp.2d 1353 (S.D.Fla. 2004). A former pretrial detainee brought a § 1983 action against a county correctional officer who escorted him on a visit to an optometrist, alleging that the officer used excessive force, threatened him, and deprived him of access to medical care. The district court entered summary judgment in favor of the defendant. The court held that the alleged profanity and ethnic slurs that the officer directed at the detainee did not rise to the level of a constitutional violation. The court found that the officer's decision to remove the detainee from an eye clinic because of security concerns did not deprive the detainee of needed medical care and did not amount to deliberate indifference to a serious medical need in violation of the Due Process Clause. According to the court, the force applied by the officer was the</p>

minimum necessary under the circumstances, where the force included wrist cuffs secured to a waist chain with the detainee seated in a wheelchair. The court noted that the officer checked that the cuffs were properly applied when the detainee complained of discomfort, and told the detainee not to struggle. The officer used additional force and restraints to keep the detainee seated in the wheelchair, when the detainee was repeatedly moving between the wheelchair and another seat in the waiting room. (Ward D, Jackson Memorial Hospital, Miami-Dade County, Florida)

U.S. Appeals Court
JUVENILES
SEARCHES

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
ACCESS TO
COURT

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. District Court
MEDICAL CARE

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
FALSE IMPRIS-
ONMENT

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. Appeals Court
SEARCH *Shain v. Ellison*, 356 F.3d 211 (2nd Cir. 2004). A misdemeanor detainee in a county correctional facility challenged a blanket policy that required strip searches of all detainees, regardless of the nature of the crime for which they were detained. The detainee sought a declaration that the policy was unconstitutional, monetary damages, and injunctive relief. The district court entered judgment in favor of the detainee and awarded \$1 in nominal damages. The parties appealed and the appeals court affirmed in part, and remanded on the issue of injunctive relief. On remand, the district court granted injunctive relief to the detainee and the defendants again appealed. The appeals court vacated and remanded, finding that the detainee lacked standing to seek prospective injunctive relief because he failed to show that he was likely to be rearrested or that he would be remanded to the county correctional facility overnight if he was rearrested. The court noted that the county had implemented a new policy that required reasonable suspicion that a detainee is concealing contraband to justify a search. (Nassau Co. Corr'l Center, New York)
- U.S. District Court
JUVENILES *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)b
- U.S. District Court
SUICIDE *Stewart ex rel. Estate of Stewart v. Waldo County*, 350 F.Supp.2d 215 (D.Me. 2004). The estate of a deceased inmate filed a § 1983 action alleging that a county violated the inmate's constitutional right to medical care and supervision, and asserting a wrongful death claim. The district court granted summary judgment in favor of the defendants. The court held that the officials' knowledge that the inmate was intoxicated did not demonstrate deliberate indifference to suicide risk. State and county policies and procedures required constant monitoring of intoxicated individuals, but the court found that the officials had no subjective knowledge that the inmate was suicidal or at risk for any reason. The court noted "despite the inmate's high blood alcohol content, he was functioning and coherent enough to understand directions and walk unassisted." The inmate hanged himself shortly after admission to the jail. Jail staff checked on the inmate at least every fifteen minutes before his death. (Waldo County Jail, Maine)
- U.S. District Court
SUICIDE
FAILURE TO
PROTECT *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. District Court
SUICIDE *Strickler v. McCord*, 306 F.Supp.2d 818 (N.D.Ind. 2004). A pretrial detainee sued jail officials under § 1983, alleging they were deliberately indifferent to his serious medical needs. The district court granted summary judgment in favor of the defendants. The court held that although the jail officials allegedly placed the inmate on a suicide watch, noted that the detainee hid razor blades and medication in his cell, observed that the detainee had tried to cut himself, and saw the detainee draw pictures expressing sadness, the detainee could not demonstrate that the officials were aware of a substantial risk that he would attempt suicide. The detainee had been arrested for driving under the influence of alcohol and his car contained whiskey, a shotgun and a suicide note. The detainee subsequently attempted suicide by cutting his arm, but jail staff detected his condition and provided the detainee with medical treatment. (Miami County Jail, Indiana)
- U.S. Appeals Court
INTAKE
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. District Court
FAILURE TO
PROTECT
SUPERVISION
STAFFING

Thompson v. Spears, 336 F.Supp.2d 1224 (S.D.Fla. 2004). A prisoner brought an action against a county and a jail official, alleging deliberate indifference to his safety, negligent supervision, and negligent infliction of emotional distress. The district court granted summary judgment in favor of the defendants. The court held that a lack of monitoring devices in jail cells did not pose an objectively substantial risk of harm to the inmate, particularly in light of the fact the state Model Jail Standards did not require cameras. The court found that the inmate presented no evidence that the officer posts were located so far that officers could not hear calls for help. The court held that the county was not liable under § 1983, even if jail officers did not actually follow the county policy of making hourly walk-throughs to monitor cells, where there was no evidence that the county had officially sanctioned or ordered the officers to disregard the county policy. The prisoner had been temporarily transferred from a state prison to the county jail in order to be involved in a family court matter. The inmate, who was from Jacksonville, Florida, alleged that he was severely beaten by other inmates for over two hours, after the Miami Dolphins beat the Jacksonville Jaguars in a football game. (Pretrial Detention Center, Miami-Dade County, Florida)

U.S. Appeals Court
DISCIPLINE
PRE-SENTENCE
DETENTION

Tilmon v. Prator, 368 F.3d 521 (5th Cir. 2004). A prisoner brought a civil rights action alleging due process violations in connection with prison disciplinary proceedings. The district court dismissed the action for failure to state a claim and the prisoner appealed. The appeals court affirmed, finding that a prisoner who has been convicted but who has not yet been sentenced has the same status as a sentenced prisoner for the purposes of analyzing whether the prisoner has a liberty interest in having certain procedural protections before being punished in connection with a prison disciplinary proceeding. The court found that the prisoner had no due process protected liberty interest implicated by his confinement in a punitive cell for eight hours without an administrative hearing. (Caddo Correctional Center, Louisiana)

U.S. District Court
MEDICAL CARE
PROTECTION
FALSE IMPRIS-
ONMENT

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)

U.S. Appeals Court
SUICIDE
INTAKE
SCREENING

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)

U.S. District Court
SEGREGATION
CLASSIFICATION

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)

U.S. Appeals Court
ACCESS TO
COURT
LAW LIBRARIES

U.S. v. Cooper, 375 F.3d 1041 (10th Cir. 2004). A defendant who was convicted of bank robbery appealed his conviction and alleged that he was deprived of due process by refusal of his request of access to a law library. The appeals court affirmed the conviction. The appeals court held that a prisoner who voluntarily, knowingly and intelligently waives his right to counsel in a criminal proceeding is not entitled to a law library or other legal materials. (Utah)

U.S. District Court
PRIVACY
TELEPHONE

U.S. v. Faulkner, 323 F.Supp.2d 1111 (D.Kan. 2004). Three detainees who were indicted on charges of attempting to kill a government witness moved to suppress recordings of their jail telephone conversations. The court held that the detainees had impliedly consented to the recording of telephone conversations because notices that conversations might be recorded were posted throughout the facility, and a recorded warning was given before the commencement of long distance calls. The district court noted that the recordings made by employees of a private corrections company, were not covered by the wiretapping exemption that was applicable when the interception was done by law enforcement officers. (Corrections Corporation of America, Leavenworth, Kansas)

U.S. District Court
CLASSIFICATION
SEGREGATION
DISCIPLINE

U.S. v. Lopez, 327 F.Supp.2d 138 (D.Puerto Rico 2004). A pretrial detainee who was placed in a special housing unit because he faced the death penalty, filed a motion for an evidentiary hearing on the conditions of his pretrial confinement. The district court held that the detainee's placement in a special housing unit solely because he faced the death penalty amounted to unconstitutional punishment. (Special Housing Unit, MDC-Guaynabo, Puerto Rico)

U.S. District Court
CONDITIONS
USE OF FORCE

Webster v. City of New York, 333 F.Supp.2d 184 (S.D.N.Y. 2004). Arrestees brought an action against a city, police commissioner and police officers alleging unreasonable use of force and punishment without due process. The district court granted summary judgment in favor of the defendants, in part. The court held that failure to provide food and water to the pretrial detainees for a few hours when they were held at a police station did not rise to the level of a due process violation, because of the relatively brief duration and the absence of allegations of injury or punitive intent. The court also held that the use of handcuffs on the pretrial detainees, and subjecting them to abusive language, did not rise to the level of a due process violation. (City of New York Police Department)

U.S. Appeals Court
SUICIDE

Wever v. Lincoln County, Nebraska, 388 F.3d 601 (8th Cir. 2004). A personal representative brought a civil rights action against a county and county sheriff alleging that an arrestee's Fourteenth Amendment rights were violated. The district court denied the sheriff's motion for summary judgment and the sheriff appealed. The appeals court affirmed. The court held that the arrestee had a clearly established Fourteenth Amendment right to be protected from the known risks of suicide, and two prior suicides in the county jail should have put the sheriff on notice that his suicide prevention training needed revision. The court held that the representative stated a supervisory liability claim under the due process clause, noting that a supervisor may be held liable under § 1983 if a failure to properly supervise and train an employee causes a deprivation of constitutional rights. (Lincoln County Jail, Nebraska)

U.S. District Court
CIVIL
COMMITMENT
PUNISHMENT
CONDITIONS

Wilson v. Watters, 348 F.Supp.2d 1031 (W.D.Wis. 2004). A patient confined as a sex offender brought an action alleging he was deprived of his due process rights. The district court denied the patient's motion. The court found that the use of a polygraph examination as part of a sex offender treatment program did not violate the patient's due process rights, even if the patient was subject to more restrictive conditions solely because of his refusal to participate in the polygraph examination. The court held that even if the treatment learning plan offered to the sex offender was inappropriate, the sex offender's due process rights were not violated. According to the court, confining the sex offender at a state detention facility did not violate his due process rights, absent allegations that his conditions of confinement were different from those imposed on any other civil detainee at the detention facility. (Wisconsin Resource Center)

U.S. Appeals Court
SUICIDE
MEDICAL CARE

Woodward v. Correctional Medical Services, 368 F.3d 917 (7th Cir. 2004). The administratrix of the estate of a pretrial detainee who had committed suicide in a county jail brought a § 1983 action against a private contractor hired by the county to provide medical and mental health services at the jail, and against the contractor's agents. The district court entered judgment on a jury verdict against the contractor and the contractor's social worker, awarding \$250,000 in compensatory damages and \$1.5 million in punitive damages, and denied motions for summary judgment as a matter of law. The contractor appealed. The appeals court affirmed, finding that the contractor's employee's lack of training and carelessness were relevant toward establishing

deliberate indifference, even though the employee herself was not found liable. The court held that the fact that no previous suicides had occurred in the jail did not preclude the contractor's liability. According to the appeals court, the district court did not abuse its discretion by letting the punitive damages award stand. The estate proffered evidence that the contractor failed to adequately train its employees and condoned employees' failure to complete mental health intake forms and the social worker's practice of challenging suicide watch referrals. According to the court, employees knew that the detainee was suicidal but failed several times to place him on suicide watch, in violation of its own written procedures. The court found that evidence of an alcohol-impaired nurse, intake backlogs, and claims of delayed or denied medical care to other inmates was relevant to the contractor's state of mind and was therefore admissible. (Lake County Jail, Illinois)

2005

U.S. Appeals Court
USE OF FORCE
RESTRAINTS

Agster v. Maricopa County, 406 F.3d 1091 (9th Cir. 2005). The parents and the representative of the estate of an inmate who died in jail brought an action against the county in state court. The case was removed to federal court, where the county was ordered to produce a mortality review report that was conducted by a private health provider. The county appealed the district court decision. The appeals court upheld the district court order. The appeals court held that no protected privilege of peer review protected the mortality review. The inmate had been arrested and taken to a county jail where he was placed in a restraint chair. His respiration decreased and he developed an irregular heartbeat. Attempts were made to resuscitate him and he was transported to a hospital where he was placed on life support. He was pronounced dead three days later. (Maricopa County Sheriff's Office, Arizona)

U.S. District Court
RELEASE

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
RESTRAINTS
USE OF FORCE

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. District Court
PRIVACY
RESTRAINTS
USE OF FORCE

Birdine v. Gray, 375 F.Supp.2d 874 (D.Neb. 2005). A pretrial detainee brought a § 1983 action against jail employees claiming violation of his right to be free of punishment and his right to privacy. The district court dismissed the complaint. The court held that the detainee did not have a privacy right that would allow him to cover the window of his cell with towels, noting that the cell contained a privacy wall which allowed for partial privacy while using the toilet. The court found that the inmate's privacy rights were not violated when he was moved from one cell to another, naked. The inmate had removed all of his clothes and refused to put them back, and jail staff moved him unclothed to a cell closer to their station where he could be constantly watched. The court found no violation when the inmate was placed in a restraint chair because he was confined as a last resort when all other restraint options proved ineffective. According to the court, the detainee was monitored, the chair was not used to punish, and the detainee was offered the opportunity to be released in return for acting appropriately. The court found no due process violation when a stun gun was applied to the detainee two times, after he engaged in violent actions as jail officers attempt to settle him into a cell to which he was being transferred. The court found that the detainee's conduct was an immediate threat to institutional safety, security and efficiency. (Lancaster County Jail, Nebraska)

U.S. Appeals Court
CONDITIONS
MEDICAL CARE
MEDICATION

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
MEDICAL CARE
USE OF FORCE

Bozeman v. Orum, 422 F.3d 1265 (11th Cir. 2005). The representative of the estate of a pretrial detainee who had died during a struggle with county correctional officers brought a § 1983 suit alleging use of excessive force and deliberate indifference to medical needs. The district court granted summary judgment for several defendants but denied summary judgment for corrections officers. The officers appealed. The appeals court affirmed. The court held that the officers' alleged conduct in subduing the detainee was actionable as excessive force and that the officers were not entitled to qualified immunity. The court also held that the officers' alleged conduct following the struggle—waiting 14 minutes before summoning medical assistance even though the detainee appeared lifeless—was actionable as deliberate indifference and the officers were not entitled to qualified immunity. The court noted that the law defining excessive force was clearly established at the time of the incident, and the officers should have known that continuing to apply force to the unruly detainee after he had given up his struggle was not acceptable. (Montgomery County Detention Facility, Alabama)

U.S. District Court
CONDITIONS
MEDICAL CARE

Brookins v. Williams, 402 F.Supp.2d 508 (D.Del. 2005). A former pretrial detainee brought a § 1983 action against a prison warden, alleging violation of his Eighth Amendment rights. The district court granted summary judgment in favor of the warden. The court held that forcing the detainee to sleep on the floor, without a mattress, next to a toilet was not punishment and therefore did not violate his due process rights, where the conditions served a legitimate governmental purpose of housing inmates in an overcrowded facility and only lasted for a period of five days. The court found that the warden was not deliberately indifferent to the serious medical needs of the detainee, where the inmate was given all of his medication within a day of being booked, except for medication that the inmate was unable to name for prison medical staff. The detainee was given tests to determine what he would need to treat his detected conditions. (Howard R. Young Correctional Institution, Delaware)

U.S. District Court
CONDITIONS

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. Appeals Court
RELEASE
LENGTH

Bryant v. City of New York, 404 F.3d 128 (2nd Cir. 2005). Detainees who had been arrested for disorderly conduct brought a § 1983 action alleging a substantive due process violation as the result of overlong detention. The district court granted summary judgment for the defendants and the detainees appealed. The appeals court affirmed. The court held that the police officers' decision to detain the arrestees overnight rather than issuing desk appearance tickets (DATs) which were authorized under state law, was not objectively unreasonable. The court noted that DATs were discretionary rather than required, and the length of detention was well within the range of flexibility allowed to states. According to the court, the detainees were members of a difficult-to-control crowd that demanded substantial police manpower, and the additional paperwork required for DATs would have drawn officers off of the streets. The detainees had been part of a demonstration protesting antigay violence. (New York City Police Department)

U.S. District Court
USE OF FORCE
CONDITIONS
CELL CAPACITY

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. The court found a potential violation in the alleged conduct of officers during his interrogation. The officers allegedly choked and beat the detainee, who was restrained and posed no threat to anyone's safety, punched him in his gunshot wound, and slammed him into a door several times telling him they wanted to make him suffer as the victim in a robbery and shooting had suffered. The court held that the officers were not entitled to qualified immunity on the excessive force claim. (Pike County Jail, Alabama)

U.S. District Court SEARCHES	<i>Calvin v. Sheriff of Will County</i> , 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 FAILURE TO PROTECT	<i>Collins v. County of Kern</i> , 390 F.Supp.2d 964 (E.D.Cal. 2005). An inmate brought a § 1983 action against a county and a sheriff's department, stemming from an attack by other inmates while he was incarcerated. A fight had erupted in a jail housing unit between Black and Hispanic inmates and the inmate was injured. The district court granted summary judgment in favor of the defendants. The court held that inmate failed to establish that department officials knew of and disregarded a risk of attack when they moved the inmate to another jail unit. At the time of the move, the inmate did not inform anyone of safety concerns or segregation issues due to a purported gang affiliation. The court found that officials took prompt action to stop the fight, secure the area, and ensure prompt medical treatment for the inmate. The court noted that a "prison official need not believe to [a] moral certainty that one inmate intends to attack another at [a] given place at time certain before he is obligated to prevent such an assault." According to the court, before being required to take action, an official must have more than a mere suspicion that an attack will occur. (Lerdo Pre-Trial Facility, Kern County, California)
U.S. Appeals Court SUICIDE	<i>Cook Ex Rel. Tessier v. Sheriff of Monroe County</i> , 402 F.3d 1092 (11 th Cir. 2005). The personal representative of the estate of a pretrial detainee who committed suicide while incarcerated brought an action against a sheriff, in his official capacity, asserting claims for deliberate indifference to the detainee's medical needs in violation of § 1983, negligent training and supervision of jail employees, and vicarious liability for the employees' negligence. The district court excluded the representative's expert witness testimony, precluded reference to other suicides at the facility, and granted judgment as a matter of law for the sheriff. The representative appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the district court acted within its discretion in excluding evidence of other suicides at the jail. The court found that the plaintiff failed to establish that the detainee's suicide was foreseeable to the sheriff and therefore any deficiencies in the sheriff's training or supervision did not rise to the level of deliberate indifference. But the court held that evidence was sufficient to support a jury verdict on the plaintiff's claim that the sheriff was vicariously liable under state law for employees' alleged negligence. The court noted that the detainee made two written requests to see a psychiatrist, one on each of the two days immediately preceding his suicide, and that the detainee stated in one request that he was "mentally sick" and asked to see the psychiatrist "as soon as possible." Three deputies observed the detainee as nervous and anxious, and one specifically observed the detainee apparently having an anxiety attack and complaining of chest pains. (Monroe County Detention Center, Florida)
U.S. Appeals Court PROTECTION	<i>Copeland v. County of Macon, Ill.</i> , 403 F.3d 929 (7 th Cir. 2005). A former pretrial detainee who had been beaten by another inmate sued a county seeking indemnification under the "scope of employment" provision of the state's local government tort immunity statute. The detainee alleged that a county correctional officer recruited and encouraged other inmates to commit the beating. The district court jury awarded the detainee \$400,000 and the county appealed. The appeals court reversed, finding that the corrections officer was not acting within the scope of his employment within the meaning of the tort immunity statute, and that the county jail, not the citizens of the county, was the officer's employer. (Macon County Jail, Illinois)
U.S. Appeals Court PROTECTION CROWDING STAFFING	<i>Crow v. Montgomery</i> , 403 F.3d 598 (8 th Cir. 2005). A pretrial detainee brought a § 1983 and a § 1988 action against officials at a county detention center, alleging violations of the Fifth, Eighth and Fourteenth Amendments. The district court denied the officials' motion for summary judgment based on qualified immunity, and the officials appealed. The appeals court reversed and remanded. The court held that the detainee failed to establish that officials disregarded any known risks to the detainee's health or safety while he was incarcerated. According to the court, the detainee's allegations regarding inadequate records, overcrowding, poor supervision, and understaffing showed at most that the officials were negligent, and did not rise to the level of deliberate indifference. (Faulkner County Detention Center, Arkansas)
U.S. District Court SUICIDE	<i>Cruise v. Marino</i> , 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. Appeals Court
CONDITIONS
JUVENILES
SEPARATION
PROGRAMS

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. Appeals Court
BAIL

Dobrek v. Phelan, 419 F.3d 259 (3rd Cir. 2005). A commercial bail bondsman brought an action against the clerk of a state superior court, contending that the clerk wrongfully removed his name from the bail bondsman registry following the discharge of his bail bond debts in a chapter 7 bankruptcy proceeding. The district court dismissed the action and the bail bondsman appealed. The appeals court affirmed, finding that the judgments against the commercial bail bondsman which arose from bond debts were "forfeitures," excepted from discharge in a chapter 7 proceeding. The court noted that the judgments against the bondsman arose from the failure of criminal defendants to appear in court and the bondsman's nonperformance of his duty to produce those defendants. (New Jersey)

U.S. District Court
STAFFING
SUICIDE
ATTEMPT
SUPERVISION

Drake ex rel. Cotton v. Koss, 393 F.Supp.2d 756 (D.Minn. 2005). The legal guardian for an incapacitated person, who attempted to commit suicide while he was a pretrial detainee in a county jail, and the state human services department sued a county and various officials under § 1983 alleging Eighth and Fourteenth Amendment violations and a state law claim for negligence. The district court granted summary judgment in favor of the defendants. The court held that the officials did not act with deliberate indifference in failing to recognize and respond to the risk that the detainee was suicidal, even assuming there was a 72-minute gap between the last time the detainee was checked and when he was found. According to the court, the officials did not know that the detainee presented a substantial risk of suicide, based on a physician's reports describing the detainee's depression as only "mild" or "situational." There was nothing in the reports to suggest that anti-anxiety medication would have helped prevent the detainee's depression and attempted suicide. The court held that the county was not shown to have any official policy or custom of overcrowding or understaffing that played a role in the detainee's attempted suicide. The court held that the officials acted with discretion with respect to their placement and treatment of the detainee, and in accordance with a physician's orders, and they promptly took the detainee to the hospital when they discovered he had harmed himself, and were therefore entitled to official immunity as to the negligence claims. (McLeod County Jail, Minnesota)

U.S. District Court
MEDICAL CARE
RESTRAINTS
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
SUICIDE

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 found that summary judgment was precluded by material issues of fact as to whether a jail commander ratified or encouraged the practice of “pencil-whipping,” which involved making false entries on records showing observations of cell occupants that were not actually made. The court held that summary judgment was precluded by material issues of fact as to whether the county knowingly established a policy of providing an inadequate number of cell inspections and of falsifying logs showing completion of cell inspections, creating a substantial risk of harm to suicide-prone cell occupants. The court ruled that the sheriff and jail commander had immunity under state law from liability claims that there were holes in the bunks that could be used for death by hanging, where use of the bunk holes for suicide was not foreseeable. 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
FAILURE TO
PROTECT
MEDICAL CARE
SUICIDE

Estate of Bradich v. City of Chicago, 413 F.3d 688 (7th Cir. 2005). The estate of an arrestee who hung himself while in a county jail brought an action alleging failure to protect the arrestee from the risk of suicide, and failing to react properly when the arrestee was discovered hanging. The district court granted summary judgment in favor of the defendants and the plaintiff appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that jail staff did not display deliberate indifference to a substantial risk of suicide by putting the intoxicated arrestee in a regular cell and allowing him to keep his civilian clothes, rather than placing him on a suicide watch or sending him to a hospital until he sobered up. The arrestee had been arrested numerous times had never attempted to injure himself, and he did not have a mental health history that implied any disposition toward suicide. The court found that the city could not be liable for jail staffs’ failure to comply with a rule requiring close monitoring of intoxicated prisoners, where the city’s policy requiring staff to check intoxicated prisoners every 15 minutes was adequate and there was no allegation that the city systematically failed to enforce its policies. The court noted that the record did not imply that the suicide rate in the city’s jail was abnormally high. The court held that summary judgment was precluded by a genuine issue of material fact as to whether three members of the jail staff acted with deliberate indifference by failing to seek outside assistance for ten minutes after finding the arrestee hanging in his jail cell. The court asked “Why did it take *all three* officers to provide unhelpful assistance? Two might have done what they could, while the third phoned for help (which would take only a minute) and then rejoined the others. Why did the two officers who lacked CPR training think that they should shout at a hanging prisoner rather than call for help? Why did the officer with CPR training not use his skills?” The arrestee had been booked and put in a cell at the city police stationhouse. (City of Chicago, Illinois)

U.S. Appeals Court
MEDICAL CARE

Estate of Carter v. City of Detroit, 408 F.3d 305 (6th Cir. 2005). The estate of a detainee who died while in custody brought a state court § 1983 action that was removed to federal court. The district court denied a police officer’s motion for summary judgment and the officer appealed. The appeals court affirmed, finding that summary judgment was precluded by genuine issues of material fact as to whether the officer was deliberately indifferent to the detainee’s serious medical needs. The detainee suffered a heart attack while in custody and was pronounced dead on arrival at the hospital. Shortly after the detainee was booked she told the officer that she was having chest pains and needed to go to the hospital, and that she had not taken her heart medicine for three days. Other detainees testified that the detainee cried loudly for help and continued to complain that her chest hurt for several hours before another officer called for a car to take her to the hospital. (Detroit Police Department, Michigan)

U.S. Appeals Court
USE OF FORCE

Estate of Moreland v. Dieter, 395 F.3d 747 (7th Cir. 2005). Family members of a county jail detainee who died in custody, brought a § 1983 action alleging the use of unnecessary and excessive force. The district court entered judgment, upon jury verdict, in favor of the family members and against county deputies, and awarded \$29 million in compensatory damages, and \$27.5 million in punitive damages. The parties appealed. The appeals court affirmed, finding that the punitive damages award was not excessive, where evidence showed that the deputies threw the detainee’s head against a concrete wall, discharged a can of pepper spray into his face when he was fully restrained, and repeatedly assaulted him, without attending to the detainee’s medical needs. The detainee died of a fatal hematoma caused by one of the head traumas inflicted by the deputies. The deputies lied to a jail nurse about the detainee’s injuries and filed

false reports to conceal their wrongdoing. The court held that neither multiple prior incidents involving the use of pepper spray, nor alleged jail overcrowding, established that a sheriff was deliberately indifferent to a substantial risk of harm to the detainee. The detainee had been admitted to jail after he was arrested for driving under the influence. Shortly after his admission to the jail, the detainee provoked a confrontation with another detainee by directing racial slurs at him. Jail staff responded to the altercation with excessive force. (St. Joseph County Jail, Indiana)

U.S. Appeals Court
SUPERVISION
STAFFING
FAILURE TO
PROTECT

Fisher v. Lovejoy, 414 F.3d 659 (7th Cir. 2005). A pretrial detainee brought a pro se § 1983 Fourteenth Amendment action against a corrections officer, alleging that the officer failed to protect the detainee from assault by other inmates of the facility. The district court entered summary judgment for the officer and the detainee appealed. The appeals court affirmed. The court held that the fact that the officer witnessed the stabbing of the detainee by another inmate did not render the officer deliberately indifferent to a second assault on the detainee that was perpetrated minutes later by several inmates. The court noted that the officer entered the room where the stabbing had occurred and attempted to restore order, found and confiscated a knife near the spot where he had observed the stabbing, which permitted the inference that the first assailant was unarmed. The officer did not identify the inmates who mounted the second attack as participants in the first attack. The court held that the officer reasonably responded when he witnessed the stabbing of the detainee, precluding liability. At the time of the assaults, the officer had been assigned to “cross-watch” two separate housing units, one of which housed 48 inmates. He was required to walk back and forth between the two units’ dayrooms. When the first assault began the victim ran toward the locked dayroom door and saw the officer outside. He pushed an intercom button near the door and summoned help. The officer immediately called for assistance but was not able to enter the dayroom until it was unlocked by a central control post. By the time the door opened, approximately twenty officers were waiting to enter. (Cook County Department of Corrections)

U.S. District Court
FALSE IMPRISONMENT

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
MEDICAL CARE

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
RELEASE
BAIL

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. Appeals Court
PROTECTION

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
SUICIDE
MEDICAL CARE
SUPERVISION

Gray v. City of Detroit, 399 F.3d 612 (6th Cir. 2005). The personal representative of the estate of a pretrial detainee who had committed suicide while in a police cell at a hospital brought a § 1983 action alleging inadequate medical treatment and failure to adequately monitor the detainee. The district court granted summary judgment for the defendants and the personal representative appealed. The appeals court affirmed. The court held that the city could not be held liable for deliberate indifference given the absence of an obvious and clear suicide risk. The court concluded that an officer enjoyed qualified immunity because the detainee's pre-suicide behavior did not give rise to a duty to monitor for suicide. The detainee had registered only physical complaints and had engaged in no self-injurious behavior at the hospital. The officer was not aware of, and could not be charged with knowledge of the detainee's behavior prior to reaching the hospital, according to the court. The court found that the city could not be held liable for failure to adequately train its officers regarding suicides, where officers complied with city policies regarding medical care, including screening by an intake nurse at the hospital, and no previous inmate suicides had occurred in the hospital cells. Although the detainee had been destructive before he was transferred to the hospital--ripping a phone from his cell wall and breaking a sink and toilet-- the court noted that none of his destructive acts had been self-directed. (Detroit Receiving Hospital, Michigan)

U.S. Appeals Court
SEARCHES
PUNISHMENT
FAILURE TO
PROTECT

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
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
SEARCHES

Hicks v. Moore, 422 F.3d 1246 (11th Cir. 2005). A former pretrial detainee brought an action challenging strip search practices at a county jail. The district court denied immunity for the defendants and they appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the mere fact that a detainee was to be placed in the jail's general population did not justify a strip search, but that reasonable suspicion existed for the plaintiff's strip search because he had been charged with a family violence battery offense. The court noted that battery is a crime of violence that would permit the inference that the detainee might be concealing weapons or contraband. (Habersham County Jail, Georgia)

U.S. District Court
MEDICAL CARE

Hollenbaugh v. Maurer, 397 F.Supp.2d 894 (N.D. Ohio 2005). The estate of a pretrial detainee sued a city, county, and jail officials under § 1983 alleging the defendants violated the detainee's constitutional rights by failing to provide necessary medical care during his arrest and detention. 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 material issues of genuine fact as to whether jail officials who dealt directly with the detainee and who had the opportunity to closely observe him, knew that the detainee was seriously ill. The court noted that although the detainee was allegedly intoxicated when he was arrested and brought to the county jail, he was adamant about his need for medical attention and his belief that he was suffering from a serious medical condition. The detainee died from a heart attack within a few hours of his arrest. (Wayne County Jail, Ohio)

U.S. Appeals Court
DUE PROCESS
SEGREGATION

Holly v. Woolfolk, 415 F.3d 678 (7th Cir. 2005). A pretrial detainee placed in segregation for two days without a prior hearing brought a § 1983 action for damages against correctional officers. The district court dismissed the case and the detainee appealed. The appeals court affirmed. The appeals court held that the placement of the detainee did not violate his due process rights, where the officers had reason to believe that the detainee was disrupting a jail headcount, which would interfere with jail security and discipline. The court noted that the detainee was given a hearing upon his release from segregation and that he was returned to the general population. The court expressed confusion about “what damages he could prove for being confined to a cell for two days rather than being free to roam the dangerous general-population area of the jail- and dangerous it is.” (Cook County Jail, Illinois)

U.S. Appeals Court
CROWDING
CONDITIONS
CELL CAPACITY

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
USE OF FORCE
PRE-SENTENCE
DETENTION

Jeanty v. County of Orange, 379 F.Supp.2d 533 (S.D.N.Y. 2005). A county jail inmate whose arm was broken in an altercation with corrections officers sued the officers and the county, alleging excessive use of force. 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 fact issues as to whether excessive force was applied when the officers allegedly beat the prisoner in his cell to the point of breaking his arm, and wantonly ignored his cries of pain and pleas that they desist. The court also found that summary judgment was precluded by issues of fact as to whether the officers were entitled to qualified immunity. According to the court, the conviction of the inmate for assaulting an officer, arising out of the same incident, did not preclude the inmate’s claim. The court held that the Eighth Amendment, not the Fourteenth Amendment, applied to this action because the inmate had been convicted of arson and was awaiting sentencing. (Orange County Jail, New York)

U.S. District Court
WORK
FALSE IMPRISONMENT

Johnson v. Board of Police Com’rs, 370 F.Supp.2d 892 (E.D.Mo. 2005). Homeless persons brought a § 1983 action against a city police captain and a city, claiming that their Fourth, Thirteenth and Fourteenth Amendment rights were violated when they were periodically removed from a downtown area. After the district court entered a preliminary injunction barring the continuation of the alleged harassment, the defendants moved to dismiss. The district court denied the motions. The court held that the Fourth Amendment rights of the homeless persons who were allegedly wrongfully detained were further violated when jailers ordered them to perform manual labor or risk continued confinement, before they were charged with or found guilty of the commission of a crime. (City of St. Louis, St. Louis Board of Police Commissioners)

U.S. Appeals Court
MEDICAL CARE

Johnson v. Karnes, 398 F.3d 868 (6th Cir. 2005). A detainee who had severely cut his hand immediately prior to his arrest brought a civil rights action alleging violation of his right to adequate medical care during his incarceration. The district court entered summary judgment in favor of all defendants, and the detainee appealed. A divided appeals court affirmed in part, reversed in part and remanded. The court held that summary judgment was precluded due to genuine issues of fact as to whether a jail doctor had knowledge of the detainee’s fully severed tendons, whether the doctor disregarded the risks inherent in delayed tendon surgery, and whether the doctor acted under the color of state law as an employee of a private contractor. In his deposition, the detainee testified that he remembered an emergency room doctor telling him that his tendons had been completely severed and that he was to return for surgery within three to seven days. (Franklin County Jail, Ohio)

U.S. District Court
USE OF FORCE

Johnson v. Wright, 423 F.Supp.2d 1242 (M.D.Ala. 2005). An arrestee sued an arresting officer, a volunteer riding with the officer, and county jail officers, claiming violation of his Fourth Amendment protections against false arrest and excessive force. The officer, volunteer and jail officers moved for summary judgment. The district court held that the jail officers were not

entitled to qualified immunity due to material issues of fact, as to whether the jail officers beat the arrestee without provocation while he was in his cell. According to the arrestee, officers dragged him out of his cell and put him in some type of harness chair, and he was in handcuffs during the entire time he was being beaten at the jail and he was still in handcuffs when he was strapped into the harness chair. The arrestee alleged that officers continued to beat him after he was strapped into the harness chair. (Chilton County Jail, Alabama)

U.S. District Court
DUE PROCESS
ACCESS TO
COURT
INITIAL
APPEARANCE

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. District Court
FAILURE TO
PROTECT

Little v. Shelby County, Tenn., 384 F.Supp.2d 1169 (W.D.Tenn. 2005). An inmate brought a § 1983 action against a county and sheriff, alleging that he had been raped in jail in violation of his Eighth Amendment rights. The county stipulated to liability and an order of injunctive relief was issued. Later, the district court found the county in contempt, and the county sought to purge itself of the contempt finding. The court entered a purgation order. The court held that the county and sheriff complied with the Eighth Amendment and purged themselves of contempt through the adoption of a structured reform to correct conditions that included violence, rape and gang control among inmates. In reaching its conclusion, the court considered whether officials took all reasonable steps within their power to comply with the order, which included whether they marshaled their own resources, asserted their highest authority, and demanded the results needed from subordinate persons and agencies in order to effectuate the course of action required by the order. The court praised the county, noting that it had adopted a focused, systemic and information-driven structural reform based on critical exert assessment of essential institutional functions. The county adopted a 14-point remedial scheme that included implementing direct supervision management of inmate cellblocks, improving population management, collecting and utilizing data, and installing an objective inmate classification system. (Shelby County Jail, Tennessee)

U.S. Appeals Court
LENGTH
INTAKE
SCREENING

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
USE OF FORCE

Manier v. Cook, 394 F.Supp.2d 1282 (E.D.Wash. 2005). A county jail inmate brought a § 1983 action against jail officers, alleging cruel and unusual punishment based on the use of excessive force. The district court entered summary judgment in favor of the defendants. The court held that the use of force was within the scope of the jail's policy for maintaining and restoring order. According to the court, the inmate had refused to return to his cell as ordered and he had verbally abused jail officers. An officer fired two Taser gun shots rather than one continuous trigger shot, and the officer decided not to fire a third short. The court noted that the inmate suffered only a minor injury and that he had a history of self harm. (Spokane County Jail, Washington)

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 founding hanging four minute 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. District Court
SUICIDE

Martin v. Somerset County, 387 F.Supp.2d 65 (D.Me. 2005). The representative of the estate of a county jail inmate who hanged himself in his cell, sued the county, sheriff and jail officials alleging violation of the inmate's federal and state rights. The district court granted summary judgment in part for the defendants, and denied it in part. The court held that summary judgment was precluded by fact issues as to whether jail officials displayed deliberate indifference to the inmate in violation of the Eighth Amendment, prior to the hanging. The court noted that it was necessary to determine if a jail shift supervisor and a control room officer subjectively knew that the inmate was suicidal and whether they unreasonably disregarded the risk. The court found that an officer who merely assisted in cutting down the inmate was not liable for deliberate indifference, where he brought a seat belt cutter to the cell on orders of the shift supervisor, and when it failed to release the sheet the inmate had used to hang himself, he brought scissors. The court found officials did not show deliberate indifference after the hanging when they did not apply cardio-pulmonary resuscitation, noting that the inmate was warm and appeared to be breathing, and it was only a few minutes before an emergency medical team arrived. The court held that the county did not show deliberate indifference to the suicide-prone inmate when it established a suicide prevention protocol, noting that the thrust of this claim was that the officials failed to *follow* the protocol in supervising the inmate. (Somerset Co. Jail, Maine)

U.S. District Court
BAIL

McLaurin v. New Rochelle Police Officers, 368 F.Supp.2d 289 (S.D.N.Y. 2005). An arrestee brought a § 1983 action against a county, alleging constitutional and state law violations after being released on bail. The district court dismissed the case. The court held that the arrestee who alleged adverse conditions of release on bail, failed to establish a policy or custom of the county that deprived him of his civil rights. The court noted that the court system, rather than county government, was responsible for setting bail. The arrestee alleged that he was forced, as a condition of bail, to attend a domestic violence program, and that he and another black man were the only persons who were at the program as a condition of bail. (Westchester County, New York)

U.S. District Court
MEDICAL CARE

McRoy v. Sheahan, 383 F.Supp.2d 1010 (N.D.Ill. 2005). A pretrial detainee brought a civil rights suit against jail authorities and a municipality, alleging deliberate indifference to his serious medical needs. The district court granted summary judgment in favor of the defendants. The court held that jail authorities were not deliberately indifferent to the presence of tuberculosis bacteria in the jail in violation of the Fourteenth Amendment rights of the detainee who contracted a latent form of tuberculosis. The court noted that the jail followed the screening, isolation and treatment policies of the Center for Disease Control and the American Thoracic Society. The court also found no deliberate indifference in the treatment of the detainee because the detainee suffered no detrimental effects as the result of an alleged delay in treatment, or the missing of four doses of medication during the treatment process. (Cook County Department of Corrections, Illinois)

U.S. District Court
JUVENILE
CLASSIFICATION
PROTECTION

Merrriweather 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
MEDICAL CARE
TRAINING

Miller v. Calhoun County, 408 F.3d 803 (6th Cir. 2005). The sister of a detainee, who died of a brain tumor while in pretrial custody in a county facility, brought a wrongful death action under § 1983 alleging deliberate indifference to the detainee's medical needs and gross negligence. The district court granted summary judgment for the defendants and the sister appealed. The appeals court affirmed. The court held that county did not have a custom or policy of deliberate

indifference so as to support a § 1983 claim, given that there was no evidence of a clear and consistent pattern of mistreatment of detainees, and that the shift commander followed the county's policy and contacted the on-call doctor. The court found that the shift commander did not act with deliberate indifference, noting that he questioned the detainee about his fall in the cell, promptly consulted the on-call physician, and placed the detainee under observation. The court noted that the sheriff had appointed a training coordinator for the facility, sought accreditation for the facility, requested bids for medical services, changed medical providers, formulated a policy for medical care at the facility, and initiated an investigation into the detainee's death. The 44-year-old detainee had told facility staff at the time of admission that he had sustained a head injury a month earlier. (Calhoun County Correctional Facility, Michigan)

U.S. Appeals Court
JUVENILES
FALSE IMPRIS-
ONMENT

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
USE OF FORCE

Niemyski v. City of Albuquerque, 379 F.Supp.2d 1221 (D.N.M. 2005). An arrestee brought a state court action against a city, alleging that police officers committed a civil rights violation in connection with his arrest and detention. The action was removed to federal court, where the district court granted summary judgment for the city and remanded state law claims. The court held that the arrestee failed to show that a municipal custom or policy contributed to the alleged violations. The court noted that the city's policy manual stated that staff were required to receive training in the legitimate use of force and restraints, and that no correctional officer was permitted to work with inmates until and unless such training was successfully completed. The arrestee had been placed in a holding cell. When he was denied the opportunity to make a telephone call he protested by refusing to have his photograph taken. Because of his resistance, jail officers used force to position him to take his photograph. The arrestee and the officers later traded racial insults. He was taken up stairs rather than an elevator, and he fell down and alleged that officers punched and kicked him resulting in an injury to his ribs. He was released less than 24 hours after his arrest on a warrant. (Bernalillo Co. Detention Center, New Mexico)

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. Appeals Court
USE OF FORCE
MEDICAL CARE

Owensby v. City of Cincinnati, 414 F.3d 596 (6th Cir. 2005). The estate of a detainee who died in the course of a police encounter sued officers and others, asserting § 1983 and state law claims. The district court resolved certain claims on summary judgment and denied the officers qualified immunity. On appeal, the court held that the officers were not entitled to immunity on the claim that the officers denied the detainee adequate medical care. The court found that the officers had time to fully consider the potential consequences of their conduct during the six minutes that the detainee was denied medical care after being taken into custody, given that the officers had time to do such things as greet each other, prepare for their superiors' arrival, pick up dropped items, and comment on the apparent severity of the detainee's injuries. The court applied the traditional deliberate standard of culpability rather than the heightened standard requiring malice and intent to harm. According to the court, each officer viewed the detainee in significant

physical distress, but made no attempt to summon or provide medical care until several minutes later when a sergeant checked on the detainee and discovered that he was not breathing. The detainee's death had been ruled a homicide resulting from the police officers' restraint attempts. The estate alleged that one officer pulled the arrestee's head up when he was on the ground and drove his knees into the arrestee's back. The estate also alleged that an officer twice sprayed mace directly into the arrestee's eyes and nose from a distance of six inches, although police policy directed a distance of five to ten feet. (City of Cincinnati, Village of Golf Manor, Ohio)

U.S. District Court
FAILURE TO
PROTECT
MEDICAL CARE

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. Appeals Court
SEGREGATION
ACCESS TO
COURT
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 detainee was first placed in segregation because the center lacked bed space in the general population, and he remained in segregation due to his plot to escape from his previous pretrial detention facility. According to the court, the detention center has a legitimate interest in segregating individual inmates from the general population for nonpunitive reasons, including threats to the safety and security of the institution. The court found that the detainee did not suffer an actual injury as the result of the violation of his right of access to the courts. The inmate was not provided with access to a law library and the lawyer who assisted him would only retrieve case law when a specific citation was provided. The detainee did not allege that he had missed court dates, been unable to make timely legal filings, been denied legal assistance to which he was entitled, or lost a case which could have been won. 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. District Court
SUICIDE
MENTAL
HEALTH
SUPERVISION

Perez v. Oakland County, 380 F.Supp.2d 830 (E.D.Mich. 2005). The father and personal representative of the estate of an inmate brought a suit under § 1983, alleging that the defendants violated the inmate's Eighth Amendment rights by failing to provide appropriate mental health treatment or monitoring when the inmate was being held in the county jail, leading to the inmate's suicide. The district court held that the county did not act with deliberate indifference in allowing the inmate caseworker, who allegedly lacked sufficient medical background or expertise, to make decisions affecting the health care needs of the inmate. The court noted that the challenged practice was widespread, with the "vast majority" of county jails allowing employees who were not psychiatrists, but who had been trained in suicide detection and prevention, to make determinations whether inmates were suicidal or potentially suicidal. The court found that the father failed to establish that deputies actually perceived that the inmate faced a substantial risk of serious harm if they conducted their rounds 16 minutes further apart than mandated under jail policy. The court held that the father failed to establish that a deputy actually perceived a risk of placing the inmate in a single cell. The inmate had been placed in a single cell and no special watch status had been ordered by the inmate caseworker, who was responsible for cell assignments. The court held that the caseworker was entitled to qualified immunity because it was not established at the time of the inmate's suicide that the caseworker's actions of making determinations concerning the inmate's cell assignments, without first consulting the inmate's physician or psychiatrist, would violate the inmate's Eighth Amendment rights. According to the court, the jail psychiatrist did not disregard a known and serious medical need, where evidence demonstrated that even though the psychiatrist knew that the inmate was not taking his medication, he determined through his

own direct evaluation that the inmate was suicidal. The court found that allegations that the sheriff failed to ensure that the county's deputies enforced and followed the law could not sustain a § 1983 claim absent evidence that the sheriff himself engaged in active unconstitutional behavior by directly participating, encouraging, authorizing, or acquiescing in the allegedly offending conduct of the sheriff's deputy. (Oakland County Jail, Michigan)

U.S. District Court
FALSE
IMPRISONMENT
RELEASE

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
RELEASE

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 denied qualified immunity to the two sheriffs who were defendants, on claims that they continued detention beyond scheduled release dates, noting that the detainees claimed they were over-detained for durations ranging from one to ten days, with an average over-detention period of 3.9 days. According to the court, the detainees stated a claim against the county under § 1983 with their allegations that the county defendants had actual knowledge that the challenged practices at the county jail were unconstitutional. 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. Appeals Court
PROTECTION
SEPARATION
COMMISSARY
CLASSIFICATION

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
CONDITIONS
SENTENCE
REDUCTION

Rickenbacker v. U.S., 365 F.Supp.2d 347 (E.D.N.Y. 2005). After pleading guilty to credit card fraud and being sentenced to 24 months of imprisonment, a defendant moved to vacate, set aside, or correct the sentence. The district court denied the motion. The court held that defense counsel was not deficient in failing to move for a downward departure of the defendant's sentence based on perceived hardships the defendant endured while being detained prior to sentencing. According to the court, the alleged substandard conditions, consisting of being served food that the defendant believed had been accessed by rodents, and not being provided with a fully stocked library, were not conditions that rose to the level that would warrant a downward departure. The defendant had been served bread that rodents had apparently partially eaten,

and in one instance a mouse had created a tunnel inside of the bread. (Nassau County Correctional Center, New York)

U.S. District Court
SEGREGATION
CLOTHING
CONDITIONS

Rose v. Saginaw County, 353 F.Supp.2d 900 (E.D.Mich. 2005). Twenty-two pretrial detainees sued a county, sheriff's department, sheriff and individual police officers, challenging the county's policy of housing uncooperative and disruptive detainees naked in administrative segregation. The district court held that the policy violated the detainees' due process rights and their rights to be free of unreasonable seizure. According to the court, the policy was an exaggerated response to the county's concerns about suicide, officer safety, and administrative costs. The court declined to issue a preliminary injunction, and granted qualified immunity to several of the defendants because the detainees' right not to have their clothes removed was not clearly established at the time of the incidents. The court held that the forced removal of clothing by an officer of the opposite sex was not justified by safety and security concerns. (Saginaw County Jail, Michigan)

U.S. Appeals Court
RELEASE
RELEASE-
CONDITIONS
FALSE IMPRIS-
ONMENT

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)

U.S. District Court
BAIL
RELEASE

Sizer v. County of Hennepin, 393 F.Supp.2d 796 (D.Minn. 2005). An arrestee sued a county and county officials asserting a state claim for false imprisonment and violations of state and federal constitutional rights. The arrestee complained that his 10½ hour detention pending release on bail was unreasonable. The court granted summary judgment in favor of the defendants. The court held that the 10½ hour detention was objectively reasonable and not unconstitutional. The court found that the arrestee failed to prove a continuing, widespread, persistent custom or practice of unconstitutional over-detentions, despite an alleged sign posted in a waiting area that alerted inmates that they could expect delays of up to eight hours in processing their releases. The county responded that the arrestee's processing was delayed by problems with its security count, which halted out-processing of detainees for two hours. (Hennepin County Adult Detention Center, Minnesota)

U.S. Appeals Court
ASSESSMENT OF
COSTS
DUE PROCESS

Slade v. Hampton Roads Regional Jail, 407 F.3d 243 (4th Cir. 2005). A pretrial detainee sued a jail, challenging the constitutionality of a one-dollar per day charge that was intended to partially defray the costs of incarceration. The district court dismissed the complaint and the detainee appealed. The appeals court affirmed, finding that the charge was not punishment, and therefore did not violate due process. According to the court, the state statute that authorized the charge expressed no intent to punish on its face, was an effort to offset the cost of housing, had a rational relationship to a legitimate governmental interest, and was not excessive in relation to that purpose. The court also held that due process was not violated by the lack of a hearing before the charge was deducted from the detainee's account. (Hampton Roads Regional Jail, Virginia)

U.S. District Court
JUVENILE
SEARCHES

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. Appeals Court SUICIDE	<i>Snow ex rel. Snow v. City of Citronelle, AL</i> , 420 F.3d 1262 (11th Cir. 2005). The administrator of the estate of a pretrial detainee who had committed suicide while in jail brought an action against a city, its mayor and several police department employees, alleging violations of the detainee's rights under the Eighth and Fourteenth Amendment and asserting a state wrongful death claim. The detainee had been arrested for driving under the influence of alcohol or drugs. The district court granted summary judgment for the defendants on the federal claims and dismissed the state law claims. The administrator appealed. The appeals court affirmed in part, reversed in part, vacated in part, and remanded. The court held that police department employees who lacked a subjective knowledge of the detainee's potential for suicide were not liable, in their individual capacities, for any constitutional violations. The court noted that the employees had no knowledge of either the detainee's emergency room records showing that the detainee told emergency room staff she had attempted suicide four times before, or of doctor's notes showing that the detainee had suicidal ideation. The court denied summary judgment for one police officer, finding fact issues as to whether he believed that there was a strong risk that the detainee would attempt suicide and did not take any action to prevent her suicide. According to the court, the city's alleged lack of a suicide policy did not cause any constitutional violation. (City of Citronelle Jail, Alabama)
U.S. Appeals Court CONDITIONS DISCIPLINE DUE PROCESS SEARCHES SEGREGATION	<i>Surprenant v. Rivas</i> , 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 that a hearing officer deprived the detainee of due process because she was not an impartial decision-maker. The officer testified that she declined to interview an alibi witness based on her preconceived belief that the witness would lie, and the officer rushed to impose sanctions on the detainee despite having been asked by officials to withhold judgment pending the completion of a parallel investigation into the incident. 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 SEARCHES	<i>Tardiff v. Knox County</i> , 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 CARE	<i>Tatum v. Simpson</i> , 399 F.Supp.2d 1159 (D.Colo. 2005). A detainee who was confined in a county jail after being found in contempt of court for failing to comply with a state water court case brought a § 1983 action and moved for summary judgment. The district court dismissed the action. The court held that a sheriff was not liable under § 1983 to the detainee for allegedly denying him medications and medical treatment while he was detained, absent evidence that the sheriff knew about the detainee's need for prescribed medication or medical treatment during his detention. (Pueblo County Jail, Colorado)
U.S. District Court CIVIL COMMITMENT CONDITIONS	<i>Thiel v. Wisconsin</i> , 399 F.Supp.2d 929 (W.D.Wisc. 2005). A detainee held under the Wisconsin Sexually Violent Persons Law (WSVPL) brought a § 1983 action alleging due process violations in connection with his commitment. The district court denied the detainee's motion to proceed in forma pauperis and dismissed the action. The court held that no due process liberty interests were implicated by the manner in which the detainee was treated, either in regard to his

commitment, or in regard to trips outside the facility to a county jail for court proceedings. The court found that the maximum security classification imposed on the detainee was an ordinary incident of such confinement and did not pose atypical or significant hardships. The court found no violations with the manner in which the detainee was strip-searched, dressed in prison clothes and placed in restraints before being transported to a county jail for court proceedings. (Sand Ridge Secure Treatment Center, Wisconsin)

U.S. District Court
FAILURE TO
PROTECT
MEDICAL CARE

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 Dept. of Corrections, Illinois)

U.S. District Court
SEARCHES
MAIL
ACCESS TO
COURT
MEDICAL CARE

Thomsen v. Ross, 368 F.Supp.2d 961 (D.Minn. 2005). A detainee brought a § 1983 civil rights action against a county and county employees, alleging he was wrongfully strip searched and suffered a broken hand after he arrested on driving under the influence (DUI) charges. The district court granted summary judgment for the defendants in part, and denied it in part. The district court held that summary judgment was precluded by genuine issues of material fact regarding the reasonableness of the strip search, and the existence and implementation of a county policy authorizing strip searches for all gross misdemeanor arrestees. The court found that even if a police officer grabbed the detainee and threw him to the floor, his actions did not amount to the use of excessive force in violation of due process, absent evidence that the officer's actions caused the detainee's lost tooth and broken hand. The court held that opening three of the detainee's attorney letters outside of his presence did not violate his Fourteenth Amendment right to court access, where the letters were not confiscated and did not prevent the detainee from communicating with his attorney, and did not address matters of defense strategy. According to the court, the detainee failed to identify any conceivable way in which the information contained in the letters, even if read by jail officials, interfered with his defense or hindered his access to the courts. The court noted that respect for the Sixth and Fourteenth Amendments obliges a jail to open legal mail in the inmate's presence and to ensure it is not read. The court found that the detainee's broken hand was not a serious medical need, such that a 48-hour delay by county employees in taking the detainee to a hospital could amount to deliberate indifference to his serious medical needs, absent evidence that a red and swollen hand was a critical or escalating situation requiring immediate attention, or that the delay jeopardized the detainee's prognosis. The court noted that employees took the detainee to the hospital on the on the evening he made the written request for treatment. (Crow Wing County Jail, Minnesota)

U.S. District Court
CONDITIONS
TELEPHONE
VISITS

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. District Court SEGREGATION SEPARATION	<i>U.S. v. Basciano</i> , 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. Appeals Court MENTAL HEALTH	<i>U.S. v. Evans</i> , 404 F.3d 227 (4th Cir. 2005). A detainee appealed the decision of a district court to medicate a detainee against his will to render him competent to stand trial. The appeals court vacated and remanded with instructions, finding that the government failed to demonstrate that involuntary medication would "significantly further" its prosecutorial interest and that it was "medically appropriate." According to the court, the government did not disclose the particular medication and dose range that it proposed to give the detainee, or indicate that it considered the detainee's particular mental or physical condition in reaching its conclusions. (Federal Correctional Institution, Butner, North Carolina)
U.S. District Court INITIAL APPEARANCE	<i>U.S. v. Johnson</i> , 352 F.Supp.2d 596 (D.Md. 2005). A detainee challenged his two-and-a-half day delay in being presented to a judicial officer after his arrest. The court found that the delay was reasonable, and was necessitated by the detainee's urgent need to receive medical care. (Western District Police Station and Central Booking, Baltimore, Maryland)
U.S. District Court RELEASE	<i>U.S. v. Marcello</i> , 370 F.Supp.2d 745 (N.D.Ill. 2005). In a pretrial detention hearing, the government asked the court for permission to have the son of the murder victim offer an oral statement opposing the release of the defendants. The district court denied the request, finding that the statute that allows crime victims to be "reasonably heard at any public proceeding in the district court involving release, plea, sentencing or any parole hearing" did not mandate oral presentation of a victim statement. The court noted that a written statement could be considered, but that the statement was not material to the "decision at hand." (U.S. District Court, Northern District of Illinois)
U.S. District Court INVOLUNTARY MEDICATION	<i>U.S. v. Rivera-Morales</i> , 365 F.Supp.2d 1139 (S.D.Cal. 2005). After a defendant was determined to be incompetent to stand trial and was committed to the Attorney General for treatment, the government moved for an order directing the facility director to evaluate the defendant for future dangerousness. The district court held that the use of involuntary medication to restore the defendant to competency was inappropriate and ordered the defendant to be detained for an additional 30 days to determine if he was subject to state commitment. (Federal Medical Center, Butner, North Carolina)
U.S. Appeals Court FAILURE TO PROTECT SUPERVISION	<i>Velez v. Johnson</i> , 395 F.3d 732 (7 th Cir. 2005). A county jail detainee brought a § 1983 action against a county correctional officer, alleging that the officer failed to protect him from an assault by another inmate by failing to adequately respond and investigate the situation when the detainee pushed the emergency call button in his cell. The detainee had unsuccessfully attempted to alert the officer who checked the cell during his rounds, but his cellmate was holding a razor to his neck at the time. After the officer left the area, the detainee pushed the emergency call button in his cell, hoping for help. The detainee had to choose his words carefully and said he was "not getting along" with his cellmate. The officer did not investigate the situation nor ask the other officers to do so. The detainee was raped by his cellmate, bitten on his back several times, and cut on his neck. The district court denied the officer's motion for summary judgment on the basis of qualified immunity and the officer appealed. The appeals court affirmed, finding that the detainee need not show that the officer had a specific awareness that an assault would occur, but that it was sufficient to show that the officer failed to act despite his knowledge of a substantial risk of harm. The court held that the detainee had a clearly established Fourteenth Amendment right to be free from the officer's deliberate indifference to an assault by another inmate. (Milwaukee County Jail, Wisconsin)
U.S. Appeals Court SUICIDE MEDICAL CARE	<i>Woloszyn v. County of Lawrence</i> , 396 F.3d 314 (3 rd Cir. 2005). The administratrix of a pretrial detainee who committed suicide in jail brought a § 1983 action and wrongful death claims against the county and corrections officers. The district court granted summary judgment in favor of the defendants and the administratrix appealed. The appeals court affirmed, finding that the administratrix failed to establish that the corrections officers were aware of the detainee's vulnerability to suicide. The court noted that even though a captain said he would put the detainee on five-minute checks, he also said that he would follow a nurse's advice. The nurse found the detainee to be polite, cooperative and alert, and cleared the detainee for one-hour

checks for signs of alcohol withdrawal. The detainee told a booking officer he was not suicidal and appeared to be in good spirits. The court also held that the fact that a breathing mask was not in its designated location did not constitute deliberate indifference. Upon finding the detainee hanging by a sheet, officers immediately initiated CPR without waiting for the protective mask to arrive, they continued CPR until a protective breathing mask arrived, and the administratrix did not claim that immediate use of the protective mask would have prevented the detainee's death. The court found that the administratrix's expert failed to identify what specific type of training would have alerted officers to the fact that the detainee was suicidal. (Lawrence County Correctional Facility, Pennsylvania)

2006

U.S. Appeals Court
MEDICAL CARE

Acosta v. U.S. Marshals Service, 445 F.3d 509 (1st Cir. 2006). A detainee brought an action against the United States Marshals Service, various county jails where he was detained, doctors in a federal prison, a private medical center, a private doctor, and others, alleging claims under § 1983 and the Federal Tort Claims Act (FTCA), and alleging negligence under state law. The district court dismissed the action and the detainee appealed. The appeals court affirmed. The court held that filing of an administrative claim with the United States Marshals Service was insufficient to satisfy the administrative exhaustion requirement of the Prison Litigation Reform Act (PLRA), for the purpose of § 1983 claims against county jails and a federal prison doctor. The court noted that administrative claims against the county jails had to be directed to those facilities, and claims alleging wrongdoing by a doctor at a federal prison had to be filed with the federal Bureau of Prisons. The court ruled that FTCA claims against county facilities were barred by the independent contractor exemption of the FTCA. According to the court, allegations did not state deliberate indifference claims against a private medical center or a private doctor with allegations that someone at a private medical center overmedicated him, and that a private doctor failed to properly diagnose the severity of his foot injury. The detainee had been arrested on federal drug and firearm charges and he was held without bail. During his pretrial detention, the United States Marshals Service lodged him in several county jail facilities with which it contracts, and he also spent time in two federal facilities. (Hillsborough County Department of Corrections, NH; Cumberland County Jail, Maine; Merrimack County House of Corrections, NH; FMC Rochester, MN; Strafford County House of Corrections, NH; FCI Raybrook, NY)

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. District Court
SEPARATION
ADA- Americans
with Disabilities
Act
RA- Rehabilitation
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 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. District Court
MEDICAL CARE

Burkett v. Wicker, 435 F.Supp.2d 875 (N.D.Ind. 2006). A prisoner, proceeding pro se, brought a civil rights action under § 1983 against a jail nurse and others, alleging that he was denied medical treatment while he was a pretrial detainee. The inmate alleged that a jail nurse made a false entry into the prisoner's medical record, denied him doses of his prescribed medication, prevented him from seeing a doctor, and delayed filling his prescription, that the nurse knew that his hand was injured and that it would get worse without treatment, and that because of her deliberate indifference to his serious medical need, he developed an infection, his hand did not heal properly, he had permanent disfigurement, and he was in prolonged, unnecessary pain. The district court held that the allegations supported a claim for violation of Eighth Amendment's prescription against cruel and unusual punishment. But the court found that no liability existed against the nurse in her official capacity, for allegedly denying the prisoner medical treatment while he was a pretrial detainee, in violation of the Eighth Amendment, absent any allegation that the nurse was acting pursuant to a policy or custom. (Cass County Jail, Indiana)

U.S. Appeals Court
MEDICAL CARE

Butler v. Fletcher, 465 F.3d 340 (8th Cir. 2006). A prisoner who was transferred from a county jail to a prison after his conviction, where he tested positive for tuberculosis (TB), filed a § 1983 action against a county sheriff, alleging the sheriff violated his substantive due process rights by failing to adopt and implement adequate safeguards protecting county jail inmates from TB infection. The district court entered summary judgment in favor of the sheriff and the prisoner appealed. The appeals court affirmed. The court held that the sheriff did not act with deliberate indifference to a serious health risk that TB posed to detainees in the county jail. The prisoner alleged that he spent most of his time at the jail in two-person cells and in larger holding cells, where as many as twenty-six short-term detainees were held under deplorable sanitary conditions. He asserted that the sheriff's policy of placing short-term detainees in multi-person cells without an initial TB screening inadequately protects detainees from the serious health risk of TB. (Ramsey County Adult Detention Center, Minnesota)

U.S. District Court
SEARCHES
RELEASE

Bynum v. District of Columbia, 412 F.Supp.2d 73 (D.D.C. 2006). Persons who had been, were, or would be incarcerated by the District of Columbia Department of Corrections brought a § 1983 class action challenging the Department's policy of conducting suspicionless strip searches of inmates who were declared releasable after their court appearances, and challenging alleged over-detentions. The district court preliminarily approved a proposed settlement. Following a final approval hearing, the district court held that final approval was warranted and that the allocation of a sum for distribution to all class members who submitted claims was a fair method of distribution. The court held that the distribution fund of \$12 million was very favorable, especially in view of the low number of opt-outs and objectors. The court found that there was no collusion between the parties or their counsel and that the settlement comported with the rule governing class actions and with due process requirements. The court found that the attorney fee award of 33% of the settlement fund, or \$4 million, was reasonable, noting that counsel had engaged in protracted efforts over four years to obtain the outstanding settlement in both monetary and injunctive terms, the case was complex and involved novel issues, the case carried a serious risk of lack of success, and the settlement met with a high level of class satisfaction. The court defined the "Over-Detention Injunctive Relief Class" as: (a) Each person who has been, is or will be incarcerated in any District of Columbia Department of Corrections facility beginning in the three years preceding the filing of the action on or about May 16, 2002 up to and until the date this case is terminated; and (b) who was not released, or, in the future will not be released by midnight on the date on which the person is entitled to be released by court order or the date on which the basis for his or her detention has otherwise expired. (District of Columbia Department of Corrections)

U.S. Appeals Court
RESTRAINTS
USE OF FORCE

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
FAILURE TO
PROTECT
RESTRAINTS

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
FAILURE TO
PROTECT

Cirilla v. Kankakee County Jail, 438 F.Supp.2d 937 (C.D.Ill. 2006). A pretrial detainee brought a § 1983 action against a county jail and jail personnel, alleging violations of his due process rights. The district court granted the defendants' motion for summary judgment. The court held that the county jail and jail personnel were not aware of, and deliberately indifferent to, a specific, impending, and substantial threat to the pretrial detainee's safety, as required for liability under § 1983 for failure to protect detainee from other inmates in violation of detainee's right to due process. According to the court, even if the detainee was involved in several altercations with other inmates, he never filed grievances or complaints about those incidents, he claimed only some bruising and a bloody nose as result of the altercations, and although the detainee requested medical attention for a sore finger after the altercations, he did not complain at that time about injuries from fights. (Kankakee County Jail, Illinois)

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 CARE

Davis v. Carter, 452 F.3d 686 (7th Cir. 2006). A plaintiff filed an action on behalf of an inmate's estate, alleging that county jail officials failed to provide adequate medical assistance to the inmate. The inmate's death in the county jail was due to sudden withdrawal from his prescribed methadone medication. The district court entered summary judgment in favor of the officials and the plaintiff appealed. The appeals court affirmed in part, reversed in part, and remanded.

The court held that fact issues remained as to whether the county had a widespread practice or custom of inordinate delay in providing methadone treatment to inmates. The court found that a county jail officer was not deliberately indifferent to the inmate's methadone withdrawal symptoms, and thus was not subject to liability under § 1983 for an Eighth Amendment violation following the inmate's death, even though the officer received a call from the inmate's wife informing her that the inmate had not yet received methadone treatment and was in excruciating pain. The officer responded that the county "don't work that fast," but appropriately transferred the call to a person responsible for the inmate's medical care. There was no evidence that the officer's job duties included anything more than answering the telephones. (Cook County Jail, Illinois)

U.S. District Court
USE OF FORCE
MEDICAL CARE

Davis v. Township of Paulsboro, 421 F.Supp.2d 835 (D.N.J. 2006). The parents of an arrestee brought a federal civil rights claim against a county, a township, and various law enforcement officers, arising from arrestee's death which occurred after he had been struck in the head by a bottle during a fight and then taken into police custody. The defendants moved for summary judgment and the district court granted the motion. The court held that the officers did not use excessive force in spraying the suspect with pepper spray, where he was visibly agitated, was acting aggressively, was yelling profanities, banged walls in his house, and shoved an officer three times, and no lasting injury occurred. According to the court, the officers did not use excessive force in waiting to wash the pepper spray from the suspect's eyes until after he had been transported from the site of the spraying to a police station because the suspect continued to physically resist officers and persisted in yelling and cursing after being sprayed. The court found that an officer did not use excessive force in removing the arrestee from his cell, where the officer nudged the arrestee several times on his lower leg in an attempt to rouse him, stepped into the cell and grabbed the arrestee by the arm, smoothly pulled the suspect by the arm off the bench and onto his hands and knees, pulled him a few feet across the floor, and placed handcuffs on him. The court held that Township officers were not deliberately indifferent to the serious medical needs of the arrestee who had been hit on the head with a bottle in a fight prior to arrest, and thus due process principles were not violated, where an ambulance arrived to transport the arrestee to a hospital within minutes of the arrestee's arrival at police headquarters, a doctor examined the arrestee and determined he was fit for incarceration, and the arrestee was periodically checked once back at the police station. According to the court, the fact that the arrestee vomited and was still bleeding upon his return to the police station did not establish deliberate indifference. (Gloucester County Sheriff's Department, Township of Paulsboro, New Jersey)

U.S. Appeals Court
SUICIDE
ATTEMPT
SUPERVISION

Drake ex rel. Cotton v. Koss, 445 F.3d 1038 (8th Cir. 2006). The legal guardian for an incapacitated person who attempted to commit suicide while he was a pretrial detainee in a county jail, and a state department of human services sued a county and various officials in their individual and official capacities under § 1983, alleging violations of the Eighth and Fourteenth Amendments, and asserted a state law claim for negligence. The district court granted the defendants' motion for summary judgment and the guardian appealed. The appeals court affirmed. On rehearing, the appeals court held that county jailers' actions did not constitute deliberate indifference, and the jailers' decision not to assign a special need classification to the pretrial detainee was a discretionary decision protected by official immunity. According to the court, the jailers' actions of conducting well-being checks of the pretrial detainee only every 30 minutes, failing to remove bedding and clothing, and failing to fill the detainee's anti-anxiety prescription in a timely manner did not constitute deliberate indifference. The court found that the jailers' view of the risk was shaped by the diagnosis and recommendations of a psychiatrist, who indicated that the detainee was not suicidal but simply manipulative. The court noted that the jailers' decision not to assign a special need classification to the pretrial detainee, that would have required more frequent observation, was a discretionary decision rather than a ministerial duty, protected by official immunity. The detainee was discovered hanging by a bed sheet from a ceiling vent in his cell. He was not breathing and the jailers immediately set to work resuscitating him and then transported him to a nearby hospital. He survived, but suffered serious brain injuries as a result of the suicide attempt. (McLeod County Jail, Minnesota)

U.S. District Court
MEDICAL CARE

Dukes v. Georgia, 428 F.Supp.2d 1298 (N.D.Ga. 2006). A pretrial detainee brought an action against state and county defendants as well as jail personnel, alleging deliberate indifference to a serious medical need, violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act, and medical malpractice. The defendants filed motions for summary judgment. The court held that jail personnel did not violate the Americans with Disabilities Act (ADA) or the Rehabilitation Act when an officer and others allegedly told other inmates of the detainee's status as an HIV infected person, where the detainee did not show that such disclosure denied him the benefits of any program or service or that it discriminated against him. The court also found no ADA or Rehabilitation Act violation when an officer did not place a mask on the detainee when he was being transported to the hospital, where the failure to place a mask on the detainee did not deny him the benefits of any program or service or discriminate against him. The court noted that transportation can be construed as a "program or service

provided by the public entity” for the purposes of Title II of the Americans with Disabilities Act (ADA). According to the court, even if a physician's failure to diagnose the pretrial detainee's cryptococcus was negligent or even severely negligent, her actions and treatment of the detainee did not constitute deliberate indifference to the detainee's serious medical needs in violation of due process where the detainee was receiving treatment for his symptoms and his underlying illness, HIV, and while in hindsight it appeared that a lesion shown by the x-rays was in fact cryptococcus, there was no showing that indicated that the physician was ever aware of that severe risk. The court held that a jail nurse was not deliberately indifferent to the detainee's serious medical needs in violation of the due process clause, where she responded to all requests for medical service and conveyed the requests and relevant information to a physician, and did not have substantial knowledge of a serious medical risk when she observed that the detainee was not moving about, was urinating on his mat, and was cursing at the staff. (Coweta County Jail, Georgia)

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. District Court
MEDICAL CARE

Glass v. Rodriguez, 417 F.Supp.2d 943 (N.D.Ill. 2006). A state inmate brought an action against a doctor at a county jail, alleging deliberate indifference to his back problems while he was a pretrial detainee. The doctor moved for summary judgment and the district court granted the motion. The court held that the doctor was not deliberately indifferent to the serious medical condition of the detainee with back pain, as would violate the Due Process Clause, even though the detainee never underwent an MRI and he was not able to see a physician every week as he would have wished. The court found that doctors, orthopedic specialists, and physical therapists used x-rays and CAT scans to diagnose the detainee's condition and to develop a treatment plan, and the detainee was provided with pain medication, physical therapy, and visits to an outside clinic. The court noted that neither simple medical malpractice nor mere dissatisfaction with a doctor's prescribed course of treatment is actionable as Eighth Amendment deliberate indifference under § 1983. (Cook County Correctional Center, Illinois)

U.S. District Court
ACCESS TO
COURTS
MENTAL
HEALTH
RESTRAINTS

Glisson v. Sangamon County Sheriff's Department, 408 F.Supp.2d 609 (C.D.Ill. 2006). A detainee brought a civil rights action against county defendants and a police officer, alleging various violations of his constitutional rights in connection with his arrest and detention. The defendants moved to dismiss. The district court dismissed in part and declined to dismiss in part. The court held that the detainee sufficiently stated claims under the Eighth Amendment and Due Process Clause of the Fourteenth Amendment against a jail and a correctional officer with respect to both his first and second detentions. The court found that the detainee, who was awaiting a probation revocation hearing, sufficiently stated a claim under the Eighth and Fourteenth Amendments by alleging that the county jail maintained policies and customs that tolerated cruel and unusual punishment of convicted prisoners and pretrial detainees, and that the correctional officer strapped him to a wheelchair for several hours, forcing him to urinate on himself and to sit in his urine for several hours, while he was in a manic state. The inmate alleged that the jail and correctional officer knew of his mental condition because it was documented and that the officer's and jail's acts were intentional with malice and reckless disregard for his federally protected rights. The court held that the detainee sufficiently stated denial of access to courts claims against a county jail and correctional officers by alleging that the jail maintained a policy and practice of arbitrarily denying inmates' confidential consultations with their attorneys and that the officers directly participated in the arbitrary and capricious denial of his access to counsel. The court found that the detainee stated an equal protection claim against a county jail and officer by alleging that the jail maintained a policy and practice that discriminated against him because of his mental illness, and that an officer discriminated against him in terms of the type of confinement on the basis of his mental illness. (Sangamon County Jail, Village of Grandview Police, Illinois)

U.S. Appeals Court
FAILURE TO
PROTECT
SUICIDE

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. District Court
RELIGION

Ha'min v. Lewis, 440 F.Supp.2d 715 (M.D.Tenn. 2006). A Muslim county jail inmate sued a county, claiming that the county violated his First Amendment rights by failing to accommodate his religious needs. The district court dismissed the complaint in part and the county moved for summary judgment. The court held that the Establishment Clause was not violated when the county provided Bibles to inmates, but did not provide the Quran to the Muslim inmate, where the county, which did not pay for any religious materials, distributed donated Bibles to inmates and would have distributed donated Qurans, if any had been received. The inmate's request the county removed his copy of the Quran from his stored personal property and gave it to him. The court found that the county did not violate the free exercise of religion rights of the inmate by failing to hold Muslim services, where two Imams recruited by the county quit, the county was searching the Muslim community for a replacement, the complaining inmate was barred from conducting services himself by a policy against any inmate-led religious ceremonies, and the county accommodated the inmate in private worship by providing a Quran, prayer rug, and a compass. (Montgomery County Jail, Tennessee)

U.S. Appeals Court
RESTRAINTS
CLASSIFICATION

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. Appeals Court
FALSE IMPRI-
SONMENT

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. Appeals Court MENTAL HEALTH	<i>Hills v. Kentucky</i> , 457 F.3d 583 (6th Cir. 2006). An arrestee brought a civil rights action against a treating psychiatrist at a state correctional psychiatric center where the arrestee was held, alleging constitutional violations arising out of his being forcibly medicated. The district court denied the psychiatrist's motion for summary judgment on the ground of qualified immunity and the psychiatrist appealed. The court of appeals reversed and remanded, finding that the psychiatrist was entitled to qualified immunity. According to the court, a reasonable governmental employee in the position of the treating psychiatrist who prescribed medication to be forcibly administered to the arrestee would not have clearly known his conduct was unlawful, and thus, the psychiatrist was entitled to qualified immunity in the arrestee's civil rights action against him. The court order that authorized the arrestee's transfer to the center for treatment and examination after the court had found that the arrestee was not competent to stand trial on a burglary charge, stated that the treatment ordered included forced medication if necessary, and after seven weeks of treatment, the center's mental health professionals concluded that the arrestee could benefit from antipsychotic medication. (Kentucky Cor'l. Psychiatric Center)
U.S. District Court MEDICAL CARE CONDITIONS CROWDING	<i>Hubbard v. Taylor</i> , 452 F.Supp.2d 533 (D.Del. 2006). Pretrial detainees filed suit under § 1983, challenging conditions of their confinement on Fourteenth Amendment due process grounds, and a prisoner imprisoned at the same facility asserted a claim under the Americans with Disabilities Act (ADA). The district court granted the defendants' motion for summary judgment and plaintiffs appealed. The appeals court vacated and remanded. On remand, the district court granted summary judgment for the defendants. The court held that requiring the pretrial 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, because providing sleeping accommodations on the floor was in response to overcrowding at the facility and was not intended to punish. The court noted that even if the pretrial detainees' 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 officials to qualified immunity. The court held that a former inmate's allegations that he was released from prison due to his end stage renal disease, rather than be provided with medical care, failed to establish a prima facie case of discrimination under the Americans with Disabilities Act (ADA), where the inmate was not denied adequate medical services because of his end stage renal disease and he received regular dialysis treatment while he was incarcerated. (Multi-Purpose Criminal Justice Facility, Delaware)
U.S. Appeals Court SEARCHES	<i>In re Nassau County Strip Search Cases</i> , 461 F.3d 219 (2d Cir. 2006). Arrestees brought an action against a county and others, challenging the county correctional center's blanket strip search policy for newly-admitted, misdemeanor detainees. The district court denied the plaintiffs' class certification motions, and the plaintiffs appealed. The appeals court reversed in part and remanded in part. The court held that common issues predominated over individual issues as to liability in this case, and the class action device was a superior litigation mechanism as to the issue of liability. (Nassau County Correctional Center, New York)
U.S. District Court SEARCHES RELIGION	<i>Jean-Laurent v. Wilkerson</i> , 438 F.Supp.2d 318 (S.D.N.Y. 2006). A detainee in a state facility sued officers and supervisors under § 1983, claiming that he was searched in violation of his due process rights. The district court held that the detainee stated a claim of unconstitutional strip search, under the Fourth Amendment, when he alleged that officers, having conducted a legitimate search in connection with prison-wide strip searches, took him out of his cell and subjected him to a second search, even though he had been in their custody ever since the first search, precluding any hiding of contraband on his person. The court also found that the detainee stated claim that the second of two strip searches violated his First Amendment rights as a Muslim, to avoid being seen naked. The court noted that while first search was in furtherance of a compelling government need to maintain order, allowing the search despite religious objection, there was no compelling government need for the second search. The court held that the detainee stated a claim that officers imposed a substantial burden on the religious exercise of the Muslim inmate, in violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA), by forcing him to submit to the second strip search. (George Motchan Detention Center, New York City)
U.S. District Court USE OF FORCE RESTRAINTS	<i>Jenkins v. Wilson</i> , 432 F.Supp.2d 808 (W.D.Wis. 2006). A pretrial detainee brought a civil rights claim alleging that jail officers used excessive force. The district court held that a genuine issue of fact, as to whether deputies were justified in hitting the pretrial detainee about the head in attempting to handcuff him and transport him to segregation, precluded summary judgment. (Dane County Jail, Wisconsin)
U.S. District Court SEARCHES	<i>Johnson v. District of Columbia</i> , 461 F.Supp.2d 48 (D.D.C. 2006). Pre-presentment arrestees brought a § 1983 action against the District of Columbia, U.S. Marshal's Service, and former U.S. Marshal, alleging that arrestees were subject to blanket strip searches and visual cavity searches without a reasonable individualized suspicion that the arrestees were concealing weapons or contraband. The government defendants moved to dismiss for failure to state a

claim. The court denied the defendants' motion to dismiss. The district court held that: (1) arrestees' allegations that the District of Columbia knew, or should have known, that marshals were unconstitutionally strip searching arrestees supported a § 1983 claim as to the District of Columbia; (2) the alleged policy under a former U.S. Marshal, if true, violated the Fourth and Fifth Amendments; (3) the right to be free from a blanket strip-search policy was clearly established; and (4) allegations that a former marshal and District of Columbia acted in concert in developing a policy stated a claim that the marshal was "state actor." The arrestees alleged that there were blanket strip searches and visual cavity searches at Superior Court without a reasonable individualized suspicion, that subjected all female arrestees, but not male arrestees, to blanket strip searches. (District of Columbia and U.S. Marshal for the D.C. Superior Court)

U.S. Appeals Court
ACCESS TO
COURT
CONDITIONS
INITIAL
APPEARANCE
RESTRAINTS

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
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 County Jail, New York)

U.S. District Court
USE OF FORCE
PROTECTION
MEDICAL CARE

Moore v. Morales, 445 F.Supp.2d 1000 (N.D.Ill. 2006). The administrator of the estate of a detainee who died in police custody brought a § 1983 action against arresting officers, and other officers and employees of a police department who had processed the detainee at a police station, alleging that the defendants either had used excessive force on the detainee, ultimately leading to his death, or had been deliberately indifferent to his medical needs. The defendants moved for summary judgment and the district court granted the motion in part and denied in part. The court held that the summary judgment was precluded by fact issues as to the degree of force used on the detainee, and whether some police officers failed to stop the infliction of injuries on the detainee by fellow officers. The court found that the police had not shown deliberate indifference to the condition of the detainee and that there was no cover-up of the use of excessive force. (Chicago Police Department, 12th District Police Station, Illinois)

U.S. District Court
EXERCISE
ACCESS TO
COURT
SANITATION
CONDITIONS
VISITING

Murray v. Edwards County Sheriff's Dept., 453 F.Supp.2d 1280 (D.Kan. 2006). A former pretrial detainee at a county jail brought a § 1983 action against a county sheriff's department, sheriff, undersheriff, and county attorney, alleging various constitutional violations. The district court granted summary judgment in favor of the defendants. The court held that the inmate's alleged weight loss while he was a pretrial detainee at the county jail did not satisfy the section of the Prison Litigation Reform Act (PLRA) requiring a showing of physical injury in addition to mental or emotional injury in order to obtain compensatory damages. The court noted that the inmate's alleged weight loss was contrary to the uncontroverted facts, where the inmate did not allege that he was not fed while at jail but that he was not allowed to exercise out of his cell, and it was not clear how a lack of exercise would have caused weight loss.

The court found that the lack of outdoor exercise for the pretrial detainee at a small county jail did not violate due process, where the cells were large, the detainee did a wide variety of inside exercises during his stay at jail, and no physical deterioration occurred due to failure to obtain outdoor exercise.

The court held that alleged inadequate temperature-control and ventilation, the presence of insects, and a lack of cleaning at the county jail did not violate the due process rights of pretrial detainee, where jail cells were heated and cooled by air conditioning that was on the same ventilation system as the rest of the courthouse in which the jail was located, detainees had the ability to open cell windows and had fans to use in the Summer, detainees were allowed additional blankets in Winter, the jail and courthouse were treated for insects on a monthly basis, and cleaning materials were provided to detainees to use in their cells.

According to the court, the county jail's policy prohibiting friends from visiting the pretrial detainee did not violate due process, where the detainee had free access to visits by family clergy and counsel to the extent that they wished to visit him, the detainee had the free use of a telephone in his cell to speak with his friends, and the detainee sent and received over 200 letters while at jail.

The court held that the detainee was not deprived of access to the courts and competent counsel, even if he was not permitted direct, physical access to a law library, was not separately assigned a paralegal to assist him, and was unable to call counsel on a few instances, where the detainee was given frequent and heavy access to law library materials, the county had limited resources for providing physical access to a law library, the detainee was an able and experienced prison litigator, the detainee decided not to file civil actions while at the jail, the detainee spoke with counsel on many occasions, and the detainee was satisfied with counsel's representation. (Edwards County Jail, Kansas)

U.S. District Court
PROTECTION
FEMALE

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
RELIGION

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. (U.S. Penitentiary, Pollock, Louisiana)

U.S. Appeals Court
MEDICAL CARE
FAILURE TO
PROTECT

Pietrafesa 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. District Court
CONDITIONS
CROWDING
MEDICAL CARE

Poole v. Taylor, 466 F.Supp.2d 578 (D.Del. 2006). A former pretrial detainee filed a § 1983 action alleging unconstitutional conditions of confinement, and that he was denied adequate medical care. The district court granted the defendants' motion for summary judgment. The court held that the detainee's due process rights were not violated when he was required to sleep on a mattress on the floor for over six months in an overcrowded facility that experienced sporadic hot and cold temperatures and insect and rodent infestations. The court noted that the officials had issued numerous work orders for temperature repairs and pest control, the detainee was not denied access to toilet facilities, the officials determined that triple-celling pretrial detainees was a method to deal with their overcrowded facilities, and there was no evidence of intention on the officials' part to punish the detainee. The court found that officials were not deliberately indifferent to the detainee's serious medical needs, in violation of the Due Process Clause, even though he was not hospitalized or sent to a plastic surgeon after he sustained a large cut over his right eye. The court noted that the detainee's treatment included sutures, bandaging of his wound, and administration of medication, as well as a follow-up visit. The detainee was given instructions to contact the medical department for any perceived problems with the wound, and the detainee did not seek additional treatment. (Multi-Purpose Criminal Justice Facility, Delaware)

U.S. District Court
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 where 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 County Jail, Texas)

U.S. District Court
MEDICAL CARE

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 CARE

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. The court found that material issues of fact existed as to whether the superintendent and assistant superintendent denied outside care to the detainee on prohibited bases, such as the detainee's ability or willingness to pay for such medical services, precluding summary judgment for the officials on the detainee's claims alleging deliberate indifference to his serious medical needs. But the court concluded that a delay in having the detainee examined by an orthopedic surgeon did not cause him any additional pain or permanent injury, given that the specialists who eventually saw the detainee did not believe that surgery was an appropriate treatment for his shoulder pain and the measures recommended did not appreciably reduce the detainee's pain and discomfort, such that implementing them earlier would not have measurably improved his condition. The court found that the detainee's injury did not amount to a "serious medical need" for alleged deliberate indifference to his serious medical needs. (Merrimack County House of Corrections, New Hampshire)

U.S. District Court
RELIGION

Rasul v. Rumsfeld, 433 F.Supp.2d 58 (D.D.C. 2006). Detainees at the United States naval facility in Guantanamo Bay, Cuba, sued the government, claiming that their treatment violated the Religious Freedom Restoration Act (RFRA). The district court denied the government's motion to dismiss holding that: (1) RFRA applied outside of the continental United States; (2) RFRA applied to Guantanamo Bay; (3) a claim of liability under RFRA was stated; and (4) there was no qualified immunity from suit under RFRA. The Muslim inmates claimed harassment when practicing their religion, forced shaving of religious beards, and placement of the Koran in a toilet. (United States Naval Station at Guantanamo Bay, Cuba)

U.S. District Court
FAILURE TO
PROTECT

Rentz v. Spokane County, 438 F.Supp.2d 1252 (E.D.Wash. 2006). The personal representatives of the estate of a pretrial detainee, who was murdered by two fellow pretrial detainees in a county jail, sought recovery of damages from county defendants under Washington's wrongful death and survival statutes. Parents and siblings, as beneficiaries of the estate, also sought recovery of damages. The court granted partial summary judgment for the defendants. The court held that neither the parents nor the siblings could recover under Washington's wrongful

death and survival statutes, but that the parents could seek recovery from the county defendants under § 1988 for violations of the detainee's constitutional rights. The court also held that the parents were entitled to assert Fourteenth Amendment substantive due process causes of action against the county defendants to vindicate their constitutional rights for loss of companionship with their adult son, but the siblings were not. The court allowed the plaintiffs to amend their complaint to include the jail officers and a jail nurse because they were allegedly involved with the placement of the detainee in the same jail dormitory as the individuals who murdered him. (Spokane County Jail, Washington)

U.S. Appeals Court
MEDICAL CARE

Self v. Crum, 439 F.3d 1227 (10th Cir. 2006). A detainee brought an action against a jail's physician alleging deliberate indifference to his medical needs in violation of the Eighth Amendment. The district court granted summary judgment in favor of the physician and the detainee appealed. The appeals court affirmed, finding that the physician who provided medication for a respiratory infection and to reduce fever and coughing did not consciously disregard the substantial risk of serious harm arising from the detainee's symptoms. According to the court, the detainee's allegation that the physician diagnosed his heart problem but ignored it, was based on speculation and conjecture. The court noted that, at most, the physician's actions amounted to a misdiagnosis or failure to conduct further testing. (Denver County Jail, Colorado)

U.S. Appeals Court
FAILURE TO
PROTECT
SUICIDE

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. District Court
ASSESSMENT OF
COSTS

Sickles v. Campbell County, Kentucky, 439 F.Supp.2d 751 (E.D.Ky. 2006). Inmates, former inmates, and relatives and friends of inmates brought a § 1983 action against counties, alleging that the methods used by the counties to collect fees imposed on prisoners for the cost of booking and incarceration violated the Due Process Clause. The district court granted summary judgment in favor of the defendants. The court held that the Kentucky statute authorizing county jailers to adopt prisoner fee and expense reimbursement policies did not require that prisoners be sentenced before fees could be imposed, and that due process did not require a pre-deprivation hearing before prison fees were assessed. According to the court, the First Amendment rights of non-prisoners who contributed funds to prisoners' accounts were not violated. The court noted that the statute authorized jails to begin to impose fees, and to deduct them from prisoners' canteen accounts, as soon as prisoners' were booked into the jail. (Campbell County and Kenton County, Kentucky)

U.S. District Court
SUICIDE

Smith v. Brevard County, 461 F.Supp.2d 1243 (M.D.Fla. 2006). The personal representative of the estate of pretrial detainee who hung himself in his cell, brought a § 1983 action on behalf of the survivors of the estate, against a county sheriff, officers, and a non-profit corporation which was under contract to provide mental health services to the prisoners at detention center. The sheriff, officers and corporation moved to dismiss and the district court granted the motion in part, and denied in part. The court held that allegations by the estate that, prior to the detainee's hanging himself in his cell, his family members and friends called and went to the detention center in person to inform the non-profit corporation that the detainee was suicidal, were sufficient to satisfy the deliberate indifference test in the suit. After receiving knowledge of the detainee's suicidal tendency, the corporation failed to provide adequate mental health care to the detainee. According to the court, knowledge that the detainee was actually threatening to commit suicide was certainly enough to show knowledge of a substantial risk of suicide, rather than just a mere possibility. The court held that the estate stated a cause of action under § 1983 against the county sheriff, in his official capacity, for violating the

detainee's Fourteenth Amendment rights. According to the court, violation of the detainee's constitutional rights was the result of the sheriff's failure to provide adequate staffing and safe housing for suicidal inmates, and in light of the sheriff's knowledge that inmate suicide was a problem, his failure to address any policies that were causing suicides constituted deliberate indifference to the constitutional rights of inmates. (Brevard County Detention Center, Florida)

U.S. Appeals Court
SEARCH
JUVENILES

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)

U.S. Appeals Court
CONDITIONS

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)

U.S. District Court
PROTECTION

Stephens v. Correctional Services Corp., 428 F.Supp.2d 580 (E.D.Tex. 2006). A pretrial detainee brought an action against a private jail corporation, alleging civil rights violations and common law negligence stemming from an attack while he was incarcerated. The corporation moved for dismissal. The district court held that the corporation was not entitled to state sovereign immunity and that the corporation was potentially liable under § 1983. The court found that the detainee properly stated a negligence claim, and also a viable claim for failure to train and/or supervise. The court noted that although the establishment and maintenance of jails were "governmental functions" under state law, jail services provided by a private entity were not. The detainee alleged that the corporation had a duty to protect his well-being and to ensure his reasonable safety while incarcerated, and that the corporation breached such duty by not properly segregating him from violent inmates who threatened his life. He alleged that he informed officials of the death threats and they took no action, and that he was severely beaten by three prisoners and suffered life-threatening injuries. (Jefferson County Corrections Facility, Texas)

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
CONDITIONS

Tate v. Gusman, 459 F.Supp.2d 519 (E.D.La. 2006). A pretrial detainee brought a § 1983 action against a sheriff, arising from conditions of confinement following a hurricane. The district court held that the detainee failed to state a nonfrivolous claim upon which relief could be granted and dismissed the action. The detainee alleged that the manner and timing of his evacuation from a flooded prison system medical unit following a hurricane constituted cruel and unusual punishment, but the court found that the detainee did not allege that the sheriff personally acted with deliberate indifference to the detainee's safety. The court noted that the detainee did not allege that he suffered any physical injury as a result of any of the conditions or lack of medical attention. (Orleans Parish Prison, Louisiana)

U.S. District Court
SUICIDE

Taylor v. Wausau Underwriters Ins. Co., 423 F.Supp.2d 882 (E.D.Wis. 2006). The estate of a pretrial detainee who had committed suicide in jail brought § 1983 claims against a county corrections officer, alleging deliberate indifference to serious medical needs, a claim against the county alleging that the county maintained an unconstitutional informal policy of allowing inmates on suicide watch to turn out their lights, and a state law wrongful death claim against the officer and county. The district court granted summary judgment in favor of the officer and county. The court held that the county was not liable for a due process violation under § 1983 for deliberate indifference to the detainee's serious medical needs absent evidence that the officer's delay in turning on the detainee's light after the detainee had turned it off, during which time the detainee hanged himself, was a standard practice or an aberration. According to the court, even if the jail's unofficial policy of allowing inmates on suicide watch access to light switches was the cause of the detainee's suicide, in that it compromised corrections officers' ability to supervise the detainee, the county was not deliberately indifferent to the detainee's serious medical needs in violation of his due process rights. The court found that the jail's classification of the detainee as a suicide risk did not indicate he was actually a suicide risk, the fact that the detainee was a former corrections officer charged with heinous crimes did not indicate a substantial suicide risk, and, even if suicide risk was indicated by facts that the detainee stole a razor, that there were scratches on his wrists, and that he removed elastic from his underwear, the county placed him on suicide watch and thus was not indifferent. The court noted that the absence of mental illness in an inmate who commits suicide is not fatal to a claim for deliberate indifference to serious medical needs. The detainee was a former correctional officer charged with attempted murder, kidnapping, and sexual assault of a minor. He was admitted to jail where he was placed on a suicide watch in a cell with constant camera surveillance. (Fond du Lac County Jail, Wisconsin)

U.S. Appeals Court
MEDICAL CARE

Thomas v. Ashcroft, 470 F.3d 491 (2nd Cir. 2006). A detainee brought a *Bivens* action against named and unnamed federal Drug Enforcement Administration (DEA) agents and prison officials, alleging that his blindness was caused by the defendants' deliberate indifference to his serious medical needs while in federal custody. The district court dismissed the case and the detainee appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that allegations by the detainee, that federal prison officials were on notice of his glaucoma and resulting medical needs, that they were aware of the improper administration of his medications and that they still failed to address the situation, that he was transferred to one correctional facility where he received no medication despite the requests of his family, his lawyer, and outside physicians, and that the officials were personally ordered by a magistrate judge to see to the detainee's medical needs, stated a *Bivens* claim against prison officials, for deliberate indifference to the detainee's serious medical needs. (New York Metropolitan Correctional Center, Federal Bureau of Prisons)

U.S. District Court
SEARCHES
INTAKE
SCREENING
MEDICAL CARE

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
FALSE
IMPRISONMENT
USE OF FORCE

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. The court held that the police officer did not use an unreasonable amount of force, in violation of the Fourth Amendment, by putting tight handcuffs on the arrestee and leaving them on for approximately 30 minutes until the arrestee was taken to a lockup at a police station. The arrestee complained only once to the officer that the handcuffs were too tight, he offered the officer no indication of the degree of pain caused by the handcuffs, he suffered minimal, if any, injury, other than redness on his wrists for less than two days, and he sought no medical care for any wrist injury. The arrestee was held in custody for two days. About twenty to twenty-five minutes after arriving at the station, the arrestee was taken to a lockup where his handcuffs were removed. (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
USE OF FORCE
MEDICAL CARE

U.S. v. Gonzales, 436 F.3d 560 (5th Cir. 2006). Following a jury trial, deportation officers were convicted of deprivation of civil rights and one defendant appealed. The appeals court held that evidence was sufficient to support a finding that the defendant willfully sprayed a detainee, who had a broken neck, with pepper spray and that the use of pepper spray resulted in bodily injury. The court noted that a detention officer testified that while the defendant was carrying the detainee to the bus, he said “Let's Mace the fucker and see if he budges” and two other

detention officers remembered a similar statement, and when the defendant exited the bus, he was coughing, smirking sarcastically, and claiming that there had been an “accidental discharge.” After the pepper spray was used, the detainee's mouth was foaming, he complained of stinging pain, and his eyes were swollen shut for at least three hours. The court found that the force that caused this pain and that the pepper spray was applied when the detainee was paralyzed, handcuffed, and lying on the floor of the bus. The detainee made his injury known to the defendant, screaming “they broke me...” and in response to his pleas the officers taunted him and invited people to wipe their feet on him. Two of the defendants dragged his limp body from a house to the van, dragged him off the van onto a bus, and witnessed his reaction to being pepper sprayed. According to the court, by moving the detainee without stabilizing him, the officers exposed him to a risk of harm. The detainee was left alone on the bus floor, handcuffed, eyes swollen shut, and foaming at the mouth, despite the officers’ training that, due to the risk of potentially fatal asphyxiation, those who had been pepper sprayed should be continually monitored and placed upright, never in a prone position. (San Antonio Division of the Immigration and Naturalization Service [INS] and Brazos County Jail, Texas)

U.S. Appeals Court
TELEPHONE
PRIVACY

U.S. v. Morin, 437 F.3d 777 (8th Cir. 2006). A defendant was convicted in district court and he appealed. The appeals court affirmed, finding that recordings of the defendant's jailhouse telephone calls were admissible for sentencing purposes. The court found that the defendant impliedly consented to the warrantless tape-recording of his jailhouse telephone calls, and thus, the recordings were admissible for sentencing purposes. The defendant had been given a prisoners' handbook that informed him that his jailhouse calls would be monitored, and there were signs above the phones in the prison informing him of that fact. (North Dakota)

U.S. District Court
PRE-SENTENCE
DETENTION

U.S. v. Nedd, 415 F.Supp.2d 1 (D.Me. 2006). A defendant convicted of two federal firearms charges sought pre-sentence release. The district court denied release, based on the defendant’s failure to comply with the terms of his pretrial release, and his belligerence toward a pretrial services officer who indicated that he posed a danger to the community. (U.S. District Court, Maine)

U.S. District Court
FAILURE TO
PROTECT
MENTAL
HEALTH
MEDICAL CARE
CRIPA- Civil
Rights of
Institutionalized
Persons Act

U.S. v. Terrell County, Ga., 457 F.Supp.2d 1359 (M.D.Ga. 2006). The federal government brought a Civil Rights of Institutionalized Persons Act (CRIPA) action against a county, county sheriff, and various other county officials, seeking a determination that county jail conditions were grossly deficient in violation of the Fourteenth Amendment. The district court granted the government’s motion for summary judgment. The court held that the sheriff and other officials were deliberately indifferent to the jail's gross deficiencies in the areas of medical and mental health care for inmates, protection of inmates from harm, environmental health and safety of inmates, and fire safety, in violation of the due process clause. The court noted that the lack of funds is not a defense to, nor legal justification for, unconstitutional conditions of a jail, for the purpose of analyzing a deliberate indifference claim under the due process clause of the Fourteenth Amendment. Even if a defendant argues that it is planning or working towards construction of a new jail to remedy the unconstitutional conditions at the current facility, the failure to implement interim measures to alleviate those conditions demonstrates deliberate indifference, according to the court. (Terrell County, Georgia)

U.S. Appeals Court
FAILURE TO
PROTECT
MEDICAL CARE

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
FALSE
IMPRISONMENT

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
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. District Court
BAIL
CONDITIONS
SUICIDE
ATTEMPT

White v. Crow Ghost, 456 F.Supp.2d 1096 (D.N.D. 2006). An arrestee brought a *Bivens* action against personnel of a jail operated by the Bureau of Indian Affairs (BIA), alleging failure to provide adequate medical care, unsanitary conditions, and delayed or prevented bond hearings. The district court granted summary judgment for the defendants. The court held that jail officials were not deliberately indifferent to the arrestee's medical needs, in violation of his Eighth Amendment rights, where officials provided the arrestee with medical care promptly after learning of his suicide gestures or attempts, and again upon learning he might have an infection. The court noted that when the arrestee's need for medication was established, officials ensured that the medications were administered. The court found that the officials were not deliberately indifferent to any risk of harm to arrestee from his placement in two different, allegedly cold and unsanitary jail cells for a total of four days, and thus such placement did not rise to the level of an Eighth Amendment violation. The court noted that the arrestee was placed in those cells after his suicide gestures or attempts so that he could be monitored, his clothing and bedding was removed for his protection after he tried to hang himself, and cleaning supplies were withheld to protect him. The court held that, absent any evidence that any of the named jail officials were responsible for the delay in the arrestee's bond hearing and subsequent failures to respond to his numerous requests for a bond reduction, the arrestee's bare allegations of such delay and failures were insufficient to demonstrate the deliberate indifference necessary to establish the violation of any constitutional right against excessive bail. (Standing Rock Agency, Fort Yates Detention Center, North Dakota)

U.S. Appeals Court
MEDICAL CARE
INTAKE
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)

U.S. District Court
FAILURE TO
PROTECT

Wilson v. Maricopa County, 463 F.Supp.2d 987 (D.Ariz. 2006). In a civil rights suit arising from a fatal assault on a county jail inmate by other inmates, the county defendants filed motions for summary judgment on all claims. The plaintiffs filed a motion for reconsideration of the court's order that had dismissed the county sheriff's office. The summary judgment motions were granted in part and denied in part; the motion for reconsideration was denied. The court held that summary judgment on Eighth Amendment liability for the fatal assault on the inmate was precluded by genuine issues of material fact as to: (1) whether the county, through its final policy maker the sheriff, implemented policies, customs, and practices with the requisite subjective intent of deliberate indifference; (2) whether the county, through the sheriff, failed to

act in the face of obvious omissions and likely constitutional violations; and (3) whether that failure to act caused a constitutional violation. The court held that the estate sufficiently alleged a § 1983 claim against the sheriff in his individual capacity by alleging that the sheriff was directly liable under § 1983 for being deliberately indifferent in failing to supervise and train jail officers in appropriate, lawful, and constitutional policies and procedures for providing a safe environment for inmates. The court also found that the estate sufficiently alleged a claim that the sheriff was deliberately indifferent in fostering, encouraging, and knowingly accepting formal and informal jail policies condoning brutality among the inmates and indifference to proper supervision. According to the court, a jail supervisor could be found to have been deliberately indifferent to the safety of the inmate if he knew that not having an officer on the ground in the jail yard posed a risk of violence among the inmates and nonetheless allowed an officer to cover both the yard and another post, which required the officer to leave the yard unattended for a significant period of time. (Maricopa County Facility, known as “Tent City”, Phoenix, Arizona)

U.S. District Court
MENTAL
HEALTH
CIVIL
COMMITMENT

Winters ex rel. Estate of Winters v. Arkansas Department of Health and Human Services, 437 F.Supp.2d 851 (E.D.Ark. 2006). The administrator of the estate of mentally ill pre-trial detainee/civil committee who had died of peritonitis while in custody of a sheriff sued the sheriff and the Arkansas Department of Human Services (DHS) under § 1983, the Americans with Disabilities Act (ADA), and the Rehabilitation Act. Following bench trial, the district court held that neither DHS nor the sheriff caused or contributed to the death of the detainee/committee, and they were not liable under the Due Process Clause, Eighth Amendment, Rehabilitation Act, or ADA. The court found that the sheriff had no policy or custom to apprehend and incarcerate acutely mentally ill persons, as indicated by the fact that the detainee may have been only person under civil commitment ever housed in the sheriff’s detention facility. (Benton County Jail, Arkansas)

2007

U.S. District Court
MEDICAL CARE

Adams v. Cook County Dept. of Corrections, 485 F.Supp.2d 940 (N.D.Ill. 2007). An inmate brought a § 1983 claim against physicians, alleging they acted with deliberate indifference to his serious medical needs. The district court dismissed the claim in part, and denied the defendants’ motion for dismissal in part. The court held that the prisoner alleged sufficiently serious medical needs to support his claim that jail officials acted with deliberate indifference to such needs, in violation of due process, by alleging that he had “shortness of breath,” “severe pain in [his] right side” and a high fever. The court found that the inmate stated a § 1983 claim for deliberate indifference to his serious medical needs under the Fourteenth Amendment by alleging that he had a serious medical need and that he was insufficiently treated by two defendant physicians. (Cook County Jail, Illinois)

U.S. District Court
MEDICAL CARE
MENTAL HEALTH

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
CONDITIONS
RELEASE
MEDICAL CARE
ACCESS TO COURT

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 the detainee’s allegations that his teeth became chipped and his gums became infected, leading to damage to his gums, disfigurement of his face, infection, pain, anxiety, and extraction of four teeth, were sufficient allegations of a serious medical need. Officials had confiscated his dental crown. The court found that the detainee stated a claim under § 1983 for cruel and unusual punishment through deliberate indifference to a serious medical need. The court held that the detainee stated a claim with his allegation that the prison’s dental unit should have replaced his dental crown or permitted him to have his private dentist do so. The prison’s dental unit had treated him with antibiotics and offered to extract the seven affected teeth. The court held that this involved a mere disagreement over proper treatment and did not support a § 1983 claim of violation of the Eighth Amendment prohibition of cruel and unusual punishment through deliberate indifference to prisoner’s serious medical needs.

According to the court, the private corporation which operated a prison as contractor for the District of Columbia, was performing functions normally performed by a municipality, and thus, the corporation could be liable to the prisoner under § 1983 if the prisoner alleged and ultimately proved that his injuries were the result of an unconstitutional custom or policy of corporation.

The court held that the detainee sufficiently alleged that the Director of District of Columbia Department of Corrections (DOC) was directly involved in violations of the detainee’s constitutional rights, as required to state

a claim under § 1983 against a government official in his individual capacity. The detainee alleged that the Director refused to transfer the detainee from the jail to a correctional treatment facility and failed to train DOC employees under his supervision in such a way as to prevent the detainee's over-detention (detention beyond proper release date). The court found that the Director of District of Columbia Department of Corrections (DOC) could not be liable in his individual capacity, under the theory of respondeat superior, to the jail detainee for allegedly unconstitutional actions or omissions of his subordinates.

The appeals court found that the detainee's allegation that policies or practices of the District of Columbia Department of Corrections (DOC) pertaining to training, supervision and discipline of employees responsible for the detainees' release from DOC custody resulted in his untimely release from jail, in violation of his constitutional rights, stated a claim for municipal liability under § 1983.

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 the detainee's allegations that the District of Columbia jail provided only one desk and chair in each two-person cell, failed to provide him with nail clippers, skin lotions, and a microwave oven and failed to provide rehabilitative courses, did not allege deprivations sufficiently serious to rise to the level of cruel and unusual punishment in violation of Eighth Amendment.

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 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 found that the detainee's allegations that he has special dietary needs as a diabetic, that officials at the District of Columbia jail were deliberately indifferent to his needs and that such indifference occurred pursuant to a custom, policy and systemic practices of the District, were sufficient to state a claim under § 1983 for cruel and unusual punishment through deliberate indifference to serious medical need.

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.

The court held that the detainee did not state a claim under § 1983 that inadequacies in the jail's law library violated his First Amendment right of access to the courts, even if he alleged that such inadequacies caused the filing of his appeals to be untimely, in the absence of an allegation that such untimeliness had an actual adverse impact on the appeals.

The court held that the detainee's allegations that his legal mail was opened by officials at the jail outside of his presence on numerous occasions during a four-month period, and that such actions were intentional and pursuant to a policy or systemic practice, stated a claim under § 1983 for violation of First Amendment free speech rights. The court held that the alleged refusal of officials of Department of Corrections (DOC) to transfer the detainee to a correctional treatment facility at which conditions were far less restrictive did not implicate a due process liberty interest. The court noted that an inmate has no due process liberty interest in a particular place of confinement or a particular level of security.

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, 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. 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 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 Corrections Corporation of America)

U.S. District Court
SUICIDE
MEDICAL CARE

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
MEDICAL CARE
USE OF FORCE

Clarke v. Blais, 473 F.Supp.2d 124 (D.Me. 2007). A pretrial detainee brought a § 1983 action against jail officers, alleging they subjected him to excessive force, and against a physician's assistant for allegedly failing to give him proper treatment for his physical and mental health issues. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that questions as to whether jail officers used excessive force in restraining the detainee and whether qualified immunity was available as a defense precluded summary judgment in the detainee's § 1983 action. The court found that the physician's assistant was not deliberately indifferent to the detainee's serious medical needs, by not embarking upon anti-viral therapy for the detainee's hepatitis C because, as a pretrial detainee, he was subject to further movement among facilities, and in not prescribing Seroquel, an anti-psychotic drug, as recommended by a counselor/social worker at an outside clinic. The court noted that the physician's assistant consulted an outside gastroenterologist, the detainee's liver function was monitored, and the counselor did not renew the Seroquel recommendation at a subsequent clinic evaluation. (Knox County Jail, Maine)

U.S. District Court
MEDICAL CARE

Cox v. Hartshorn, 503 F.Supp.2d 1078 (C.D.Ill. 2007). A former pretrial detainee in a county jail brought a § 1983 action against a county sheriff and county jail nurse, alleging that he was denied proper medical care within the county jail in violation of his constitutional rights. The district court granted the defendants' motion for summary judgment. According to the court, the detainee's medical complaint of a foot rash did not rise to the level of an objectively serious medical need, so as to afford the detainee due process protections against the county sheriff and county jail nurse's alleged deliberate indifference to his request for medical attention. The court noted that the detainee's fungal foot rash was not so serious that it was life threatening or posed a risk of needless pain or lingering disability, and after being treated by a nurse, the detainee did not submit any further medical requests for treatment of the rash, nor did he receive any treatment of the rash after leaving the county jail. (Vermilion County Jail, Illinois)

U.S. District Court
USE OF FORCE
MEDICAL CARE

Danley v. Allyn, 485 F.Supp.2d 1260 (N.D.Ala. 2007). A pretrial detainee brought a § 1983 action against jail officers, alleging that he was subjected to excessive force and then denied medical treatment when they sprayed him with pepper spray. The district court denied the defendants' motions to dismiss and they appealed. The court of appeals vacated and remanded. On the remand, the district court again denied the defendants' motion to dismiss. The court held that the officers were not entitled to qualified immunity from the detainee's claim that the officers subjected him to excessive force, in violation of Fourteenth Amendment, by pepper spraying him in response to a dispute over toilet paper. The court noted that the officers had fair warning that to employ pepper spray as punishment, or for the sadistic pleasure of the sprayers, as distinguished from what was reasonably necessary to maintain prisoner control, was constitutionally prohibited. The court found that the detainee's allegations that a jail administrator and sheriff created an atmosphere or practice under which the defendant officers operated in allegedly subjecting the detainee to excessive force and then denying him medical treatment when they sprayed him with pepper spray, were sufficient, if proven, to create supervisory liability under § 1983. The court held that the detainee's claim of deliberate indifference on behalf of defendant officers, wherein they failed to provide medical attention to the detainee after using pepper spray against him, was no more than a continuation of the detainee's excessive force claim, and thus was not a separate cause of action under § 1983. (Lauderdale Detention Center, Alabama)

U.S. District Court
CONDITIONS
CROWDING
MEDICAL CARE
PRIVACY

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. The court found that the detainee's attention deficit hyperactivity disorder (ADHD) was not a serious condition, and therefore any denial of medical care for the condition did not violate his Eighth Amendment rights. The court noted that even if ADHD was a serious condition, prison officials were not deliberately indifferent in treating it, and any denial of medical care did not violate the detainee's Eighth Amendment rights, in that the detainee merely disagreed with the treatment offered by two doctors at the jail.

According to the court, a deputy's alleged recording of the detainee in a jail dormitory with a cell phone video camera, if proven, was not a violation of any constitutional right to privacy, inasmuch as the detainee had no expectation of privacy while in a public area of the jail, and any possible harm to the detainee's reputation was so speculative as to be non-existent. (River Parish Correction Center, Louisiana)

U.S. District Court
INTAKE
SCREENING
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
CLASSIFICATION
FAILURE TO
PROTECT

Eichelman v. Lancaster County, 510 F.Supp.2d 377 (E.D.Pa. 2007). A detainee brought a § 1983 action against a county, the warden of the county prison, and a corrections officer, seeking monetary relief relating to his treatment while detained in the county prison for a short period of time. The district court granted the defendants' motions for 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 corrections officer acted with deliberate indifference to the detainee's safety when he informed inmates of the arrival of the detainee charged with shooting incident involving a two-year old boy. The officer knew that the detainee was not in protective custody but rather was in the general population among violent offenders with whom he would have contact and was housed in a cell furthest from the guard post. The inmate subsequently suffered injuries at the hands of other inmates. The court also found genuine issues of material fact as to whether the officer acted recklessly and callously by intentionally inciting inmate animosity toward the detainee and as to whether he acted with an awareness of the risk that his actions would result in serious harm to the detainee when other inmates inevitably would have access to him. (Lancaster County Prison, Pennsylvania)

U.S. District Court
INTAKE
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. (Crabtree, Rohrbaugh & Associates, Carbon County Prison, Pennsylvania)

U.S. Appeals Court
SUICIDE
MENTAL HEALTH
INTAKE
SCREENING
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. Appeals Court
BAIL

Galen v. County of Los Angeles, 477 F.3d 652 (9th Cir. 2007). A domestic violence arrestee brought a § 1983 Eighth Amendment action against a county, county sheriff, and individual sheriff's deputies, alleging that bail of \$1 million was excessive. The district court granted summary judgment in favor of the defendants and awarded attorney fees in favor of the defendants. The arrestee appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that bail was not excessive, and that the deputy who requested a bail enhancement and the deputy's superior who authorized the enhancement request were entitled to qualified immunity. The court held that individual sheriff's deputies were not entitled to the award of attorney fees under § 1988, but that the arrestee's post-discovery litigation of a *Monell* claim was frivolous, supporting the award of attorney fees to the county. (Los Angeles County Sheriff's Department, California)

U.S. District Court
RELEASE

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. Appeals Court
MEDICAL CARE
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. Appeals Court
FAILURE TO PROTECT
CLASSIFICATION

Guzman v. Sheahan, 495 F.3d 852 (7th Cir. 2007). A pretrial detainee brought a § 1983 action against county jail officials and a sheriff alleging violations of his right to due process as guaranteed by the Fourteenth Amendment. The district court granted the defendants' motion for summary judgment and the detainee appealed. The appeals court affirmed. The court held that a corrections officer was not deliberately indifferent to the detainee's safety and welfare, as required for the detainee's § 1983 due process claim, arising out of a fight with another inmate and resulting in serious injury to the detainee. The court noted that the detainee had never before interacted with the inmate involved in the altercation nor had he ever communicated to the corrections officer or to anyone else that the inmate might be a specific danger to him. Immediately after the fight broke out, the officer called for back-up. The court held that there was no evidence that the sheriff had knowledge that the classification and reclassification of inmates were being poorly implemented by corrections officers, as required for the detainee's § 1983 official capacity claim against the sheriff. (Cook County Jail, Illinois)

U.S. District Court
MEDICAL CARE
INTAKE
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
ACCESS TO COURT
CONDITIONS

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. The court held that the detainee's right of access to the courts was not violated by any restriction on his access to a law library, despite his claim that his "wrongful" conviction was proof of his actual injury. He did not identify a specific defense or legal claim that he was unable to pursue due to his alleged lack of access to legal materials, and any finding that he had been injured by a "wrongful" conviction would have impermissibly implied the invalidity of his conviction. The court noted that lack of free photocopying of law library materials did not deny the indigent detainee access to the courts. (Alvin S. Glenn Detention Center, South Carolina)

U.S. Appeals Court
MEDICAL CARE

Hartsfield v. Colburn, 491 F.3d 394 (8th Cir. 2007). A pretrial detainee brought a § 1983 action against a nurse, physician, and captain, alleging that they were deliberately indifferent to his serious medical needs. The inmate alleged that the defendants were deliberately indifferent to his serious medical needs when they delayed referring him to an oral surgeon to have three teeth extracted. On remand the district court entered judgment for the defendants and the detainee appealed. The appeals court affirmed. The appeals court held that the district court did not clearly err in finding that the nurse and physician acted reasonably in requiring a second sick call request from the detainee before referring him to a dentist, and that most of the delay in the detainee seeing the dentist resulted when the detainee unreasonably failed or refused to submit a second request. The court found that the captain in charge of transporting inmates to medical appointments did not deny or delay the detainee's dental treatment by interfering with or overriding any medical staff decisions to schedule an earlier appointment. (Scott County Jail, Iowa)

U.S. District Court
FAILURE TO PROTECT
SUICIDE
MEDICAL CARE

Herman v. County of York, 482 F.Supp.2d 554 (M.D.Pa. 2007). The estate of a prisoner who had committed suicide in a county prison sued the county, a warden, the prison health service, and nurses, asserting Eighth Amendment claims under § 1983, claims under the Americans with Disabilities Act (ADA), and state medical malpractice claims. The defendants moved for summary judgment. The district court granted the motions in part and denied in part. The court found that, notwithstanding a Pennsylvania statute stating that the safekeeping, discipline, and employment of prisoners was exclusively vested in a prison board, the county could be held liable to the prisoner under § 1983 for the actions of the warden if he was acting as an agent of the county. The court held that summary judgment was precluded by genuine issues of material fact as to whether the warden was acting as an agent for the county in allegedly failing to prevent the prisoner's suicide, and as to the warden's role in ratifying county prison policies. The court found that the county, warden, nurses, and prison health service were not deliberately indifferent to the medical needs of prisoner who committed suicide, where alleged failures to check on the prisoner in his cell was by officers other than the defendants, nurses could not have been deliberately indifferent if they were unqualified as the prisoner's estate said, and the nurses' failure to place the prisoner on a suicide watch did not fall outside their professional judgment, given the prisoner's denials of suicidal ideation and his family's testimony. The court found that the prisoner was not denied access to county prison's programs or services because of disability, and any failure by the county and warden to prevent his suicide thus was not discrimination in services, programs, or activities of a public entity in violation of ADA. The prisoner denied thoughts of suicide, he told a nurse that he did not wish to take anti-depressant medications that had been prescribed for him, and a nurse told him to return to mental health services if necessary. (York County Prison, Pennsylvania)

U.S. District Court
CLASSIFICATION
FAILURE TO PROTECT

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. District Court
MEDICAL CARE
MENTAL HEALTH
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 found that the sheriff was not deliberately indifferent to the pretrial detainee's suicidal nature, and thus was not subject to liability under § 1983 for failing to take steps to prevent his suicide, even though a notation on an incident report two months before the detainee's suicide indicated that another prisoner reported that the detainee "was threatening suicide". The court found no proof that the report did not simply inadvertently escape the sheriff's knowledge.

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.

According to the court, under Virginia law, the deputies' failure to provide the pretrial detainee with prompt medical care after they discovered him hanging in his cell did not amount to gross negligence as required to overcome their immunity from tort liability. (Buchanan County, Virginia)

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, South Dakota)

U.S. Appeals Court
USE OF FORCE

Marvin v. City of Taylor, 509 F.3d 234 (6th Cir. 2007). An arrestee brought an action against police officers under § 1983 and state law alleging excessive force. The district court denied the defendants' motion for summary judgment and they appealed. The appeals court reversed. The court held that even if an officer pushed the arrestee, who was drunk, to the ground as he exited the police vehicle upon arrival at the police station, the officer did not use excessive force. The court noted that the arrestee was on the ground outside of the vehicle for less than fifteen seconds, and as soon as the arrestee ended up on the ground the officer closed the vehicle's door, joined another officer in helping arrestee to his feet, and walked the arrestee inside to the booking room. The court found that the officers did not use excessive force in the booking room when they moved the arrestee's arms behind him and over his head for less than twenty seconds after the arrestee refused to keep his hands on a bench and struck out at an officer with closed-fist swing. According to the court, the officers did not use excessive force outside of the cell in which they attempted to place the arrestee when they restrained the arrestee on the floor for approximately thirty seconds after the arrestee fell. (City of Taylor Police Department, Michigan)

U.S. Appeals Court
MEDICAL CARE

Meuir v. Greene County Jail Employees, 487 F.3D 1115 (8th Cir. 2007). A prisoner who suffered from chronic dental problems brought a § 1983 action against a county and county jail medical staff, alleging deliberate indifference to his serious medical needs. The prisoner suffered from chronic dental problems. The district court granted summary judgment in favor of the defendants and the prisoner appealed. The appeals court affirmed. The court held that the prisoner failed to establish that jail medical staff acted with deliberate indifference to his serious medical needs, where jail nurses provided the prisoner with over-the-counter pain medication and encouraged him to brush and gargle with salt water in response to his

complaints of bleeding gums and toothaches. The court noted that staff referred him to a county dentist, but the prisoner refused to go. According to the court, in the face of medical records indicating that medical treatment was provided and physician affidavits indicating that the care provided was adequate, an inmate cannot create a question of fact, to avoid summary judgment, in a claim for deliberate indifference to serious medical needs by merely stating that he did not feel he received adequate treatment. The court held that the prisoner failed to show that the county jail physician was motivated by an impermissible motive in refusing to provide the prisoner with free over-the-counter pain medication, although the prisoner claimed that he refused to see the dentist because the dentist was allegedly a “pull-teeth only” provider. The court found that the physician refused to provide prisoner with medication based on his refusal to see the dentist, and there was no showing that the physician knew why the prisoner refused to go to the dentist or that the physician’s motive was otherwise retaliatory. The court noted that the medication was available to the prisoner for purchase in the commissary. According to the court, the prisoner lacked standing to seek injunctive relief to end the county jail’s unwritten “pull-teeth-only” policy for treatment of chronic dental problems, where the prisoner filed suit against the county four months after he was transferred to another correctional facility, his dental ailments were treated without complaint at the transferee facility, and there was no reason to believe that detainee would be returned to the county jail. (Greene County Jail, Missouri)

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
RESTRAINTS
CONDITIONS
SANITATION

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
USE OF FORCE
RESTRAINTS
PROTECTION

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 being handcuffed behind her back was alone not an adequate form of restraint. (Independence Co. Jail, Ark.)

U.S. District Court
FAILURE TO PROTECT

Orange v. Fielding, 517 F.Supp.2d 776 (D.S.C. 2007). A pretrial detainee brought a § 1983 action against two detention center administrators to recover for a beating by officers. The court granted summary judgment in favor of one administrator, and denied the other administrator’s motion. The court held that the detainee’s conclusory statements in an affidavit, that the administrator was aware of an officer’s aggressiveness toward inmates and failed to protect the detainee, were insufficient to preclude summary judgment. The court found that the detainee’s affidavit stating that he spoke with the administrator several times about danger from officers, but that the administrator failed to take action, raised genuine issues of

material fact, precluding summary judgment in favor of the other administrator. (Georgetown County Detention Center, South Carolina)

U.S. District Court
LENGTH
RELEASE

Portis v. City of Chicago, 510 F.Supp.2d 461 (N.D.Ill. 2007). Arrestees brought a class action challenging the unconstitutional practice of delaying the release of persons arrested for ordinance violations that were punishable by only a fine. After their class was certified, the arrestees moved for summary judgment. The district court denied the motion. The court held that summary judgment was precluded by a genuine issue of material fact as to when the steps necessary to process persons arrested for fine-only ordinance violations were completed. (City of Chicago, Illinois)

U.S. District Court
CROWDING
STAFFING

Roberts v. County of Mahoning, Ohio, 495 F.Supp.2d 784 (N.D. Ohio 2007). Pretrial detainees and convicted prisoners being held in the custody of an Ohio sheriff at 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 appointed a special master for the remedial phase of the litigation. A three-judge panel of the district court approved the proposed stipulated order. The district court held that the appointment of a special master had accomplished the court's original objective and the appointment would be terminated. The court noted that the special master's reports and other actions had fulfilled the requirement that he "assist the parties, specifically the Defendants, in attempting to find a solution to the problems which created the unconstitutional conditions in the Jail," and his fourth report had established a mechanism for the litigation's actual resolution. The first two reports addressed a narrowly avoided crisis that would have resulted from massive layoffs of security staff as a result of a budget shortfall in the county. The third report, filed after passage of a successful ballot issue increasing revenues available for the funding of the MCJC, described the parties' continued cooperation in attempting to resolve the problems facing the jail, in particular, the need for accelerated collection of the proceeds from the successful bond issue. The court concluded "These reports, to which no party filed any objection, were instrumental in establishing an informational foundation for discussions of possible remedies to the phenomenon of chronic and serious crowding in the jail." (Mahoning County Justice Center, Ohio)

U.S. District Court
CROWDING
STAFFING

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)

U.S. Appeals Court
MEDICAL CARE

Ruiz-Rosa v. Rullán, 485 F.3d 150 (1st Cir. 2007). The mother of a pretrial detainee brought suit against officials of the Puerto Rico prison system and prison medical personnel after her 18-year-old son died of septicemia while incarcerated. The district court granted the defendants' motion for summary judgment and the mother appealed. The appeals court affirmed. The appeals court held that the district court's dismissal with prejudice of the mother's complaint for failure to comply with a court order requiring her to file a clearly stated amended complaint was an abuse of discretion, but that there was no evidence of deliberate indifference on the part of prison personnel to the serious medical needs of pretrial detainee, as required for the mother's claim under the Fourteenth Amendment. The court noted that the detainee received medical care in the form of draining of his abscess, blood cultures, and two different antibiotics. (Bayamón Correctional Complex, Puerto Rico)

U.S. District Court
FAILURE TO PROTECT

Saunders v. U.S., 502 F.Supp.2d 493 (E.D.Va. 2007). A pretrial detainee brought an action under the Federal Tort Claims Act (FTCA) seeking to hold the United States liable for injuries that he suffered during a fight at a state jail while in federal custody. The district court granted the defendant's motion to dismiss. The court held that the detainee's claim that the United States Marshals Service acted negligently in placing him in an unsafe state jail, and in failing to respond to his verbal concerns about his safety, involved discretionary decision making, and thus fell within the scope of the Federal Tort Claims Act (FTCA) discretionary function exception. The court noted that there was no allegation that the Marshals Service had any knowledge of unsafe conditions at the jail other than an apprehension expressed by the detainee himself. (Western Tidewater Regional Jail, Virginia)

U.S. Appeals Court
ASSESSMENT OF
COSTS

Sickles v. Campbell County, Kentucky, 501 F.3d 726 (6th Cir. 2007). Inmates, former inmates, and relatives and friends of inmates brought a § 1983 action against two counties, challenging methods used by the counties to collect fees imposed on prisoners for the cost of booking and incarceration. The district court entered summary judgment for the counties and the plaintiffs appealed. The appeals court affirmed. The court held that the county was not required under the Due Process Clause to grant a predeprivation hearing to inmates prior to withholding a portion of money from their canteen accounts to pay the costs of booking, room, and board. The court found that the relatives lacked a property interest in the money they sent to inmates and that the counties did not violate the free speech rights of relatives of inmates in withholding money. According to the court, the county inmates had a property interest protected by the Due Process Clause in money withheld from their canteen accounts to pay the costs of booking, room, and board, but the county was not required under the Due Process Clause to grant a predeprivation hearing to inmates prior to withholding money from their canteen accounts where the amounts withheld were small, the risk of erroneous deprivation was minor in that withholding involved elementary accounting and was non-

discretionary, the potential benefits of a hearing were small, and the government's interests of sharing costs and furthering offender accountability were substantial. The court also found that the county did not violate the free speech rights of relatives of inmates in withholding a portion of money that relatives had sent to the inmates for their canteen accounts, notwithstanding that if the money had not been withheld the inmates might have spent it making telephone calls. (Campbell County and Kenton County, Kentucky)

U.S. Appeals Court
SEGREGATION
CONDITIONS
DUE PROCESS

Stevenson v. Carroll, 495 F.3d 62 (3rd Cir. 2007). Three pretrial detainees filed a pro se § 1983 action against a warden, alleging that their placement in restrictive confinement violated their substantive and procedural due process rights. The district court dismissed the action and the detainees appealed. The appeals court vacated and remanded. The court held that the detainees' allegations stated a claim for violation of substantive due process rights and a claim for violation of procedural due process rights. The court remanded the case for consideration of the qualified immunity claim. The detainees alleged that they were punished prior to being sentenced by being placed in restrictive confinement, that they were subjected to lengthy stays in isolation with prisoners who had disciplinary problems or who were in protective custody, and that they were subjected to additional hardships that were not shared by the general prison population. The court found that the detainees' allegations were sufficiently factual to raise the detainees' right to relief above a speculative level. The detainees also alleged that they were placed in restrictive confinement indefinitely and removed from the general prison population while awaiting resentencing after their sentences were vacated, and that they were not given any explanation or opportunity to contest the restrictive placement. (Security Housing Unit [SHU], Delaware)

U.S. District Court
USE OF FORCE
TRANSPORT

Stewart v. Beaufort County, 481 F.Supp.2d 483 (D.S.C. 2007). A pretrial detainee brought an action in state court against a county, county sheriff's department, and deputy, alleging claims for assault and battery against the deputy, gross negligence against the sheriff's department, and, pursuant to § 1983, violation of his constitutional rights. Following removal to federal court, the defendants moved for summary judgment. The district court denied the motion. The court held that a genuine issue of material fact existed as to whether the deputy's use of force in transporting the pretrial detainee to a detention center was excessive, precluding summary judgment for deputy on the basis of qualified immunity. The court noted that, at the time of the alleged violation, a pretrial detainee's right to be free from excessive force was clearly established. (Beaufort County Detention Center, South Carolina)

U.S. Appeals Court
SEARCHES

Tabbaa v. Chertoff, 509 F.3d 89 (2nd Cir. 2007). United States citizens brought an action alleging that the Bureau of Customs and Border Protection (CBP) officials violated their constitutional and statutory rights by detaining and searching them at a border when they returned from an Islamic conference in Canada. The district court entered summary judgment in the government's favor, and the plaintiffs appealed. The appeals court affirmed, finding that the suspicionless searches of the plaintiffs did not violate the Fourth Amendment. The court found that the burden placed on the plaintiffs' associational rights as the result of the CBP searches and detention was sufficiently significant to implicate First Amendment protections, but the searches and detention constituted the least restrictive means to protect the nation from terrorism. (U.S. Bureau of Customs and Border Protection, Buffalo, New York)

U.S. District Court
CONDITIONS

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
MEDICAL CARE
STAFFING
SUPERVISION

Thomas v. Sheahan, 499 F.Supp.2d 1062 (N.D.Ill. 2007). A special administrator filed a § 1983 suit against a county, sheriff, county board, correctional officers, supervisors, and a correctional medical technician, on behalf of a pretrial detainee who died at a county jail from meningitis and pneumonia. The administrator alleged violations of the detainee's constitutional rights and state law claims for wrongful death, survival action, and intentional infliction of emotional distress. The defendants moved for summary judgment and to strike documents. The district court granted the motions in part and denied in part. The court did not strike all of the plaintiff's summary judgment submissions, for allegedly failing to disclose witnesses or individuals with relevant information who submitted affidavits, given that the plaintiff had disclosed witnesses prior to discovery deadline.

The court held that summary judgment was precluded by a genuine issue of material fact as to whether the detainee's illness was an objectively serious medical need, and whether correctional officials and a correctional medical technician were aware of the detainee's serious medical symptoms. The court found that the supervisors of the correctional officers were not deliberately indifferent to the detainee's serious medical condition, where the officers did not contact their supervisors about the detainee until the morning that he died, the supervisors obtained medical care for the detainee, and the supervisors were not responsible for security checks or rounds of jail. The court also found that summary judgment was precluded on the issue of causation due to a genuine issue of material fact as to whether the county was

deliberately indifferent to its widespread practice of failing to train its employees on how to handle inmate medical requests at the county jail. Summary judgment was also precluded by genuine issues of material fact as to whether the county was deliberately indifferent to: (1) its widespread practice of understaffing correctional officers at the county jail; (2) its widespread practice of failing to repair broken video monitoring systems for inmate surveillance at the jail; and, (3) its widespread policy or practice of falsifying daily logs to cover up missed security checks on inmates. (Cook County Jail, Illinois).

U.S. District Court
MEDICAL CARE

Thomas v. Sheahan, 514 F.Supp.2d 1083 (N.D.Ill. 2007). A special administrator filed a § 1983 suit against a county, sheriff, county board, correctional officers, supervisors and correctional medical technician on behalf of a pretrial detainee who died at a county jail from meningitis and pneumonia, alleging violations of constitutional rights and state law claims for wrongful death, survival action, and intentional infliction of emotional distress. The court held that the administrator's failure to produce documentary evidence of lost wages or child support payments did not preclude her from introducing evidence at trial. The court found that the physician was not qualified to testify as to the manifestations of meningitis absent evidence that the physician was an expert on meningitis or infectious diseases. According to the court, a jail operations expert's proposed testimony that the county did not meet minimum standards of the conduct for training of correctional staff was inadmissible. The court also found that evidence of jail conditions was relevant and thus admissible, where the administrator of the detainee's estate argued that county officials should have known the detainee was sick because he was throwing up in his cell and in a day room. (Cook County, Illinois)

U.S. Appeals Court
SEARCHES

U.S. v. Barnes, 506 F.3d 58 (1st Cir. 2008). The government appealed an order of the United States District Court for the District of Rhode Island suppressing cocaine seized from a defendant pursuant to a visual body cavity search. The appeals court vacated and remanded. The court held that the strip search for contraband and weapons was justified given the defendant's arrest for a drug trafficking crime, but that the arresting officer did not have individualized suspicion that the arrestee was "cheeking" drugs, as required to justify a visual body cavity search. According to the court, the evidence before the officer was that the arrestee was a suspected drug dealer in possession of narcotics and that some drug dealers concealed drugs between their buttocks. (Woonsocket Police Department, Rhode Island)

U.S. Appeals Court
MEDICAL CARE

U.S. v. Miller, 477 F.3d 644 (8th Cir. 2007). A supervisor at a county detention center was convicted in the district court of depriving two prisoners of their Eighth Amendment right to be free from cruel and unusual punishment. The supervisor appealed and the appeals court affirmed. The court held that there was sufficient evidence that the supervisor acted maliciously and sadistically toward the prisoner, in violation of the Eighth Amendment prohibition against cruel and unusual punishment, even though the supervisor could have inflicted even greater injuries upon the prisoner. Evidence indicated that the supervisor punched the prisoner when there was no legitimate reason to do so, kicked the prisoner, and stomped on the prisoner while he was lying on the ground. The court noted that the assailing officer's ability to inflict greater injuries upon a prisoner does not make an attack any less malicious or sadistic, for the purposes of the Eighth Amendment prohibition against cruel and unusual punishment. The court held that the prisoner's medical records, which did not identify the supervisor as the individual responsible for the prisoner's injuries, were admissible under the medical treatment or diagnosis exception to the hearsay records. (Craighead County Detention Facility, Arkansas)

U.S. Appeals Court
CONDITIONS

U.S. v. Ramirez-Gutierrez, 503 F.3d 643 (7th Cir. 2007). A defendant pled guilty in the district court to reentering the United States illegally after being deported. On appeal, the court held that the conditions of the defendant's pretrial confinement were not so substandard or onerous as to warrant special consideration at sentencing, and the sentencing judge considered the defendant's claim that he committed crimes because of substance abuse problem. The defendant complained that he was unable to obtain care for his broken tooth, lived in poorly ventilated quarters, and was given inadequate opportunity to exercise during his two and a half month detention. (Kankakee County Detention Center, Illinois)

U.S. District Court
MEDICAL CARE
INTAKE SCREENING

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. District Court
CIVIL COMMITMENT

Webb v. Budz, 480 F.Supp.2d 1050 (N.D. Ill. 2007). African-American civil detainees in a state treatment and detention facility for sexually violent persons brought a § 1983 action against facility officials, alleging discrimination on the basis of race. The district court granted summary judgment in favor of the defendants. The court held that the African-American civil detainees who were placed on temporary special/secure management status (SMS) for committing acts of violence toward staff members were not similarly situated to five Caucasian detainees who were placed on SMS for committing acts of violence toward staff members, as required to establish a prima facie case of discriminatory effect in violation of equal protection. According to the court, after being placed on SMS, each of the Caucasian detainees progressed out of SMS as a result of good behavior and acceptance of responsibility, while the African-American detainees engaged in numerous acts of insubordination while on SMS, including threats on security staff, concealing weapons and contraband, and throwing urine at staff members. (Illinois Department of Human Services Treatment and Detention Facility for Sexually Violent Persons, Sheridan, Illinois)

U.S. Appeals Court
MEDICAL CARE

Williams v. Rodriguez, 509 F.3d 392 (7th Cir. 2008). 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)

U.S. Appeals Court
MENTAL HEALTH
MEDICAL CARE

Winters v. Arkansas Dept. of Health and Human Services, 491 F.3d 933 (8th Cir. 2007). The administrator of the estate of a mentally ill pretrial detainee/civil committee who had died of peritonitis in a county jail sued a sheriff and the Arkansas Department of Human Services (DHS) under § 1983, the Americans with Disabilities Act (ADA), and the Rehabilitation Act. The district court entered judgment for the defendants. The administrator appealed and the appeals court affirmed. The appeals court held that the pretrial detainee was not discriminated against on the basis of his mental illness, as required to establish violation of the Americans with Disabilities Act (ADA) or the Rehabilitation Act. The court noted that the detainee was arrested for criminal trespass, and although he was not treated for his peritonitis due to his inability to communicate because of his mental illness, the sheriff and other jail officials sought immediate treatment for the detainee's mental illness, and attempted to transport him to a state hospital, but he was denied admittance due to lack of available space. The court found that neither the Arkansas Department of Human Services (DHS) nor the county sheriff were deliberately indifferent to the serious medical needs of the detainee, nor was there a policy or custom to deprive mentally ill detainees of treatment. According to the court, the detainee died from a condition that neither defendant knew of or suspected, the sheriff and other jail officers attempted to get the detainee into a mental health treatment facility, but no facility would accept custody of him. (Benton County Jail, Arkansas)

2008

U.S. District Court
INVOLUNTARY
MEDICATION

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
INVOLUNTARY
MEDICATION

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. Appeals Court
FALSE ARREST
INTAKE SCREENING
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. District Court
RESTRAINTS

Antoine v. County of Sacramento, 566 F.Supp.2d 1045 (E.D.Cal. 2008). A pretrial detainee brought a civil rights action against corrections officers based upon the officers' use of a "grating" restraint practice. After a jury verdict in favor of the detainees, the officers moved for a new trial. The district court granted the motion in part and denied in part. The court held that it was proper to permit an expert witness to express his opinions regarding the propriety of the "grating" practice in the context of whether the officers' decision to employ that practice rather than the "prostraint" restraining chair was appropriate. The court found that the detainee's attorneys' argument that the detainee was "hogtied" by the defendant corrections officers did not constitute misconduct warranting a new trial, where testimony indicated that the detainee's feet were shackled together and his hands were shackled together behind his back, but that his feet were not shackled to his hands. The court found that the compensatory damages instruction given in the detainee's civil rights action was in error since it permitted the jury to believe that it could award an unlimited amount of non-compensatory damages to compensate the plaintiff for the abstract "value" of his constitutional rights. According to the court, the use of the term "constitutional injuries"--combined with the instruction allowing the jury to award nominal damages, and the omission of the \$1.00 limit--invited the jury to award an unlimited amount of damages based on the importance of the plaintiff's constitutional rights in lieu of awarding compensatory damages. The jury awarded the detainee \$20,000 in compensatory damages as well as \$25,000 in punitive damages against each of four defendants, and \$50,000 against one defendant. (Sacramento County, California)

U.S. District Court
CLASSIFICATION
DUE PROCESS
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. District Court
PRIVACY

Bellamy v. Wells, 548 F.Supp.2d 234 (W.D.Va. 2008). A pretrial detainee brought a § 1983 action against police officers and a chief of police for initiating and surreptitiously recording conversations with him while he was in custody on an indictment for rape. The district court entered judgment for the defendants in part. The court held that the detainee's allegations that police officers initiated and surreptitiously recorded conversations with him while he was in custody, and that incriminating statements he made during these conversations were subsequently used against him at trial, stated a cognizable claim under § 1983 for violation of his Fifth Amendment right against compelled self-incrimination. While in a hospital, the detainee spoke with an officer who was guarding him. When police learned of these conversations, they had the officer wear a recording device and they recorded subsequent conversations. The detainee was never given his Miranda warning during the course of these conversations. (City of Waynesboro, Virginia)

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
FAILURE TO PROTECT
SUICIDE

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. Appeals Court
FAILURE TO PROTECT
INTAKE SCREENING
MEDICAL CARE

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. Appeals Court
HABEAS CORPUS

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
INTAKE SCREENING

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
LENGTH
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
SEARCHES

Craft v. County of San Bernardino, 624 F.Supp.2d 1113 (C.D.Cal. 2008). County jail inmates brought a class action alleging that a county's practice of routinely strip-searching inmates without probable cause or reasonable suspicion that the inmates were in possession of weapons or drugs violated the Fourth Amendment. After the court granted the inmates' motion for partial summary judgment, the parties entered into private mediation and reached a settlement agreement providing for, among other things, a class fund award of \$25,648,204. The inmates moved for the award of attorney's fees and costs. The district court held that class counsel were entitled to an attorney's fees award in the amount of 25% of the settlement fund plus costs. The court noted that counsel obtained excellent pecuniary and nonpecuniary results in a complex and risky case involving 150,000 class members, 20,000 claims, and five certified classes, each of which presented unsettled legal issues. According to the court, tens or hundreds of thousands of future inmates benefited from policy changes brought about by the suit, and the attorneys were highly experienced and highly regarded civil rights lawyers with extensive class action experience. (San Bernardino County Jail, California)

U.S. Appeals Court
MEDICAL CARE
USE OF FORCE

Danley v. Allen, 540 F.3d 1298 (11th Cir. 2008). A pretrial detainee brought a § 1983 action against jailers, alleging that he was subjected to excessive force and then denied medical treatment when they sprayed him with pepper spray. The district court entered orders denying the defendants' motions to dismiss on qualified immunity grounds, and the defendants appealed. The appeals court vacated and remanded. On remand, the district court again denied the motion to dismiss, and defendants again appealed. The appeals court affirmed. The court held that the use of pepper spray to subdue the unruly detainee who had twice ignored a jailer's instructions for him to return to his cell did not represent the application of excessive force in violation of the detainee's Fourteenth Amendment rights. But the court found that allegations in the detainee's complaint, regarding his subsequent confinement without being allowed to properly clean himself and remove pepper spray from his clothing, in a small, poorly-ventilated cell, were sufficient to state an excessive force claim.

According to the court, the entire incident, consisting of both the initial pepper-spraying and the detainee's subsequent confinement in a small, poorly-ventilated cell, could be treated as a single alleged incident of use of excessive force. The court noted that the detainee's eyes nearly swelled shut, he had difficulty breathing, and he nearly passed out, while jail officials allegedly failed to take any, and then only inadequate, steps to alleviate his suffering but instead mocked and ridiculed him. The court found that the alleged mocking of the detainee while he suffered, by jailers who parodied his choking, was circumstantial evidence of their malicious intent.

The court found that the allegations were sufficient to state a claim for officials' deliberate indifference to the detainee's serious medical needs. The court determined that the jailers were not entitled to qualified immunity on the detainee's deliberate indifference claim and that the detainee stated a claim against the sheriff and the jail administrator to hold them personally liable under § 1983 for alleged excessive force and deliberate indifference by the jailers.

The detainee was allegedly diagnosed with chemical conjunctivitis and bronchospasms as the result of the delay in treatment. The court noted that this, along with the fact that another prisoner allegedly recognized the detainee's distress and was ultimately successful in obtaining a brief shower for him, was sufficient to show the seriousness of his medical need. (Lauderdale County Detention Center, Alabama)

U.S. District Court
MEDICAL CARE

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
MEDICAL CARE
USE OF FORCE

Estate of Harvey ex rel. Dent v. Roanoke City Sheriff's Office, 585 F.Supp.2d 844 (W.D.Va. 2008). The administrator of a pretrial detainee's estate brought a civil rights action under §§ 1983, 1985, and 1986 and Virginia law, against a city sheriff's department, sheriff, deputies, and prison health providers, alleging excessive use of force, failure to train, assault, battery, conspiracy, breach of a non-delegable fiduciary duty, intentional infliction of emotional distress and wrongful death. The defendants moved for summary judgment. The district court granted the motions. The court held that the estate of the pretrial detainee who died following cardiac arrest after transfer from a jail to a hospital could not sustain a deliberate indifference claim under the Fourteenth Amendment against the employees of a prison health provider, absent evidence that they actually knew of and disregarded a serious risk of harm to the detainee, or that they actually knew of and ignored a serious need for medical care. The court noted that the city sheriff and sheriff's deputies did not knowingly disregard a substantial risk of harm to the pretrial detainee in violation of Fourteenth Amendment when they relied on medical personnel's decisions as to the appropriate course of treatment for the detainee's medical needs. The court found that the city sheriff's deputies did not act with deliberate indifference when, in an attempt to transfer the detainee to a hospital for treatment, they forcibly removed the detainee from his cell, placed him face down on a stretcher, and covered him with a blanket to stop him from spitting and throwing feces at the deputies. According to the court, there was no evidence that the deputies knew that the detainee suffered from an excited delirium or serious heart condition. The court noted that the detainee was naked, slick with feces and urine, spitting, yelling, being combative, threatening to throw more bodily fluids, trying to bite, and was HIV and Hepatitis C positive. (Roanoke City Jail, Virginia)

U.S. District Court
FALSE ARREST
FALSE
IMPRISONMENT

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. Appeals Court
ALIEN
FAILURE TO PROTECT
MEDICAL CARE

Grieverson v. Anderson, 538 F.3d 763 (7th Cir. 2008). A federal pretrial detainee who was a Canadian citizen and who was held in a county jail brought actions against a city and against a sheriff, jail commander, sergeant, jail officers, and the United States marshal. The detainee sued the defendants in their official and individual capacities, asserting state-law negligence and constitutional claims, § 1983 claims, and claims under the Alien Tort Claims Act. The district court granted summary judgment for the defendants and the detainee appealed. The appeals court affirmed in part, reversed in part, and remanded.

The court held that there was no evidence that the county jail's grievance process and the allegedly sham manner in which it functioned caused the injuries suffered by the pretrial detainee, who was beaten on repeated occasions by other prisoners, as required for the detainee to establish the causation element of his § 1983 claim against the county sheriff in his official capacity.

The court found that the detainee did not show that the alleged practice at the county jail of dispensing an inmate or detainee's entire drug prescription at one time was a widespread practice, reflective of a policy choice made by the county sheriff, as required to establish a § 1983 claim against the sheriff in his official capacity. According to the court, the detainee did not establish the frequency of the claimed practice or indicate how many such disbursements to others he witnessed.

The court held that there was no evidence that jail officers knew that the detainee was perceived to be a snitch by his fellow inmates and thus that the officers knew that the detainee's placement in a barracks-style cell with 45 others posed a substantial risk of serious harm to the detainee, as required to establish the jail

officers' deliberate indifference to the detainee's safety in violation of his due process rights. The court found that the repeated assaults suffered by the detainee at the hands of other jail inmates did not establish that the jail officers were subjectively aware of a specific risk to the detainee's safety, as required for the detainee to establish deliberate indifference to his safety in violation of his due process rights. The court noted that the detainee did not inform jail officers of a specific threat to his life, such as the perception that he was "snitch," but instead indicated only that he was afraid and wanted to be moved. According to the court, the officers could not have been on notice of specific threats to the detainee's safety, when the detainee was assaulted by one inmate for taking too long to use a toilet, by another for snoring, and by another out of anger over losing a card game. The court found that the inmate was a "victim of the inherent, as it were the baseline, dangerousness of prison life." The court held that summary judgment was precluded by material issues of fact as to whether the detainee was assaulted by other inmates in the presence of a jail officer and whether the jail officer watched the assault but did not intervene to protect the detainee. The court held that summary judgment was precluded by verifying medical evidence of a genuine issue of material fact as to whether a delay in securing medical care for the detainee's broken nose was deliberate indifference to his serious medical needs. According to the court, evidence that the detainee suffered a nasal fracture, could experience further bleeding, and possibly would need to see a specialist, and that the detainee later underwent painful nose surgery, would help a jury determine whether the one and one-half day delay by jail officers in getting the detainee medical attention unnecessarily prolonged and exacerbated the detainee's pain. (Marion County Jail, Indiana)

U.S. District Court
BAIL
LENGTH

Hernandez v. Carbone, 567 F.Supp.2d 320 (D.Conn. 2008). An indigent arrestee brought an action against the director of Connecticut court support services, alleging violations of § 1983, the Eighth Amendment, and the Fourteenth Amendment arising from the arrestee's nearly year-long pre-trial detention, during which time the arrestee was unable to post bail, before charges were dropped. The director moved to dismiss. The district court granted the motion. The arrestee alleged that the director caused his bail to be set at \$100,000. The court held that the director's alleged misconduct in adopting unconstitutional policies and practices did not cause the arrestee's bail to be set so high or cause detention. The court held that it was required to abstain from deciding the arrestee's facial constitutional challenges to Connecticut's bail system. The court noted that the sentencing judge not only ignored a bail commissioner's recommendation for a much lower bail, in an amount that was also requested by the arrestee's counsel, but he also ignored the bail commissioner's statement that the arrestee could not post any bail, and at a subsequent bail reduction hearing the judge declined to reduce the arrestee's bail. (Connecticut's Court Support Services Division, City of Hartford)

U.S. Appeals Court
CELL CAPACITY
CROWDING
DUE PROCESS

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
ADA- Americans with
Disabilities Act
MEDICAL CARE
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. The court found that the inmate's placement in isolation at the county jail only lasted three or four days, and thus did not constitute an atypical and significant hardship compared to the burdens of ordinary jail confinement in violation of the inmate's due process rights for the purposes of § 1983 action, although it appeared that the inmate lost some privileges during his time of isolation. According to the court, evidence was insufficient to show that the inmate was injured, or that whatever force was used by correctional officers, who removed the inmate from his cell during his transfer to segregation, was more than necessary, as would have supported the inmate's § 1983 claim for alleged violation of his rights under the Eighth Amendment. The court held that evidence was insufficient to show that medical staff at the county jail acted with deliberate indifference to the inmate's medical needs as to requested dental care, as required to support his § 1983 claim for violation of the Eighth Amendment. The court noted that although the inmate had to wait two months to see a dentist, the dentist filled the inmate's cavities and took x-rays related to that treatment. (Genesee Co. Jail, New York)

U.S. District Court
LAW LIBRARIES

Jones v. Lexington County Detention Center, 586 F.Supp.2d 444 (D.S.C. 2008). A pretrial detainee brought a pro se civil rights action against a county detention center and sheriff, alleging his inability to have access to legal research materials violated his constitutional rights. The district court dismissed the case. The court held that the detainee did not have a constitutional right of access to a law library while being temporarily held in a county detention facility awaiting trial on criminal charges, where the detainee did not allege that he had been incarcerated for too long and was not pursuing any speedy trial claims. The court noted that a state is only required to provide criminal defendants legal counsel, not legal research materials. According to the court, the detainee's lack of access to a law library while being temporarily held in a county detention facility was not an "actual injury," as required to confer standing for the detainee to allege a deprivation of a constitutional right of access to the courts. (Lexington County Detention Center, South Carolina)

U.S. Appeals Court
FAILURE TO PROTECT

Klebanowski v. Sheahan, 540 F.3d 633 (7th Cir. 2008). A detainee who was being held for trial brought a § 1983 action against a sheriff, a jail and its officers, alleging deliberate indifference to risks of housing gang members with non-gang members, which caused attacks on the detainee by gang members. The detainee had suffered two attacks at the hands of his fellow prisoners. The defendants moved for summary judgment. The district court granted the motion and the detainee appealed. The appeals court affirmed. The court held that the allegation by the detainee that his attack by gang members was brought on by the jail's policy of housing gang members with non-gang members, allowing them weapons, and periodically leaving them unattended, did not sufficiently establish an unconstitutional policy, for purposes of establishing deliberate indifference in violation of due process in his § 1983 action. According to the court, the detainee submitted no evidence showing an express endorsement of the claimed policies, that any policymaker caused the circumstances of which he complained, or any evidence to establish the existence of a widespread practice by the jail. The court found that jail officers were not deliberately indifferent to the detainee in violation of due process by not taking steps to protect the detainee from attack by gang members. The court held that the detainee's statements to officers prior to the attack, that he was afraid for his life, were not sufficient to alert the officers to a specific threat as he did not provide specific identities of those who had threatened him, did not tell officers he had actually been threatened with future violence, nor that the attack had been inflicted due to his non-gang status. (Cook County Jail, Illinois)

U.S. Appeals Court
FAILURE TO PROTECT

Leary v. Livingston County, 528 F.3d 438 (6th Cir. 2008). A pretrial detainee brought a § 1983 action against a county and officers, alleging deliberate indifference and excessive force. The district court granted summary judgment on qualified immunity grounds to one officer, but denied summary judgment to the other officer. The officers appealed. The appeals court affirmed in part and reversed in part. The court held that the harm facing the detainee resulting from an officer telling other inmates that the detainee was in for raping a nine-year-old girl was objectively serious, as required to establish deliberate indifference and preclude qualified immunity. The court noted that another officer had verified the risk of serious harm that the detainee would face if the inmates learned of his charges, and the defendant officer himself informed the detainee that "once other inmates found out what he did[,] there would be no protection from anyone here at the jail". Once other inmates learned of the detainee's charges, the officer knew there was reason to believe that the detainee would need protection at the jail, and yet the officer persisted in telling other inmates about the detainee's charges despite that knowledge. (Livingston County Jail, Michigan)

U.S. District Court
USE OF FORCE

McCall v. Crosthwait, 590 F.Supp.2d 1337 (M.D.Ala. 2008). An arrestee brought a § 1983 action against a police officer and others, alleging that an officer used excessive force against him when he was in a municipal jail, in violation of the Fourth Amendment. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the police officer's use of force against the arrestee and the injuries sustained by the arrestee, allegedly arising out of the officer pushing the arrestee in the jail with such force that he fell into a steel door and plexiglass window, was de minimis under the Fourth Amendment. According to the court, even if the officer pushed the arrestee into a jail house door unprovoked, a hospital found no injuries after the jail incident aside from a minor contusion to the arrestee's right elbow and shoulder. (Montgomery Municipal Jail, Alabama)

U.S. Appeals Court
USE OF FORCE

Moore ex rel. Estate of Grady v. Tuelja, 546 F.3d 423 (7th Cir. 2008). Administrators of an arrestee's estate filed a § 1983 action alleging that police officers and jail personnel deprived the arrestee of his rights under the Fourth and Fourteenth Amendments by using excessive force and denying him medical care. The district court entered judgment on a jury verdict in the defendants' favor and denied the administrators' motions for judgment as a matter of law and for a new trial. The administrators appealed. The appeals court affirmed. The court held that there was sufficient evidence to support the jury's findings. A physician had testified that the nature of the arrestee's injuries indicated that he had most likely been beaten with a baton by jail personnel. But all medical experts agreed that the arrestee suffered from advanced heart disease and died of a heart attack, the arrestee had been in two automobile accidents on the date of his death and had suffered a hand laceration immediately after the second accident, and there was evidence that the arrestee's wrist injuries occurred in an accident or while he was being transported to jail, and that his head injuries occurred when he fell to the floor after a heart attack. (Chicago Police Department, Illinois)

U.S. District Court
SEARCHES

Munyeri 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. District Court
MEDICAL CARE

Myrie v. Calvo/Calvoba, 591 F.Supp.2d 620 (S.D.N.Y. 2008). A pretrial detainee brought a pro se § 1983 action alleging jail medical personnel violated his Eighth Amendment right to adequate medical care. The medical personnel filed a pre-answer motion to dismiss the complaint. The district court granted the motion. The court held that the detainee's claim that deprivation of his eyeglasses caused significant eye deterioration constituted a serious deprivation of medical needs, but the allegation that a jail physician neglected to take care of his vision problem in a sufficiently prompt manner did not sufficiently allege the physician was deliberately indifferent to the detainee's serious medical needs. According to the court, allegations that jail medical personnel's delay in locating his medical file, and the resulting cancellation of his appointment with a physician, delayed or denied his access to medical treatment in violation of Due Process failed to state a claim. (Otis Bantum Correctional Center, New York)

U.S. Appeals Court
USE OF FORCE

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
ACCESS TO COURT
FALSE
IMPRISONMENT
INITIAL APPEARANCE

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. 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
CONDITIONS
DUE PROCESS
EXERCISE
RELIGION
ADA- Americans with
Disabilities Act

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. Inmates had alleged that they were denied the opportunity for eight hours of uninterrupted sleep on the night before and the night after each court appearance. The court found that an injunction relating to restrictions of the detainees' religious rights based on security concerns was narrowly drawn and extended no further than necessary to correct the violation of the federal right of pretrial detainees in administrative segregation. According to the court, providing pretrial detainees housed in administrative segregation only ninety minutes of exercise per week, less than thirteen minutes per day, constituted punishment in violation of due process standards. The court also 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 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
ADA- Americans with
Disabilities Act
CONDITIONS
EXERCISE
PROGRAMS
RELIGION

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 an injunction relating to restrictions of detainees' religious rights based on security concerns was narrowly drawn and extended no further than necessary to correct the violation of the federal right of pretrial detainees in administrative segregation. The injunctive order, with its provision for the curtailment or elimination of pretrial detainees' religious rights based on security concerns, provided for no more than a minimum level of ongoing participation in religious activities.

The court held that providing pretrial detainees housed in administrative segregation only 90 minutes of exercise per week, less than 13 minutes per day, constituted punishment in violation of due process standards. The court found that an order requiring that inmates in administrative segregation be permitted exercise at least twice each week for a total of not less than 2 hours per week was necessary to correct the current and ongoing violation. 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)

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, 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 County Jail, Georgia)

U.S. District Court SUICIDE USE OF FORCE	<p><i>Powers-Bunce v. District of Columbia</i>, 576 F.Supp.2d 67 (D.D.C. 2008). The mother of a detainee who committed suicide while in police custody brought a suit in the District of Columbia Superior Court against police officers, alleging violations of the Fifth, Eighth, and Fourteenth Amendments. The case was removed to federal court and the district court granted the officers' motion to dismiss in part and denied in part. The district court granted summary judgment for the officers. An autopsy identified contusions that were consistent with being struck repeatedly with a night stick or similar weapon. The detainee sustained injuries on his buttocks, back of legs, abdomen, back, shins, and fingers. But the court noted that there was no evidence indicating whether the injuries were inflicted before the detainee's arrest or linking the injuries to the arresting officer. The district court concluded that there was an absence of a factual dispute concerning the Fourth Amendment excessive force claim, and therefore summary judgment was granted to the officers. (District of Columbia)</p>
U.S. District Court FAILURE TO PROTECT INTAKE SCREENING MEDICAL CARE	<p><i>Presley v. City of Blackshear</i>, 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 and Pierce County Jail, Georgia)</p>
U.S. Appeals Court PRIVACY TELEPHONE ACCESS TO COURT	<p><i>Sherbrooke v. City of Pelican Rapids</i>, 513 F.3d 809 (8th Cir. 2008). An arrestee sued a city and its police officers alleging that his Fourth Amendment rights were violated when officers recorded one side of his conversation with his attorney. The district court entered summary judgment for the arrestee and the defendants appealed. The appeals court reversed and remanded, finding that the recording of the conversation with the attorney did not constitute a search. The court found that the police officers' recording of one side of the suspect's conversation with his attorney, pursuant to a standard operating procedure of recording detainees who were awaiting a blood alcohol content breath test, did not constitute a search inasmuch as the suspect could not reasonably expect that the conversation was private. The court noted that officers were present when the call was made in an open room at the police station and the suspect acknowledged that the recording was "fine" with him. (City of Pelican Rapids, Minnesota)</p>
U.S. District Court ACCESS TO COURT MAIL SEGREGATION	<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 detainee alleged that his mail was opened and returned to him, thereby impeding his ability to communicate with his attorney, that his placement in close custody limited his ability to access legal materials, and that his placement in segregation barred him from contacting his attorney and potential witnesses. The district court dismissed in part. The court held that the inmate did not state a First Amendment claim for deprivation of access to courts, absent an allegation of actual injury in connection with his challenge to his conviction or sentence. 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 ACCESS TO COURT ASSESSMENT OF COSTS DISCIPLINE	<p><i>Stanko v. Patton</i>, 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. The court found that there was no evidence that jail employees were aware of facts from which an inference could be drawn that the detainee faced a serious risk of harm by being celled with killers, robbers, and psychopaths, or that they actually drew such an inference, as required to establish deliberate indifference.</p> <p>The court found that the detainee was not denied his right of access to the courts, notwithstanding his placement in segregation, where the detainee had been offered, and either accepted or declined, counsel in both underlying criminal prosecutions. The court noted that the detainee was provided with legal assistance and law library access, and the detainee was not substantially impeded regarding his legal matters whether he was in segregation or otherwise. According to the court, the detainee had no right to assistance from jail officials regarding his general civil litigation activities. The court held that there was no evidence that county jail officials charged the detainee more than the standard rate for telephone calls, as required to establish that the rates charged violated the detainee's right to equal access to the courts. The court held that a charge of \$65 to the detainee's account by county jail officials, as discipline for ripping pages from or</p>

otherwise defacing several law books, did not violate due process, as the disciplinary procedures the detainee underwent provided him with all the process he was due and because he had additional remedies in state court if such procedures were insufficient. (Douglas Co. Correctional Center, Nebraska)

U.S. District Court
FALSE
IMPRISONMENT
USE OF FORCE

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. District Court
PRIVACY
SEARCHES

Streeter v. Sheriff of Cook County, 576 F.Supp.2d 913 (N.D.Ill. 2008). Current or former pretrial detainees filed a class action under § 1983 against a county sheriff and the county, challenging a strip search policy at the county jail, alleging it violated their Fourth and Fourteenth Amendment rights. The district court denied summary judgment for the defendants. The court held that the detainees stated a claim for violation of their Fourth Amendment rights in connection with group strip searches that were allegedly conducted in an unreasonably intrusive manner and went on longer than penologically necessary. The court also found that the detainees stated a claim for violation of their rights under the Due Process Clause of the Fourteenth Amendment in connection with group strip searches that were allegedly conducted in a manner intended to humiliate and embarrass the detainees, and that went on longer than necessary. (Cook County Jail, Illinois)

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
ADA-Americans with
Disabilities Act
TELEPHONE

Tucker v. Tennessee, 539 F.3d 526 (6th Cir. 2008). Deaf and mute arrestees and their deaf mother sued a city and county, alleging that denial of an interpreter or other reasonable accommodations during criminal proceedings violated the Americans with Disabilities Act (ADA). The district court granted the county's motion for summary judgment and the plaintiffs appealed. The appeals court affirmed. The court held that the county's use of the deaf mother's services as an interpreter during her deaf sons' dispositional hearing on criminal charges did not violate Title II of the ADA, which prohibits discrimination in public services. The court noted that the mother voluntarily served as the interpreter and that her service was requested in light of her sign language skills, not for any discriminatory purpose. The court found that the deaf and mute arrestees were not denied a "service, program, or activity" when the city failed to provide an interpreter during a domestic disturbance call which resulted in their arrest, and the city thus was not liable under ADA's Title II. According to the court, the arrests were made not because the arrestees were disabled, but because the arrestees assaulted police officers, individual citizens, or attempted to interfere with a lawful arrest. The court concluded that the arresting officers were able to effectively communicate with the arrestees. The court held that the county did not violate Title II of the ADA, which prohibits discrimination in public services, by using relay operators to allow the deaf arrestees to communicate with their mother, rather than providing them with a teletypewriter (TTY) telephone. Jailers assisted the arrestees in making their requested phone call by utilizing relay operators, the phone call lasted nearly forty-five minutes, and the Department of Justice (DOJ) provisions did not mandate the presence of a TTY telephone. (City of Savannah Police Department, Hardin County Jail, Tennessee)

U.S. Appeals Court FAILURE TO PROTECT USE OF FORCE	<i>U.S. v. Cote</i> , 544 F.3d 88 (2 nd Cir. 2008). After a correction officer was convicted by a jury of criminal violation of a pretrial detainee's civil rights, the district court granted the officer's motion for judgment of acquittal notwithstanding the verdict and conditionally granted the officer's motion for a new trial. The government appealed, and the officer cross-appealed. The appeals court reversed and remanded, finding that there was sufficient evidence to support the officer's conviction. The court held that the officer was not entitled to a new trial. According to the court, evidence was sufficient to support the correction officer's conviction for the criminal violation of the pretrial detainee's right to be free from excessive force, despite discrepancies in inmate witnesses' accounts as to the number of stomps and kicks the defendant gave the detainee, and the possibility that the detainee suffered a head injury when he was taken down by another officer. The court noted that four eyewitnesses testified that the defendant viciously assaulted the detainee while he was lying on the ground, already in a position of weakness, and that the defendant yelled words of punishment at the detainee. A fellow officer testified that the defendant falsified his incident report and attempted to persuade him to "[stick] to the story." The government's medical expert testified that it was unlikely the detainee's injuries were caused by a single blow. All witnesses agreed that the defendant approached and began assaulting the detainee while he was being held down by another officer, and that the defendant was shouting at the detainee to respect his authority. (Westchester County Jail, New York)
U.S. Appeals Court INVOLUNTARY MEDICATION STATE INTEREST	<i>U.S. v. Green</i> , 532 F.3d 538 (6 th Cir. 2008). A pretrial detainee who had been determined to be mentally incompetent to stand trial on narcotics trafficking indictments, appealed the order of the district court for involuntary administration of psychotropic medications. The appeals court affirmed, finding that an important governmental interest was at stake in the prosecution, as required to support an order for involuntary medication. (Federal Medical Center, Rochester, New York)
U.S. District Court INVOLUNTARY MEDICATION PSYCHOTROPIC DRUGS	<i>U.S. v. Moruzin</i> , 583 F.Supp.2d 535 (D.N.J. 2008). A defendant was indicted on charges of bank robbery and jury tampering. The government moved for the involuntary administration of antipsychotic medication to the defendant to render him competent to stand trial. The district court denied the motion. The court held that the administration of medication would not significantly further the state's interests, that alternatives existed to involuntary administration of the drug Haldol, and that involuntary administration of Haldol was not in the defendant's best medical interest. (Federal Medical Center, Butner, North Carolina)
U.S. Appeals Court CLOTHING	<i>U.S. v. Reed</i> , 522 F.3d 354 (D.C. Cir. 2008). A defendant was convicted in district court of armed bank robbery, armed carjacking and destruction of property and he appealed. The appeals court affirmed. The court held that requiring the defendant to wear a jumpsuit without underwear did not rise to the level of a coercive police activity that would render the defendant's confession not voluntary within the meaning of the due process clause of the Fourteenth Amendment. (District of Columbia)
U.S. Appeals Court RESTRAINTS	<i>Vondrak v. City of Las Cruces</i> , 535 F.3d 1198 (10 th 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. Appeals Court MEDICAL CARE	<i>Walker v. Sheahan</i> , 526 F.3d 973 (7 th Cir. 2008). A pretrial detainee brought a § 1983 action against county correctional officers, a county sheriff, and a county, alleging that the officers used excessive force against him, deprived him of access to medical care, and retaliated against him. The district court granted summary judgment in favor of the defendants. The detainee appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the sheriff's office was not liable under § 1983 because the detainee failed to demonstrate that the sheriff's office had a pattern of widespread use of excessive force, inadequate investigation and training regarding use of force, or a code of silence. The court noted that although 783 complaints of excessive force were made against the sheriff's office over a five-year period, none resulted in an indictment, the the training the officers received imposed limitations on the amount of force they could use, and that officers were disciplined for the use of excessive force. The court held that summary

judgment for the officers was precluded by a genuine issue of material fact as to whether the injuries sustained by the detainee were consistent with his account of the restraint incident involving county corrections officers. (Cook County Jail, Illinois)

U.S. Appeals Court
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)

U.S. District Court
SPEEDY TRIAL

Williams v. Warden-Central Detention Facility, 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)

2009

U.S. District Court
PRIVACY
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. Supreme Court
CONDITIONS
DISCRIMINATION

Ashcroft v. Iqbal, 129 S.Ct. (2009). A Muslim Pakistani pretrial detainee brought an action against current and former government officials, alleging that they took a series of unconstitutional actions against him in connection with his confinement under harsh conditions after separation from the general prison population. The detainee had been placed in a section of a federal detention facility known as the Administrative Maximum Special Housing Unit, where detainees were kept in lockdown 23 hours a day, spending the remaining hour outside their cells in handcuffs and leg irons accompanied by a four-officer escort. The district court denied in part the defendants' motions to dismiss on the grounds of qualified immunity and the defendants appealed. The appeals court affirmed in part, reversed in part, and remanded. The United States Supreme Court granted certiorari. The Supreme Court reversed and remanded. The court held that the appeals court had subject matter jurisdiction to affirm the district court's order denying the officials' motion to dismiss on the grounds of qualified immunity, and the detainee's complaint failed to plead sufficient facts to state a claim for purposeful and unlawful discrimination. The court noted that the detainee challenged neither the constitutionality of his arrest nor his initial detention, but rather the policy of holding post-September 11th detainees once they were categorized as of "high interest." (Federal Bureau of Prisons, Metropolitan Detention Center, Brooklyn, New York)

U.S. Appeals Court USE OF FORCE	<i>Askew v. Sheriff of Cook County, Ill.</i> , 568 F.3d 632 (7 th Cir. 2009). A pretrial detainee brought a § 1983 action against a prison guard and a sheriff, asserting excessive force and deliberate indifference claims against the guard and a municipal liability claim against the sheriff. The district court granted the defendants' motion to dismiss. The detainee appealed. The appeals court vacated and remanded. The appeals court held that upon determining that a county was a required party in the pretrial detainee's § 1983 suit against a prison guard and the sheriff, the district court was required to order that the county be made a party, rather than dismissing the suit. The court noted that a county in Illinois is a necessary party in any suit seeking damages from an independently elected county officer, and, because state law requires the county to pay, federal law deems it an indispensable party to the litigation. But the court found that the Illinois county was not a party that was required to be joined if feasible in § 1983 suit brought against a prison guard in his individual capacity. (Cook County Jail, Illinois)
U.S. District Court ADA-Americans with Disabilities Act HANDICAP INTAKE SCREENING RA-Rehabilitation Act TELEPHONE	<i>Bahl v. County of Ramsey</i> , 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 RELEASE	<i>Blandford v. District of Columbia Jail</i> , 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. (District of Columbia Jail)
U.S. District Court MEDICAL CARE FAILURE TO PROTECT	<i>Brace v. Massachusetts</i> , 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 USE OF FORCE	<i>Browne v. San Francisco Sheriff's Dept.</i> , 616 F.Supp.2d 975 (N.D.Cal. 2009). A former state pretrial detainee filed a § 1983 action against nearly 50 defendants, seeking redress for alleged injuries caused by deputies and medical staff of a sheriff's department. The district court granted summary judgment to the defendants. The court held that a deputy's alleged placing of a "white tip poisonous spider" in a safety cell before moving the pretrial detainee back into the cell, grabbing the detainee and bending his arm while he threw him out of the cell, and putting his knee into the center of the detainee's back did not rise to the level of malicious and sadistic use of force, as required for a Fourteenth Amendment excessive force claim. The court noted that there was no evidence that the detainee was injured or that he sought medical treatment for any injuries. (San Francisco County Sheriff's Department, San Francisco County Jail, California)
U.S. District Court USE OF FORCE	<i>Cabral v. County of Glenn</i> , 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 Dept., California)

U.S. Appeals Court
MEDICAL CARE

Caiozzo v. Koreman, 581 F.3d 63 (2nd Cir. 2009). The estate of a pretrial detainee who died in custody at a county jail, brought a § 1983 action against county corrections officials and medical staff, alleging deliberate indifference to the detainee's serious medical condition in violation of the Fourteenth Amendment. The district court granted summary judgment in favor of the defendants. The estate appealed. The appeals court affirmed. The appeals court held: (1) the subjective standard for analyzing a claim of deliberate indifference to medical needs of a convicted prisoner held in state custody also applied to the pretrial detainee, overruling *Liscio v. Warren* and *Benjamin v. Fraser*; (2) the estate was required to prove that the defendants disregarded a risk of harm to the detainee of which the defendants were aware; and (3) a nurse was not deliberately indifferent to the detainee's serious medical condition of alcohol withdrawal. The court noted that the nurse incorrectly believed that the detainee was intoxicated, and there was no evidence that the nurse actually believed that the detainee was in danger of imminent severe alcohol withdrawal. The detainee had previously been incarcerated at the facility on at least 27 separate occasions, and had been treated for chronic alcoholism by the facility's medical staff. (Albany Co. Correctional Facility, New York)

U.S. District Court
ALIEN
STRIP SEARCH

Cehade 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.

The court found that the German citizen adequately alleged that the defendant's actions constituted extreme and outrageous conduct, as required to state claim for intentional infliction of emotional distress under Nevada law, where he alleged that DHS officials told him that if he did not spy for the United States government, he would never be able to return to the United States where his daughter and grandchild lived.

According to the court, the detained German citizen's negligence claim, alleging that the United States owed him a duty of care not to cause him to be detained in a local jail when he had not been and was never charged with any criminal offense, was not barred by the discretionary function exception to the Federal Tort Claims Act (FTCA). The court noted that although the government claimed that immigration officials had discretion in choosing where to house aliens, under an Immigration and Naturalization Service (INS) memorandum, the alien should never have been booked into local jail. (North Las Vegas Detention Center, Nevada)

U.S. District Court
CONDITIONS
MEDICAL CARE

Christian v. Wagner, 611 F.Supp.2d 958 (S.D.Iowa 2009). A pretrial detainee brought an action against county jail officials and employees, seeking to recover damages for injuries he allegedly sustained as a result of his exposure to a cleaning solvent used to clean cells. Following a jury verdict in favor of the defendants, the detainee filed a combined motion for a new trial and for judgment as a matter of law. The district court denied the motion. The court held that the detainee's claim was properly construed as a deliberate indifference to a serious medical need claim, not a general conditions of confinement claim. According to the court, whether the detainee had a serious medical need to be removed from the cleaning solvent was an issue for the jury. (Johnson County Jail, Iowa)

U.S. District Court
SUICIDE
SUPERVISION

Cuebas v. Davila, 618 F.Supp.2d 124 (D.Puerto Rico 2009). The mother of a man who committed suicide in a jail cell filed a § 1983 action on behalf of herself, her minor daughter, and her deceased son, claiming deprivation of constitutional rights by the arresting police officers and their supervisors, and seeking compensatory damages for pain and suffering due to the loss of her mentally ill son. The district court dismissed the case in part, and declined to dismiss in part. The court held that the mother, as sole heir of her deceased son, under Puerto Rico law, had Article III standing to bring a § 1983 suit on behalf of her son against the police officers and supervisors for alleged constitutional violations, since the mother inherited her son's cause of action. The court found that the mother's allegations that arresting officers and their supe-

rriors were deliberately indifferent to her son's risk of suicide in his jail cell following his arrest were sufficient to state a § 1983 claim that the son's due process rights were violated under the Fourteenth Amendment. The court held that the mother's allegations that the police officer in charge of detainees was deliberately indifferent to her son's risk of suicide were factually sufficient to state a § 1983 claim that the officer violated her son's due process rights, including allegations that the officer was aware of the likelihood that the arrestee might commit suicide, and that the officer did not take obvious steps to prevent the arrestee's suicide. The mother had explained to the officers that her son was mentally ill and that he had recently attempted suicide. The son was placed in a cell after his shoes and belt had been removed. At some point during that night he committed suicide. The mother alleged that he was not properly monitored while being held in custody, as he should have been, by the officers who were aware he was suicidal. She alleged that his cell was not adequately monitored even though the police officers who arrested him and who monitored him knew that he was mentally ill and had recently attempted suicide. (Puerto Rico Police Department, Salinas Police Headquarters)

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

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. District Court
MEDICAL CARE

Estate of Henson v. Wichita County, Tex., 652 F.Supp.2d 730 (N.D.Tex. 2009). Daughters of a pre-trial detainee, who died from chronic obstructive pulmonary disease while being held in a county jail, brought a § 1983 action against the county and jail physician, among others, for violation of the detainee's Fourth and Fourteenth Amendment rights. The court held that summary judgment was precluded by genuine issues of material fact as to whether the jail physician was a supervisor, whether a policy of intimidation of jail nurses was a moving force behind the alleged violation of the rights of the detainee, whether the physician failed to supervise nurses, and, if so, whether his failure to supervise amounted to deliberate indifference. The court held that the jail physician was entitled to assert a defense of qualified immunity, even though he was a contract physician. (Wichita County Jail, Texas)

U.S. District Court
MEDICATION
MENTAL HEALTH

Estate of Rice ex rel. Rice v. Correctional Medical Services, 596 F.Supp.2d 1208 (N.D.Ind. 2009). The estate of a prisoner who died while detained at a county jail, where he suffered from schizophrenia and various complications as the result of his refusal to take his medication and his self-imposed starvation, brought an action against a private hospital and a physician at the hospital. The estate alleged that the physician deprived the prisoner of his constitutional rights in violation of § 1983, and that the hospital and physician negligently failed, under state law, to provide adequate medical care and treatment to the prisoner. The district court granted summary judgment for the defendants in part. The court held that an expert's summary judgment report, in which he stated, among other things, that the treating physician was fully aware that the deceased prisoner had been refusing food, drink, and medications, and that she had no reason to believe that the same pattern would not subsequently continue back in jail, was admissible. The court also found that the expert's summary judgment report that the physician who treated the schizophrenic prisoner prior to his death showed indifference to the prisoner's serious medical condition "by turning a blind eye to the likely outcome of a return to jail" was admissible. The court noted that the expert was not offering a legal conclusion as to the treating physician's subjective knowledge. The court found that the prisoner had a serious medical need, as an element of his alleged Eighth Amendment violation. The court noted that the prisoner went to a hospital because he was not taking his medications, was not eating, had lost 50 pounds in 13 months, and was uncommunicative. Medical records indicated that the prisoner had severe mental problems, including schizophrenia, which posed a risk of serious damage to his future health. The physician who treated the prisoner acknowledged the seriousness of his condition in her medical recommendation, and ten weeks after his hospital stay, the prisoner died from malnutrition. (Elkhart County Jail, Indiana)

U.S. District Court
ALIEN
CONDITIONS

Families for Freedom v. Napolitano, 628 F.Supp.2d 535 (S.D.N.Y. 2009). Immigrant advocacy organizations and former immigration detainees brought an action under the Administrative Procedure Act (APA) seeking an order to compel the Department of Homeland Security (DHS) to act on their petition seeking promulgation of regulations to govern conditions in immigration detention facilities operated by Immigration and Customs Enforcement (ICE). DHS moved to dismiss. The district court denied the motion, finding that DHS's nearly two-and-one-half year delay in deciding the petition was unreasonable as a matter of law. The court noted that the DHS Office of Inspector General had issued a report detailing significant problems in ICE detention facilities, problems with detainee medical care had been chronicled by the news media, and the petitioners alleged that detainees in DHS custody were dying as result of substandard conditions. (U.S. Department of Homeland Security)

U.S. Appeals Court
USE OF FORCE

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
SEARCHES

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
MENTAL HEALTH
PSYCHOLOGICAL
SERVICES
SUICIDE
SUPERVISION

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 the County, which paid \$360,000 in exchange for a release of claims brought by the estate of the detainee, would be entitled to indemnity on third-party claims against the psychiatrist who evaluated the detainee if a jury determined that the psychiatrist was at fault in the detainee's suicide. 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. The court found that the county prison had an effective suicide policy in place and thus the psychiatrist who evaluated the pretrial detainee had no viable Fourteenth Amendment inadequate medical care and failure to train counterclaims under § 1983 against the county. According to the court, while at least one individual at the prison may have failed to carry out protocols for the diagnosis and care of suicidal detainees, the policy would have been effective if properly followed as was customary at the prison. The court held that the county prison warden adequately trained subordinates with regard to protocols for the care and supervision of suicidal inmates and adequately supervised execution of these protocols, and thus the psychiatrist who evaluated the pretrial detainee had no viable counterclaim under § 1983 against the warden for failure to adequately train or supervise under the Fourteenth Amendment. (Northumberland Co. Prison, Penn.)

U.S. District Court
ACCESS TO COURT
CONDITIONS
CROWDING
DISCIPLINE
MEDICAL CARE
RECREATION
SUPERVISION

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: (1) the class of detainees was the prevailing party entitled to attorney's fees; (2) the initial lodestar figure of \$1,239,491.63 for attorney's fees was reasonable; (3) Kerr factors provided no basis for downward adjustment of the initial lodestar; (4) the attorney's fees award would not be reduced for limited success; (5) the amount requested as reimbursement for attorney's fees was fully compensable under the Prison Litigation Reform Act (PLRA); (6) PLRA did not require appointment of class counsel for the award of attorney's fees and non-taxable costs; and (7) the class was entitled to interest on the award of attorney's fees from the date of the court's order ruling in favor of the detainees on the motion to terminate. 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
HAIRCUT

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. According to the court, the allegation that the inmate, who was being escorted to a mental health appointment when he became involved in an altercation with another inmate and was not allowed to continue to his appointment, failed to state a claim for an Eighth Amendment violation. The court found that any delay in the inmate's mental health treatment did not cause him actual harm or put his health at risk, and there was no evidence that the delay resulted from any sadistic or otherwise impermissible motive. 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
DUE PROCESS
FAILURE TO PROTECT
STAFFING

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 detainees alleged that on the day of one of their scalding assaults by a fellow inmate, officials were present at a council hearing at which testimony described significant and multiple instances of violence in unguarded locations occurring in the jail, that the previous scalding assaults had occurred by the same inmate in question, and that despite such knowledge, the officials refused to take measures to protect inmates. 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
DISCRIMINATION
MEDICAL CARE
USE OF FORCE

Harris v. City of Circleville, 583 F.3d 356 (6th Cir. 2009). A pretrial detainee brought a § 1983 action against a city and police officers, alleging that he was subjected to excessive force and inadequate medical care, and discriminated against on account of his race, while being booked at a jail. The district court denied the defendants' motion for summary judgment and the defendants appealed. The appeals court affirmed. The appeals court held that summary judgment was precluded by fact issues on the excessive force claim, the deliberate indifference claim, and the equal protection claim. The court held that summary judgment was precluded by genuine issues of material fact as to whether police officers' use of force against the detainee, in yanking at the detainee's necklance and kicking his leg out from under him causing the detainee to fall and hit his head, in using a takedown maneuver to get the detainee down on the floor in a booking area, and in kicking the detainee in the ribs, was objectively reasonable or shocked the conscience. According to the court, summary judgment was precluded by a genuine issue of material fact as to whether the

detainee had a serious need for medical care that was so obvious that even a layperson would easily recognize the need for a doctor's attention, following the police officers' exercise of force against him. The court also held that summary judgment was precluded by a genuine issue of material fact as to whether police officers used excessive force and delayed medical treatment of the detainee on account of his African-American race. (Circleville City Jail, Ohio)

U.S. Appeals Court
MEDICAL CARE
PRIVACY
SUICIDE

Hunter v. Amin, 583 F.3d 486 (7th Cir. 2009). The sister of a pretrial detainee who committed suicide in a county jail brought an action on her own behalf, and as the personal representative of the estate of her deceased brother, against a jail psychiatrist, county sheriff, and the county, asserting claims under § 1983, as well as claims of medical malpractice. The district court granted summary judgment in favor of the defendants and the sister appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the county jail's policy that prevented the pretrial detainee from speaking to the jail psychiatrist without a jail officer being present did not violate the detainee's constitutional rights, so as to serve as the basis for holding the county liable for the detainee's death under § 1983. According to the court, the pretrial detainee had a constitutional right to adequate mental health treatment, but there was no evidence suggesting that the detainee could not have received adequate mental health treatment in the presence of a corrections officer. The appeals court held that summary judgment was precluded by a genuine issue of material fact as to whether the jail psychiatrist committed medical malpractice by discontinuing the medication of the detainee who later committed suicide. (St. Clair County Jail, Illinois)

U.S. Appeals Court
MEDICAL CARE

Jenkins v. County of Hennepin, Minn., 557 F.3d 628 (8th Cir. 2009). An inmate brought a § 1983 action against a county, the supervisor of a jail's nursing staff, and others alleging he received constitutionally inadequate medical care while incarcerated. The district court granted summary judgment in favor of the defendants and the inmate appealed. The appeals court affirmed. The court found that the supervisor of the jail's nursing staff did not act with deliberate indifference to the inmate's serious medical condition when she determined that the inmate should be sent for an x-ray in a day or two. The inmate was unable to open his jaw completely, blow his nose, or chew. According to the court, the decision reflected a medical judgment that the inmate's injury, though possibly serious, was not urgent and nothing indicated that a one-day delay was detrimental to the inmate's recovery. The court held that the inmate failed to establish that any of the jail's official policies reflected deliberate indifference to his serious medical needs, as required to support his § 1983 claim. (Hennepin County Adult Detention Center, Minnesota)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE
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
DISCIPLINE

King v. Rivas, 555 F.3d 14 (1st Cir. 2009). A pretrial detainee brought an action against corrections officers and others, alleging constitutional violations relating to a false accusation of threatening a guard. Prior to trial, the defendants made a package settlement offer, which was rejected by the detainee. Following the trial of one officer, a jury awarded the detainee damages in an amount less than the settlement offer. The parties moved for attorney's fees and costs. The district court granted the detainee's motion and denied the defendant's motion. The officer appealed. The appeals court vacated and remanded. The court held that the package settlement offer is to be taken on its own terms and compared with the total recovery package in determining whether a defendant is entitled to costs following the detainee's success at trial. The court held that the officer was entitled to costs, excluding attorney's fees, and that the detainee was entitled only to attorney's fees and costs accrued prior to the rejected offer. (Hillsborough House of Corrections, New Hampshire).

U.S. Appeals Court
MEDICAL CARE
USE OF FORCE

Krout v. Goemmer, 583 F.3d 557 (8th Cir. 2009). The administratrix of a pretrial detainee's estate brought a § 1983 action against police officers and correctional officers alleging excessive force and deprivation of medical care. The district court denied the defendants' motions for summary judgment and the defendants appealed. The appeals court dismissed in part, 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 fellow police officers used excessive force in making a traffic stop and arrest. According to the court, it was clearly established at the time of the arrest that a police officer had a duty to intervene to prevent the excessive use of force by other officers. The appeals court held that the correctional officers' response to the pretrial detainee's inability to walk or feel his legs and difficulty breathing was not deliberately indifferent to his medical needs under the Due Process Clause of the Fourteenth Amendment. The court noted that the detainee was closely monitored and checked by an officer every 15 minutes, the detainee did not want medical attention, the detainee stated he was doing fine, emergency medical services (EMS) technicians examined the detainee's neck and neuromuscular function and determined there was nothing unusual, the detainee declined to go to a hospital at least three times, and officers repositioned the detainee's neck to ease his breathing. (Pope County Detention Center, Russellville Police Department, Arkansas)

<p>U.S. Appeals Court RESTRAINTS USE OF FORCE</p>	<p><i>Lewis v. City of West Palm Beach, Fla.</i>, 561 F.3d 1288 (11th Cir. 2009). The survivor of a detainee who had died in police custody brought a § 1983 action against a city and against individual officers, alleging use of excessive force. The district court granted summary judgment for the defendants and the survivor appealed. The appeals court affirmed. The court held that the detainee's right not to be restrained via "hobbling" and being "hogtied" was not clearly established. The detainee became unconscious and died during detention. According to the court, the officers' conduct was not so egregious as to be plainly unlawful to any reasonable officer, given the detainee's agitated state when first detained and given his continued uncooperative and agitated state, presenting a safety risk to himself and others, during restraint. After handcuffing the detainee did not prevent his continued violent behavior, the officers attached an ankle restraint to the handcuffs with a hobble cord (also known as "TARP," the total appendage restraint position). The hobble was tightened so that Lewis's hands and feet were close together behind his back in a "hogtied" position. The court held that the city was not potentially liable for failure to train officers in the use of restraints, where the need for training in the application of "hobble" restraints did not rise to the level of obviousness that would render the city potentially liable under § 1983 for deliberate indifference based on the failure to administer such training. The court noted that hobble restraints did not have the same potential flagrant risk of constitutional violations as the use of deadly firearms. (West Palm Beach Police Department, Florida)</p>
<p>U.S. District Court DUE PROCESS PRIVACY SEARCHES</p>	<p><i>Lopez v. Youngblood</i>, 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.</p> <p>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)</p>
<p>U.S. Appeals Court MEDICAL CARE USE OF FORCE</p>	<p><i>Mann v. Taser Intern., Inc.</i>, 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)</p>
<p>U.S. Appeals Court FAILURE TO PROTECT INTAKE SCREENING MEDICAL CARE</p>	<p><i>Martinez v. Beggs</i>, 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)</p>
<p>U.S. Appeals Court MEDICAL CARE</p>	<p><i>McRaven v. Sanders</i>, 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</p>

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. 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
FAILURE TO PROTECT

Mosher v. Nelson, 589 F.3d 488 (1st Cir. 2009). The administrator of the estate of a pretrial detainee who was killed at a state mental health hospital by another patient brought an action against the superintendent of the hospital, the commissioner of the state department of corrections (DOC), and other state officials, alleging civil rights violations and state-law claims. The district court granted summary judgment in favor of the defendants. The administrator appealed. The appeals court affirmed. The court held that the superintendent of the state mental health hospital and the commissioner of the state department of corrections were entitled to qualified immunity from § 1983 liability on the deliberate indifference claim. According to the court, although the patient was able to strangle the detainee while the detainee was visiting the patient in his room, the hospital had a long-standing policy that allowed patients to visit in each others' rooms during the short period during the end of the morning patient count and lunch. The court noted that there was no history of violence or individualized threats made by any patient, and reasonable officials could have believed that allowing the visiting policy to continue and maintaining the current staffing levels at the hospital would not cause a substantial risk of harm. (Bridgewater State Hospital, Massachusetts)

U.S. Appeals Court
CLASSIFICATION
FAILURE TO PROTECT

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
ALIEN
FALSE ARREST
FALSE
IMPRISONMENT

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. Appeals Court
ACCESS TO COURT
LAW LIBRARIES
RELIGION

Ortiz v. Downey, 561 F.3d 664 (7th Cir. 2009). A federal pretrial detainee brought a § 1983 action against the chief of corrections at a detention center, alleging his rights under the First Amendment's Free Exercise Clause were violated. The district court dismissed the complaint and the detainee appealed. The appeals court reversed and remanded. The court held that the detainee stated a § 1983 claim that his First Amendment free exercise rights were violated by alleging that he was denied a religious rosary and a prayer booklet solely because a jail official did not find those items vital to worship. The court also found the alleged denial stated a claim under the Religious Land Use and Institutionalized Persons Act (RLUIPA). The court found that the detainee failed to allege that any deprivations in obtaining legal materials caused him an actual injury, as required to state a claim that his right of access to courts was denied. The court noted that a prisoner's complaint must spell out, in minimal detail, the connection between the alleged denial of access to legal materials and an inability to pursue a legitimate challenge to a conviction, sentence, or prison conditions to state a claim that his right to access the courts was denied. The detainee had asked jail officials to copy, at no charge, approximately fifty legal documents that pertained either to his pro se civil suit against his jailers or to his criminal prosecution. The detainee was represented by counsel in the criminal case, but was proceeding pro se in the civil matter. Jail officials told the detainee that he would be charged \$1.00 per page, but also noted that copies regarding his criminal case would be provided at no charge. The detainee sought access to a law library and tried to subscribe to various legal periodicals, but his requests were denied. (Jerome Combs Detention Center, Kankakee, Illinois)

U.S. District Court
ACCESS TO COURT
CONDITIONS
RELIGION
RESTRAINTS

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.

According to the court, the detainee's allegations that a senior government official bore responsibility for his conditions of confinement due to his drafting opinions that purported to create legal legitimacy for such treatment, were sufficient to state a claim under the Eighth Amendment, and thus stated a due process claim under the Fourteenth Amendment. The detainee alleged that while detained, he suffered prolonged shackling in painful positions and relentless periods of illumination and intentional interference with sleep by means of loud noises at all hours, that he was subjected to extreme psychological stress and impermissibly denied medical care, that these restrictions and conditions were not justified by a legitimate penological interest, but rather were intended to intensify the coerciveness of interrogations. 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. District Court
USE OF FORCE
ALIEN

Petrolino v. County of Spokane, 678 F.Supp.2d 1082 (E.D.Wash. 2009). A detainee, a German citizen, brought an action against a county, county sheriff, and numerous defendants, seeking damages under § 1983 and state law for force used during his arrest and detention. 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 corrections officers' knee strikes against the pretrial detainee were administered in response to a threat, due to the detainee's alleged refusal to surrender a pen that he possessed, and thus whether the strikes were reasonable uses of force. (Spokane County Jail, Washington)

U.S. District Court
ADA- Americans with
Disabilities Act
MEDICAL CARE
PLRA-Prison Litigation
Reform Act
RA- Rehabilitation 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 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 required. 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. According to the court, the county and county sheriff failed to establish that they were not recipients of federal funds, as would render them beyond the reach of the Rehabilitation Act's requirements. 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. The court found no evidence that the detainees were excluded from electronic monitoring or drug rehabilitation programs by the county department of corrections, as would support their Americans with Disabilities Act (ADA) claim. (Cook County Department of Corrections, Illinois)

U.S. District Court
FAILURE TO PROTECT
SUICIDE

Powers-Bunce v. District of Columbia, 594 F.Supp.2d 54 (D.D.C. 2009). The mother of a detainee who hung himself in a holding cell at a police precinct headquarters brought an action against the District of Columbia and individual police and Secret Service officers alleging constitutional violations and tort claims for her son's suicide. The detainee hung himself shortly after he was arrested by the Secret Service for cocaine possession and driving with a suspended license. The detainee had been placed in a jail cell away from other detainees around 2:00 a.m. No one checked on the detainee while he was alone in his cell between 2:30 a.m. and 4:16 a.m. He was found hanging from the bars of the jail cell by his tube socks tied in a knot around 4:16 a.m. The district court dismissed claims against the police officers and the Secret Service officers in their entirety. The court held that the arresting Secret Service officers were not the custodians of the detainee and therefore had no "special relationship" with the detainee giving rise to an affirmative duty to resuscitate the detainee, as would support the due process claims of the detainee's mother against the officers for deliberate indifference in their failure to resuscitate. According to the court, although the officers had taken temporary custody of the detainee and might have obtained a key to the cell, the District, not the officers, was the custodian which owed an affirmative duty of protection to the detainee. (Metropolitan Police Department's Third District Precinct Headquarters, District Columbia)

U.S. District Court
INTAKE SCREENING
MEDICAL CARE
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. The court held that inadequate training and supervision of District of Columbia police officers, who failed to follow police department procedures when they did not attempt to revive the arrestee who had hanged himself in his cell, failed to expeditiously obtain assistance from Emergency Medical Services, and failed to maintain and operate the video surveillance system, did not reflect a deliberate or conscious choice by the District of Columbia, as required to hold the District of Columbia liable under § 1983 for the detainee's death. (District of Columbia Metropolitan Police Department, Third District Precinct)

U.S. District Court
SEARCHES

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. District Court
CELLS
FAILURE TO PROTECT
SUPERVISION

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. Appeals Court
DUE PROCESS
JUVENILES
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. Appeals Court
MEDICAL CARE
MEDICATION

Shepherd v. Dallas County, 591 F.3d 445 (5th Cir. 2009). A pretrial detainee sued a county under § 1983, alleging that conditions of confinement, specifically the jail's failure to administer pills he needed to ameliorate chronic hypertension, violated his due process right to medical care while in custody. The district court, entered judgment on jury verdict for the detainee. The county appealed. The appeals court affirmed, finding that the action was an attack on conditions of confinement rather than on episodic acts or omissions of particular jail officials. The court noted that the jail medical director testified that the jail's medical ser-

vices were inadequate, and a clinical pharmacist testified that the administration of medication at the jail was so inadequate that half or more of the inmates did not receive their prescription medications. The court held that a Department of Justice (DOJ) report concerning jail conditions was not excludable as being more prejudicial than probative, inasmuch as the report was relevant in that it provided strong support for the claim that medical care at the jail was constitutionally inadequate, and, although findings in the report were prejudicial to the county's cause, they were probative as well. (Dallas County Jail, Texas)

U.S. Appeals Court
MEDICAL CARE
USE OF FORCE

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 Co. Justice Ctr., Tenn.)

U.S. Appeals Court
INTAKE SCREENING
MEDICAL CARE

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
INTAKE SCREENING
MEDICAL CARE

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 County Jail, Arkansas)

U.S. District Court
PROBABLE CAUSE
RELEASE
USE OF FORCE

Wasserman v. Rodacker, 557 F.3d 635 (D.C. Cir. 2009). An arrestee brought an action against the government and a police officer, alleging tort and constitutional claims based on his arrest for violating a leash law and assaulting a police officer. The government substituted itself as a defendant and moved to dismiss. The district court dismissed the tort claims and granted summary judgment on the constitutional claims. The

arrestee appealed. The appeals court affirmed. The court held that the government properly substituted itself as a party defendant and that the force used in the arrest was reasonable. The court found that the arrestee's detention was not unreasonable, in violation of Fourth Amendment, despite having been premised on an assault charge that was later dropped by the government, where the length of detention was less than 48 hours, and the arrestee failed to allege that the delay of a probable cause hearing was a result of ill will or some other malicious purpose. (District of Columbia, Metropolitan Police Dept. Central Cell Block)

U.S. District Court
PRIVACY
SEARCHES

Young v. County of Cook, 616 F.Supp.2d 834 (N.D.Ill. 2009). Pretrial detainees brought an action against a county, sheriff, and current and former directors of the county department of corrections, on behalf of themselves and two certified classes, alleging that the county jail's strip search policy for new detainees violated their rights under the Fourth and Fourteenth Amendments. The district court granted the parties' motions for summary judgment in part and denied in part. The court held that: (1) the strip search of detainees charged with misdemeanor offenses not involving drugs or weapons violated the Fourth Amendment; (2) the strip searches of members of a class of males who were subjected to a strip search as new detainees before privacy screens were installed violated the Fourth Amendment; (3) issues of material fact precluded summary judgment on the Fourth Amendment claims for the time period after privacy screens were installed; and (4) strip searches before privacy screens were installed violated due process. According to the court, there was no evidence that blanket strip searches were necessary with respect to these class members, and there was no evidence that the strip search of individual class members was required. The court noted that although intermingling with general prisoners may be one factor in evaluating the reasonableness of a prison's strip search policy with respect to new pretrial detainees, that fact standing alone is not enough to justify strip searches of pretrial detainees in the absence of individualized reasonable suspicion. (Cook County Jail, Illinois)

U.S. District Court
PRIVACY
SEARCHES

Young v. County of Cook, 616 F.Supp.2d 856 (N.D.Ill. 2009). Pretrial detainees charged with misdemeanors brought a civil rights class action under § 1983 against a county, a former county sheriff, and sheriff's employees, alleging that the jail's blanket strip search policy violated their Fourth and Fourteenth Amendment rights. The district court granted summary judgment in favor of the detainees on the issue of liability and the defendants moved for reconsideration. The district court denied the defendants' motion for reconsideration. The court held that the county could have forfeited its claim to raise the issue that the details of 2,000 contraband reports revealed 832 instances where persons purportedly charged with misdemeanors were found to have contraband money during strip search process, where the county failed to properly bring this evidence to the court's attention during the summary judgment briefing process. According to the court, the deference accorded to the jail's expertise in matters of institutional security did not preclude the court from determining whether the evidence supported the application of the jail's policy of subjecting newly arriving misdemeanor detainees to a blanket policy of strip/body cavity searches. The court noted that the defendants asserted that the district court had "ignored ... downplayed, and ... distorted" the evidence. In its decision, the court responded "Not so. With their submissions, defendants submitted volumes of exhibits that, if stacked up, create a pile over fifteen inches high." (Cook County Jail, Illinois)

2010

U.S. Appeals Court
RELEASE
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. District Court
MEDICAL CARE

Beatty v. Davidson, 713 F.Supp.2d 167 (W.D.N.Y. 2010). A former pretrial detainee brought a § 1983 action against a county, jail officials, and a nurse, alleging that the defendants denied him adequate medical care while he was a pretrial detainee, in violation of his Fourteenth Amendment rights. The defendants moved for summary judgment. The district court denied the motion. The court held that the detainee's diabetic condition was a serious medical condition and that a genuine issue of material fact existed as to whether the nurse was deliberately indifferent to the detainee's diabetic condition, precluding summary judgment for the nurse. The court held that summary judgment was precluded by a genuine issue of material fact as to whether jail officials were grossly negligent in supervising subordinates who allegedly violated the former pretrial detainee's constitutional rights. According to the court, a genuine issue of material fact existed as to whether the county lacked a system at its jail for managing chronically ill inmates and failed to train and properly supervise its staff, precluding summary judgment for the county on the former pretrial detainee's municipal liability claim under § 1983. (Erie County Holding Center, Pennsylvania)

U.S. District Court USE OF FORCE	<i>Brooks v. Austin</i> , 720 F.Supp.2d 715 (E.D.Pa. 2010). A state pretrial detainee brought a § 1983 action against correction officers, alleging violations of the Eighth and Fourteenth Amendments. The officers filed a motion to dismiss. The district court granted the motion in part and denied in part. The court held that the pretrial detainee's allegations that a correctional officer slammed him into a wall, that another officer was "on his neck" while he was handcuffed, and that these actions resulted in injuries to his knee and shoulder were sufficient to state a § 1983 claim for excessive force in violation of the Fourteenth Amendment. (Chester County Prison, Pennsylvania)
U.S. Appeals Court MEDICAL CARE	<i>Brown v. Callahan</i> , 623 F.3d 249 (5 th Cir. 2010). The estate of a pretrial detainee, who died of a gastrointestinal hemorrhage while in pretrial custody, brought a § 1983 action against a county sheriff in his individual and official capacity for failure to train and supervise the jail's medical employees and for maintaining an unconstitutional policy of deliberate indifference to serious medical needs. The district court denied the sheriff's motion for summary judgment based on qualified immunity. The sheriff appealed. The appeals court reversed. The court held that the county sheriff was not deliberately indifferent to a known or obvious risk of inadequate medical care toward pretrial detainees arising from the supervising jail physician's unpleasant attitude or practice of intimidation toward jail nurses, which allegedly discouraged nurses from calling the physician or sending patients to the emergency room. The court noted that the detainee's gastrointestinal hemorrhage was neither referred for treatment by a hospital emergency room nor treated by the jail's supervising physician. According to the court, despite the physician's bad temper, despite one nurse's expressed fear of an "ass-chewing" from the physician had she sent the detainee to the emergency room, and even though the nurses and physician had disagreed in two instances on whether inmates should be sent to an emergency room, the two nurses had previously decided to send inmates to the emergency room over the physician's objections. The sheriff had reportedly counseled the physician and ordered the nurses to act appropriately notwithstanding the physician's distemper, and there was no prior instance in which the sheriff's instruction to the nurses was not followed. (Wichita County Jail, Texas)
U.S. District Court INTAKE SCREENING SEARCHES	<i>Cantley v. West Virginia Regional Jail and Correctional Facility Authority</i> , 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 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 MEDICAL CARE USE OF FORCE	<i>Castro v. Melchor</i> , 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 FEMALES PRIVACY SEARCHES	<i>Chase v. District of Columbia</i> , 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. Appeals Court
MEDICAL CARE

Christian v. Wagner, 623 F.3d 608 (8th Cir. 2010). A pretrial detainee brought a § 1983 action against jail officials and employees, alleging a due process violation arising out of his exposure to a cleaning solvent. After a jury found in favor of the defendants, the district court denied the detainee's motion for a new trial or judgment as a matter of law. The detainee appealed. The appeals court affirmed. The appeals court held that the jury could reasonably find that the detainee failed to show that a physician or other medical personnel had diagnosed him with a serious medical need while incarcerated, as would support a finding that such need was objectively serious. The court noted that medical personnel who examined the detainee found no objective evidence supporting a diagnosis, and the record did not contain a medical order to jail employees. The court also held that evidence supported the finding that the detainee's need for medical attention was not so obvious that a layperson must have recognized it, as would support a finding that such need was objectively serious. According to the court, the detainee's testimony that he informed jail employees that he coughed up blood and experienced difficulty breathing was corroborated only by his mother, whereas several jail employees testified they did not observe the detainee suffering adverse reactions to cleaning solutions and had no recollection of his complaining of a medical problem. (Johnson County Jail, Iowa)

U.S. Appeals Court
MENTAL HEALTH
SUICIDE

Clouthier v. County of Contra Costa, 591 F.3d 1232 (9th Cir. 2010). The estate of a pretrial detainee brought a § 1983 action against a county, mental health specialist, and two sheriff's deputies alleging they violated the detainee's due process rights by failing to prevent his suicide while he was confined. The district court granted summary judgment in favor of the defendants and the estate appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the estate had to show that the detainee was confined under conditions posing a substantial risk of serious harm and that correction officers were deliberately indifferent to that risk. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the mental health specialist at the jail, who was on notice of the pretrial detainee's suicidal condition, was deliberately indifferent to a substantial risk of harm to the detainee when she removed the detainee from an observation log and told deputies that the detainee could be given regular clothes and bedding. According to the court, it was clearly established at the time of detention that a reasonable mental health professional would not have removed key suicide prevention measures put in place by a prior mental health staff member, and therefore the specialist was not entitled to qualified immunity.

The court found that the estate failed to establish that a sheriff's deputy at the jail knew that moving the detainee to the general population in the jail posed a substantial risk of serious harm to the detainee, where the deputy only knew that the detainee had missed meals and free time, and that the detainee had been taken off an observation log. The court noted that the deputy spoke to the detainee all weekend and noted he had a positive outlook on wanting to get out of the room, and earlier that day the mental health specialist found that the detainee was not actively suicidal at the time. The court held that the estate failed to establish that another sheriff's deputy knew that the detainee was suicidal and deliberately ignored that risk, where the deputy knew only that the detainee was suicidal and needed to be on 15-minute checks and the mental health specialist told the deputy to give the detainee his regular clothes and bedding. The court noted that nothing indicated that the deputy saw the detainee's knotted sheet. According to the court, the county did not have a longstanding custom or practice of moving pretrial detainees from an observation cell into the general population without consultation with mental health staff, or a longstanding practice of miscommunication between mental health staff and custodial staff. The court found no pattern of repeated wrongful conduct by county staff, and nothing that indicated another suicide resulted from the improper transfer of a detainee. The court found that the affidavit of the estate's expert, who opined that custodial staff and mental health staff did not work together as a team, was speculative and conclusory, and thus was insufficient to avoid summary judgment. The court noted that the factual basis for the expert's declaration was limited to a sequence of events and statements of participants surrounding the detainee's transfer to the general population in the jail, and the report did not address the key question of whether the alleged disconnect was so obvious as to have been deliberate indifference. (Contra Costa Co. Martinez Detention Facility, California)

U.S. Appeals Court
FAILURE TO PROTECT
DUE PROCESS

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 Co. Jail, Mo.)

U.S. Appeals Court
USE OF FORCE
MEDICAL CARE
PLRA-Prison Litigation
Reform Act

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 dis-

covery. 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. District Court
CIVIL COMMITMENT
USE OF FORCE

Enriquez v. Kearney, 694 F.Supp.2d 1282 (S.D.Fla. 2010). A civil detainee brought a pro se civil rights action against correctional facility officers and physicians, asserting claims for excessive force. The officers and physicians moved for summary judgment. The district court granted the motion. The court held that officers did not use excessive force against the civil detainee in violation of his due process rights by spraying him with pepper spray, handcuffing him, and escorting him from a detention unit in restraints, where the detainee did not sustain any serious injury, and the decision to use pepper spray was only made after officers attempted for more than one hour to verbally convince the detainee to cooperate and leave the unit where his interaction with officers was causing a disturbance. The court noted that there was no indication that the force was imposed as punishment rather than in a good faith effort to further the need to maintain order and security on a unit where numerous sexually violent predators (SVPs) were held. (Florida Civil Commitment Center, Arcadia, Florida)

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. District Court
CLASSIFICATION
DUE PROCESS
DISCIPLINE

Ford v. Clarke, 746 F.Supp.2d 273 (D.Mass. 2010). An inmate brought an action challenging his confinement in a Departmental Disciplinary Unit (DDU) at a prison while a pretrial detainee and, later, as a convicted felon serving his sentence. The Department of Corrections' employees filed a motion for summary judgment, which the court allowed in part and denied in part. The court held that the detainee's incarceration in the DDU was intended as punishment, and thus, the Department of Corrections violated the detainee's substantive due process rights. According to the court, the Deputy Commissioner of the Prison Division of Department of Corrections stated, when he placed the pretrial detainee in DDU after his criminal sentence had been completed, that it was meant as punishment and deterrence, as well as for the safety and security of the institution and staff. The detainee's confinement in DDU was imposed as part of a 10-year disciplinary sanction that he had received while serving his prior criminal sentence, and the Commissioner never reassessed the detainee's threat to the institution or others, but, instead relied on conduct which had occurred years earlier. According to the court, the detainee retained a liberty interest in freedom from disciplinary confinement without due process, even after he pled guilty and was sentenced, and thus, the Deputy Commissioner of Correction's failure to provide the detainee with any procedural protections at the time he was returned to DDU as a pretrial detainee, or at the time he was placed in the DDU as a convicted prisoner, violated his procedural due process rights. (Departmental Disc. Unit MCI-Cedar Junction, Mass.)

U.S. Appeals Court
SEARCHES
USE OF FORCE

Forrest v. Prine, 620 F.3d 739 (7th Cir. 2010). A pretrial detainee brought a § 1983 action against a police officer alleging the officer used excessive force against him when he used a stun gun in a holding cell. The district court entered summary judgment for the officer. The detainee appealed. The appeals court affirmed. The court held that the officer did not violate the pretrial detainee's right to be free of illegal search and seizure when he used a stun gun on the detainee while attempting to conduct a strip search in a holding cell following the detainee's arrest. The court held that the officer's decision to use the stun gun on the detainee did not violate the detainee's due process guarantees, where the officer was aware that the detainee had attacked another officer earlier in the night, and the detainee appeared to be intoxicated. The court noted that the detainee was a relatively large man confined in an enclosed space of relatively small area, and he was facing the officer, pacing in the cell, clenching his fists, and yelling obscenities in response to orders to comply with the strip search policy. (Rock Island County Jail, Illinois)

U.S. Appeals Court
MEDICAL CARE
WRONGFUL DEATH

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. Appeals Court
MEDICAL CARE
CONDITIONS

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. Appeals Court
FEMALES
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. Criminal Justice Center, Tenn.)

U.S. Appeals Court
INTAKE SCREENING
MEDICAL CARE
DUE PROCESS

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 held that the detainee's estate failed to allege how the sheriff and jail administrators could possibly have had actual knowledge of the detainee's erratic and strange behavior while in jail, as required to support a § 1983 claim alleging deliberate indifference to the detainee's serious medical needs. 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. Appeals Court
FALSE IMPRISONMENT
RELEASE-
CONDITIONS

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
USE OF FORCE
FAILURE TO PROTECT

Hunt ex rel. Chiovari v. Dart, 754 F.Supp.2d 962 (N.D.Ill. 2010). A pretrial detainee's estate brought a civil rights action against a sheriff, whose actions allegedly led to the death of detainee while he was in custody at a county jail. The district court granted the sheriff's motion for summary judgment. According to the court, the mere fact that the pretrial detainee died while he was in the custody of the sheriff at the county jail was not sufficient to give rise to an excessive force claim under the due process clause, without identifying any responsible officer, or providing any admissible evidence regarding what happened to the detainee or what the detainee or any officers in the vicinity were doing at the time of the detainee's collapse. The court found that the opinions of medical experts, that the detainee's death resulted from trauma to the head from an assault, "was hopelessly speculative" and therefore inadmissible. (Cook County Jail, Illinois)

U.S. District Court
FEMALES
MEDICAL CARE
SUICIDE ATTEMPT

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. Appeals Court
MEDICAL CARE
SEGREGATION
USE OF FORCE
DUE PROCESS

Johnston v. Maha, 606 F.3d 39 (2nd Cir. 2010). An inmate brought a § 1983 action against employees of a county jail, alleging violations of his constitutional rights and of the Americans with Disabilities Act (ADA) in connection with detention and medical care while in jail. The district court granted the defendants summary judgment. The inmate petitioned for the appointment of counsel in his appeal. The appeals court granted the petition. The court held that the appointment of counsel was appropriate in connection with the inmate's appeal from dismissal of his claim that his placement in solitary confinement, and subsequent excessive force he suffered, violated his constitutional rights, since there was likely merit in the inmate's claims. The court found that it appeared from the inmate's complaint that he might have been a pre-trial detainee at the time he was placed in solitary confinement, and thus the claim that the inmate was subjected to excessive force as a detainee would arise under the Fifth, not the Eighth Amendment, because as a detainee he could not be punished at all. The court noted that there was no evidence that the inmate violated any rule or was provided with a pre-deprivation hearing. According to the court, the legal issues were fairly complex, especially with respect to whether the inmate's pretrial detention was substantial enough to give rise to a constitutional violation of a procedural due process right. *On appeal* (460 Fed.Appx. 11) the court found that remand was warranted to allow the District Court to evaluate inmate's claim under the Fourteenth Amendment, and that the inmate exhausted his administrative remedies and was excused from the exhaustion requirement under the Prison Litigation Reform Act (PLRA). (Genesee County Jail, New York).

U.S. Appeals Court
MEDICAL CARE

Jones v. Muskegon County, 625 F.3d 935 (6th Cir. 2010). A father, as the personal representative of the estate of a deceased pretrial detainee, brought an action against a county and various corrections officers and medical staff, alleging constitutional claims pursuant to § 1983, gross negligence and intentional infliction of emotional distress. The district court granted the defendants' motions for summary judgment. The father appealed. The appeals court affirmed in part, reversed in part and remanded. The court held that assignment charts listing corrections officers assigned to the pretrial detainee's area during the period in which his health deteriorated, and affidavits from other detainees who witnessed his deterioration and the officers' alleged failure to assist the detainee, were insufficient to create a fact issue as to whether the officers were deliberately indifferent towards the detainee's serious medical needs in violation of the Fourteenth Amendment. The court noted that the affidavits referred to "guards" in a general sense without specifying wrongdoing attributable to any particular officer, and did not specify which officers observed the detainee's deterioration or ignored his requests for medical care. The court found that a correctional officer's failure to immediately call an ambulance upon observing the pretrial detainee's deteriorating health condition was not deliberate indifference towards his serious medical needs as would violate the Fourteenth Amendment, where the officer believed the decision to call an ambulance was not hers to make but was command's, and the officer attended to the detainee's medical needs and made efforts to make him more comfortable. But the court found that summary judgment was precluded by a genuine issue of material fact as to whether prison nurses were aware of the risk to the pretrial detainee's health and chose to disregard the risk, and whether the prison nurses were grossly negligent under Michigan law as to the pretrial detainee's medical care. (Muskegon County Jail, Michigan)

<p>U.S. District Court FAILURE TO PROTECT WRONGFUL DEATH RELEASE MEDICAL CARE</p>	<p><i>Lum v. County of San Joaquin</i>, 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)</p>
<p>U.S. District Court JUVENILES SEARCHES</p>	<p><i>Mashburn v. Yamhill County</i>, 698 F.Supp.2d 1233 (D.Or. 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)</p>
<p>U.S. District Court JUVENILES MEDICAL CARE USE OF FORCE</p>	<p><i>Molina v. New York</i>, 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)</p>
<p>U.S. District Court MEDICAL CARE</p>	<p><i>Mosby v. Cavey</i>, 686 F.Supp.2d 868 (W.D.Wis. 2010). A pretrial detainee sued medical personnel at a county jail, asserting a Fourteenth Amendment claim of deliberate indifference to his serious medical need. 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 when the inmate's impacted wisdom tooth presented an emergency condition requiring surgery, and whether dentists refused to refer him to an outside oral surgeon because they were not permitted to make such referrals. The court also found genuine issues of material fact as to whether a failure of prison nurses to schedule the inmate to see the dentists or consult with the dentists was intentional mistreatment likely to seriously aggravate the inmate's serious dental condition. (Dane County Jail, Wisconsin)</p>
<p>U.S. Appeals Court FAILURE TO PROTECT PSYCHOLOGICAL SERVICES TRANSFER</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>

U.S. District Court
FAILURE TO PROTECT
FEMALES
MENTAL HEALTH
PSYCHOLOGICAL
SERVICES
RELEASE

Paine v. Johnson, 689 F.Supp.2d 1027 (N.D.Ill. 2010) *affirmed* 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
FEMALES
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
ALIEN
USE OF FORCE

Porro v. Barnes, 624 F.3d 1322 (10th Cir. 2010). An immigration detainee brought a § 1983 excessive force claim against a jail employee, sheriff, and the sheriff's successor, related to an incident in which a stun gun was used on the detainee. The district court granted the sheriff's motion for summary judgment and the successor's motion for summary judgment. The detainee appealed. The appeals court affirmed. The court held that the sheriff who was not present during the incident in which a stun gun was used on the detainee while he was restrained was not liable under § 1983, where the sheriff did not employ any force on the detainee, was not present when the force was applied, and did not give any advance approval to the use of the stun gun on the detainee. The court found that the county jail's policy of training jailers to use stun guns only if and when an inmate should become violent, combative, and pose a direct threat to the security of staff did not exhibit deliberate indifference to the immigration detainee's due process rights against the use of excessive force, as required for § 1983 liability. (Jefferson County Jail, Oklahoma)

U.S. Appeals Court
RELEASE

Portis v. City of Chicago, Ill., 613 F.3d 702 (7th Cir. 2010). Arrestees brought a class action against a city, alleging that the city had a practice of unconstitutionally delaying the release of persons arrested for non-jailable ordinance violations that were punishable by a fine only. The arrestees alleged that release was delayed for more than two hours after all the administrative steps necessary to determine their eligibility for release was completed. The district court granted the arrestees' motion for summary judgment and the city appealed. The appeals court reversed and remanded. The appeals court held that the district court, in finding the city's delay in releasing arrestees for non-jailable offenses unreasonable, erred in prescribing a two-hour limit between the city's completion of all the administrative steps necessary to identify the arrestees correctly and to determine their eligibility for release. Instead, according to the court, the arrestees bore the burden of proof and persuasion on the contention that any particular detention was excessive, and the court was required to examine not only the length of a given detention but also the reasons why the release was deferred. (City of Chicago, Illinois)

U.S. Appeals Court
FAILURE TO PROTECT
USE OF FORCE
FEMALES
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
CONDITIONS
DISCIPLINE
DUE PROCESS
RECREATION
SAFETY
SANITATION

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
BAIL
LENGTH
RELEASE

Schneyder v. Smith, 709 F.Supp.2d 368 (E.D.Pa. 2010). A detainee who was being held as a material witness whose testimony was vital to a homicide prosecution brought a civil rights action against the prosecutor who had secured the material witness warrant for her arrest, alleging the prosecutor failed to notify the judge that the case had been continued for nearly four months. The detainee sought her release. The district court granted the prosecutor's motion to dismiss in part and the detainee appealed. The appeals court reversed and remanded. On remand, the district court denied the prosecutor's motion for summary judgment. The court held that the detainee had a clearly established constitutional right to be free from detention without probable cause and that a triable issue existed regarding whether a reasonable prosecutor would have been aware of her duty to inform the judge of the status of any detained material witness. The detainee had sought bail, but at the bail hearing, the judge articulated his dislike for "setting bail on people who are not accused of a crime." In open court, he told the plaintiff, "[i]f the case breaks down, let me know early and I'll let you out." (Philadelphia, Pennsylvania)

U.S. Appeals Court
FAILURE TO PROTECT

Schoelch v. Mitchell, 625 F.3d 1041 (8th Cir. 2010). A pretrial detainee who was assaulted two times by a fellow inmate in a county jail brought a civil rights action against a jail guard, and against various supervisory jail officials and county officials. The district court granted summary judgment in favor of the defendants. The detainee appealed. The appeals court affirmed, finding that the detainee did not establish a claim against the guard for deprivation of his due process rights, arising from the first assault, and the guard was not deliberately indifferent to a substantial risk of serious harm to the detainee. The court noted that even assuming that the county jail guard was deliberately indifferent to the pretrial detainee's risk of substantial harm from being assaulted by a fellow inmate by opening the door to the detainee's cell and allowing the other inmate to enter, there was no evidence that the detainee suffered an objectively serious injury as the result of the assault by the fellow inmate, as required to establish a claim against the guard for deprivation of the detainee's due process rights. According to the court, although the fellow inmate had a history of fighting with the detainee and others, the fellow inmate's prior conduct did not put the guard on notice of a substantial risk that he would violently attack the detainee, as it was a surprise attack and the guard was unaware that the inmate had engaged in any prior violent attacks. (St. Louis County Justice Center, Missouri)

U.S. District Court
CLOTHING
DUE PROCESS
FAILURE TO PROTECT
MENTAL HEALTH
PROTECTIVE CUS-
TODY
SUICIDE
SUPERVISION

Silvera v. Connecticut Dept. of Corrections, 726 F.Supp.2d 183 (D.Conn. 2010). The representative of a pretrial detainee's estate filed a § 1983 action alleging that state prison officials' decision to house the detainee with a convicted inmate and their failure to provide adequate mental health care caused the detainee's suicide death. The officials moved to dismiss. The district court granted the motion in part and denied in part. The court held that allegations that prison medical staff ignored abundant evidence demonstrating that the pretrial detainee was an acute suicide risk were sufficient to state a claim of deliberate indifference to his serious medical needs, in violation of the Due Process Clause. The court noted that evidence included a judge's instructions to keep him on suicide watch, the detainee's prior medical records, contemporaneous complaints and behavior, and examinations by medical staff, all of whom concluded that the detainee suffered from severe mental health issues. Nonetheless, officials placed him in a cell by himself, rather than in specialized housing, with access to materials with which he could hang himself, failed to check on him regularly, and ignored signs that his mental condition had deteriorated. The court found that a state prison supervisor was not liable under § 1983 for the pretrial detainee's suicide death, even if the supervisor had some training with regards to caring for mentally ill detainees, and his subordinates failed to properly oversee the detainee's activities. The court noted that the detainee was placed in the general prison population based on a mental health professional's recommendation, the supervisor was not aware that the detainee posed an excessive risk of suicide, and subordinates were given proper orders to keep the detainee under constant surveillance and interact with him at frequent, irregular intervals. The court described the change in the detainee's conditions of confinement prior to his suicide. "Inmates housed in the Charlie Unit—apparently unlike those in the specialized housing unit where Mr. Lyle was held from May 11 until May 15—have the ability to turn the cell's lights on and off at will. Additionally, the Charlie Unit has bunk-style beds, which are outfitted with standard-issue sheets and pillow case—both of which would play a role in Mr. Lyle's suicide. Once transferred to the Charlie Unit, Mr. Lyle was given standard DOC clothing, whereas previously he had been given only a 'suicide gown.'" According to the court, the pretrial detainee's right to due process was not violated merely because he was forced to share a cell with a convicted prisoner, absent an allegation that the detainee suffered an injury from being housed with a convicted inmate, or that placement with the convicted inmate was intended to punish the detainee. (Garner Correctional Institute, Connecticut)

U.S. Appeals Court
ADA- Americans with
Disabilities Act
MENTAL HEALTH
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. Appeals Court
FEMALES
MEDICAL CARE
SUPERVISION

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
FAILURE TO PROTECT
INTAKE SCREENING
SUICIDE
SUPERVISION

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
USE OF FORCE

Vanderburg v. Harrison County, Miss. ex rel. Bd. of Supervisors, 716 F.Supp.2d 482 (S.D.Miss. 2010). A pretrial detainee brought an action against a county, officials and officers, alleging civil rights violations under § 1983 and related statutes. A correctional officer moved for summary judgment and for dismissal. The district court granted the motions in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact, regarding whether the correctional officer acted with malice in allegedly injuring the pretrial detainee and whether the force used by the correctional officer was objectively reasonable. (Harrison County Adult Detention Center, Mississippi)

U.S. District Court
SPEEDY TRIAL
CONDITIONS

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
FALSE IMPRISON-
MENT
INITIAL APPEARANCE
LENGTH
RELEASE

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)

U.S. District Court
ADA-Americans with
Disabilities Act
DUE PROCESS
JUVENILES
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)

U.S. District Court
MEDICAL CARE
MEDICATION

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 Mun. Jail, Ala.)

U.S. District Court
FAILURE TO PROTECT
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
SEARCHES
INTAKE SCREENING

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
RELEASE

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. District Court
CELL CAPACITY
LAW LIBRARIES
TELEPHONE
PRIVACY

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 held that a pretrial detainee had no reasonable expectation of privacy in telephone calls made from within jail to individuals other than his attorney, and thus jail officials did not violate the detainee's Fourth Amendment rights by monitoring his calls to his former spouse.

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. The court held that the county inmates lacked standing to raise a claim that the county jail's lack of a law library violated their due process rights, where the inmates did not claim that they attempted to exercise the right of self-representation and did not otherwise have access to legal materials. According to the court, the county jail's removal of its law library was rationally related to its interest in reducing expenses, and thus did not violate the inmates' equal protection rights. The court noted "...because Plaintiff's claim for law library is not explicitly or implicitly guaranteed by the Constitution, it is not a fundamental right. Therefore, the prison's policy need only bear a rational relationship to a legitimate state interest." (Cuyahoga County Jail, Ohio)

U.S. District Court
MEDICAL CARE

Burgos v. Philadelphia Prison System, 760 F.Supp.2d 502 (E.D.Pa. 2011). A pretrial detainee brought a § 1983 action against a city prison system, health service and officials, alleging wrongful delay in receiving medical treatment for his broken arm. The district court granted the defendants' motion for summary judgment in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact, regarding whether the prison health service's actions in failing to timely refer the detainee to an orthopedic surgeon for treatment of a broken arm constituted an official "policy" of deliberate indifference to the detainee's serious medical needs, for the purposes of municipal liability under § 1983, and whether the prison health administrator significantly delayed the detainee's medical treatment for non-medical reasons. (Philadelphia Prisons Systems, Prison Health Services, Inc.)

U.S. Appeals Court
SEARCHES

Byrd v. Maricopa County Sheriff's Dept., 629 F.3d 1135 (9th Cir. 2011). A male pretrial detainee, proceeding pro se, brought a § 1983 action against a female cadet and a sheriff's department, alleging violations of the Fourth and Fourteenth Amendments. The district court entered judgment in favor of the defendants. The ruling was affirmed on appeal. After granting a rehearing en banc, the appeals court reversed and remanded. The appeals court held that the strip search of the male pretrial detainee by a female cadet was unreasonable in violation of the Fourth Amendment, where the cadet touched the detainee's inner and outer thighs, buttocks and genital area with her latex gloved hand through very thin boxer shorts, the female cadet moved the detainee's penis and scrotum in the process of conducting the search, the cadet wore only jeans and a white t-shirt without any identification other than a name printed on the back of the shirt, ten to fifteen non-participating officers watched the search, and at least one person videotaped the search. (Maricopa County Sheriff, Arizona)

U.S. District Court
FAILURE TO PROTECT
CELLS

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
SEXUAL ASSAULT
FAILURE TO PROTECT

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. Appeals Court
MEDICAL CARE
FAILURE TO PROTECT

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
RELEASE
FAILURE TO PROTECT
INTAKE SCREENING
MEDICAL CARE
SUICIDE

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 CARE

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)

<p>U.S. Appeals Court MEDICAL CARE USE OF FORCE</p>	<p><i>Estate of Amaro v. City of Oakland</i>, 653 F.3d 808 (9th Cir. 2011). An arrestee's mother filed a § 1983 action against a city and police officers, alleging that arresting officers used excessive force and that prison medical officials were deliberately indifferent to his serious medical condition. The district court denied the city's motion for summary judgment and the city appealed. The appeals court affirmed. The appeals court held that the city could not assert a limitations defense in the § 1983 excessive force action, where the suspect's mother diligently investigated his arrest and death within the limitations period and believed she had a claim against the city, but five different lawyers told her that, in light of the suspect's uncorroborated statements about a police beating and a police sergeant's misstatements regarding his death, she did not have sufficient evidence to file a § 1983 claim. The court noted that the city's continued stonewalling in refusing her requests for police department reports prevented her from appreciating the full nature of her claim and dissuaded her from filing a § 1983 claim. (Oakland County Jail, California)</p>
<p>U.S. District Court FAILURE TO PROTECT STAFFING</p>	<p><i>Estate of Gaither ex rel. Gaither v. District of Columbia</i>, 833 F.Supp.2d 110 (D.D.C. 2011). The personal representative of a detainee's estate brought a § 1983 action against the District of Columbia, department of corrections officials, and corrections officers, seeking damages in connection with the detainee's fatal stabbing while he was incarcerated pending sentencing for felony distribution of cocaine. The corrections officers moved for summary judgment. The district court granted the motion, finding that the officers were entitled to qualified immunity. According to the court, at the time of the detainee's death it was not clearly established that corrections officers were acting with deliberate indifference by exposing inmates, including the detainee, to a substantial threat of inmate-on-inmate attack by understaffing a unit, and thus corrections officers were entitled to qualified immunity. (District of Columbia, Central Detention Facility)</p>
<p>U.S. District Court ACCESS TO COURT ALIEN MENTAL HEALTH RA- Rehabilitation Act</p>	<p><i>Franco-Gonzales v. Holder</i>, 828 F.Supp.2d 1133 (C.D.Cal. 2011). Immigrant detainees brought a putative class action on behalf of mentally disabled detainees being held in custody without counsel during removal proceedings, asserting claims under the Immigration and Nationality Act (INA), Rehabilitation Act, and Due Process Clause. A detainee who was a native and citizen of Belarus, and who had been deemed mentally incompetent to represent himself in removal proceedings, moved for a preliminary injunction. The district court granted the motion in part. The court held that: (1) the detainee was entitled to a custody hearing at which the government had to justify his continued detention on the basis that he was a flight risk or would be a danger to the community; (2) a qualified representative for a mentally incompetent immigrant detainee may be an attorney, law student or law graduate directly supervised by a retained attorney, or an accredited representative; (3) the detainee's father could not serve as a qualified representative for detainee at a custody hearing; (4) appointment of a qualified representative to represent the detainee at a custody hearing was a reasonable accommodation under the Rehabilitation Act; (5) the likelihood of irreparable harm and the balance of hardships favored the detainee; and (6) a mandatory injunction was warranted. (Sacramento County Jail, California)</p>
<p>U.S. District Court RELEASE FALSE IMPRISONMENT</p>	<p><i>Harbeck v. Smith</i>, 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)</p>
<p>U.S. District Court FAILURE TO PROTECT SUICIDE SUPERVISION</p>	<p><i>Hawkins v. County of Lincoln</i>, 785 F.Supp.2d 781 (D.Neb. 2011). The personal representative of a hospital patient brought a § 1983 action against the hospital, a county, a city, and related defendants for claims arising when the patient was brought to the hospital at the time of his arrest, was released by the hospital to a county jail, and subsequently hanged himself at the jail. 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 prison officials were objectively aware that the prisoner posed a risk of harm to himself that included a risk of suicide. According to the court, although the prisoner had serious medical needs in connection with his risk of suicide, no prison correctional officers, jailers, and/or law enforcement officers were deliberately indifferent to the prisoner's needs, even though it might have been negligent for individual defendants to take the prisoner off a suicide watch without having him evaluated by a physician or other professional. According to the court, the defendants' conduct was not more blameworthy than mere negligence. The court also held that summary judgment was precluded by a genuine issue of material fact as to whether the county acted with deliberate indifference by failing to have</p>

a specific policy for determining when an inmate could be removed from a suicide watch and placed in a situation that could increase the likelihood of a successful suicide attempt. (Lincoln County Jail, Nebraska)

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
MEDICAL CARE

Hodge v. Murphy, 808 F.Supp.2d 405 (D.R.I. 2011). A pretrial detainee brought a pro se action against a state prison warden and others, alleging the defendants failed to properly dispense his daily medication for migraines and pain resulting from a fractured lower back. The district court dismissed the action. The court held that the allegation that the pretrial detainee suffered undue pain as the result of prison officials' failure to properly dispense daily medication was insufficient to establish a serious medical need involving a substantial risk of serious harm, as required to state a due process claim against the prison officials under the Fourteenth Amendment. (Donald W. Wyatt Detention Facility, Central Falls, Rhode Island)

U.S. Appeals Court
FAILURE TO PROTECT
MEDICAL CARE
SAFETY
DUE PROCESS

Holden v. Hirner, 663 F.3d 336 (8th Cir. 2011). A pretrial detainee filed a § 1983 action against officials of a county jail for allegedly violating his Fourteenth Amendment rights under the Due Process Clause by allegedly failing to protect him from an assault by three other inmates, and failing to provide adequate medical treatment for his tooth pain. The district court granted prison officials summary judgment and the detainee appealed. The appeals court affirmed. The court held that there was no evidence that the pretrial detainee was incarcerated under conditions posing a substantial risk of serious harm in the protective custody pod in which the detainee was imprisoned as a sex offender, even though one of the assaulting inmates was involved in another fight four days before the altercation with the detainee. The court noted that the pod was designed to provide greater supervision and security for vulnerable inmates who were more likely to be assaulted, and nothing in the record established that the prior fight involved a sex offender. According to the court, even if the pretrial detainee faced a substantial risk of serious harm from other inmates in the protective custody pod, there was no evidence that officials at the county jail were deliberately indifferent to his safety, where the detainee did not tell officials that he felt threatened by other inmates, and the officials had no knowledge of any specific danger to the detainee in the pod. The court held that the pretrial detainee's tooth pain did not constitute a serious medical need, as required to support the detainee's Fourteenth Amendment claim of deprivation of his due process rights by officials of the county jail. The court noted that a nurse employed by the jail evaluated the detainee's teeth and gums on multiple occasions and never noted bleeding, swelling, infection, or other visible symptoms of tooth pain. The nurse never determined that the detainee's tooth pain required treatment, and the detainee was observed eating without difficulty and later refused to have his tooth extracted. The court found that the detainee's prognosis was not negatively impacted by any delay in treatment. (Marion County Jail, Missouri)

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 presentment 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 presentment to a judicial official violated the Fourth Amendment. (United States Marshal for the Superior Court of the District of Columbia)

U.S. Appeals Court
CLOTHING-COURT
APPEARANCES
PLRA- Prison Litigation
Reform Act
RELIGION

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 County Santa Ana Courthouse, California)

U.S. District Court
ALIEN
MEDICAL CARE

Newbrough v. Piedmont Regional Jail Authority, 822 F.Supp.2d 558 (E.D.Va. 2011). The administrator of an immigration detainee's estate brought an action against the federal government, a regional jail authority and various of its employees, and several agents of the United States Immigration and Customs Enforcement (ICE), alleging § 1983 claims in relation to medical treatment received by detainee while in jail, and a claim for wrongful death. The defendants moved to dismiss and the plaintiff moved for a stay. The court held that the stricter deliberate indifference standard, rather than the professional judgment standard, applied to the § 1983 denial-of-medical-care claims brought by the administrator, where immigration detention was more similar to pretrial detention rather than the involuntary commitment of psychiatric patients, in that immigration detention served to secure the detainee's appearance at future proceedings and to protect the community, and pre-removal detention was generally limited in duration.

The court held that the allegations of the administrator were sufficient to allege that a prison nurse deliberately denied, delayed, or interfered with the detainee's medical care with knowledge of his serious condition, as required to state a § 1983 denial-of-medical-care claim under Fourteenth Amendment's Due Process Clause. The administrator alleged that the nurse visited the detainee while he was held in isolation in a medical segregation unit with an apparent inability to walk or stand, and yet withheld medication because the detainee was unwilling to stand up and walk to the door to receive that medication. The court noted that the nurse acknowledged that not giving the detainee his medication could cause severe problems.

The court found that the nurse did not deny, delay, or intentionally interfere with the immigration detainee's medical treatment, where the nurse documented her observations regarding the detainee's acute back pain, sleeplessness, and unresponsiveness, and then related those observations to superior prison officials, including a prison doctor. According to the court, allegations of the administrator were sufficient to allege that a prison doctor deliberately denied, delayed, or interfered with the detainee's medical care with knowledge of his serious condition, where the administrator alleged that the doctor received multiple reports from his subordinates regarding the detainee's back pain, his inability to stand, and elevated vital signs and yet failed to act or personally assess the detainee's condition, to provide more than perfunctory treatment, or to follow up on prescribed courses of treatment. The court found that the administrator sufficiently alleged that the regional jail authority and its superintendent failed to adequately train jail staff, as required to state a § 1983 policy-or-custom claim in relation to the detainee's medical care under the Fourteenth Amendment's Due Process Clause. The administrator alleged that prison officers regularly refused to refer requests for medical attention unless a request was in writing, regardless of the urgency of a detainee's need, that prison staff either failed to recognize symptoms of grave illness or ignored them, and that, even in the face of the detainee's potentially fatal infection, staff provided no more than an over-the-counter pain reliever. The court found that the administrator's allegations were sufficient to allege that the jail's superintendent, even if newly hired, was aware of the shortcomings in his facility's medical care, as required to state a § 1983 supervisory liability claim, where the administrator alleged that numerous public investigations and media coverage reported the poor quality of the jail's health services and the superintendent failed to act to improve those services. (Piedmont Regional Jail Authority, Virginia, and U.S. Immigration and Customs Enforcement Agency)

U.S. Appeals Court
MEDICAL CARE
FAILURE TO PROTECT

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 Dept. 23rd Dist. Lockup, Illinois)

U.S. District Court
MEDICAL CARE

Palmer v. Board of Com'rs for Payne County Oklahoma, 765 F.Supp.2d 1289 (W.D.Okla. 2011). A former pretrial detainee in a county detention center filed a § 1983 action against a sheriff, deputy sheriff, and county jail administrator for alleged deliberate indifference to the detainee's serious medical needs in violation of the Due Process Clause. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that a deputy sheriff was not deliberately indifferent to the pretrial detainee's serious medical needs, in violation of the Due Process Clause, due to a bacterial infection that required surgical excision of three gangrenous areas of the detainee's body, but rather, he took active and reasonable steps to abate any harm to the detainee. According to the court, there was no evidence of inadequate training of jailers as to the passing on of doctor's instructions for inmates, as required to establish the deliberate indifference of the county sheriff to the serious medical needs of the pretrial detainee who contracted a bacterial infection, in violation of due process. (Payne County Jail, Oklahoma)

U.S. District Court
FAILURE TO PROTECT
GRIEVANCE
PLRA- Prison Litigation
Reform Act
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 pre-trial 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
HANDICAP
ADA-Americans with
Disabilities Act
CONDITIONS
PLRA- Prison Litigation
Reform Act
PROGRAMS

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; (5) the county's revised grievance procedure satisfied ADA; and (6) 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
FAILURE TO PROTECT
USE OF FORCE
JUVENILES

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
FALSE
IMPRISONMENT

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. District Court
ALIEN
BAIL
RELEASE

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. Appeals Court RELEASE CIVIL COMMITMENT	<p><i>Schneyder v. Smith</i>, 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)</p>
U.S. Appeals Court FAILURE TO PROTECT	<p><i>Shields v. Dart</i>, 664 F.3d 178 (7th Cir. 2011). A pretrial detainee brought a pro se § 1983 action against prison officials who allegedly were deliberately indifferent in failing to protect him from an attack by other inmates at a county jail. The prison officials moved for summary judgment. The district court granted the motion and the detainee appealed. The appeals court affirmed. The court held that the officials were unaware of a substantial risk of serious injury to the pretrial detainee, and thus the officials were not deliberately indifferent in failing to protect the detainee from the attack. According to the court, a corrections officer on duty during the two inmates' attack did not act with deliberate indifference by failing to enter a day room where the attack was occurring. The officer verbally commanded the inmates to stop the attack. The officer was alone, intervened by promptly calling for back-up and monitoring the fight from a secure area until other officers arrived, and was not required to put herself in significant jeopardy by attempting to break up fight herself. (Cook County Jail, Illinois)</p>
U.S. District Court CONDITIONS SANITATION	<p><i>Solomon v. Nassau County</i>, 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)</p>
U.S. Appeals Court FAILURE TO PROTECT	<p><i>Starr v. Baca</i>, 652 F.3d 1202 (9th Cir. 2011). A prisoner brought a § 1983 action for damages resulting from a violent attack he allegedly suffered while he was an inmate in a county jail. The district court dismissed the prisoner's supervisory liability claim for deliberate indifference against the sheriff in his individual capacity, and the prisoner appealed. The appeals court reversed and remanded. The court held that the inmate sufficiently alleged a supervisory liability claim of deliberate indifference against the sheriff in violation of the Eighth and Fourteenth Amendments based on allegations that the sheriff failed to act to protect inmates under his care despite his knowledge that they were in danger because of the culpable acts of his subordinates and despite his ability to take actions that would have protected them. The court noted that the complaint specifically alleged numerous incidents in which inmates in county jails had been killed or injured because of the culpable actions of the subordinates of the sheriff, that the sheriff was given notice of all of those incidents, was given notice, in several reports, of systematic problems in the county jails under his supervision that had resulted in deaths and injuries, and that the sheriff did not take action to protect inmates under his care despite the dangers created by the actions of his subordinates of which he had been made aware. (Los Angeles County Jails, California)</p>
U.S. District Court LAW LIBRARY ACCESS TO COURT CRIPA- Civil Rights of Institutionalized Persons Act DUE PROCESS USE OF FORCE	<p><i>Thorpe v. Little</i>, 804 F.Supp.2d 174 (D.Del. 2011). A pretrial detainee, proceeding in forma pauperis, brought a § 1983 action against a prison, prison officials, and prison medical personnel, alleging violations of the Americans with Disabilities Act (ADA), Civil Rights Act, Civil Rights of Institutionalized Persons Act (CRIPA), and supplemental state law claims. The detainee moved to show cause and for transfer to a different institution. The district court denied the motions and dismissed the claims in part. The court held that the prison did not violate the pretrial detainee's First Amendment right of access to courts by only allowing the detainee to receive legal services from the prison law library through written requests, where the detainee was provided access to courts if he merely submitted a written request, and the detainee was represented by a public defender. The court held that the detainee's complaint, alleging that a corrections officer sprayed him in the face with pepper spray when he did not comply with the officer's order, stated a claim for excessive force, as would violate the Fourteenth Amendment Due Process Clause. The detainee was maced when he would not allow correctional officers to leave his food tray on the cell window flap. The macing caused vision loss and facial irritation. Following the incident, the detainee was taken to isolation where he remained for the next fifteen days. He received a disciplinary write-up for this incident and was found guilty. (James T. Vaughn Correctional Center, Smyrna, Delaware)</p>
U.S. Appeals Court SPEEDY TRIAL	<p><i>U.S. v. Ferreira</i>, 665 F.3d 701 (6th Cir. 2011). After denial of a motion to dismiss an indictment based on violation of his Sixth Amendment speedy trial right, a defendant pled guilty in district court to conspiracy to distribute 500 grams or more of methamphetamine. The defendant appealed. The appeals court reversed</p>

and remanded. The court held that a thirty-five month delay between an indictment charging conspiracy to distribute 500 grams or more of methamphetamine and the defendant's guilty plea was sufficient to trigger an analysis of the defendant's claim that his Sixth Amendment speedy trial rights were violated. The court found that the thirty-five month delay was caused solely by the government's gross negligence, for the purposes of determining whether such a delay violated the defendant's Sixth Amendment right to speedy trial. The defendant was serving a term of imprisonment of 110 months following his guilty plea. (U.S. Marshals Service, Bartow County, Cobb County, Georgia)

U.S. District Court
FAILURE TO PROTECT
MEDICAL CARE

Wereb v. Maui County, 830 F.Supp.2d 1026 (D.Hawai'i 2011). The parents of a diabetic pretrial detainee 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 district granted summary judgment, in part, in favor of the defendants. The county moved for reconsideration. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by fact issues on the claim that the county failed to train jail employees to monitor detainees' serious medical needs. The court found that the county and its police department were not liable for their alleged failure to train employees on the risks and symptoms of alcohol withdrawal. According to the court, assuming that the detainee died from alcohol withdrawal, no other prisoner in the county jail had suffered injury from alcohol withdrawal for more than 17 years before the detainee's death, so that such a failure to train did not constitute deliberate indifference. (Lahaina, Maui, Police Station, Hawai'i)

2012

U.S. Appeals Court
FAILURE TO PROTECT

Bistrrian v. Levi, 696 F.3d 352 (3rd Cir. 2012). A federal inmate brought a civil rights action against prison officials and employees, alleging, among other things, that the defendants failed to protect him from inmate violence, and that the defendants placed him in a special housing unit (SHU) in retaliation for exercising his First Amendment rights. The inmate alleged that prison investigators used him to intercept notes being passed among other inmates, and then failed to protect him after they fouled up the operation and the inmates discovered his involvement. When the target inmates threatened to retaliate, the inmate contended he repeatedly begged the officials responsible for help, but no one took any preventive measures. Later, one of the inmates against whom inmate had cooperated, along with two others, beat him while they were together in a locked recreation pen. A few months later, an inmate wielding a razor-blade type weapon also attacked the inmate in the recreation pen. The district court denied the defendants' motion to dismiss. The defendants appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that: (1) the officials' decision to keep the inmate, who had acted as an informant, in SHU after his cooperation with the officials was not unreasonable; (2) the officials were deliberately indifferent to the inmate's safety when they placed him in a recreation yard with prisoners who were aware of his complicity with officials by informing on them; (3) the officials were not deliberately indifferent to a risk of harm when they placed the inmate in the yard with a prisoner who had a history of violent assaults against other inmates; (4) the inmate stated a failure-to-protect claim with respect to the officer's failure to intervene in the assault, where he intervened in another prisoner's assault on the inmate in the special housing unit's (SHU) recreation yard "only after several minutes of continued pummeling;" and (6) the inmate stated a substantive due process claim. The court noted that the federal inmate, who was either not yet convicted, or convicted but not yet sentenced, when he was attacked by other inmates in the prison's recreation yard, had a clearly established due process right to have prison officials protect him from inmate violence. (Federal Detention Center, Philadelphia, Pennsylvania)

U.S. District Court
ACCESS TO COURT
MAIL

Blalock v. Eaker, 845 F.Supp.2d 678 (W.D.N.C. 2012). A pretrial detainee brought a § 1983 action against prison officials, alleging they lost his legal mail. The district court granted the defendants' motion for summary judgment. The court held that when prison staff ignored the detainee's subpoenas it did not violate his right of access to the courts. The court noted that the detainee was represented by counsel, the subpoenas were invalid as the detainee was a criminal defendant who had no right under North Carolina common law to pretrial discovery, North Carolina statutes did not authorize the use of subpoenas "duces tecum" as a criminal discovery tool, and North Carolina law did not allow criminal defendants to depose witnesses. (Lincoln County Detention Center, North Carolina)

U.S. District Court
FEMALES
MEDICAL CARE
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
MEDICAL CARE
WRONGFUL DEATH

Currie v. Cundiff, 870 F.Supp.2d 581 (S.D.Ill. 2012). The administrator of the estate of a deceased detainee brought an action against a county, jail officials, and health care providers, alleging various claims, including claims pursuant to § 1983 and the Illinois Wrongful Death Act, as well as for punitive damages. The court held that allegations by the administrator of the estate of the deceased arrestee, that jail officials and

health care providers acted with deliberate indifference in dealing with his diabetes while he was in custody, were sufficient to plead that they acted with reckless or callous disregard to federally protected rights, as required to seek punitive damages in the § 1983 proceedings alleging violations of the Fourth Amendment. The detainee died as a result of diabetic ketoacidosis while confined in the county jail. (Williamson County Jail, Illinois)

U.S. District Court
MEDICAL CARE
MEDICATION

Dilworth v. Goldberg, 914 F.Supp.2d 433 (S.D.N.Y. 2012). A released pretrial detainee and his wife brought an action against a county, its health care corporation, and 47 related individuals, for federal and state claims arising from his confinement at a county jail. The district court partially dismissed the claims and the plaintiffs moved to amend. The district court granted the motion in part and denied in part. The court found that New York's three-year limitations period began to run on the date in which the pretrial detainee was directed by an officer to sign fraudulent papers indicating he caused his own injuries and that would waive his legal claims against the county and jail officials. According to the court, it was appropriate for the now-released pretrial detainee to amend his complaint to assert his section 1983 unconstitutional conditions of confinement claim, under the Eighth Amendment, against the officer, since there were sufficient allegations in the proposed pleading to support the claim. The court noted that loss of consortium claims are not cognizable under § 1983 because they do not involve an injury based on a deprivation of the plaintiff's rights, privileges, and immunities.

The detainee, an African-American, was detained in the jail when he slipped and fell on wet wax that had been left on a corridor floor by a trustee inmate. He "suffered severe injuries to his head, back, and right arm, and lost consciousness due to the fall." He was taken the jail infirmary and given a " cursory" examination, which allegedly resulted in the understatement of his actual medical condition. Rather than allowing him to return to his cell to rest, he was ordered to go to a visit and he was threatened with a charge of disobeying a direct order if he did not comply. He suffered several subsequent health problems but was not taken to an outside source of medical care. He was given a wheelchair and assigned to a dormitory with inmates who had medical problems. While confined in the dorm he was allegedly denied meals on several occasions, was not able to take a shower, and was refused pain medication. He alleged further complaints about his treatment and conditions. (Westchester County Department of Corrections, New York Medical College, Westchester County Health Care Corporation, New York)

U.S. District Court
FAILURE TO PROTECT

Ebrahime v. Dart, 899 F.Supp.2d 777 (N.D.Ill. 2012). A pretrial detainee at a county jail brought a § 1983 action against a county sheriff and jail officials arising from an attack by a fellow detainee. The district court granted the defendants' motion for summary judgment. The court held that county jail officials were not deliberately indifferent in preventing the attack on the detainee, who reported theft of commissary items from his table, by the accused fellow inmate. The court noted that the detainee did not himself feel there was threat, and the fellow inmate did not know that the detainee had reported him, but rather, he only knew that the detainee's associates had reported their items stolen from detainee's table. The court found that the county jail officials were not deliberately indifferent in failing to intervene in the attack on the pretrial detainee, even though the corrections officer who was with the detainee when the attack began did not respond on his own, he called for backup which arrived, in force, within a minute or two. (Cook County Jail, Illinois)

U.S. District Court
MEDICAL CARE
SUICIDE
SUICIDE ATTEMPT
WRONGFUL DEATH

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. The video surveillance of the cell was broadcast on four different television monitors throughout the jail, all of which were working and manned by officers. Additionally, the work station thhhatt was located around the corner from the cell, approximately 20 feet away, was equipped with one of the four television monitors. The monitor was situated on the wall above the desk at the work station, such that it would be directly in front of the officer manning the station if he was sitting facing his desk.

The detainee attempted suicide by trying to hang himself with his bed sheet from the top of the cell bars, which took several minutes and was unsuccessful. After the attempt, however, the detainee left the bed sheet hanging from the top of his cell bars and started to pace in his cell in visible mental distress. This suicide attempt, as well as the hanging bedsheets were viewable from the nearby work station video surveillance monitor as well as the other three monitors throughout the jail. A few minutes later the detainee attempted to commit suicide a second time by hanging himself with his bed sheet from the top of his cell bars. This suicide attempt took several minutes, was unsuccessful, and was viewable from the work station

video surveillance monitor as well as the other three monitors throughout the jail. A few minutes later, the detainee attempted to commit suicide a third time by hanging himself with his bed sheet. This time, he hung himself from his bed sheet for over twenty minutes, without being noticed by any of the four officers who were manning the four video surveillance monitors. In fact, one officer admitted he was asleep at his work station at the time. By the time another officer noticed the hanging, nearly 30 minutes had passed. The detainee was cut down and transported to a local hospital where he was subsequently pronounced dead due to asphyxiation by hanging. (Fayette County Prison, Pennsylvania, and PrimeCare Medical, Inc.)

U.S. Appeals Court
BAIL
DUE PROCESS
RELEASE

Fields v. Henry County, Tenn., 701 F.3d 180 (6th Cir. 2012). An arrestee filed a civil rights action alleging that a county had violated his Eighth Amendment right to be free from excessive bail and his Fourteenth Amendment right to procedural due process. The district court granted summary judgment for the county and the arrestee appealed. The appeals court affirmed. The appeals court held that setting the arrestee's bail at the same amount as other defendants facing domestic-assault charges through the county's use of a bond schedule without particularized examination of his situation did not violate the arrestee's Eighth Amendment right to be free from excessive bail. The court noted that the mere use of a bond schedule does not itself pose a constitutional problem under the Eighth Amendment's prohibition of excessive bail, since a schedule is aimed at assuring the presence of a defendant, and the bond schedule represents an assessment of what bail amount would ensure the appearance of the average defendant facing such a charge.

The court found that a liberty interest protected by due process had not been implicated by the county's policy of automatically detaining domestic-assault defendants for 12 hours without bail.

The court noted that a Tennessee statute providing that a person could not "be committed to prison" until he had a hearing before a magistrate did not create a liberty interest, and release on personal recognizance under Tennessee law lacked explicitly mandatory language needed to create a liberty interest. (Henry County Sherriff's Office and Henry County Jail, Tennessee)

U.S. District Court
MEDICAL CARE

Frank v. County of Ontario, 884 F.Supp.2d 11 (W.D.N.Y. 2012). A pretrial detainee brought a state action against a county, a jail physician, and a nurse practitioner, alleging medical malpractice and deliberate indifference to his serious medical need under §§ 1983 and 1985. The defendants removed 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 pretrial detainee who had a history of colitis had a serious medical need, as required to support a claim for deliberate indifference to his serious medical need in violation of Fourteenth Amendment. The court noted that the detainee was repeatedly examined during his relatively brief stay at the jail, and the defendants ordered tests on more than one occasion, which generally yielded normal results that did not indicate a need for surgery or more aggressive treatment. The court also found no evidence that the jail physician and or nurse practitioner unreasonably delayed treatment of the detainee's colitis. According to the court, the fact that the detainee did not undergo surgery for his condition until some weeks after he was discharged from jail suggested that the detainee did not need emergency surgery as a result of treatment that he had received at the jail. (Ontario County Jail, New York)

U.S. District Court
MEDICAL CARE
FAILURE TO PROTECT

Gabriel v. County of Herkimer, 889 F.Supp.2d 374 (N.D.N.Y. 2012). The administrator of a pretrial detainee's estate brought a § 1983 action against a county, jail officials, and jail medical personnel, alleging deliberate indifference to a serious medical need, due process violations, and a state claim for wrongful death. The county brought a third-party complaint against a hospital demanding indemnity. The defendants moved for summary judgment and the hospital moved to dismiss the third-party complaint. The district court held that severance of the third party complaint involving the hospital was warranted, where a separate trial regarding indemnity, following a verdict on liability, would be both economical and convenient. The court found that summary judgment was precluded by material fact issues as to: (1) whether a nurse practitioner was aware of the detainee's history of depression, anxiety, tachycardia, angina, mitral valve prolapsed, degenerative back disease, and sciatic nerve, but consciously disregarded the risk of harm to him; (2) whether the detainee had a serious medical condition; and (3) whether a policy or custom of the county led to the denial of medical treatment for the detainee. According to the court, there was no evidence that a corrections officer disregarded an excessive risk to the safety of the pretrial detainee, noting that when the officer witnessed the detainee fall, he assisted him and promptly contacted the medical unit. According to the court, a lieutenant was not a policymaker, as required to support a § 1983 claim by the estate, where the lieutenant was responsible for jail security and had no involvement in the jail's medical policies and procedures. (Herkimer County Jail, New York)

U.S. District Court
SUICIDE
MEDICAL CARE

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
INTAKE SCREENING
RELEASE

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
SPEEDY TRIAL

Heyerman v. County of Calhoun, 680 F.3d 642 (6th Cir. 2012). A pretrial detainee, who was imprisoned for more than 17 years after a state appellate court reversed his criminal conviction and remanded the matter to the trial court, brought a § 1983 action against a county and the county's prosecuting attorney. The district court granted the defendants' motion for summary judgment. The detainee appealed. The appeals court affirmed. The court held that there was no evidence that the county's prosecuting attorney was directly responsible for any conduct that led to any violation of the speedy-trial rights of the pretrial detainee, as required to hold the prosecuting attorney individually liable under § 1983. The court also found that the detainee, failed to demonstrate a defective policy or practice to hold the county or the county's prosecuting attorney in her official capacity liable for the alleged violation of his speedy-trial rights under § 1983. (Calhoun County, Michigan)

U.S. Appeals Court
ACCESS TO COURT
DUE PROCESS
SPEEDY TRIAL

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. District Court
DISCIPLINE
DUE PROCESS
FAILURE TO PROTECT
GRIEVANCE

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
MEDICAL CARE

King v. Kramer, 680 F.3d 1013 (7th Cir. 2012). The widow of a deceased pre-trial detainee brought a § 1983 action against a county, officers, and nurses, alleging violations of the Fourteenth Amendment. The district court granted summary judgment in favor of the defendants. The widow appealed. The appeals court affirmed in part and reversed in part. The court held that the county jail officers were not deliberately indifferent to the pre-trial detainee's serious medical needs, as would violate the Fourteenth Amendment, even though severe seizures led to his death. The court noted that the officers were not responsible for administering medical care and they immediately notified nursing staff when the seizures began, and the officers monitored the detainee while waiting for a nurse to arrive. The court held that summary judgment was precluded by a genuine issue of material fact as to whether a prison nurse's actions regarding treatment of the pre-trial detainee were so far afield from an appropriate medical response to the detainee's seizures that they fell outside the bounds of her professional judgment. The court found that summary judgment was precluded by a genuine issue of material fact as to whether the county had a policy or custom resulting in violations of the pre-trial detainee's constitutional rights, precluding summary judgment in a § 1983 action alleging violations of the 14th Amendment following the detainee's death. (La Crosse Co. 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. Appeals Court
SUICIDE
MEDICAL CARE

Luckert v. Dodge County, 684 F.3d 808 (8th Cir. 2012). The personal representative of the estate of her deceased son, who committed suicide while detained in a county jail, filed a § 1983 action against the county and jail officials for allegedly violating due process by deliberate indifference to the detainee's medical needs. Following a jury trial, the district court entered judgment for the personal representative, awarding actual and punitive damages as well as attorney fees and costs. The jury awarded \$750,000 in compensatory damages and \$100,000 in punitive damages. The district court denied the defendants' motion for judgment as a matter of law and the defendants appealed. The appeals court reversed the denial of the defendants' motion and vacated the awards. The appeals court held that while the detainee had a constitutional right to protection from a known risk of suicide, the jail nurse and the jail director were protected by qualified immunity, and the county was not liable. According to the court, the county jail nurse's affirmative but unsuccessful measures to prevent the pretrial detainee's suicide did not constitute deliberate indifference to his risk of suicide, where the nurse assessed the detainee twice after learning from his mother that he had recently attempted suicide, the nurse arranged for the detainee to have two appointments with the jail's psychiatrist, including an appointment on the morning of the detainee's suicide, the nurse contacted the detainee's own psychiatrist to gather information about the detainee's condition, she reviewed the detainee's medical records, and she responded in writing to each of the detainee's requests for medical care. The court held that the county jail director's actions and omissions in managing jail's suicide intervention practices did not rise to the level of deliberate indifference to the pretrial detainee's risk of suicide, even though the director delegated to the jail nurse significant responsibility for suicide intervention before formally training her on suicide policies and procedures, and the jail's actual suicide intervention practices did not comport with the jail's written policy. The court noted that the jail had a practice under the director's management of identifying detainees at risk of committing suicide, placing them on a suicide watch, and providing on-site medical attention, and the detainee remained on suicide watch and received medical attention including on the day of his suicide. The court held that the county lacked a custom, policy, or practice that violated the pretrial detainee's due process rights and caused his suicide, precluding recovery in the § 1983 action. The court found that, even though the county had flaws in its suicide intervention practices, the county did not have a continuing, widespread, and persistent pattern of constitutional misconduct regarding prevention of suicide in the county jail. (Dodge County Jail, Fremont, Nebraska)

U.S. District Court
DUE PROCESS
MEDICATION
SEARCHES
UNLAWFUL
DETENTION

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
WORK

McGarry v. Pallito, 687 F.3d 505 (2nd Cir. 2012). A pretrial detainee filed an action against state prison officials alleging that compelling him to work in a prison laundry under the threat of physical restraint and legal process violated the Thirteenth Amendment. The district court dismissed the action and the detainee appealed. The appeals court reversed and remanded. The appeals court held that the detainee stated a civil rights claim under the Thirteenth Amendment, on allegations that his work in a prison laundry was compelled and maintained by the use and the threatened use of physical and legal coercion, where state prison officials threatened to send him to "the hole" if he refused to work and that he would thereby be subjected to 23 hour-per-day administrative confinement and shackles. The detainee also alleged that he had been threatened with disciplinary reports, which are alleged to be taken into consideration when making recommendations for a release date and, therefore, lengthen any period of incarceration. The court found that the prohibition against prison officials from rehabilitating pretrial detainees had been clearly established, and thus it was not objectively reasonable for the prison officials to compel and maintain the pretrial detainee's work in the prison laundry by the use and threatened use of physical and legal coercion. The court held that the officials were not entitled to qualified immunity at the pleading stage of the detainee's civil rights claim. According to the court, officers of reasonable competence should have known that compelling a pretrial detainee, as a person not "duly convicted," to work in the laundry for up to 14 hours per day for three days per week, doing other inmates' laundry, reasonably could not be construed as personally-related housekeeping chores. The court found that the work constituted hard labor solely to assist in defraying of institutional costs in violation of the Thirteenth Amendment. (Chittenden Regional Correction Facility, Vermont)

U.S. District Court
MEDICAL CARE
WRONGFUL DEATH

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. District Court
MEDICATION
MENTAL HEALTH
DUE PROCESS

Olaniyi v. District of Columbia, 876 F.Supp.2d 39 (D.D.C. 2012). A pretrial detainee brought an action against the District of Columbia and the United States, asserting claims under § 1983 and the Federal Tort Claims Act (FTCA), arising from his detention and a separate incident involving a traffic stop. The defendants moved for summary judgment. The district court granted the motion. The court held that past alleged deficiencies in medical services at the District of Columbia jail that were unrelated to unconstitutional forced medication of inmates could not have put the District on notice of the need for training to avoid an alleged due process violation arising from the detainee's being forcibly injected with a psychoactive drug while residing in the jail's mental health unit, and thus could not sustain a finding of deliberate indifference necessary to hold the District liable under § 1983 for an alleged due process violation. The court also held that the detainee failed to establish a pattern of similar due process violations by untrained or inadequately trained jail employees that could have put the District on notice of a need for more training with respect to forced medication of inmates, thus precluding the detainee's § 1983 due process claim against the District based on a failure to train theory. (Mental Health Unit of the District of Columbia Jail)

U.S. Appeals Court
DUE PROCESS
FAILURE TO PROTECT
FEMALES
INTAKE SCREENING
MENTAL HEALTH
RELEASE

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
ADA- Americans with
Disabilities Act
ASSESSMENT OF
COSTS
DUE PROCESS
EXERCISE
MEDICAL CARE
PLRA- Prison Litigation
Reform Act

Pierce v. County of Orange, 905 F.Supp.2d 1017 (C.D.Cal. 2012). 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, following a bench trial, the district court entered a final judgment and a permanent injunction, and the detainees renewed their motion for attorney fees. The district court granted the motion. The court held that: (1) attorneys were entitled to compensation for time spent taking calls from inmates and performing pre-trial preparation; (2) time spent unsuccessfully opposing a motion for sanctions was not compensable as part of fee award; (3) a 50%/50% split between pre-appeal constitutional claims and Americans with Disabilities Act (ADA) claims was appropriate; (4) reduction in the fee award in the amount of 30% was warranted based on the detainees' limited success on their constitutional claims; and (5) application of a multiplier to the lodestar calculations, under the provisions of the Prison Litigation Reform Act (PLRA) was not warranted. The case began in 2001, a class of pre-trial detainees in the Orange County, California, jails, filed a lawsuit against the County under 42 U.S.C. § 1983 for violations of their Fourteenth Amendment due process rights for the County's operation of the County jails in an unconstitutional manner. Allegations included depriving detainees of opportunities for exercise and restricting their ability to practice religion. (Orange County, California)

U.S. District Court
SUICIDE
MEDICAL CARE
MEDICATION
MENTAL HEALTH
SUPERVISION

Ponzini v. Monroe County, 897 F.Supp.2d 282 (M.D.Pa. 2012). Survivors of a pretrial detainee sued prison officials, medical care providers and a corrections officer under § 1983 and state tort law, claiming that they were deliberately indifferent to the serious medical needs of the detainee, who committed suicide. The detainee allegedly did not receive his medication during his confinement. The survivors noted that one of the medications, Paxil, has "a short half-life and leaves a user's system very quickly," and that its withdrawal symptoms include "worsening of underlying anxiety or depression, headache, tremor or 'shakes',

gastrointestinal distress and fatigue-, all of which were allegedly present in detainee during his incarceration.” The detainee had also been taking Trazadone. The survivors alleged that during the period in which the detainee was incarcerated at the facility, officers were aware that the detainee should have been monitored closely and placed on a suicide watch. The survivors asserted that, although the detainee was not on a suicide watch, the inmate housed in an adjacent cell was on such a watch. An officer was expected to pass the neighboring cell, and by virtue of its location, the detainee’s cell, every fifteen minutes. The survivors alleged that the officer falsified documents demonstrating that he properly made his rounds every fifteen minutes, and that officer failure to properly maintain a suicide watch on the detainee’s neighbor facilitated the detainee’s own suicide. The detainee killed himself by swallowing shreds of his own t-shirt. The court held that the survivors stated a § 1983 claim under the Fourteenth Amendment against prison officials for deliberate indifference to the serious medical needs of the detainee, who committed suicide allegedly as a result of a lack of daily medication necessary to treat depression and other psychological issues. According to the court, the complaint raised the possibility that prison officials knew that the detainee suffered from a severe medical condition and did not attempt to provide appropriate, necessary care in a timely manner. The court held that the survivors also stated a § 1983 claim under the Fourteenth Amendment against the corporate medical provider for deliberate indifference. (PrimeCare Medical, Inc., and Monroe County Correctional Facility, Pennsylvania)

U.S. District Court
PROBABLE CAUSE
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. Appeals Court
DUE PROCESS
FAILURE TO PROTECT
MEDICAL CARE
SUICIDE
USE OF FORCE

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 found that the estate failed to show that the detainee’s assignment to an administrative segregation unit of the jail for approximately seven months violated the detainee’s due process rights, where the estate failed to identify feasible alternatives and to tender evidence supporting the contention that the detainee likely would have fared better in one of those alternative placements. The court held that jail officials did not employ excessive force, in violation of due process, to the pretrial detainee who had been fighting with his cellmate and failed to comply with a directive that he step out of his cell which he refused to leave for 18 hours, by spraying his face with pepper foam, and placing him in a restraint chair. 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 fact-finder 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. Appeals Court
SUICIDE
FAILURE TO PROTECT
MENTAL HEALTH
SUICIDE
TRANSPORT

Rosario v. Brawn, 670 F.3d 816 (7th Cir. 2012). The father of a detainee who committed suicide while in police custody brought a § 1983 action against police officers, alleging deliberate indifference to the detainee’s risk of suicide in violation of the detainee’s right to due process under Fourteenth Amendment. The district court granted summary judgment to the police officers, and the father appealed. The appeals court affirmed. The court held that the police officers did not intentionally disregard a substantial risk that the detainee would commit suicide, as required for liability on a due-process claim alleging deliberately indifferent treatment of the detainee. The detainee committed suicide while being transported to a mental health facility after exhibiting self-destructive behavior. The officers failed to discover the detainee’s razor blade, which he used to commit suicide. According to the court, their overall actions toward the detainee showed

protection and compassion by searching the detainee, arranging for assessment of his mental condition, ensuring his comfort during transportation, and personally administering first aid despite his resistance. (Washington County Sheriff, Wisconsin)

U.S. District Court
FAILURE TO PROTECT
MEDICAL CARE
SAFETY

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.

According to the court, allegations that the pretrial detainee's health was visibly deteriorating, that he had requested medical care on numerous occasions, and that the undersheriff knew of his health issues but failed to ensure that the prison provided him medical care, were sufficient to plead a causal connection between the undersheriff's conduct and denial of medical care for the detainee's serious medical need, as required to state a § 1983 supervisory liability claim against the undersheriff alleging violations of Fourteenth Amendment due process after the detainee died. The court also found that allegations were sufficient to plead that training was obviously deficient, as required to state a § 1983 claim for municipal liability against the city, alleging violations of the 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
MEDICAL CARE

Smentek v. Dart, 683 F.3d 373 (7th Cir. 2012). Pretrial detainees and convicted prisoners brought a § 1983 class action against a county and county jail officials, alleging that the failure to make more than a single dentist available to 10,000 inmates violated their federal constitutional rights. The district court certified the class, and the defendants petitioned for leave to appeal from the grant of class certification. The appeals court affirmed. The appeals court held that the district court's earlier denial of class certification of the inmates' § 1983 suit did not bar, pursuant to the rule of comity, the subsequent certification by a different district judge of the same or a similar class in a § 1983 suit brought by an inmate who was a member of the class in the previous suit. (Cook County Jail, Illinois)

U.S. Appeals Court
FAILURE TO PROTECT
MEDICAL CARE
SUPERVISION

Smith v. Knox County Jail, 666 F.3d 1037 (7th Cir. 2012). A pretrial detainee brought a pro se action against a county jail under § 1983, alleging that jail officials violated the Eighth Amendment because they were deliberately indifferent to his serious medical needs after a fellow inmate attacked him. The district court dismissed the case and the detainee appealed. The appeals court vacated and remanded. The court held that the detainee stated a claim for deliberate indifference under the Due Process Clause of the Fourteenth Amendment with his allegations that while he was asleep in his cell a guard opened the door and allowed another inmate to attack him, that he requested medical attention after the attack but received none for five days, and that the guard knew of his "obvious blood," dizziness, throwing up, blind spots, severe pain, and loss of eye color. (Knox County Jail, Illinois)

U.S. District Court
CELLS
EQUAL PROTECTION
FAILURE TO PROTECT

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
MEDICAL CARE
RESTRAINTS
SUICIDE ATTEMPT
USE OF FORCE

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 defend-

ants 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 pressure, 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
FAILURE TO PROTECT
USE OF FORCE

Taylor v. Hale, 909 F.Supp.2d 1320 (N.D.Ala. 2012). A pretrial detainee brought § 1983 and Bivens actions against county deputy sheriffs and deputy United States marshals alleging they used excessive force against him. The defendants moved for summary judgment. The district court granted the motion and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether county deputy sheriffs used more force than was necessary to subdue the detainee and place him in a holding cell. The court also found that summary judgment was precluded by a genuine issue of material fact as to whether one county deputy sheriff, and a United States Marshal, failed to protect the detainee from an alleged use of excessive force by two other deputy sheriffs. According to the court, a deputy sheriff's and a United States Marshal's alleged conduct of failing to intervene when she witnessed two other deputy sheriffs use excessive force against the detainee violated the clearly established duty of officers to protect inmates in their care from assault by fellow officers, and thus, they were not entitled to qualified immunity on the detainee's § 1983 claim against her, alleging deliberate indifference to a substantial danger to the detainee in violation of his Fourteenth Amendment rights. During the booking process, a deputy allegedly forced the detainee to the floor on his stomach with a "combination of repetitious blows to the temple, jaw, neck, and ribs" and he was then handcuffed dragged to the holding cell where the beating continued. (Jefferson County Jail, Birmingham, Alabama)

U.S. District Court
FAILURE TO PROTECT

Todd v. Montoya, 877 F.Supp.2d 1048 (D.N.M. 2012). A pretrial detainee brought a § 1983 action against a corrections officer and prison officials, alleging cruel and unusual punishment, and state claims for negligence, gross negligence, and recklessness. The corrections officer moved for summary judgment and the detainee moved for additional discovery. The district court granted the officer's motion and denied the detainee's motion. The court found that there was evidence that the detainee suffered an injury that was more than de minimis, as required to meet the objective element of a § 1983 claim against corrections official for deliberate indifference to a substantial risk of serious harm, in violation of the Due Process Clause. According to the court, there was evidence showing that the detainee received a beating from two other prisoners, including having them hit him in the face and attacking him for two to three minutes. But the court held that there was no evidence that a corrections officer acted with deliberate indifference when the detainee was physically assaulted by the other prisoners. The court noted that the officer called other officers to come stop the fight almost immediately after the physical altercation involving the detainee began. The court held that there was no evidence that the corrections officer permitted two prisoners to discover the detainee's criminal history as a sex offender in such a way that caused the detainee's beating, as required to support the detainee's negligence claim against the officer under New Mexico law. (Bernalillo County Metropolitan Detention Center, Albuquerque, New Mexico)

U.S. District Court MAIL PRIVACY	<i>U.S. v. Ligambi</i> , 886 F.Supp.2d 492 (E.D.Pa. 2012). A detainee who was charged with various crimes, including racketeering, moved to suppress an outgoing prison letter seized by prison officials. The district court denied the motion. The court held that the defendant, who was in prison while charged with various crimes, including racketeering, did not have a reasonable expectation of privacy in his outgoing non-privileged mail. The court noted that prison regulations permitted officials to seize correspondence when it might contain information concerning criminal activities, it was established practice to inspect non-privileged mailings to promote discipline in the institution, and the defendant had a reputation for involvement with organized crime. (South Woods State Prison, Southern State Correctional Facility, New Jersey)
U.S. Appeals Court INVOLUNTARY MEDICATION	<i>U.S. v. Loughner</i> , 672 F.3d 731 (9 th Cir. 2012). In a prosecution for attempted assassination of a Congresswoman, murder of federal judge, murder and attempted murder of other federal employees, injuring and causing death to participants at a federally provided activity, and related weapons offenses, the district court denied the defendant's emergency motion to enjoin an involuntary medication decision, and he appealed. The appeals court affirmed. The appeals court held that: (1) procedures used to determine whether the defendant ought to be involuntarily medicated complied with due process; (2) the Bureau of Prisons (BOP) medical facility did not act arbitrarily in finding that the defendant was a danger to himself and that antipsychotic medication was in his best interest; and, (3) due process did not require the BOP to specify a medication regimen before it could involuntarily medicate the defendant. (U.S. Medical Center for Federal Prisoners in Springfield, Missouri)
U.S. District Court PRIVACY TELEPHONE	<i>U.S. v. Salyer</i> , 853 F.Supp.2d 1014 (E.D.Cal. 2012). A defendant in a criminal prosecution moved to suppress recordings of telephone calls he made while in pretrial detention, and the government moved for an order permitting it to listen to and use the recordings. The district court granted the motions in part and denied in part. The court held that most of the recorded conversations were not covered by attorney-client privilege, and conversations in which legal advice was the predominate purpose were covered by the attorney-client privilege. The court noted that attorney-client communication was not the predominate purpose of telephone conversations between defendant and attorney who was a friend and who did not represent him in the criminal case. (Sacramento County Jail, California)
U.S. Appeals Court PRE-SENTENCE DETENTION	<i>U.S. v. Tyerman</i> , 701 F.3d 552 (8 th Cir. 2012). A defendant was convicted in district court of being a felon in possession of a firearm and he appealed. The appeals court reversed and remanded. After a trial, the defendant was convicted in the district court of being a felon in possession of a firearm and ammunition, and possession of a stolen firearm. His motion for acquittal or new trial was denied and the defendant appealed. The appeals court affirmed. The court held that the government's passive conduct in receiving information regarding the location of the defendant's gun, from the defendant's counsel, did not violate the defendant's Sixth Amendment right-to-counsel. The court found that the defendant's conduct in creating handcuff keys and practicing the use of them constituted a substantial step, as an element of attempt, with respect to escaping from pretrial incarceration, for purposes of using attempted escape as the basis for a sentence enhancement for obstruction of justice. At sentencing, a U.S. Marshal testified that prison guards discovered two homemade handcuff keys in the defendant's cell. According to the Marshal, during the investigation, other inmates revealed the defendant's plans to escape from jail and his use of the law library (which lacked surveillance) to practice removing handcuffs. Finding the Marshal credible, the district court applied a two-level adjustment for obstruction of justice based on the attempted escape, sentencing the defendant 72 months' imprisonment. (U. S. District Court, Iowa)
U.S. Appeals Court ACCESS TO COURT INITIAL APPEARANCE	<i>Waganfeald v. Gusman</i> , 674 F.3d 475 (5 th Cir. 2012). Pre-trial detainees who had been arrested for public intoxication and were incarcerated in New Orleans when Hurricane Katrina struck the city brought a § 1983 action against a sheriff, chief deputy, and others, alleging claims for violations of their Fourth, Sixth, and Eighth Amendment rights, as well as claims for false imprisonment under Louisiana law. A jury trial was held. After denying the defendants' motions for judgment as a matter of law, the district court entered judgment on the jury verdict for the plaintiffs on some of the claims, and denied the defendants' post-verdict motions for judgment as a matter of law or, alternatively, for a new trial. The defendants appealed. The appeals court reversed, vacated, and remanded with instructions. The appeals court held that under Louisiana law, the sheriff's actions fell within the emergency exception to the 48-hour rule, and so the plaintiffs' detention was not "unlawful," as required to establish their claim of false imprisonment, despite the sheriff's failure to release them when they were not granted a probable cause determination within 48 hours after their arrest. The court found that, even if the plaintiffs had a Sixth Amendment right to counsel during the period in question, the chief deputy did not act in an objectively unreasonable manner in light of clearly established law when, after the prison's land-line telephones became inoperable, he refused to let the plaintiffs use their cell phones to call an attorney. (Orleans Parish Criminal Sheriff, Louisiana)
U.S. Appeals Court SEARCHES	<i>Washington v. Hively</i> , 695 F.3d 641 (7 th Cir. 2012). A federal pretrial detainee filed a § 1983 action alleging that a county jail guard improperly touched him during a pat down and strip search. The detainee alleged that while patting him down, the guard spent five to seven seconds gratuitously fondling the plaintiff's testicles and penis through the plaintiff's clothing and then while strip searching him fondled his nude testicles for two or three seconds, contrary to a jail policy which forbids touching the inmate in the course of a strip search, and again without any justification. The district court entered summary judgment in the guard's favor, and the detainee appealed. The appeals court reversed and remanded. The appeals court held that: (1) the detainee's allegation that the guard touched his private parts to humiliate him or to gratify the guard's sexual desires was sufficient to state a claim, whether or not the force exerted by the guard was significant; (2) fact issues remained as to the guard's subjective intent in conducting the pat down and strip search; and (3) a statute barring federal civil actions by prisoners for mental or emotional injuries absent a

showing of physical injury did not bar the pretrial detainee from seeking both nominal and punitive damages in his § 1983 action, even though the detainee did not claim to have suffered any physical injury. (Waukesha County Jail, Wisconsin)

U.S. District Court
MEDICAL CARE
RELEASE
UNLAWFUL
DETENTION

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 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)

U.S. District Court
RELEASE

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. District Court
FAILURE TO PROTECT
SAFETY
SUPERVISION

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
TRANSPORTATION
ADA- Americans with
Disabilities Act
DUE PROCESS
EQUAL PROTECTION
HANDICAP
PRIVACY
SAFETY

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. District Court
MEDICAL CARE

Wright v. County of Franklin, Ohio, 881 F.Supp.2d 887 (S.D. Ohio 2012). A pretrial detainee brought a § 1983 action against a county, sheriff, deputy, medical staff, and physician, alleging deliberate indifference to his serious medical needs in violation of the Fourteenth Amendment, and state common law claims. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the pretrial detainee who had abdominal pain had a serious medical need, as required to support a § 1983 claim against the county, sheriff, deputy, medical staff, and physician for deliberate indifference to his serious medical need in violation of the Fourteenth Amendment. According to the court, as a result of the delay in diagnosis and treatment, the detainee was later rushed to a hospital, diagnosed with a small bowel obstruction and a mass in his colon, and subjected to emergency surgery. The court found that summary judgment was precluded by a genuine issue of material fact as to: (1) whether a nurse failed to exercise judgment and instead chose to ignore serious symptoms that ultimately led to the pretrial detainee with abdominal pain having to undergo multiple major surgeries; (2) whether nurses did basically nothing in the face of the pretrial detainee's alarming symptoms, including vomiting blood and severe abdominal pain, which later proved to be precursor to a serious gastrointestinal issue. The court found that there was no evidence that the county or sheriff had a policy or custom of recklessly training medical staff who were contracted to work at the prison, as required to support the pretrial detainee's § 1983 claim for failure to train. The court noted that the detainee's claim was based on little more than the argument that the Sheriff's Office and the county did not do enough to ensure that nurses were familiar with policies applicable to inmates who need medical care. (Franklin County Correctional Center, Correctional Care Plus, Ohio)

2013

U.S. District Court
PUNISHMENT
RESTRAINTS
SEGREGATION
DUE PROCESS

Allah v. Milling, 982 F.Supp.2d 172 (D.Conn. 2013). A pretrial detainee brought an action against prison officials, asserting claims for violation of the Eighth Amendment and his due process rights under the Fourteenth Amendment based on his placement in an administrative segregation program. The officials moved for summary judgment on the due process claims. The district court denied the motion, finding that summary judgment was precluded by several fact issues. The court held that a genuine issue of material fact existed as to whether the decision by prison officials to place the pretrial detainee, who had previously been in an administrative segregation program before being discharged from the correctional facility, in administrative segregation immediately upon his readmission for a subsequent offense, was for a punitive purpose or was based on a legitimate non-punitive purpose. The court found that a fact issue existed as to whether the restrictions imposed upon the detainee during his confinement in administrative segregation, including handcuffs and leg shackles, constituted punishment. (Garner Correctional Institution, Connecticut)

U.S. Appeals Court
FAILURE TO PROTECT
SAFETY

Baker v. RR Brink Locking Systems, Inc., 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)

U.S. Appeals Court
ALIEN
DUE PROCESS
EQUAL PROTECTION
FEMALES
INTAKE SCREENING
MEDICAL CARE
MENTAL HEALTH
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
TRANSPORT
FAILURE TO PROTECT
TRANSFER

Benton v. Rousseau, 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)

U.S. Appeals Court
JUVENILES
MEDICAL CARE
MENTAL HEALTH
RESTRAINTS
USE OF FORCE
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, for purposes of the juvenile detention center director's qualified immunity defense. 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. Appeals Court
CROWDING
CONDITIONS
EXERCISE
MEDICAL CARE
RECREATION
SANITATION

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. Appeals Court
FAILURE TO PROTECT
MEDICAL CARE
USE OF FORCE

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
FAILURE TO PROTECT
MEDICAL CARE
MENTAL HEALTH
SUICIDE ATTEMPT

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
MEDICAL CARE
USE OF FORCE
DUE PROCESS
SUPERVISION

Christie ex rel. estate of Christie v. Scott, 923 F.Supp.2d 1308 (M.D.Fla. 2013). An estate brought a § 1983 action against a private prison health services provider and corrections officers following the death of a detainee after he was pepper-sprayed over 12 times in 36 hours. The provider 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 failure of the nurses to inspect the detainee after each time he was pepper-sprayed constituted deliberate indifference; (2) whether the sheriff knew that corrections officers were using pepper spray nearly indiscriminately; (3) whether corrections officers were deliberately indifferent to the detainee's physical and medical needs; and (4) whether corrections officers' repeated pepper-spraying of the detainee while he was restrained naked in a chair was malicious and sadistic to the point of shocking the conscience. The estate alleged that the nurses' failed to evaluate the detainee after each time he was pepper-sprayed, failed to follow their employer's policy by not monitoring the detainee every 15 minutes for the periods he was restrained, and failed to offer the detainee fluids or a bedpan while he was restrained. The nurses allegedly checked the inmate only two times during the five hours he was restrained. The court found that the health services provider did not have a policy of understaffing that constituted deliberate indifference to the detainee's health, as required to support a § 1983 claim against the private provider. (Lee County Jail, Florida)

U.S. District Court
CLOTHING
PRIVACY
SEARCHES
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 testi-

mony. 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
CIVIL COMMITMENT
HANDICAP
RELIGION

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. Appeals Court
FAILURE TO PROVIDE
CARE
MEDICATION
WRONGFUL DEATH

Currie v. Chhabra, 728 F.3d 626 (7th Cir. 2013). The administrator of the estate of a deceased arrestee brought an action against a county, jail officials, and health care providers, alleging various claims, including claims pursuant to § 1983 and the Illinois Wrongful Death Act, and for punitive damages. The district court denied the providers' motion to dismiss based on qualified immunity. The providers appealed prior to disposition by the district court. The appeals court affirmed. The appeals court held that the health care providers were not entitled to qualified immunity to the arrestee's estate's civil rights claim under the Fourth Amendment alleging that the providers' failure to monitor the arrestee's blood sugar level, provide insulin shots, and deliver other necessary medical care while the arrestee was detained in the county jail. According to the court, the officials' conduct was objectively unreasonable and caused the detainee's death, which resulted from diabetic ketoacidosis, a life-threatening condition associated with untreated Type I diabetes. The court noted that although prior Fourth Amendment medical care cases spoke only of "officers," those opinions did not hint at any special Fourth Amendment exemption for health care professionals. (Williamson County Jail, Illinois)

U.S. District Court
SEGREGATION
USE OF FORCE
CLASSIFICATION

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
CELL CAPACITY
CROWDING
DUE PROCESS
FAILURE TO PROTECT
MAIL
MEDICAL CARE
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
ALIEN
DUE PROCESS
FAILURE TO PROTECT
JUVENILES
SAFETY

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
MEDICAL CARE
USE OF FORCE

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. District Court
EQUAL PROTECTION
MEDICAL CARE
TRANSPORT
WRONGFUL DEATH

Estate of Prasad ex rel. Prasad v. County of Sutter, 958 F.Supp.2d 1101 (E.D.Cal. 2013). The estate of a deceased pretrial detainee brought an action against jail employees and officials, as well as medical staff, alleging violations of the Fourteenth Amendment. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that: (1) although the detainee died at a hospital, liability for the jail employees and officials was not precluded, where the jail employees and officials could have contributed to detainee's death despite the transfer to the hospital; (2) allegations were sufficient plead deliberate indifference to serious medical needs by the deputies and medical staff; (3) allegations were sufficient to state a claim for supervisory liability; (4) allegations were sufficient to state a claim for supervisory liability against the corrections officers in charge; (5) allegations were sufficient to state a claim against the county; (6) allegations were sufficient to state a claim for wrongful death under California law; and (7) the health care provider was a state actor. The court found that a statement by health care providers, in an attachment to the complaint, that even if the detainee had been transferred to the hospital sooner, it "probably" would not have changed his death, was possibly self serving, and did not contradict the complaint's allegations that the detainee's death was unnecessary and unavoidable.

According to the court, allegations that the county maintained customs or practices whereby no medical staff whatsoever were at the jail for one-sixth of every day, that the staff lacked authority to respond to emergency and critical inmate needs, and that the jail records system withheld information from affiliated health care providers, were sufficient to state a § 1983 claim against the county, alleging violations of the Fourteenth Amendment after the pretrial detainee died.

The court held that allegations that deficiencies in medical care at the jail, including lack of 24-hour emergency care, were longstanding, repeatedly documented, and expressly noted by officials in the past, and that the doctor who was employed by the health care provider that contracted with the prison was aware of the deficiencies, and that the doctor discharged the pretrial detainee to the jail were sufficient to plead deliberate indifference to serious medical needs, as required to state a § 1983 action against the doctor for violations of the Fourteenth Amendment after the detainee died. (Sutter County Jail, California)

U.S. District Court
MEDICAL CARE
MEDICATION
WRONGFUL DEATH

Ford-Sholebo v. U.S., 980 F.Supp.2d 917 (N.D.Ill. 2013). The wife of a deceased pretrial detainee who suffered from a seizure disorder, individually and as administrator of the detainee's estate, brought a wrongful death action against the United States pursuant to the Federal Tort Claims Act (FTCA). The district court held that: (1) evidence supported a finding that the detainee had a seizure disorder; (2) correctional facility employees breached the standard of care for treating the detainee's seizure disorder; (3) the employees' failures and breaches of the standard of care proximately caused the detainee's death; and (4) an award of damages to the wife in the amount of \$40,000 for the loss of consortium was appropriate. The court noted that the testimony of the administrator's expert physician and a pathologist who was subpoenaed to testify at trial, that the detainee suffered from a seizure disorder, was overwhelmingly credible, while testimony of the government's two experts, that the detainee did not have seizure disorder, was incredible and unreliable. According to the court, the standard of care for treating the detainee's seizure disorder required correctional facility personnel, including physicians and physician assistants, to examine the detainee on a monthly basis, review the detainee's medical records, draw the detainee's blood for the purpose of monitoring the level of anti-seizure medication in his blood and obtain corresponding lab reports, and inform the detainee about the risks and benefits of taking or not taking medication, and to counsel him about his medication. The court found that the facility breached the appropriate standard of care, where required monthly evaluations were not conducted, facility personnel failed to make any efforts to retrieve the detainee's medical records while they were treating the detainee, facility physicians were derelict in their duty to review medical records they actually possessed and then to meet with the detainee in light of information they derived from those records, and physicians failed to talk to the detainee about his medication, to ask him why he was not taking his medication, and to counsel him about his noncompliance. (Metropolitan Correctional Center, Chicago, and Kankakee County Detention Center, Illinois)

U.S. Appeals Court
FAILURE TO PROTECT
SEXUAL ASSAULT

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
ADA-Americans with
Disabilities Act
MEDICAL CARE

Gilmore v. Hodges, 738 F.3d 266 (11th Cir. 2013). A pretrial detainee, proceeding pro se, brought a § 1983 action against prison officers, alleging violations of the First and Fourteenth Amendments, as well as the Americans with Disabilities Act (ADA), in failing to provide batteries for his hearing aids. The district court granted summary judgment for the officers. The detainee appealed. The appealed court affirmed. The court found genuine issues of material fact as to whether the detainee's severe hearing loss that could be corrected by hearing aids was an objectively serious medical need, and whether prison officials' response to the detainee's need for batteries for his hearing aids was objectively insufficient. But the court held that the detainee's right to a functioning hearing aid was not clearly established at the time, and therefore the officers were entitled to summary judgment. (Wakulla County Jail, Florida)

<p>U.S. Appeals Court FAILURE TO PROTECT SAFETY</p>	<p><i>Glaze v. Byrd</i>, 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)</p>
<p>U.S. Appeals Court FAILURE TO PROTECT SUPERVISION</p>	<p><i>Goodman v. Kimbrough</i>, 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)</p>
<p>U.S. District Court ALIENS DUE PROCESS INITIAL APPEARANCE</p>	<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>
<p>U.S. District Court CIVIL COMMITMENT DUE PROCESS CONDITIONS</p>	<p><i>Grohs v. Yatauro</i>, 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)</p>
<p>U.S. District Court CLASSIFICATION SEARCHES</p>	<p><i>Haas v. Burlington County</i>, 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)</p>
<p>U.S. District Court MEDICAL CARE</p>	<p><i>Hahn v. Walsh</i>, 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.</p> <p>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,</p>

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. Appeals Court
FALSE
IMPRISONMENT
PROBABLE CAUSE

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
INTAKE SCREENING
MEDICAL CARE
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 Correctional Center, New York)

U.S. Appeals Court
SEARCHES
EQUAL PROTECTION

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. Appeals Court
FAILURE TO PROTECT
SAFETY

Junior v. Anderson, 724 F.3d 812 (7th Cir. 2013). A pretrial detainee brought a suit under § 1983 against a guard who allegedly failed to protect him from an attack by other inmates. The district court granted summary judgment in favor of the guard, and the detainee appealed. The appeals court reversed and remanded. The appeals court held that summary judgment was precluded by genuine issues of material fact as to whether the guard acted with a conscious disregard of a significant risk of violence to the detainee, when she noted that two cells in the corridor where she was posted were not securely locked, but only noted that this was a “security risk” in her log. The guard then let several of the inmates who were supposed to remain locked up out of their cells, let them congregate in a darkened corridor, and then left her post, so that no guard was present to observe more than 20 maximum-security prisoners milling about. The court found that the detainee was entitled to appointed counsel in his § 1983 suit against a prison guard. According to the court, although the case was not analytically complex, its sound resolution depended on evidence to which detainee in his distant lockup had no access, and the detainee needed to, but could not, depose the guard in order to explore the reason for her having left her post and other issues. (Cook County Jail, Illinois)

U.S. District Court
MEDICAL CARE
WRONGFUL DEATH

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. District Court
ADA- Americans with
Disabilities Act
DUE PROCESS
PACKAGES
RELIGION

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.

The court held that the jail, the jail administrator, and the county sheriff's denial of a typewriter in the pretrial detainee's cell to accommodate his alleged handwriting disability did not violate the detainee's rights under Title II of the Americans with Disabilities Act (ADA). The court noted that the detainee was able to write by hand, although he stated he experienced pain when doing so. According to the court, if the detainee chose to avoid writing by hand he had substantial access to a typewriter in the jail's law library, there was no permanent harm from the handwriting he performed, there was no evidence the detainee was not able to adequately communicate with lawyers and jail officials without a typewriter in his cell, and the accommodation of an in-cell typewriter would impose an undue burden on jail personnel because metal and moving parts of typewriter could be used as weapons. (Gwinnett County Jail, Georgia)

U.S. District Court
CIVIL COMMITMENT
FAILURE TO PROTECT
MEDICAL CARE
PROTECTIVE
CUSTODY

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
FAILURE TO PROTECT
MEDICAL CARE
WRONGFUL DEATH

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
ACCESS TO COURT
CONDITIONS
SANITATION
MEDICAL CARE
SEGREGATION
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. District Court
ADA- Americans with
Disabilities Act
CONDITIONS
SANITATION

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 disabili-

ties 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
SEARCHES
UNLAWFUL
DETENTION

Page v. Mancuso, 999 F.Supp.2d 269 (D.D.C. 2013). A pretrial detainee brought an action in the Superior Court for the District of Columbia, against the District of Columbia and a police officer, alleging unlawful arrest in violation of the Fourth Amendment, and deliberate indifference to the arrestee's over-detention and strip search. The detainee also alleged that the District maintained a custom and practice of strip searches in violation of the Fourth and Fifth Amendments. The defendants removed the action to federal court and filed a partial motion to dismiss. The district court granted the motion. The court held that the detainee's complaint failed to allege that the District of Columbia was deliberately indifferent to Fourth and Fifth Amendment violations jail officials inflicted upon the detainee when they subjected him to "over-detention" and strip searches, as required to state a claim against District for Fourth and Fifth Amendment violations under the theory of municipal liability. (D.C. Jail)

U.S. District Court
ACCESS TO COURT
RELIGION

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. District Court
ACCESS TO COURT
ADA- Americans with
Disabilities Act
BAIL
DISCIPLINE
DISCRIMINATION
DUE PROCESS
EQUAL PROTECTION
FALSE
IMPRISONMENT
FEMALES
MENTAL HEALTH
PROBABLE CAUSE
RA- Rehabilitation Act
RELEASE

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
SEGREGATION
CLASSIFICATION
DUE PROCESS

Potts v. Moreci, 12 F.Supp.3d 1065 (N.D.Ill. 2013). A pretrial detainee brought a § 1983 action against a county, employees of the county jail in their individual capacities, and a sheriff, in his individual and official capacities, alleging retaliation in violation of his First Amendment rights, deprivation of his procedural due process and equal protection rights, denial of access to the courts, municipal liability, and statutory indemnification. The sheriff moved to dismiss the claims asserted against him. The district court granted the motion in part and denied in part. The court found that the detainee who allegedly was placed in a segregation unit at the county jail without adequate grounds and without an opportunity to contest such placement stated a claim for a procedural due process violation against the sheriff, in his individual capacity, under § 1983. The court noted that the sheriff's personal responsibility for the detainee's placement in segregation could be assumed in determining whether the detainee adequately pleaded the claim, and the detainee also sufficiently alleged the sheriff's knowledge of the detainee's allegedly unconstitutional confinement in segregation by asserting that the sheriff attended periodic meetings at which the detainee's confinement was discussed, which permitted the inference that sheriff knew about the challenged conduct and facilitated, approved, condoned, or turned a blind eye to it. The court held that the detainee sufficiently pleaded the sheriff's personal involvement in the alleged misconduct of jail employees in singling out the detainee for arbitrary treatment during his confinement in a segregation unit, subjecting him to living conditions that were inconsistent even with conditions of other detainees in a segregation unit, and thus stated a § 1983 claim for class-of-one equal protection violation against the sheriff. (Cook County Jail, Illinois)

U.S. District Court
MAIL
PUBLICATIONS

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. Appeals Court
ALIEN
BAIL
DUE PROCESS

Rodriguez v. Robbins, 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 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
DUE PROCESS
FEMALES
PRIVACY
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 Department, Sixth District Police Station and MPD's Central Cellblock, and United States Marshals Service)

U.S. District Court
MEDICAL CARE

Sistrunk v. Khan, 931 F.Supp.2d 849 (N.D.Ill. 2013). A pretrial detainee with a leg injury brought a pro se § 1983 action against a county jail physician, alleging deliberate indifference to his medical needs in violation of the Fourteenth Amendment. The district court granted the physician's motion for summary judgment. The court found that there was no evidence that the detainee's perceived need for a wheelchair, rather than crutches, due to his injured and infected leg, was an objectively serious medical need, as required to support the pro se § 1983 claim against the jail physician for deliberate indifference to a serious medical need under the Due Process Clause of the Fourteenth Amendment. The court noted that, although the detainee's physical therapist and hospital physicians recommended that he be placed in wheelchair "for now," such accommodation was not medically necessary in light of the fact that the detainee's left leg was uninjured and could support weight, and the wheelchair recommendation was preliminary to more active ambulation by detainee. According to the court, the physician's decision to issue the detainee crutches instead of a wheelchair when detainee had one good leg was not so far afield as to demonstrate an absence of professional judgment. The court noted that there was no evidence that the jail physician was aware that the detainee had fallen, let alone that he had a serious medical need for treatment of his injuries, as required to support a § 1983 claim for deliberate indifference to serious medical need under the Due Process Clause of the Fourteenth Amendment. (Cook County Department of Corrections, Illinois)

U.S. District Court
SEGREGATION
DUE PROCESS
ADA-Americans with
Disabilities Act
MEDICAL CARE
MENTAL HEALTH
PSYCHOLOGICAL
SERVICES

Slevin v. Board of Com'rs for County of Dona Ana, 934 F.Supp.2d 1270 (D.N.M. 2013). A detainee brought an action against a county board of commissioners, detention center director, and medical director, alleging violations of his rights with regard to his medical care. The detainee alleged that, because of his mental illness, officials at the Detention Center kept him in administrative segregation for virtually the entire 22 months of his incarceration, without humane conditions of confinement or adequate medical care, and without periodic review of his confinement, causing his physical and mental deterioration, in violation of the Americans with Disabilities Act. The jury awarded the detainee \$3 million in punitive damages against the Detention Center Director, and \$3.5 million in punitive damages against the facility medical director. The jury fixed the amount of compensatory damages at \$15.5 million, which included \$500,000 for each month that detainee was incarcerated, plus an additional \$1 million for each year since the detainee's release from custody. The defendants moved for a new trial or for reduction of the damages awards. The district court denied the motion, finding that the compensatory damages award was supported by substantial evidence and it would not be set aside on the ground that it was the product of passion or prejudices. The court also declined to set aside the punitive damages awards as excessive. (Doña Ana County Detention Center, New Mexico)

U.S. District Court
ADA-Americans with
Disabilities Act
MEDICAL CARE
MENTAL HEALTH
SEGREGATION

Slevin v. Board of Com'rs for County of Dona Ana, 934 F.Supp.2d 1282 (D.N.M. 2013). A detainee brought an action against a county board of commissioners, detention center director, and medical director, alleging violations of his rights with regard to his medical care. After a verdict in favor of the detainee, the defendants moved for a new trial based on nondisclosure of the existence of attorney-client relationship between the detainee's counsel and a witness, who was a lead plaintiff in other proceedings. The district court denied the motion, finding that failure to volunteer information about their representation of the witness was not fraud, misrepresentation, or misconduct, and did not substantially interfere with the defense. The detainee alleged that, because of his mental illness, officials at the Detention Center kept him in administrative segregation for virtually the entire 22 months of his incarceration, without humane conditions of confinement or adequate medical care, and without periodic review of his confinement, causing his physical and mental deterioration, in violation of the Americans with Disabilities Act. The jury awarded the detainee \$3 million in punitive damages against the Detention Center Director, and \$3.5 million in punitive damages against the facility medical director. The jury fixed the amount of compensatory damages at \$15.5 million, which included \$500,000 for each month that detainee was incarcerated, plus an additional \$1 million for each year since the detainee's release from custody. (Doña Ana County Detention Center, New Mexico)

U.S. Appeals Court
CLASSIFICATION
FAILURE TO PROTECT
INTAKE SCREENING
SAFETY

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 FAILURE TO PROTECT MEDICAL CARE WRONGFUL DEATH	<p><i>Sours v. Big Sandy Regional Jail Authority</i>, 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. <i>On appeal</i>, 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)</p>
U.S. Appeals Court EQUAL PROTECTION	<p><i>Stickley v. Byrd</i>, 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)</p>
U.S. District Court ADA-Americans with Disabilities Act FALSE IMPRISONMENT INTERROGATION RA- Rehabilitation Act	<p><i>Taylor v. City of Mason</i>, 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)</p>
U.S. Appeals Court FAILURE TO PROTECT MEDICAL CARE WRONGFUL DEATH	<p><i>Thompson v. King</i>, 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)</p>
U.S. Appeals Court INVOLUNTARY MEDICATION MENTAL HEALTH SAFETY	<p><i>U.S. v. Hardy</i>, 724 F.3d 280 (2nd Cir. 2013). The district court granted the motion of the United States to authorize the Bureau of Prisons to medicate a mentally ill detainee without his consent, and the detainee appealed. The appeals court affirmed, finding that there was no basis for disturbing the district court's order authorizing involuntary medication of the pretrial detainee to reduce the danger he posed to Bureau of Prisons staff. The court noted that involuntary medication of the detainee to reduce the danger he posed to staff was warranted, where the detainee suffered from schizophrenia, the consensus of the testifying psychiatrists and psychologists was that antipsychotic medication was the treatment of choice for someone with the</p>

detainee's condition. The court noted that the detainee's past conduct, which included threats of harm, attempts to bite or hit officers, repeated throwing of liquids in their faces, and attempted and actual stabbings, indicated that he posed a danger to others. (United States Bureau of Prisons, Metropolitan Corrections Center, New York City, Metropolitan Detention Center, Brooklyn, New York)

U.S. District Court
FAILURE TO PROTECT
RESTRAINTS
SEXUAL ASSAULT
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. Appeals Court
ACCESS TO COURT
DUE PROCESS
PROBABLE CAUSE
INITIAL APPEARANCE

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.

According to the court, under New Mexico law, the warden of the county's detention facility and the county sheriff were responsible for policies or customs that operated and were enforced by their subordinates, and for any failure to adequately train their subordinates. The court noted that statutes charged both the warden and the sheriff with responsibility to supervise subordinates in diligently filing a criminal complaint or information and ensuring that arrestees received a prompt probable cause hearing.

The court found that the arrestee sufficiently alleged that the warden promulgated policies that caused the arrestee's prolonged detention without a probable cause hearing, and that the warden acted with the requisite mental state, as required to support his § 1983 claim against the warden, regardless of whether the arrestee ever had direct contact with the warden. The arrestee alleged that the warden did not require filing of written criminal complaints, resulting in the detainees' being held without receiving a probable cause hearing, and that the warden acted with deliberate indifference to routine constitutional violations at the facility. 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. Appeals Court
GRIEVANCE
PLRA- Prison Litigation
Reform Act
FAILURE TO PROTECT

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 County Men's Central Jail, California)

U.S. District Court
MEDICAL CARE
MEDICATION
GRIEVANCE

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: (1) concerning whether failure of the sheriff's office and the jail's medical services provider to provide adequate medical training to correctional officers caused the detainee's death; (2) as to whether the sheriff's office and the jail's medical services provider had an implicit policy of deliberate indifference to medical care

provided to detainees; (3) regarding whether correctional officers knew that the detainee was suffering seizures and ignored his suffering; (5) 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; and (6) as to whether the sheriff's office and the jail's medical services provider had an express policy that prevented a nurse from restocking a particular medication until there were only eight pills left in stock and whether that policy was the moving force behind the pretrial detainee's seizure-related death. The court denied qualified immunity from liability to the correctional officers and the sheriff's office. (Grundy County Jail, Illinois)

U.S. District Court
WRONGFUL DEATH
MEDICAL CARE

Awalt v. Marketti, 75 F.Supp.3d 777 (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 action against the county, jail personnel, the medical services contractor, and the contractor's employees. Individual defendants moved to separate their cases from the claims against the county and the contractor. The district court granted the motion, finding that the potential for unfair prejudice warranted the separation. (Correctional Health Companies, Inc., Health Professional, Ltd., Grundy County Jail, Illinois)

U.S. District Court
CIVIL COMMITMENT
RELIGION
PROGRAMS
SEARCHES

Ballard v. Johns, 17 F.Supp.3d 511 (E.D.N.C. 2014). A civil detainee being considered for certification as a sexually dangerous person brought an action against federal employees, in their official capacities and in their individual capacities under Bivens, challenging various conditions of his detention, including claims concerning due process violations and inability to attend religious services. The employees moved to dismiss or for summary judgment and the detainee moved to overrule objections to requests for document production. The district court granted the employees' motion and denied the detainee's motion. The court held that: (1) the detainee did not show that federal employees, by following Federal Bureau of Prisons (BOP) regulations and policies, violated his constitutional rights; (2) the detainee was properly subjected to restrictions and disciplinary consequences of the BOP commitment and treatment program; (3) denial of the detainee's request to attend or receive religious services while in disciplinary segregation did not unduly burden his free exercise of religion; and (4) the employees did not violate detainee's right to be free from unreasonable searches and seizures by searching his cell and seizing his property. (Federal Correctional Institution at Butner, North Carolina)

U.S. District Court
DISCIPLINE
SEGREGATION
FAILURE TO PROTECT
TRANSPORT

Best v. New York City Dept. of Correction, 14 F.Supp.3d 341 (S.D.N.Y. 2014). A pretrial detainee filed a § 1983 action alleging that state prison officials denied him due process at an infraction hearing, improperly placed him in segregated housing, and failed to protect him while being transported to court. The officials moved to dismiss. The district court granted the motion in part and denied in part. The court held that the issues of whether the detainee's placement in segregated housing following the infraction hearing was administrative or punitive in nature, and whether he was provided the opportunity to call a witnesses at a hearing involved fact issues that could not be resolved on a motion to dismiss the detainee's claim that prison officials' denied him procedural due process at the hearing. According to the court, the officials' failure to provide the detainee with a seat belt while he was being transported to court with his hands handcuffed behind his back did not demonstrate deliberate indifference to the detainee's safety. Plaintiff alleges that, some time after he was placed in segregated housing, "while being transported to court, handcuffs [were] placed behind [Plaintiff's] back and [he was] "placed in a cage with no seatbelt or a way to protect [himself] in case of a sudden stop or accident." and that, "while riding[, he sat] on a slippery seat that cause[d] [him] to continuously slide." According to the detainee, "On [his] way to court, the bus kept stopping short and [Plaintiff] continued to bump [his] head on the gate in front of [him]." The detainee complained to the driver and after he returned to the detention facility he was taken to the medical center where his injuries were assessed and an injury report was filed. The detainee claims that, as a result of the injuries that he sustained during this trip, his neck and shoulders were injured, and that "he now has to take medication for migraine headaches. (Metropolitan Detention Center, Brooklyn, New York)

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

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. Appeals Court
SUICIDE
MEDICAL CARE

Cady v. Walsh, 753 F.3d 348 (1st Cir. 2014). Following her son's death from self-inflicted injuries in a county jail, the mother of a pretrial detainee brought an action under § 1983 against employees of a private healthcare services provider, alleging deliberate indifference to the detainee's health in violation of the Due Process Clause. The provider's employees moved for summary judgment based on qualified immunity. The district court denied the motion and the employees appealed. The appeals court affirmed, finding that

the employees failed to raise a purely legal challenge, depriving the court of jurisdiction. (Cumberland County Jail, Corizon Inc., Maine)

U.S. District Court
CONDITIONS

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. Appeals Court
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. Appeals Court
MENTAL HEALTH

Carl v. Muskegon County, 763 F.3d 592 (6th Cir. 2014). A pretrial detainee brought a § 1983 action against a psychiatrist, who served as an independent contractor to the provider of jail mental health services, claiming that the psychiatrist failed to provide necessary mental health services in violation of the detainee's Eighth and Fourteenth Amendment rights. The district court dismissed and the detainee appealed. The appeals court reversed and remanded, finding that the psychiatrist was a state actor for the purposes of inmate's § 1983 claim. (Muskegon County Jail, Michigan)

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

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
USE OF FORCE

Crayton v. Graffeo, 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)

U.S. Appeals Court
USE OF FORCE

Edwards v. Byrd, 750 F.3d 728 (8th Cir. 2014). Pretrial detainees in a county jail brought a § 1983 action against the county, county sheriff, and jail guards, alleging use of excessive force, failure to protect, and other constitutional violations. The district court denied, in part, the sheriff's and guards' motion for summary judgment based on qualified immunity. The sheriff and a guard appealed. The appeals court affirmed in part and reversed in part. The court found that the guards were not entitled to qualified immunity for their alleged conduct in employing a flash-bang grenade in pretrial detainees' cell, kicking the detainees, and shooting them with bean-bag guns. According to the court, immediately before the guards entered the cell, the detainees were allegedly submissive, lying face-down, which the guards could allegedly see through the cell door, and the detainees allegedly did not resist or otherwise act aggressively, and, at the time of the incident, it was clearly established that such conduct would violate due process. The court held that the sheriff could not be liable where it was undisputed that the sheriff was not present during the alleged incident. (Falkner County Detention Center, Arkansas)

<p>U.S. Appeals Court WRONGFUL DEATH FAILURE TO PROTECT MEDICAL CARE USE OF FORCE DUE PROCESS</p>	<p><i>Estate of Booker v. Gomez</i>, 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)</p>
<p>U.S. District Court SUICIDE FAILURE TO PROTECT</p>	<p><i>Estate of Schroeder v. Gillespie County</i>, 23 F.Supp.3d 775 (W.D.Tex. 2014). The estate of a deceased pre-trial detainee brought a § 1983 action against a county, its sheriff, the sheriff's department, and a jailer, alleging violations of the 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: (1) the sheriff's department did not have the legal capacity to engage in litigation separate from the county; (2) the detainee's right not to be subjected to deliberate indifference by prison officials while they had a subjective knowledge of a risk of serious harm to the detainee that was clearly established; (3) the jailer's conduct was objectively reasonable; and (4) genuine issue of material fact existed as to whether the county's policies were the moving force behind the alleged constitutional violation. According to the court, the jailer's conduct in relation to the pretrial detainee, who the jailer was aware was suicidal, was objectively reasonable, and therefore, the jailer was entitled to qualified immunity. The detainee committed suicide using his socks. The jailer was aware that the detainee had torn a piece of a blanket and tied it to a fixture in his cell in what was interpreted by on duty officers as a suicide attempt, which led to the detainee's being put on 15 minute suicide watch. The jailer continued that watch when he came on duty, following existing policies. The jailer was not aware that the detainee still had his socks, and the jailer immediately cut the detainee down upon discovering detainee had hanged himself, called for help, and attempted to resuscitate the detainee. (Gillespie County Jail, Texas)</p>
<p>U.S. District Court FAILURE TO PROTECT SUICIDE</p>	<p><i>Estate of Stevens ex rel. Collins v. Board of Com'rs. of County of San Juan</i>, 53 F.Supp.3d 1368 (D.N.M. 2014). The estate of a county jail detainee who committed suicide while in custody brought a § 1983 action against county officials, county jail officers, and the healthcare provider that contracted with the county jail. The healthcare provider filed a partial motion to dismiss. The district court converted it to a motion for judgment on the pleadings, and granted the motion. According to the court, the estate failed to isolate the allegedly unconstitutional acts of each defendant, and thus did not provide adequate notice as to the nature of the claims against each, where the complaint generally used the collective term "defendants" and failed to differentiate between unnamed jail officers and unnamed employees of the healthcare provider when discussing the alleged wrongful action or inaction. (San Juan County Adult Detention Center, New Mexico)</p>
<p>U.S. Appeals Court DISCIPLINE CONDITIONS SEGREGATION PUNISHMENT</p>	<p><i>Ford v. Bender</i>, 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 held that: (1) reasonable prison officials would not have known that the pretrial detainee's substantive due process rights and procedural due process rights would have been violated by holding him in disciplinary segregated confinement throughout the period of pretrial detention as punishment for conduct that had occurred while he was imprisoned during a prior criminal sentence; (2) the detainee's two prior convictions were not sufficient to establish reasonable expectation after he had been released from custody that he would re-offend; (3) the detainee was not the "prevailing party" for the purpose of attorneys' fees and costs with regard to a declaratory judgment entered on his behalf as it related to his rights as a detainee; (4) the detainee was the "prevailing party" for the purpose of attorneys' fees and costs with regard to an injunction to ensure his access to traditional programs that were available to the general population; and (5) the detainee was not the "prevailing party" for the purpose of attorneys' fees and costs with regard to an injunction to deem his administrative sanction satisfied.</p> <p>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)</p>

U.S. District Court FAILURE TO PROTECT	<p><i>Fouch v. District of Columbia</i>, 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)</p>
U.S. Appeals Court MEDICAL CARE INTAKE SCREENING	<p><i>Fourte v. Faulkner County, Ark.</i>, 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.</p> <p>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)</p>
U.S. District Court ALIEN DUE PROCESS INITIAL APPEARANCE	<p><i>Gayle v. Johnson</i>, 4 F.Supp.3d 692 (D.N.J. 2014). Aliens brought a class-action lawsuit against the Department of Homeland Security (DHS) and numerous other federal and state government agencies, alleging that the defendants' acts of subjecting individuals to mandatory immigration detention violated the Immigration and Nationality Act (INA) and the Due Process Clause. The government moved to dismiss. The district court declined to dismiss the alien's claims for injunctive relief, finding that the aliens had standing to challenge the adequacy of the <i>Joseph</i> hearing and associated mandatory detention procedures, and that allegations that the <i>Joseph</i> hearings failed to afford aliens adequate protection were sufficient to state claims for due process violations. (Department of Homeland Security, Immigration and Customs Enforcement, District of New Jersey)</p>
U.S. District Court MEDICAL CARE WRONGFUL DEATH	<p><i>Graham v. Hodge</i>, 69 F.Supp.3d 618 (S.D.Miss. 2014). The spouse of a pretrial detainee who died of cardiac arrhythmia brought a wrongful death action against a sheriff and a county alleging deliberate indifference to the detainee's medical care under the Due Process Clause of the Fourteenth Amendment, as well as failure to train under § 1983. The defendants moved for summary judgment. The district court granted the motion. The court held that a nurse was not deliberately indifferent to the detainee's medical needs, notwithstanding that the nurse waited 13 days to fax a medical authorization to a care center, that she sent the detainee to a medical clinic that had no cardiologist, that she was not aware for several months that the detainee was not taking necessary heart medication, and that the detainee ultimately died of cardiac arrhythmia. According to the court, the nurse regularly treated the detainee, which included providing him with his medication once she was made aware of its necessity, and the detainee's death was not proximately caused by the months-long lack of medicine. The court found that the detainee's death was not a highly predictable consequence of failing to train the jail nurse. (Jones County Adult Det. Facility, Mississippi)</p>
U.S. District Court MEDICAL CARE MENTAL HEALTH	<p><i>Graves v. Arpaio</i>, 48 F.Supp.3d 1318 (D.Ariz. 2014). Pretrial detainees in the Maricopa County, Arizona, jail system brought a class action against the county and the county board of supervisors, seeking injunctive relief for alleged violations of their civil rights. The parties entered into consent decree which was superseded by amended judgments entered by stipulation of the parties. The defendants sought to terminate the remaining court-ordered injunctive relief regarding medical, dental, and mental health care for detainees. The district court denied the motion. The court held that: (1) termination of injunctive relief requiring the timely identification, assessment, and placement of detainees suffering from serious health conditions was not warranted; (2) termination of injunctive relief requiring the timely identification, assessment, and placement of detainees suffering from mental illness was not warranted; (3) termination of injunctive relief requiring the timely identification, segregation, and treatment of detainees with communicable diseases was not warranted; (4) termination of injunctive relief requiring that the detainees have ready access to care to meet their serious medical and mental health needs was not warranted; and (5) the detainees were the prevailing party for the purpose of awarding attorney's fees. (Maricopa County Jail, Arizona)</p>
U.S. Appeals Court MEDICAL CARE WRONGFUL DEATH	<p><i>Hahn v. Walsh</i>, 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</p>

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. District Court
FAILURE TO PROTECT
MEDICAL CARE

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
SEARCHES
FALSE IMPRISON-
MENT

Hebschi 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
STAFFING
CONDITIONS
MEDICAL CARE
HANDICAP
ADA- Americans with
Disabilities Act
RA- Rehabilitation Act

Hernandez v. County of Monterey, 70 F.Supp.3d 963 (N.D.Cal. 2014). Current and recently released inmates from a county jail brought an action against the county, the sheriff's office, and the private company that administered all jail health care facilities and services, alleging, on behalf of a class of inmates, that substandard conditions at the jail violated the federal and state constitutions, the Americans with Disabilities Act (ADA), the Rehabilitation Act, and a California statute prohibiting discrimination in state-funded programs. The inmates sought declaratory and injunctive relief. The defendants filed motions to dismiss. The district court denied the motions. The court held that both current and recently released inmates had standing to pursue their claims against the county and others for allegedly substandard conditions at the jail, even though the recently released inmates were no longer subject to the conditions they challenged. The court noted that the short average length of stay of inmates in the proposed class, which was largely made up of pretrial detainees, was approximately 34 days, and that short period, coupled with the plodding speed of legal action and the fact that other persons similarly situated would continue to be subject to the challenged conduct, qualified the plaintiffs for the "inherently transitory" exception to the mootness doctrine.

The court found that the inmates sufficiently alleged that the private company that administered all jail health care facilities and services operated a place of public accommodation, as required to state a claim for violation of ADA Title III. The court noted that: "The complaint alleges a litany of substandard conditions at the jail, including: violence due to understaffing, overcrowding, inadequate training, policies, procedures, facilities, and prisoner classification; inadequate medical and mental health care screening, attention, distribution, and resources; and lack of policies and practices for identifying, tracking, responding, communicating, and providing accessibility for accommodations for prisoners with disabilities." (Monterey County Jail, California)

U.S. District Court
USE OF FORCE
RELEASE

Hill v. Hoisington, 28 F.Supp.3d 725 (E.D.Mich. 2014). A detainee filed an action alleging that a deputy sheriff used excessive force and committed battery against him while he was in custody, after he was acquitted of criminal charges against him. After a jury verdict in the detainee's favor, the detainee moved for entry of judgment on the jury verdict, for costs, and for judgment as matter of law. The district court denied the motion as moot, where the award of exemplary damages was justifiable and the detention of the detainee after he was acquitted was unlawful, where the jury found that the deputy's conduct was malicious, or so willful and wanton as to demonstrate reckless disregard of the detainee's rights. The court noted that the proper post-acquittal procedure requires immediate release of a detainee following acquittal, allowing for any possible out-processing to occur without continued or required detention. (Oakland Co. Jail, Michigan)

U.S. District Court USE OF FORCE	<i>Holton v. Conrad</i> , 24 F.Supp.3d 624 (E.D.Ky. 2014). An arrestee brought a § 1983 action against a constable, a county jail, and a county jailer, asserting claims arising out of his arrest and treatment at the jail. The jail and jailer moved for judgment on the pleadings on the arrestee's state law claim. The district court denied the motion. According to the court, the arrestee's claim requesting records under Kentucky law did not form part of same case or controversy as his federal claim in § 1983, where the arrestee's federal claim was based on the constable's actions in allegedly beating him at time of arrest and at the county jail. (Estill County Detention Center, Kentucky)
U.S. District Court MEDICAL CARE CONDITIONS USE OF FORCE SANITATION	<p><i>Imhoff v. Temas</i>, 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 court held that the detainee stated a claim against the employees for deliberate indifference to a serious medical need under the Fourteenth Amendment, where the detainee alleged that he informed facility personnel of his extensive drug use, that he had repeatedly requested medical assistance when he began experiencing seizures and hallucinations in conjunction with his drug withdrawal in the presence of facility personnel, and that he was provided no medical treatment for at least eight days despite his requests for medical attention. The court held that the employees were not entitled to qualified immunity from liability because a county correctional facility's constitutional obligation to provide care to inmates suffering unnecessary pain from a serious medical need was clearly established at the time the pretrial detainee allegedly began experiencing seizures in conjunction with drug withdrawal and was not provided medical treatment.</p> <p>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.</p> <p>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)</p>
U.S. District Court SEARCHES	<i>In re Nassau County Strip Search Cases</i> , 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 CARE USE OF FORCE	<i>Jackson v. Buckman</i> , 756 F.3d 1060 (8 th Cir. 2014). A pretrial detainee brought a § 1983 action against corrections facility employees and corrections officials alleging he received constitutionally deficient medical care and that medical officials used excessive force against him while responding to his medical emergency. The district court granted summary judgment to the defendants, and the detainee appealed. The appeals court affirmed. The court held that: (1) a physician was not deliberately indifferent to the detainee's surgical wound on his abdomen; (2) a nurse was not deliberately indifferent to the detainee's medical needs; (3) absent an underlying constitutional violation, the detainee could not maintain official-capacity and failure-to-supervise claims against a sheriff and a chief of detention; (4) a nurse's act of hitting the pretrial detainee's nose while administering an ammonia inhalant was not excessive force; and (5) the force used by nurses to move the pretrial detainee to his bed after he lost consciousness was not excessive. (Pulaski County Regional Detention Facility, Arkansas)
U.S. District Court USE OF FORCE	<i>Johnson v. Milliner</i> , 65 F.Supp.3d 1295 (S.D.Ala. 2014). A county jail detainee brought an action against a jail officer alleging use of excessive force and state law claims for assault and battery. The officer 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 the force applied against the detainee by the jail officer, which involved the use of a stun gun, was applied in a good faith effort to preserve discipline and security or was applied maliciously and sadistically to cause harm. (Mobile Metro Jail, Alabama)

U.S. District Court
CIVIL COMMITMENT
CONDITIONS
CELL SEARCHES
DUE PROCESS
MAIL
PROGRAMS
TELEPHONE
SEARCHES

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 held that the patients' allegations that commitment to MSOP essentially amounted to lifelong confinement, equivalent to a lifetime of criminal incarceration in a facility resembling, and run like, a medium to high security prison, sufficiently stated a § 1983 substantive due process claim pertaining to the punitive nature of the patients' confinement. 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. The court ordered that its court-appointed experts would be granted complete and unrestricted access to the documents the experts requested, including publicly available reports and documents related to the patients' lawsuit, as well as MSOP evaluation reports and administrative directives and rules. (Minnesota Sex Offender Program)

U.S. Appeals Court
FAILURE TO PROTECT

Keith v. DeKalb County, Georgia, 749 F.3d 1034 (11th Cir. 2014). The administrator of the estate of a pretrial detainee who was murdered by a fellow inmate in a jail's mental health unit brought an action against a county, the county sheriff, and correctional officers, alleging under § 1983 that the defendants violated the detainee's substantive due process rights. The district court denied the sheriff's motion for summary judgment based on the doctrine of qualified immunity. The sheriff appealed. The appeals court reversed. The court held that while a correctional officer on duty at the time the detainee was murdered by a fellow inmate may have acted contrary to jail policy by using a cell phone within the jail, the administrator of the detainee's estate failed to show that the use of personal cell phones within the jail was a widespread problem or that the county sheriff was aware that officers routinely violated the policy and failed to correct the problem. The court found that the sheriff was entitled to qualified immunity on the § 1983 due process claim that he was deliberately indifferent to the safety of the detainee, in failing to segregate mental health inmates with violent histories from those with nonviolent histories and by failing to separate mental health inmates charged with a violent crime from those charged with a nonviolent crime. According to the court, even if the sheriff violated the detainee's due process rights, it was not clearly established that he had a constitutional obligation to disregard the medical expertise of mental health contractors he hired to ensure that inmates' mental health was tended to. The court also found that the administrator of the estate of the detainee failed to show that the county sheriff was subjectively aware that the jail's policy of requiring detention officers to alert mental health staff when relocating mental health inmates to different cells within the same pod was disregarded on a widespread basis, as would have subjected the sheriff to supervisory liability under § 1983. The court found that a prior isolated incident in which a pretrial detainee was killed by another inmate when the two were placed in the same cell in the jail's mental health pod did not provide requisite notice to the county sheriff that training provided to detention officers was constitutionally deficient, as would subject the sheriff to liability under § 1983 with respect to claims arising from the subsequent murder of a pretrial detainee by a fellow inmate in the same pod. (DeKalb County Jail, Georgia)

U.S. Appeals Court
MEDICAL CARE

King v. Kramer, 763 F.3d 635 (7th Cir. 2014). The estate of a pretrial detainee who died while awaiting trial in a county jail brought a civil rights action against the county and the health care provider for the jail. Following reversal in part of the grant of summary judgment in favor of the county and the provider, the court entered judgment for the county and the provider on a jury verdict. The estate appealed. The appeals court reversed and remanded, finding that: (1) the county was not liable for the death of the detainee who was found dead in his jail cell after jail medical staff rapidly tapered off his psychotropic medication, absent evidence that the county had an official custom or policy in place to deprive inmates of their prescribed medications; (2) the district court could not take judicial notice of a contract between the county and the provider; and (3) the indemnification agreement between the county and the provider was inadmissible to show liability. (La Crosse Jail, Wisconsin)

U.S. Appeals Court
WRONGFUL DEATH
USE OF FORCE
MEDICAL CARE

Kitchen v. Dallas County, Tex., 759 F.3d 468 (5th Cir. 2014). The widow of a pretrial detainee who died of asphyxiation while he was being extracted from his jail cell brought a § 1983 action against the county, detention officers, and others, alleging that the defendants used excessive force and acted with deliberate indifference to the detainee's medical needs. The defendants moved for summary judgment. The district court granted the motion in its entirety, and the plaintiff appealed. The appeals court reversed and remanded in part, and affirmed in part. The court held that summary judgment was precluded by genuine issues of

material fact as to both the timing and the degree of force used in extracting the detainee from his jail cell. The court noted that the law was “clearly established” at the relevant time that use of force against an inmate was reserved for good-faith efforts to maintain or restore discipline, rather than for the purpose of causing harm, such that the defendants had reasonable warning that kicking, stomping, and choking a subdued inmate would violate the inmate’s constitutional rights under certain circumstances.

The court held that the widow failed to demonstrate that detention officers acted with deliberate indifference to the detainee’s medical needs, even though they failed to contact medical staff prior to attempting to extract the detainee from his cell, where the need for participation of specialized staff to perform the extraction of a mentally ill inmate from a jail cell was not so apparent that even laymen would recognize this alleged medical need. According to the court, the widow failed to establish that the county failed to provide proper training to personnel located in the facility’s North tower, where the detainee was being held when he died, where the widow pointed to no pattern of past constitutional violations bearing a sufficient resemblance to the events surrounding the death of detainee. (Dallas County Jail, Texas)

U.S. District Court
HOME 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. Appeals Court
ALIEN
BAIL

Lopez-Valenzuela v. Arpaio, 770 F.3d 772 (9th Cir. 2014). A felony arrestee brought an action against state officials challenging the constitutionality of an Arizona constitutional provision prohibiting state courts from setting bail for detainees who were in the United States illegally. The district court granted summary judgment and partial dismissal in the officials’ favor, and the arrestees appealed. The appeals court affirmed. On rehearing en banc, the appeals court reversed and remanded. The court held that the Arizona constitutional provision forbidding any form of bail or pretrial release to undocumented immigrants arrested for serious felony offenses, without regard to whether they were dangerous or a flight risk, was not narrowly tailored to serve a compelling state interest in ensuring that persons accused of crimes be available for trial, and thus violated substantive due process. The court noted that there was no evidence that the provision was adopted to address a particularly acute problem regarding an unmanageable flight risk of undocumented immigrants, the provision encompassed an exceedingly broad range of offenses, including not only serious offenses but also relatively minor ones, and the provision employed an overbroad, irrebuttable presumption, rather than an individualized hearing, to determine whether a particular arrestee posed an unmanageable flight risk. (Maricopa County Sheriff, Maricopa County Attorney, and Presiding Judge of the Maricopa County Superior Court)

U.S. Appeals Court
USE OF FORCE
ACCESS TO COURT

Maus v. Baker, 747 F.3d 926 (7th Cir. 2014). A pretrial detainee filed a § 1983 action against personnel at a county jail, alleging that they had used excessive force against him. The detainee alleged that the defendants used excessive force in response to him covering the lens of the video camera in his jail cell. In the first incident, the detained alleged that his arms were twisted, he was pinned against the wall, and he was choked. In the second incident, the detainee alleged that a taser was used to gain his compliance in transferring him to a separate cell. Following a jury trial, the district court entered judgment for the defendants and denied the detainee’s motions for new trial. The detainee appealed. The appeals court reversed and remanded, finding that the court’s errors in failing to conceal the detainee’s shackles from jury, and in requiring the detainee to wear prison clothing while the defendants were allowed to wear uniforms were not harmless. According to the court there was no indication that concealment of the restraints would have been infeasible, and visible shackling of the detainee had a prejudicial effect on the jury. The court noted that there would have been no reason for the jury to know that the plaintiff was a prisoner, and being told that the plaintiff was a prisoner and the defendants were guards made a different impression than seeing the plaintiff in a prison uniform and the defendants in guard uniforms. (Langlade County Jail, Wisconsin)

U.S. District Court
FAILURE TO PROTECT
MEDICAL CARE
WRONGFUL DEATH
CONTRACT SERVICES

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
SUICIDE
SUPERVISION

Nagle v. Gusman, 61 F.Supp.3d 609 (E.D.La. 2014). Siblings of a mentally ill pretrial detainee who committed suicide brought an action against numerous employees of a parish sheriff's office, alleging a due process violation under § 1983, and asserting claims for wrongful death and negligence under state law. The siblings moved for partial summary judgment. The district court granted the motion. The court held that: (1) a deputy had a duty to take reasonable measures to protect the detainee from self-inflicted harm; (2) the deputy breached his duty by failing to observe the detainee for long periods of time; (3) the deputy's abandonment of his post was the cause of the detainee's suicide; (4) the sheriff was vicariously liable; and (5) the deputy's repeated decision to abandon his post violated the detainee's due process right to adequate protection from his known suicidal impulses. According to the court, the detainee was suffering from psychosis and was suicidal while in custody, the detainee was placed on a suicide watch, suicide watch policies and training materials of the sheriff's office explicitly required officers to continuously monitor detainees on a suicide watch and to document that they had done so, and it was during one of the deputy's extended absences that the detainee succeeded in killing himself. The officer left his post at least three times during his suicide watch shift, to help another employee distribute meals to other inmates, to take a restroom break, and to visit the nurses' station. During these absences, the detainee went unobserved for an hour and a half, fifteen minutes, and two hours respectively. No other staff took the officer's place observing the detainee during the times when the officer abandoned his post. During the officer's final absence, an inmate notified an on-duty officer that the detainee was lying on the floor of his cell, unresponsive. It was later determined that the detainee had asphyxiated after his airway became blocked by a wad of toilet paper. (Orleans Parish Sheriff's Office, House of Detention at Orleans Parish Prison, Louisiana)

U.S. District Court
MEDICAL CARE

Nam Dang v. Sheriff of Seminole County, Fla., 38 F.Supp.3d 1333 (M.D.Fla. 2014). A pretrial detainee brought a § 1983 action against a county sheriff, county jail medical staff, and others, alleging that he was deprived of his constitutional right to receive adequate medical care for his meningitis, resulting in multiple strokes and severe brain damage. The defendants moved to dismiss. The district court denied the motions, finding that the pretrial detainee had serious medical needs, his allegations stated a claim against jail nurses for deliberate indifference to his serious medical needs, and the detainee stated a § 1983 claim against the county sheriff. The detainee allegedly experienced severe and increasing neck and back pain, minimal neck rotation, fever, and bouts of unconsciousness and was eventually diagnosed with meningitis, and ended up suffering multiple strokes and brain damage. The inmate alleged that the nurses who regularly attended to the detainee over a period of weeks were well aware of his increasing symptoms and declining health, that the nurses allegedly put him on muscle relaxants and returned him repeatedly to the general population, that the nurses allegedly made no meaningful effort to diagnose or treat his condition, until he passed out in a wheelchair, could not sit up, and became unresponsive.

The court held that the detainee's allegations that the lack of meaningful health care training of county jail personnel was the result of the county sheriff's deliberate cost-cutting efforts, and that the lack of such training was reckless and created an obvious risk that the detainee's constitutional right to adequate medical care for his serious medical need of meningitis would be violated, stated a § 1983 claim against county sheriff. (John E. Polk Correctional Facility, Seminole County, Florida)

U.S. Appeals Court
SUICIDE ATTEMPT

Penn v. Escorsio, 764 F.3d 102 (1st Cir. 2014). The guardian of a pretrial detainee brought an action against county corrections officers, alleging deliberate indifference to the detainee's health in violation of the detainee's Fourteenth Amendment Due Process rights, following the detainee's attempted suicide while in the county jail. The district court denied the officers' motion for summary judgment. The officers appealed. The appeals court affirmed in part and dismissed the appeal in part. The court held that the officers were not entitled to qualified immunity from a deliberate indifference claim at the summary judgment phase, where the law was clearly established that county corrections officers were required to take some reasonable measures to thwart a known, substantial risk that a pretrial detainee would attempt suicide at the time that plaintiff detainee made such an attempt. The court noted that the facts supported conclusions that the officers faced the knowledge of a substantial risk to the detainee, and effectively failed to take any action to forestall the risk that the detainee would attempt suicide at the moment he did.

The detainee was arrested and taken to the jail on a Saturday for allegedly being intoxicated and committing an assault in violation of the terms of his release. His arraignment was set for Monday. During the booking process, an officer completed both a suicide risk assessment form and a medical screening form for the detainee. The suicide risk assessment revealed that the detainee had, among other things: (1) lost two close friends to suicide; (2) attempted suicide himself two years prior; and, (3) when asked whether he then felt like killing himself responded "not sure, feels that ... life is over." Under the jail's suicide risk assessment form, a suicide risk score of 15 or more points qualifies as the highest suicide risk level and requires one-on-one observation of the inmate, and the completion of a mental health evaluation within one hour. The detainee's risk of suicide scored at least 20 points. The detainee was placed on a "welfare watch," which required staff to make separate log entries regarding his condition when they conducted their fifteen-minute checks of his cell. Although the jail had an available suicide prevention cell which could be constantly monitored from the intake desk, he was placed in another cell out of view of any staff post. The cell was not stripped of objects a detainee could use to harm himself, and contained sheets and bedding

which a detainee could potentially fashion into a makeshift noose—as the detainee did, following his return to jail after his court appearance on Monday. (Knox County Jail, Maine)

U.S. District Court
CIVIL COMMITMENT
MENTAL HEALTH

Pierce v. Pemiscot Memorial Health Systems, 25 F.Supp.3d 1198 (E.D.Mo. 2014). A mental health detainee brought a § 1983 action against a medical director and a program director employed by the company that contracted to provide psychiatric services to a county hospital, alleging violations of her due process rights and Missouri law. The parties cross-moved for summary judgment. The district court denied the motion, granted the defendants' motion in part and denied in part. The court held that summary judgment on the issue of punitive damages was precluded by genuine issue of material fact as to whether the conduct of the medical director and the program director in continuing to detain the mental health detainee was motivated by an evil motive or involved reckless indifference to the detainee's rights. The detainee brought the action to challenge her detention in an inpatient psychiatric unit following the expiration of a 96-hour detention order. She alleged that her continued detention violated her due process rights under the United States and Missouri Constitutions, governing involuntary commitment procedures. (Pemiscot Memorial Hospital, Missouri)

U.S. Appeals Court
MENTAL HEALTH
SUICIDE ATTEMPT

Pittman ex rel. Hamilton v. County of Madison, Ill., 746 F.3d 766 (7th Cir. 2014). By and through his guardian, a pretrial detainee brought a § 1983 action against a county and various jail officials, alleging the defendants were deliberately indifferent to his risk of suicide in violation of the Fourteenth Amendment. The district court granted the defendants' motion for summary judgment and denied the detainee's motion for a new trial. The detainee appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that a nurse and doctor were not deliberately indifferent, that there was no evidence that the sheriff or a captain knew of a substantial risk of harm for the detainee, and that the jail's suicide prevention policies and practices were not so inadequate that they violated the detainee's rights. But the appeals court also held that summary judgment was precluded by a genuine issue of material fact as to whether a deputy and a sergeant were aware of the detainee's risk of suicide, where the detainee requested to see a crisis intervention person. According to the court, when an inmate presents an officer with a request to see a crisis intervention person and the officer also is aware that the reason for the request well may be a serious psychological condition that is beyond the officer's capacity to assess definitively, the officer has an obligation under the Eighth Amendment to refer that individual to the person who, under existing prison procedures, is charged with making that definitive assessment. (Madison County Jail, Illinois)

U.S. District Court
SEARCHES
MEDICAL CARE
FAILURE TO PROTECT

Rahman v. Schriro, 22 F.Supp.3d 305 (S.D.N.Y. 2014). A pretrial detainee brought a § 1983 action against a state prison commissioner, warden, deputy warden, deputy of security, and officers, alleging they violated the Fourteenth Amendment's Due Process Clause by forcing him to go through a radiation-emitting X-ray security screening machine in order to get to and from his daily work assignment. 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 sufficiently alleged a serious present injury or future risk of serious injury, as required to state a deliberate indifference claim against prison officials under the Fourteenth Amendment's Due Process Clause, by alleging that he was subjected to at least two full-body X-ray scans each day, that each scan exposed him to a level of radiation that was 10 to 50 times higher than that emitted by airport scanners, that radiation damages cells of the body and that even low doses of radiation increase an individual's risk of cancer, and that federal regulations prohibited prison officials from using even non-repetitive X-ray examinations for security purposes unless the device was operated by licensed practitioner and there was reasonable suspicion that the inmate had recently secreted contraband. According to the court, the detainee's allegations that a prison officer intentionally subjected him to a higher dose of radiation through a full-body X-ray screening machine while calling him a "fake Muslim, homosexual, faggot" were sufficient to allege that the force was not applied to maintain or restore discipline, as required to state an excessive force claim under Fourteenth Amendment's Due Process Clause. The court held that the alleged force exerted by a prison officer on the detainee by setting the full-body X-ray screening machine to a higher radiation dose on one occasion was not excessive in violation of the Fourteenth Amendment's Due Process Clause. The court noted that the alleged force was de minimis, and the use of a higher setting of radiation, which was designed to produce a better image, in a situation where detainee expressed resistance to the scanning process and could have been conceivably hiding contraband was not the type of force repugnant to the conscience of mankind. The court found that the prison commissioner was not entitled to qualified immunity where the right to be free from deliberate indifference to serious medical needs was clearly established, and given the known dangers of radiation, a reasonable person would have understood that exposing the detainee to a cumulative level of radiation that posed a risk of damage to his future health could violate the Due Process Clause of the Fourteenth Amendment. (Anna M. Kross Center, Rikers Island, New York City Department of Correction)

U.S. District Court
ALIEN
ACCESS TO COURTS
BAIL
RESTRAINTS

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 de-

tainee'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)

U.S. District Court
MEDICAL CARE
SUPERVISION
DUE PROCESS

Revilla v. Glanz, 7 F.Supp.3d 1207 (N.D.Okla. 2014). Four pretrial detainees or representatives of their estates brought an action against a county sheriff, asserting claims under § 1983 and the Oklahoma Constitution, relating to allegedly deficient medical care. The sheriff filed a motion to dismiss. The district court denied the motion, finding that the plaintiffs stated a § 1983 claim against the sheriff for supervisory liability in his individual capacity, and a § 1983 claim against the sheriff for liability in his individual capacity. The court noted that the Due Process Clause of the Oklahoma Constitution protects pretrial detainees against the denial of medical attention. The plaintiffs alleged: (1) that the sheriff was responsible for ensuring that pretrial detainees received appropriate medical care; (2) that he was responsible for creating, adopting, approving, ratifying, and enforcing the policies that his subordinates allegedly violated; (3) that he failed to provide prompt and adequate care in the face of known and substantial risks to each detainee's health; and (4) that he had long known of systemic deficiencies in the jail's medical care. The plaintiffs cited numerous incidents and reports, as well as inmate deaths, which they alleged provided clear notice to the sheriff of seriously deficient medical and mental health care which placed inmates at a serious risk of injury or death. One such notice included a report by the United States Department of Homeland Security's Office of Civil Rights and Civil Liberties which "found a prevailing attitude among clinic staff [at the Jail] of indifference." (Tulsa County Jail, Oklahoma)

U.S. District Court
MEDICAL CARE

Revilla v. Glanz, 8 F.Supp.3d 1336 (N.D.Okla. 2014). Pretrial detainees or representatives of their estates brought an action against healthcare providers, doctors, and nurse, asserting claims under § 1983 and the Oklahoma Constitution, relating to allegedly deficient medical care. The defendants moved to dismiss. The district court denied the motion, finding that: (1) allegations were sufficient to plead the provider, doctors, and nurse were acting under the color of state law; (2) allegations were sufficient to state a § 1983 claim against the provider under the theory of municipal liability; and (3) the provider was not entitled to immunity from punitive damages afforded to municipalities.

The court noted that the healthcare provider was endowed by the county with powers or functions that were governmental in nature, that provider was responsible for providing medical services at the jail, including creating and implementing policies and practices governing provision of care, as well as training and supervision, that doctors and nurse were employees of the provider, that they had responsibility for overseeing and treating detainees, and that doctors served as the medical director.

The pretrial detainees and representatives of their estates also alleged that the provider refused to send detainees to a hospital for financial reasons, understaffed the medical unit, failed to properly train and supervise employees, and the provider was on notice of these deficiencies from reports by the National Commission on Correctional Health Care, the Oklahoma Department of Health, the United States Department of Homeland Security's Office of Civil Rights and Civil Liberties (CRCL), and the Jail's own medical auditor. (Correctional Healthcare Companies, Inc.)

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. District Court
SUICIDE
SUPERVISION

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
MEDICAL CARE
WRONGFUL DEATH

Rouster v. County of Saginaw, 749 F.3d 437 (6th Cir. 2014). The representative of the estate of a detainee who died while in custody at a county jail brought a § 1983 action against the county, the contractor that provided medical services to the county jail, and the jail's nursing staff, who were employees of the contractor. The district court granted in part the defendants' motion for summary judgment. The representative appealed. The appeals court affirmed. The court held that the county jail's nursing staff did not have subjective knowledge of the detainee's perforated duodenal ulcers, which eventually resulted in sepsis and the detainee's death, and staff did not consciously disregard the detainee's condition or otherwise refuse to provide appropriate treatment, as required for staff to be liable in a § 1983 Fourteenth Amendment deliberate indifference claim. According to the court, although staff was aware that the detainee had complained of stomach cramping, diarrhea, and vomiting, and that he had been observed engaging in bizarre behavior, such as drinking from a toilet, they misdiagnosed him first with gas and diarrhea, and later with alcohol withdrawal. The court noted that the detainee never told any staff member about his previous treatment for his ulcer, staff did not ignore the detainee's symptoms, but attempted to treat him with over-the-counter medication and moved him to an observation cell for monitoring. (Saginaw County Jail, Michigan)

U.S. District Court
FAILURE TO PROTECT
USE OF FORCE

Rowlery v. Genesee County, 54 F.Supp.3d 763 (E.D.Mich. 2014). A detainee brought an action against a county and officers and deputies in the county sheriff's department, alleging that he was assaulted by deputies on two occasions when he was lodged at the county jail. The defendants moved for partial summary judgment. The district court granted the motion in part and denied in part. The district court held that summary judgment was precluded by genuine issues of material fact as to: (1) whether the county adequately trained officers and deputies regarding the use of force; (2) whether certain officers and deputies came into physical contact with the detainee; (3) whether certain officers and deputies failed to act reasonably when they did not act to prevent or limit other deputies' use of force on the detainee; and (4) whether the alleged failure of certain officers and deputies to put a stop to other deputies' use of force on the detainee was the proximate cause of the detainee's injuries. (Genesee County Jail, Michigan)

U.S. Appeals Court
JUVENILE
INTAKE SCREENING

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 Co. Juv. Det. Center, Ohio)

U.S. Appeals Court
USE OF FORCE
RESTRAINTS

Shreve v. Franklin County, Ohio, 743 F.3d 126 (6th Cir. 2014). A detainee brought an action against a county, its sheriff, and sheriff's deputies, alleging that the deputies used excessive force against him when they subdued him with a stun gun while he was in custody. The district court granted the defendants' motion for summary judgment. The detainee appealed. The appeals court affirmed. The appeals court held that the sheriff's deputies did not act with deliberate indifference towards the detainee's federally protected rights when they subdued the detainee with a stun gun while he was in custody, and therefore the deputies did not use excessive force against the detainee under the Fourteenth Amendment. According to the court: (1) the deputies tried to handcuff the detainee several times before using the stun gun, showing that they sought to minimize the stun gun's use; (2) the deputies also warned the detainee that the stun gun would hurt and that he did not want to have the gun used on him, which showed that they were trying to avoid unnecessary harm; and (3) the deputies faced an ongoing danger with the detainee thrashing about on the cell floor with a loose handcuff, as the deputies had been trained never to lose control of an inmate with a loose handcuff because it could be used as a weapon. The court held that the incident, in which the detainee lunged towards a sheriff's deputy with his hands raised after a hospital examination, was a rapidly evolving, fluid, and dangerous predicament which precluded the luxury of a calm and reflective pre-response deliberation, and therefore the detainee was required to show that the deputy's actions involved force employed maliciously and sadistically for the very purpose of causing harm, rather than in a good faith effort to maintain or restore discipline, in order to establish the use of excessive force under the Fourteenth Amendment. The court noted that the detainee lunged toward the deputy after asking the deputy "Do you want a piece of me?" and the deputy explained that he had "no way of retreating" because of the cramped quarters and the detainee's position over him while standing on the hospital bed. (Franklin County Corrections Center II, Ohio)

U.S. Appeals Court
USE OF FORCE

Smith v. Conway County, Ark., 759 F.3d 853 (8th Cir. 2014). A pretrial detainee brought a § 1983 action against two jailers, a county jail administrator, the county, and the sheriff, alleging claims for excessive force and failure to supervise under the Fourteenth Amendment. The district court denied qualified immunity to the administrator and jailers and denied summary judgment to the county and individual defendants. The defendants appealed. The appeals court affirmed in part and dismissed in part. The court held that

a nonviolent pretrial detainee's right to be free from being shot with a stun gun for non-compliance was clearly established at the time a jailer used a stun gun on the detainee for the purpose of achieving compliance, and thus, the jailer was not entitled to qualified immunity from the detainee's § 1983 claim of excessive force in violation of the Fourteenth Amendment. The court found that at the time a jailer failed to intervene when another jailer warned the pretrial detainee and then shot him with a stun gun, that a jail official violated a pretrial detainee's due process rights if the official knew that another official was using excessive force against the detainee but failed to intervene, and thus the jailer was not entitled to qualified immunity from the detainee's § 1983 claim of excessive force in violation of the Fourteenth Amendment. (Conway County Jail, Arkansas)

U.S. District Court
PRIVACY

Taha v. Bucks County, 9 F.Supp.3d 490 (E.D.Pa. 2014). An arrestee brought an action against a county, a county correctional facility, and companies that operated websites publishing mug shot and arrest information, alleging that the defendants published his expunged arrest record in violation of Pennsylvania's Criminal History Record Information Act (CHRIA), and that the companies violated a Pennsylvania statute prohibiting the unauthorized use of a name or likeness and committed an invasion-of-privacy tort of "false light." The company moved to dismiss. The district court granted the motion in part and denied in part. The court held that the arrestee's allegations that the company selectively published his expunged arrest record and mug shot on its website in order to falsely portray him as a criminal, and created a false impression regarding his criminal history and character, were sufficient to state a "false light" claim against the company under Pennsylvania law. (Citizens Information Associates, LLC, Bucks Co. Corr. Facility, Penn.)

U.S. District Court
TRANSPORTATION
FAILURE TO PROTECT

Torres v. Amato, 22 F.Supp.3d 166 (N.D.N.Y. 2014). The administrator of a pretrial detainee's estate brought a § 1983 action against corrections officers, a sheriff, government officials, and a county, alleging deliberate indifference to the serious risk of harm in violation of the Fourteenth Amendment and various state claims. The defendants moved for summary judgment. The district court denied the motion. The court held that: (1) disputes of material fact as to whether the door to a transport van was improperly latched or the officer was operating the van in a reckless manner precluded summary judgment on the deliberate indifference claim against the officers; (2) a dispute of material fact as to the personal involvement of government officials in the alleged conduct precluded summary judgment on deliberate indifference claim against the officials and the county; and (3) the defendants were not entitled to qualified immunity from the § 1983 claim. The court noted that the detainee's right to be free from deliberate indifference to a substantial risk of harm was clearly established at the time the detainee suffered fatal injuries after falling out of transport van driven by corrections officers, and thus, officers and government officials were not entitled to qualified immunity from the § 1983 claim of deliberate indifference to a substantial risk of harm in violation of the Fourteenth Amendment. (Montgomery County Sheriff's Department, New York)

U.S. District Court
MENTAL HEALTH

Trueblood v. Washington State Dept. of Social and Health Services, 73 F.Supp.3d 1311 (W.D.Wash. 2014). Pretrial detainees brought a class action against the Washington Department of Social and Health Services and two state hospitals, alleging that in-jail waiting times for court-ordered competency evaluations and restoration services violated their Fourteenth Amendment due process rights. The detainees moved for summary judgment. The district court granted the motion, finding that in-jail waiting times for court-ordered competency evaluations and restoration services violated the Fourteenth Amendment substantive due process rights of mentally incapacitated pretrial detainees. The court noted that detainees were incarcerated for many weeks, not because they were convicted, found to be dangerous, or posed a flight risk, but because Department of Social and Health Services and state hospitals did not have sufficient bed space or available staff to provide the services they were required to provide. Some detainees were held in solitary confinement due to space issues, exacerbating any mental illness, and the rate of medication compliance was lower in jail. (Washington State Department of Social and Health Services, Western State Hospital and Eastern State Hospital)

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)

U.S. District Court
MENTAL HEALTH
MEDICATION

Williams v. Board of Regents of University of New Mexico, 20 F.Supp.3d 1177 (D.N.M. 2014). A mental health detainee and his mother brought an action against a county, alleging medical negligence, negligence per se, intentional and negligent infliction of emotional distress, and loss of consortium, based on conduct while the detainee was being held at a county medical center and jail. The plaintiffs alleged that the detainee was not given his psychotropic medications while detained. The county moved to dismiss. The district court granted the motion. According to the court, the New Mexico Tort Claims Act (NMTCA) did not waive the county's immunity for any of the detainee's claims. (Bernalillo County Metropolitan Detention Center, New Mexico)

U.S. District Court
CONDITIONS
MEDICAL CARE

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)

U.S. District Court
INITIAL APPEARANCE
LENGTH
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. Appeals Court
MAIL
ACCESS TO COURT

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
EXCESSIVE FORCE
SEARCHES
GRIEVANCE
CONDITIONS

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. District Court
USE OF FORCE
CONDITIONS OF
CONFINEMENT
MEDICAL CARE

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 Corr. Facility, Md.)

<p>U.S. District Court SEARCH FEMALE PRIVACY</p>	<p><i>Blanco v. County of Kings</i>, 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 Dept., Kings County Jail, California)</p>
<p>U.S. District Court FAILURE TO PROTECT</p>	<p><i>Bloom v. Toliver</i>, 133 F.Supp.3d 1314 (N.D. Okla. 2015). A pretrial detainee brought a § 1983 action against a jail's administrator, shift supervisors, detention officer, and county sheriff, alleging violations of his Fourth, Eighth, and Fourteenth Amendment rights in connection with an attack on him by another inmate while being transferred from a holding cell to a segregation 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 a genuine issue of material fact as to whether the jail shift supervisor who made the decision to move the pretrial detainee from a holding cell to a segregation cell did so with a desire to punish the detainee, in violation of the Fourteenth Amendment's due process clause. The supervisor admitted that there were cells other than the one where the detainee was moved, and testified that his intent in moving the detainee "was to discipline [the detainee] Bloom," and that placement in any of the other cells "wouldn't have been disciplinary." The court also found that summary judgment was precluded by a genuine issue of material fact as to whether the jail's detention officer violated the pretrial detainee's Fourteenth Amendment right to be protected from substantial risks of assault from other inmates by moving him from the holding cell to a segregation cell in which another inmate was being held.(Creek County Criminal Justice Center Oklahoma)</p>
<p>U.S. Appeals Court MEDICAL CARE</p>	<p><i>Burton v. Downey</i>, 805 F.3d 776 (7th Cir. 2015). A pretrial detainee brought a § 1983 action against a county, county jail, county sheriff, non-medical correctional officials, physician's assistants, and nurses, asserting due process violations based on deliberate indifference to his serious medical needs, relating to hip and elbow pain, a rash, and rectal bleeding. 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 court held that an alleged two-day delay in providing non-narcotic pain medication to the detainee was not deliberate indifference, failure to honor the detainee's preference for narcotic pain medication was not deliberate indifference, the detainee did not offer objective evidence of a serious medical need for narcotic pain medication, and failure to provide outside physical therapy was not deliberate indifference. The court noted that an orthopedic surgeon who had treated the detainee before his detention recommended to staff that the detainee receive in-cell therapy using a towel. The court held that failure of county jail staff to provide the detainee, who suffered from hip pain, with a second mattress, did not constitute cruel and unusual punishment with respect to conditions of confinement, in the absence of evidence that a second mattress was essential medical care. (Jerome Combs Detention Center, Kankakee County, Illinois)</p>
<p>U.S. District Court CROWDING SANITATION CLASSIFICATION FAILURE TO PROTECT CONDITIONS</p>	<p><i>Cano v. City of New York</i>, 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 un-ventilated 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)</p>
<p>U.S. Appeals Court FAILURE TO PROTECT FACILITY PLANS</p>	<p><i>Castro v. County of Los Angeles</i>, 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 indif-</p>

ference 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
INTAKE 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
USE OF FORCE
MEDICAL CARE
RESTRAINTS

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
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 a 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, Cal.)

U.S. Appeals Court
CIVIL COMMITMENT

Davis v. Wessel, 792 F.3d 793 (7th Cir. 2015). A civil detainee brought a pro se action under § 1983 against security guards employed at civil detention facility for sexually violent persons, operated by the Illinois Department of Human Services. The detainee alleged violation of his rights under the Due Process Clause of the Fourteenth Amendment. The district court entered judgment on a jury verdict in favor of the detainee and the security guards appealed. The appeals court vacated and remanded. The court held that the issue of whether security guards employed at the civil detention facility refused to remove the detainee's handcuffs with the intent of humiliating him, by preventing him from using the restroom and forcing him to urinate on himself, was for a jury to decide. The court found that the security guards were not entitled to qualified immunity from the claim by the detainee under § 1983 alleging excessive use of restraints in violation of the Due Process Clause after the guards refused to remove the detainee's handcuffs because it was clearly established at the time the detainee requested to use the restroom, which had no windows, that keeping the handcuffs on was not rationally related to a legitimate non-punitive purpose absent an indication that the detainee was a security risk. (Illinois Dept. of Human Services, Rushville Treatment and Det.Facility)

U.S. Appeals Court
JUVENILES

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. Appeals Court
MEDICAL CARE
HOSPITAL
EMERGENCY CARE
FAILURE TO PROVIDE
CARE

Estate of Henson v. Wichita County, Tex., 795 F.3d 456 (5th Cir. 2015). The estate of a pretrial detainee who died from chronic obstructive pulmonary disease (COPD) while being held in a county jail brought a § 1983 action against the county, jail physician, and others, alleging violation of the detainee's Fourth and Fourteenth Amendment rights, and asserted claims under state law for negligence and breach of contract. The district court granted in part, and denied in part, the defendants' motions for summary judgment based on qualified immunity. The court of appeals reversed and remanded in part. The physician and county moved for reconsideration. The appeals court granted the motion and the estate appealed. The court held that there was no unstated policy of intimidation at the jail to prevent detainees to a hospital, and thus, the doctor could not be liable for alleged enforcement of such a policy. According to the court, the county's multi-tiered health services plan, which provided that the county jail would employ six licensed vocational nurses, rather than registered nurses, and one jail physician, to provide medical care for pretrial detainees, and which did not require the nurses and physician to be present at jail facility at all times, but required them to be available via telephone and regularly present for sick call clinics, and provided that detainees facing emergency situations would be transported to a hospital, did not violate the due process rights of the pretrial detainee who died of chronic obstructive pulmonary disease (COPD) while held at the jail. According to the court, the county's plan was reasonably related to its legitimate interest in providing medical attention to detainees with varying levels of need, and there was no showing that serious injury and death were the inevitable results of the plan. (Wichita County Jail, Texas)

U.S. District Court
USE OF FORCE

Ewing v. Cumberland County, 152 F.Supp.3d 269 (D. N.J. 2015). A former arrestee brought a § 1983 action, bringing claims against county correctional officers, police officers, and a number of municipal entities for use of excessive force and other constitutional violations. The defendants filed nine motions for summary judgment. The district court held that (1) issues of fact existed as to whether the force used on detainee was imposed maliciously and sadistically to cause harm; (2) issues of fact existed as to whether two officers who were not in the room when excessive force was allegedly used on the pre-trial detainee knew of and failed to intervene in the assault; (3) issues of fact existed as to whether five correctional officers conspired to cover up their actions; (4) issues of fact existed as to whether the police officer who had

taken the detainee back to the jail after a trip to the hospital had reason to believe that the detainee's safety was in jeopardy when the officer left the jail, and (5) genuine issues of material fact existed as to whether the county trained its correctional officers on the use of force, whether the other trainings that took place were inadequate and untimely, whether that failure to train amounted to deliberate indifference, and whether there was a causal link between that lack of training and the injuries the detainee sustained at the hands of correction officers, precluding summary judgment for the defendants in the failure to train claim. According to the court, the detainee, while unarmed, suffered life-threatening injuries while in an isolated room with five officers, and that none of the officers were injured, indicated that the officers used force beyond what was necessary to take down the detainee, in a manner intended to inflict pain. The court noted that it was clearly established, at the time of the incident, that prisoners were protected from excessive force and wanton beatings that exceed good-faith efforts to maintain discipline and order, and a reasonable officer would have known that the force used was excessive. (Cumberland County Correctional Facility and Vineland Police Department, New Jersey)

U.S. District Court
ACCESS TO COURT
DUE PROCESS
CONDITIONS
EQUAL PROTECTION
FALSE IMPRISON
MENT
INITIAL APPEARANCE
MEDICATION
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
MEDICAL CARE

Fisher v. Miami-Dade County, 114 F.Supp.3d 1247 (S.D. Fla. 2015). A former pre-trial detainee brought a § 1983 action against a county, alleging that during his detention in a county jail, county employees were deliberately indifferent to his serious medical needs. The county moved to dismiss for failure to state a claim. The district court denied the motion. The court held that the detainee: (1) sufficiently alleged that the county had policy that constituted deliberate indifference to jail detainees' serious medical needs (2) sufficiently alleged that County policymakers had notice of a pattern or practice of deliberate indifference to detainees' serious medical needs; and (3) sufficiently alleged that county policymakers failed to take action after being put on notice of the pattern of deliberate indifference to detainees' serious medical needs. According to the court, detailed allegations of a pattern of deliberate indifference to county jail detainees' medical needs, including 117 inmate deaths in the years preceding the plaintiff's detention, and 20 specific instances in which county employees withheld necessary medical care from detainees, or provided insufficient medical care, resulting in severe injury or death to those detainees, were sufficient to state a claim for municipal liability under § 1983. The court noted that direct complaints by detainees had been made to county officials, there were widespread news accounts in local newspapers and on local news television programs regarding treatment of detainees, the Department of Justice (DOJ) had conducted a three-year DOJ investigation into county employees' violations of detainees' constitutional rights, including the right to medical care, and there were more than half a dozen judicial orders from federal, state and county courts relating to detainees' medical treatment. The court noted that the detainee sufficiently alleged that county policymakers chose not to take action after being put on notice of county employees' deliberate indifference to jail detainees' serious medical needs, where the detainee alleged that systemic deficiencies occurred, including two deaths, following the mayor's promise to correct such deficiencies. (Miami-Dade Corr. and Rehabilitation Dept. Florida)

U.S. District Court
MEDICAL CARE
SUPERVISION
WRONGFUL DEATH

Frary v. County of Marin, 81 F.Supp.3d 811 (N.D.Cal. 2015). A deceased detainee's wife, mother, daughter, and estate brought an action against a county and certain county jail employees, alleging that the employees were deliberately indifferent to the detainee's serious medical needs while he was in custody. 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 genuine issues of material fact as to: (1) whether a deputy was aware of a substantial risk to the detainee's serious medical needs and disregarded that risk by failing to monitor the detainee more closely; (2) whether another deputy knew of and disregarded an excessive risk to the detainee's health when she failed to ascertain the circumstances of the detainee's prolonged unconsciousness, and when she falsely radioed another deputy falsely suggesting that the detainee had consciously refused breakfast; (3) whether a nurse recognized a serious risk to the detainee's health from ingesting street morphine pills and then failed to take reasonable precautionary steps to

protect the detainee from that risk; (4) whether the sheriff's duties with respect to the county jail were causally connected to the alleged violations of the detainee's due process rights; (5) whether the county's policy and practice of indirect monitoring at the county jail was a moving force behind the alleged violation of the detainee's due process rights; and (6) whether the county's failure to implement policies at the county jail about how to monitor detainees with medical needs was the moving force behind the alleged violation of the due process rights of the detainee. The plaintiffs alleged that the Jail's regular practice and operating procedure was only to observe inmates indirectly, using "tower checks" where deputies looked out the tower window to observe the inmates from dozens of feet away, or listening to inmates through intercoms in their cells. (Marin County Jail, California)

U.S. Appeals Court
DISCIPLINE
SEGREGATION
GRIEVANCE

Goguen v. Allen, 780 F.3d 437 (1st 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
PLRA- Prison Litigation
Reform Act
USE OF FORCE

Hubbs v. Suffolk County Sheriff's Dept., 788 F.3d 54 (2nd 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. Appeals Court
SUICIDE
MENTAL HEALTH
MEDICAL CARE

Jackson v. West, 787 F.3d 1345 (11th Cir. 2015). The estate of a detainee who committed suicide while in the custody of a county jail brought a § 1983 action against a county sheriff and against 10 corrections officers, alleging violation of the detainee's due process rights. The district court granted summary judgment in favor of three officers on qualified immunity grounds, but denied summary judgment on qualified immunity grounds with respect to the remaining officers. The remaining officers filed an appeal. The appeals court reversed, finding that the officers lacked a subjective knowledge of a strong risk that the detainee would attempt suicide, so that the officers did not act with deliberate indifference in failing to prevent the suicide. The court noted that the detainee had made explicit suicide threats and he was placed in the suicide prevention unit, as was proper protocol, and the detainee was released from that unit when prison medical staff later determined that he no longer presented such a risk. The court stated: "This case is troubling. The Marion County Jail tragically failed to keep Mr. James safe while he was incarcerated. Under our precedent, however, an officer is liable under § 1983 for the suicide of an inmate only if he had subjective knowledge of a serious risk that the inmate would commit suicide and he disregarded that known risk." (Marion County Jail, Florida)

U.S. District Court
MEDICAL CARE
MEDICATION

Johnson v. Clifton, 136 F.Supp.3d 838 (E.D. Mich. 2015). A pretrial detainee brought an action against a jail's medical director, alleging that, during his pretrial detention, the medical director was deliberately indifferent to his severe pain and infected ulcers. The director 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 on the detainee's claim that the medical director knew that the detainee had an infection, but chose to not treat it with antibiotics. According to the court, the medical director did not violate the due process clause by prescribing non-narcotic pain relievers to the detainee since the director's decision was objectively reasonable and the director was not deliberately indifferent to the detainee's pain. The court noted that the detainee has received 11 prescriptions for pain in 16 months. (Wayne County Jail, Michigan)

U.S. Supreme Court
USE OF FORCE

Kingsley v. Hendrickson, 135 S.Ct. 2466 (2015). A pretrial detainee brought a § 1983 action against county jail officers, alleging, among other things, that they used excessive force against him in violation of his Fourteenth Amendment rights. The district court entered an order denying the officers' motion for summary judgment on the detainee's excessive force claim, and subsequently entered judgment on a jury verdict in the officers' favor. The detainee appealed. The appeals court affirmed. The U.S. Supreme Court vacated and remanded, finding that the detainee was required to show only that the force used was objectively unreasonable, and that jury instructions improperly added a subjective standard for determining excessiveness. (Monroe County Jail, Wisconsin)

U.S. Appeals Court USE OF FORCE	<p><i>Kingsley v. Hendrickson</i>, 801 F.3d 828 (7th Cir. 2015). A pretrial detainee brought a § 1983 action against county jail officers, alleging that they used excessive force against him in violation of his Fourteenth Amendment rights. The district court entered an order denying the officers’ motion for summary judgment on the detainee’s excessive force claim, and subsequently entered judgment on a jury verdict in the officers’ favor. The detainee appealed. The appeals court affirmed. The U.S. Supreme Court vacated and remanded. On remand, the appeals court reversed and remanded for a new trial. The appeals court held that the district court’s error of instructing the jury that the detainee was required to establish the subjective intent of the officers was not a harmless error, and thus a new trial was warranted, since jurors might have decided that, although the officers had acted in an objectively unreasonable manner, they did not have the subjective intent required by the erroneous instruction. According to the court, a reasonable officer would have been on notice that the detainee was not resisting officers in a manner that justified slamming his head into a wall and using a stun gun while he was manacled, and thus the alleged use of a stun gun on the non-resisting detainee, lying prone and handcuffed behind his back, violated the detainee’s clearly established right to be free from excessive force in violation of his Fourteenth Amendment rights. (Monroe County Jail, Wisconsin)</p>
U.S. District Court MEDICAL CARE	<p><i>McNeill v. Allen</i>, 106 F.Supp.3d 711 (W.D. N.C. 2015). A pre-trial detainee in a county detention facility brought an action against county sheriff’s office captain under § 1983, alleging deliberate indifference to his medical needs in violation of the Fourteenth Amendment. The district court dismissed the case, finding that the detainee failed to plead personal involvement as required to maintain claim against sheriff’s captain in his individual capacity under § 1983. The detainee alleged that jail staff did not adequately treat him for injuries he suffered after slipping on water in his jail cell. (Buncombe County Sheriff’s Office and Jail, North Carolina)</p>
U.S. District Court TVPA- Trafficking Victims Protection Act WORK	<p><i>Menocal v. GEO Group, Inc.</i>, 113 F.Supp.3d 1125 (D. Colo. 2015). Current and former detainees at a private, for-profit immigration detention facility brought an action against the facility’s owner-operator, alleging that a work program violated the Colorado Minimum Wage Order (CMWO) because detainees were paid \$1 per day instead of the state minimum wage, that forcing detainees to clean living areas under the threat of solitary confinement violated the Trafficking Victims Protection Act’s (TVPA) prohibition on forced labor, and that the owner-operator was unjustly enriched through the work program. The detainees participate in a “Voluntary Work Program” at the facility where they perform tasks such as maintaining the on-site medical facility that is owned and operated by the same company, doing laundry, preparing meals, and cleaning various parts of the facility for compensation of \$1 per day. They also alleged that each day, six randomly selected detainees (whether they participate in the Voluntary Work Program or not) are required to clean the facility’s “pods” without compensation under the threat of solitary confinement. The owner-operator moved to dismiss. The court found that the detainees adequately alleged that the owner-operator obtained the detainees’ labor by threats of physical restraint, as required to state a claim for violation of TVPA. The court held that the detainees were not the facility owner-operator’s “employees” who could bring claim alleging that a work program violated CMWO. The court noted that the detainees apparently fell within CMWO’s broad definition of employee, but so did prisoners to whom the state labor department found CMWO’s definition of employee should not apply, and detainees, like prisoners, did not use the wages to provide for themselves, and thus the purposes of CMWO were not served by including them in the definition of employee. (Aurora Det. Facility, Owned and Operated by the GEO Group, Colo.)</p>
U.S. District Court MEDICAL CARE SANITATION	<p><i>Montoya v. Newman</i>, 115 F.Supp.3d 1263 (D. Colo. 2015). A former county jail detainee brought a § 1983 action against a sheriff, jail detention officer, and jail medical staff member, and a physician, alleging deliberate indifference to his serious medical needs. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the summary judgment was precluded by a genuine issue of material fact as to whether a county jail detention officer was aware of the detainee’s serious medical need and was deliberately indifferent to that need when he failed to arrange for the detainee to see a doctor for at least two days, despite knowing that the detainee was coughing up bloody phlegm, had trouble breathing, and was not eating. The officer was also allegedly told by two other detainees, as well as the detainee’s sister, and the detainee himself, the detainee needed to see a doctor.</p> <p>The court found that evidence did not support the detainee’s § 1983 municipal liability claim based on failure to abate unsanitary conditions and disease in the county jail, where there was no evidence that, prior to the detainee’s incarceration in the county jail, the sheriff was aware of a mold or sanitation problem in the jail that presented a serious risk to the health of detainee or other inmates, that the sheriff was deliberately indifferent to those conditions, or that those conditions were a cause of the detainee’s illness. (Huerfano County Jail, Colorado)</p>
U.S. Appeals Court SEARCHES USE OF FORCE INTAKE SCREENING PRIVACY	<p><i>Peters v. Risdal</i>, 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</p>

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. District Court
RELEASE
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 Detention Center, Fulton County Jail, Georgia)

U.S. Appeals Court
BAIL
ALIEN

Rodriguez v. Robbins, 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)

U.S. District Court
FAILURE TO PROTECT
MEDICAL CARE
MENTAL HEALTH

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.

The court found that the detainee's allegations were sufficient to state a plausible claim against the sheriff in his individual capacity by alleging that the sheriff was responsible for creating and enforcing regulations, policies, practices, and customs at the county jail, and that pursuant to those practices, policies, and customs, the jail maintained a longstanding, constitutionally deficient system of medical and mental health care. According to the court, the sheriff knew of substantial risks created by that system but failed to take reasonable steps to alleviate the risks, but instead took intentional and active steps to conceal the dangerous conditions at the jail, and the sheriff disregarded known and obvious risks of severe harm from lack of adequate mental health assessment and treatment, classification, supervision, or protection. (David L. Moss Criminal Justice Center, Tulsa County Sheriff, Oklahoma, Correctional Healthcare Management, Inc. and, Correctional Healthcare Management of Oklahoma, Inc.)

U.S. District Court
USE OF FORCE
BRUTALITY

Senalan v. Curran, 78 F.Supp.3d 905 (N.D. Ill. 2015). A pretrial detainee brought a § 1983 action against corrections officers at a county jail, the sheriff, and the sheriff's office, alleging unlawful detention and excessive force, as well as conspiracy. 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 allegations were sufficient to plead excessive force and were sufficient to state a conspiracy claim. The court found that the detainee's allegations that he was pushed, pepper sprayed, stunned, beaten, and subdued in his cell by correctional officers, that he was naked and prone on the floor of a booking cell when four officers jumped on him and violently restrained him, and that he was not threatening or resisting, were sufficient to plead excessive force, as required for the detainee's § 1983 claim against the officers. According to the court, the detainee's allegations that correctional officers used excessive force against him, and that the officers communicated with each other prior to engaging in their use of force, were sufficient to state a § 1983 claim against the officers for conspiracy to deprive him of his constitutional rights. (Lake County Jail, Illinois)

U.S. District Court
FAILURE TO PROTECT
SUICIDE
SUPERVISION

Shaidnagle v. Adams County, Miss., 88 F.Supp.3d 705 (S.D.Miss. 2015). After a detainee committed suicide while being held in a county jail, his mother, individually, on behalf of the detainee's wrongful death beneficiaries, and as administratrix of the detainee's estate, brought an action against the county, sheriff, jail staff, and others, asserting claims for deprivation of civil rights, equitable relief, and declaratory judgment. The defendants brought a § 1988 cross-claim for attorney fees and costs against the plaintiff, and subsequently moved for summary judgment. The court held that neither the sheriff nor another alleged policymaker could be held liable on a theory of supervisory liability for failure to train or supervise, where the mother did not show that the training jail staff received was inadequate, and the policy in place to de-

termine whether the detainee was a suicide risk was not the “moving force” behind a constitutional violation. The court held that the correct legal standard was not whether jail officers “knew or should have known,” but whether they had gained actual knowledge of the substantial risk of suicide and responded with deliberate indifference. The court held that neither party was entitled to attorney fees as the “prevailing party.” (Adams County Jail, Mississippi)

U.S. District Court
SUICIDE
FAILURE TO PROTECT
STAFFING

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
CLOTHING
CONDITIONS
EXERCISE
FEMALES
MEDICAL CARE
MENTAL HEALTH
SANITATION
SEARCHES
RECREATION
USE OF FORCE

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. District Court
USE OF FORCE
FAILURE TO PROTECT
RESTRAINTS

Shuford v. Conway, 86 F.Supp.3d 1344 (N.D.Ga. 2015). Pretrial detainees brought a § 1983 action against a sheriff and other county jail officials and employees, alleging excessive force in violation of the Fourteenth Amendment. The defendants moved for summary judgment. The district court granted the motion, finding that the jail employees did not apply force maliciously and sadistically against any detainee. According to the court, in shooting the pretrial detainee with a non-lethal chemical agent projectile, taking him to the floor, and placing him in restraint chair, the employees did not apply force maliciously and sadistically. The court noted that the detainee had hit a wall and metal partition, creating a risk of self-harm, the restraints reduced or eliminated the detainee’s ability to inflict harm against himself, and the detainee did not suffer serious or permanent injuries. (Gwinnett County Jail, Georgia)

U.S. Appeals Court
FOOD
MEDICAL CARE
RECREATION
SANITATION
WORK

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.

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.

According to the court, the detainee's mere assertion that he could not "go outside for recreation" was insufficient to allege that he was deprived of the opportunity to exercise, and thus failed to state a claim under § 1983 for deliberate indifference. The court noted that "...there is a significant difference between a lack of outdoor recreation and an inability to exercise."

The court found that the detainee's claims that prison water contained cyanide, lead, and "alpha and beta radiation," if true, were sufficient to allege deprivation of drinkable water, as required 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 ruled that pretrial detainees are not protected by the Fair Labor Standards Act (FLSA) because they are not employees of their jail. The court noted that the detainee had volunteered to participate in a veteran's program within the county jail that included a job in the jail's laundry room, and that this was not "involuntary servitude" or punishment that would violate the Thirteenth Amendment. According to the court, "[P]eople are not imprisoned for the purpose of enabling them to earn a living. The prison pays for their keep. If it puts them to work, it is to offset some of the cost of keeping them, or to keep them out of mischief, or to ease their transition to the world outside, or to equip them with skills and habits that will make them less likely to return to crime outside. None of these goals is compatible with federal regulation of their wages and hours. The reason the FLSA contains no express exception for prisoners is probably that the idea was too outlandish to occur to anyone when the legislation was under consideration by Congress." (Cook County Jail, Illinois)

U.S. District Court
USE OF FORCE

Taylor v. United States, 103 F.Supp.3d 87 (D.D.C. 2015). A detainee brought an action under the Federal Tort Claims Act (FTCA), alleging she suffered intentional infliction of emotional distress, assault, and battery while in the custody of the United States Marshals Service. After a bench trial, the district court held that evidence did not support the detainee's intentional infliction of emotional distress claim, and that the officer's use of force against the detainee was protected by law enforcement privilege. The detainee alleged that a detention enforcement officer's use of a leg sweep on her, which caused her to fall and sustain facial injuries, caused intentional infliction of emotional distress. According to the court, the officer's conduct was not extreme and outrageous since the leg sweep maneuver is a standard non-lethal technique that was appropriate in the situation, and the detainee provided no documentation relating to any psychiatric evaluation or counseling for the alleged emotional distress. The court found that the officer's use of the leg sweep maneuver was privileged, and thus could not support her claim of battery against the officer, where the detainee could have posed a legitimate threat to the officer, and the officer responded to the detainee's refusal to obey commands by using a standard non-lethal technique. (D.C. Superior Court Holding Cell, District of Columbia)

U.S. District Court
MENTAL HEALTH
SEGREGATION
CONDITIONS

Trueblood v. Washington State Dept. of Social and Health, 101 F.Supp.3d 1010 (W.D. Wash. 2015). Members of a class of pretrial detainees suspected of being mentally incompetent, the next friends of such pretrial detainees, and a disability rights organization brought an action seeking a permanent injunction and a declaratory judgment establishing a time frame within which due process required that the Department of Social and Health Services provide a competency evaluation and restoration of services to such detainees. After a bench trial, the district court held that: (1) the disability rights organization had standing to bring the action; (2) the next friends of the pretrial detainees had standing to bring an action; and (3) due process balancing favored the interests of the pretrial detainees, and thus seven days was the maximum justifiable period of incarceration while awaiting a competency evaluation and restoration of services. A permanent injunction was ordered. The court noted that jails could not provide an environment or type of care required for such detainees, especially as they were often held in solitary confinement without access to medication, and that confinement in jails actively damaged detainees' mental condition and each additional day of incarceration caused further deterioration of the detainees' mental health, increased the risk of suicide and victimization by other inmates. (State of Washington, Department of Social and Health Services)

U.S. District Court
CONDITIONS
SEGREGATION
MAIL
VISITS
TELEPHONE

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)

U.S. District Court
SUICIDE
MEDICAL CARE
FAILURE TO PROTECT

White v. Washington County, Tenn., 85 F.Supp.3d 955 (E.D.Tenn. 2015). The mother of a county jail detainee who committed suicide in custody brought an action against the county, county sheriff, and the private contractor that provided health care services to county jail inmates, alleging federal constitutional claims and state-law negligence claims. The defendants moved to dismiss. The court held that claims against the private health care provider were "health care liability claims," under Tennessee law, for which the mother was required to file certificate of good faith and a pre-suit notice of a potential claim, where the mother asserted that the provider failed to properly assess or provide adequate care for detainee's mental health issues. (Washington County Jail, Tennessee)

U.S. District Court
RESTRAINTS
MEDICAL CARE

Young v. District of Columbia, 107 F.Supp.3d 69 (D.D.C. 2015). A pretrial detainee who was shot in the back by a police officer brought an action against the municipal police department and the officer, alleging under § 1983 that the defendants violated his Fourth Amendment rights by seizing him without probable cause and using excessive force. The defendants moved for partial dismissal for failure to state claim. The district court granted the motions in part and denied in part. The court held that the officer was entitled to qualified immunity from the claim that handcuffing and shackling of the detainee during hospital treatment violated his due process rights, where the law regarding use of handcuffs and shackles on a pretrial detainee during hospital treatment was not clearly established at the time of the incident in question. The court held that the detainee failed to state a § 1983 claim based on the municipality's alleged failure to train the officer, absent allegations regarding any specific policy or custom, the enforcement of which caused the detainee's injury, or any particular deficiency in training or supervision resulting in the officer's allegedly shooting an unarmed man with his hands raised. (District of Columbia and D.C. Metropolitan Police Department)

2016

U.S. Appeals Court
MEDICAL CARE

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)

U.S. Appeals Court
MEDICAL CARE
RESTRAINTS
GRIEVANCE
PLRA-Prison Litigation
Reform Act

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
GRIEVANCE

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)

SECTION 33: PRIVACY

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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.

1974

U.S. District Court
FAMILY
RELATIONSHIPS

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)

1978

U.S. District Court
CROWDING

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.

The eighth amendment's prohibition against cruel and unusual punishment is not limited to specific acts directed at selected individuals, but is equally pertinent to general conditions of confinement. Confinement itself will result in a finding of cruel and unusual punishment, however, only where confinement is characterized by conditions and practices so bad as to be shocking to the conscience of reasonably civilized people.

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)

1979

U.S. Appeals Court
TELEPHONE CALLS

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)

State Supreme Court
ATTORNEY- CLIENT
COMMUNICATIONS

Case v. Andrews, 603 P.2d 623 (1979). The Kansas Supreme Court held that the policy of visually monitoring all consultations between attorneys and clients by Lyon County Jail officials is an unreasonable interference with the right to confidential attorney-client communications. The case arose when a prisoner and his counsel tried to obtain privacy by hanging a coat over a television camera lens in the room. Upon denial of the request, they instituted an action alleging violation of the inmate's sixth amendment right to effective representation by counsel.

The court agreed and found that the jail officials had made no showing that the questioned practice furthered any substantial governmental interest in security, order or rehabilitation. The confidentiality of communications between attorney and client were deemed necessary of protection by the court and, as such, the court held they should be afforded as much privacy as is reasonably possible under the circumstances. The court stated that attorneys are officers of the court and absent a showing to the contrary it must be presumed will strive to uphold the credibility and standards of the judicial system rather than subvert them. Finally the court said, "absent a showing of risk to the order or security of the jail, the practice of visually monitoring an inmate-lawyer conference when privacy is requested, is unreasonable." (Lyon County Jail, Kansas)

U.S. Appeals Court
MEDIA

Holman v. Central Arkansas Broadcasting Co., 610 F.2d 542 (5th Cir. 1979). The recording of the loud complaints of a jail inmate to his counsel by personnel of a radio station who were in the public portions of the jail is neither an invasion of privacy nor an interference with the right to counsel. (Russellville Police Department, Arkansas)

1981

U.S. District Court
STAFF OF OPPOSITE
SEX

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)

U.S. Appeals Court
MEDIA

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

U.S. Appeals Court
STAFF OF OPPOSITE
SEX

Hardin v. Stynchcomb, 691 F.2d 1364 (11th Cir. 1982). Sheriff's department violates Title VII by failing to hire a female deputy. Denied employment as a deputy sheriff because it would have allegedly violated privacy of male jail inmates, a woman brought suit under Title VII of the Civil Rights Act of 1964. The federal district court held that although there had been discrimination, it was justified, because there was a bona fide occupational qualification (bfoq), reasoning that allowing female deputies to work in the male section of the jail would have violated the privacy rights of the male inmates. On appeal the 11th Circuit Court of Appeals reversed, holding that such discrimination was illegal under Title VII.

Four men who applied for positions as deputies had scored lower than the female plaintiff on the examination. The plaintiff filed a charge of employment discrimination with the EEOC and later brought a class action suit against the Fulton County sheriff's department. (Fulton County Sheriff's Department, Georgia)

1984

U.S. District Court
STAFF OF OPPOSITE
SEX

Grummett v. Rushen, 587 F.Supp. 913 (N.D. Ca. 1984). Federal court upholds female officers viewing of male prisoners in housing areas. Inmates at the San Quentin State Prison (California) brought suit in federal district court against the prison, claiming that the policy of assigning female correctional officers to prisoner areas which allowed them to view male inmates in states of partial or total nudity while dressing, showering, being strip searched or using toilet facilities, violated their constitutional rights for privacy.

Prison officials argued that reasonable efforts had been made to provide privacy, but that security considerations and the equal opportunity rights of female correctional officers supported current practices. While female officers are assigned to work in male housing units, they are prohibited from working in positions which would require close and direct view of unclad inmates.

The federal court agreed with prison officials, ruling in their favor. The court noted that there were many situations and types of assignments involving female correctional officers which would be constitutionally impermissible. After examining the situation at the prison, the conduct of the female officers, and the volatile environment of the facility, the court found that current practices were reasonable. (San Quentin State Prison, California)

1985

U.S. District Court
CROWDING
HEALTH

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. 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. Appeals Court
STAFF

Fugate v. Phoenix Civil Service Board, 791 F.2d 736 (9th Cir. 1986). Appeals court upholds city police department policy concerning officer conduct and determines that officers did not have a constitutionally protected right of privacy to engage in sexual relations with prostitutes while on duty. Two married vice officers were discharged in 1978 after an investigation revealed that they had been intimately involved with prostitutes while on duty, that one prostitute was accepting city money from an officer as a paid informant, and that both relationships were carried on openly and publicly. The officers were discharged for violating a police department order which prohibited "conduct unbecoming an officer and contrary to the general orders of the police department." The officers appealed to the Phoenix Civil Service Board, which reinstated them but did not order back pay for the period of their suspension. The officers filed an action for back pay and injunctive relief in federal district court, asserting violations of their constitutional rights. The district court entered summary judgment for the city, and on second appeal the higher court concurred with the dismissal. While acknowledging that the city's policy was vague, the court found that it was intended to protect the legitimate interests of the police department, and that while the Constitution does not expressly guarantee the right of privacy, it is considered one of the "liberty" interests protect by the due process clause. (City of Phoenix Police Department, Arizona)

U.S. District Court
MEDIA

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 tattoos exposed. Injunctive relief to prevent a television broadcasting company from broadcasting footage containing pictures of the prisoner would not necessarily be improper. An 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

Nakao v. Rushen, 635 F.Supp. 1362 (N.D.Cal. 1986). A prison inmate and his wife brought Section 1983 action, seeking damages for violation of their constitutional rights, arising from the disposition of letters seized during a search of the inmate's cell. The United States District Court entered summary judgment in favor of the inmate and his wife, and the state prison official appealed. The court of appeals, 766 F.2d 410, vacated and remanded. On remand, the district court held that the action of the prison official in sending copies of official correspondence received by the inmate from his wife, then a county social worker, to the wife's supervisor did not constitute a violation of the first amendment or the privacy provision of the California Constitution.

The action of a prison official in sending copies of official letters received by the inmate from a county social worker to the social worker's supervisor did not deprive the inmate and social worker of their liberty without due process of law under privacy article of the California Constitution, considering that provision does not protect the recipient of official correspondence from having the author's supervisor discover the contents thereof. The inmate could not reasonably expect that the county would be unaware of the contents of official letters he received, and the social worker could not assert an expectation that letters she wrote in her official capacity could not be read by her supervisor. (San Quentin, California)

U.S. District Court
STAFF OF OPPOSITE
SEX

Smith v. Chrans, 629 F.Supp. 606 (C.D.Ill. 1986). Inmates' constitutional rights were not infringed by inadvertent and occasional sightings by female prison employees of the inmates in their cells or open shower and toilet facilities engaged in basic bodily functions. The intrusion into the prisoners' personal privacy was unwanted, but their rights were necessarily limited as a result of their incarceration. The policy required minimum unwanted intrusions by persons of the opposite sex and, in addition, avoided discrimination against women in job opportunities because of their gender. The need for institutional security and the right of institution administrators to search inmates may limit prisoner's expectation of privacy, but some shred of personal body integrity must remain. A prisoner cannot be subjected to maliciously motivated searches of his person or intentional harassment. (Pontiac Correctional Center, Illinois)

U.S. Appeals Court
STAFF

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. District Court
TELEPHONE CALLS

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. District Court
TELEPHONE CALLS

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

Williams v. Kyler, 680 F.Supp. 172 (M.D. Pa. 1986). Due to the self-contradictory nature of its language, a Pennsylvania regulation governing the presence of inmates during cell searches was found not to create a substantive right. While the regulation contained an explicit disclaimer to the effect that it "[did] not create any rights in any person," it also stated that an inmate "[had] a right to be present during an investigative search" and that inmates should be notified of their option to remain during searches. In the absence of a clear expression of intent to create a substantive right, the ambiguity was resolved against the creation of such a right. Prisoners do not possess any privacy right in their cells under the Fourth Amendment. (Pennsylvania State Prison)

1987

U.S. Appeals Court
STAFF OF
OPPOSITE SEX

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. Appeals Court
TELEPHONE CALLS

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. Appeals Court
STAFF OF
OPPOSITE SEX

U.S. v. Gregory, 818 F.2d 1114 (4th Cir. 1987), cert. denied, 108 S.Ct. 143. An action was instigated by four female applicants for positions with the Sheriff's Department when they complained that they were denied jobs because of their gender. The county Sheriff failed to establish that gender was bona fide occupational qualification for correctional officers by failing to demonstrate why the county could not accommodate, through reasonable modification of the facility and the job functions, female correctional officers in order to minimize the clash between the privacy interests of the inmates and the safety of the prison employees on the one hand and the non-discrimination requirement of Title VII on the other. The case was remanded to the trial court for further proceedings. (Patrick County Jail)

U.S. District Court
TELEPHONE CALLS

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. Detention center's taping and monitoring system was related to legitimate governmental objective of institutional security, and could not be regarded as punishment in violation of Fifth Amendment. (Metropolitan Corr. Center, New York)

1988

U.S. District Court
RIGHT OF
PRIVACY
HEALTH
AIDS

Doe v. Coughlin, 697 F.Supp. 1234 (N.D.N.Y. 1988). An inmate brought an action on behalf of a class of inmates confined in correctional facility in New York seeking preliminary injunction prohibiting further implementation of a program involving the involuntary transfer of inmates who tested positive for Human Immunodeficiency Virus to a separate dormitory. The district court granted the request, finding that the inmate was entitled to a preliminary injunction. The inmate, who had tested positive for the Human Immunodeficiency Virus, had a standing to maintain a cause of action challenging, on the right to privacy grounds, the involuntary transfer of all inmates who tested positive for HIV to a special dormitory, even though the inmate had not yet been transferred, where the Department of Correctional Services officials unambiguously maintained they intended to go forward with their program of placing all positive testing inmates in a special dormitory, and such placement would effectively reveal the inmate's medical conditions to third parties without his consent. There were approximately 400 known cases where inmates had tested positive for the HIV virus, and questions of law concerning the right of privacy and the reasonableness of the transfer program were common to all proposed class members. Claims and defenses of each member arose from the same course of conduct, and maintaining the anonymity of the class members established an additional reason for certification. Although improving and expediting the medical care for such inmates was a desirable and highly commendable objective, the involuntary segregation of the inmates violated the inmates' constitutional rights to privacy, and the same objectives could be provided in a program designed to allow the inmates a choice of whether they wished to be housed in a separate dormitory. The court noted that there are "few matters" of a more personal nature, and there are "few decisions" over which a person could have a "greater desire to exercise control," than the manner in which he reveals a diagnosis of positive exposure to AIDS to others, including other inmates and family members. (New York State Department of Correctional Services)

U.S. District Court
STAFF OF
OPPOSITE SEX
NUDITY

Lumpkin v. Burns, 702 F.Supp. 242 (D. Nev. 1988). An inmate brought a suit under Section 1983 alleging the violation of his constitutional rights arising from prison's use of "see-through" shower curtains, the absence of "sanitary dividers" between toilets, and the proximity of the toilets to the sinks. The inmate objected to allowing "strangers, females, and high level officials" to view him in the nude and while performing bodily functions. The district court found that the allegation that the prison's use of see-through shower curtains and toilets without dividers impinged on the plaintiff's right to privacy in violation of the fourteenth amendment and stated a claim for relief, and the defendant would be permitted to assert that the prison's policy infringed on the defendant's right to free exercise of religion by interfering with his ability to practice "Christian modesty." In order to prevail on the claim that the prison's use of see-through shower curtains and toilets without dividers violated his free exercise rights to practice "Christian modesty," the inmate was required to show that the belief he asserted was indeed religious, that it was sincerely held and that it was being infringed upon by prison policies which furthered no legitimate penological purpose. The court also stated that inmates possess the right to shield their naked bodies from strangers and members of the opposite sex. A restriction on this privacy right, the court said, must be "reasonably related to legitimate penological objectives" and the burden is on the defendant to establish the existence of such objectives warranting the intrusion into privacy. (Northern Nevada Correctional Center)

State Sup. Court
HEALTH
PSYCHOLOGICAL
SERVICES

Rules Regarding Inmate-Therapist Conf., 540 A.2d 212 (N.J. Super. A.D. 1988). The Office of Inmate Advocacy appealed from a portion of a regulation adopted by the Department of Corrections concerning psychological services provided for prison inmates. The superior court found that the portion of the Department of Corrections regulation excepting from psychotherapist-patient privilege for inmate patients communications when it is believed that disclosure is more important to the interests of substantial justice or safety than protection of the relationship between a psychotherapist and patient is invalid as being broader than the situation which presents clear and imminent danger to the inmate or others. The portion of the regulation excepting from confidentiality the requirement of specified past crimes based upon a finding that the nature of the past crime presents a reasonable foreseeable danger is invalid as requiring disclosure without a regard to the existence of an identifiable intended victim, based only upon the dangerousness indicated by the prior act. Although prison therapists have certain administrative duties to the employer, such duties provide no basis for the Department of Corrections' imposition of diluted standard of care for therapists' treatment of inmates. The definition of adequate medical care does not depend upon who is paying the bills. (New Jersey Department of Corrections)

U.S. Appeals Court
STAFF OF
OPPOSITE SEX

Torres v. Wis. Dept. of Health & Social Services, 838 F.2d 944 (7th Cir. 1988), cert. denied, 109 S.Ct. 1133, 109 S.Ct. 1537. Male correctional officers at a women's maximum security prison brought a sex discrimination suit. The federal appeals court held that: (1) the prison officials did not offer a distinct security justification for the claimed bona fide occupational qualification; (2) the privacy interests of the inmates were protected by existing procedures at the prison and, thus, did not justify the plan; and (3) that theory that having female guards in the living units would promote the rehabilitation of female inmates was not supported by sufficient facts to meet the burden of bona fide occupational qualification exception. A policy that designated specific positions at a women's maximum security prison as available only to women was "continuing violation" for purposes of determining whether male correctional officers filed timely EEOC charges after demotions and continued to exclude all male correctional officers from positions covered by plan. To establish bona fide occupational qualification defense, defendant clearly may not justify a refusal to hire members of one sex merely by pointing to stereotypes about differences between women and men. Wisconsin prison officials had no distinct security justification to require that only women be hired for specific positions at a women's maximum security prison for purposes of determining whether they established bona fide occupational qualification defense. Wisconsin prison officials did not meet their burden of proving existence of serious conflict between privacy interests of the female inmates and employment rights of male correctional officers for purposes of determining whether officials had bona fide occupational qualification defense to charge that male correctional officer were demoted pursuant to a policy that designated specific positions at a women's maximum security prison as available only to women; prison was operated in a manner that was very sensitive to privacy interests of its inmates and afforded them a good deal of privacy from correctional officers of both sexes. (Taycheedah Correctional Institution, Wisconsin)

U.S. District Court
VIEW BY STAFF

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)

U.S. District Court
AIDS
HEALTH

Woods v. White, 689 F.Supp. 874 (W.D. Wis. 1988). A prison inmate brought a suit against prison medical service personnel, alleging that they had violated his constitutional right to privacy by disclosing to nonmedical staff and other inmates the fact that the inmate had tested positive for AIDS (Acquired Immune

Deficiency Syndrome). On motion by medical service personnel for judgment on the pleadings, the district court denied the motion, finding that the constitutional right to privacy extended to the fact that the prison inmate had tested positive for AIDS, which allegedly was disclosed by prison medical service personnel to nonmedical staff and other inmates. The inmate retained such a right to privacy even though he was incarcerated. The prison medical service personnel were not acting within their discretionary function in allegedly disclosing in casual discussion, the fact that the prison inmate had tested positive for AIDS, and thus, the defense of qualified immunity was not available. Despite many invasions of privacy that are inherent in the fact of incarceration or even probation, convicted persons retain some constitutional right to privacy. (Waupun Correctional Institution, Wisconsin).

U.S. District Court
HEALTH
FORCIBLE
INJECTION

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
AIDS
BLOOD TEST

Dunn v. White, 880 F.2d 1188 (10th Cir. 1989), cert. denied, 110 S.Ct. 871. A prisoner filed a Section 1983 action against prison officials, alleging that officials assaulted him and threatened to place him in disciplinary segregation when he refused to submit to a blood test for AIDS (Acquired Immune Deficiency Syndrome). The U.S. District Court dismissed the complaint, and the prisoner appealed. The appeals court found that the nonconsensual AIDS test did not violate the prisoner's first amendment or fourth amendment rights. The prison had a substantial interest in pursuing a program to treat those infected with the disease and in taking steps to prevent further transmission, and that interest outweighed the prisoner's limited expectation of privacy. In addition, the court also stated that the prisoner was not entitled to a due process hearing before being threatened with disciplinary segregation because of his refusal to submit to the test. (Conner Correctional Center, Oklahoma)

U.S. District Court
CONFIDENTIAL
INFORMATION

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
MAIL

Summers v. Salt Lake County, 713 F.Supp. 1415 (D.Utah 1989). An inmate brought a civil rights action for alleged denial of rights to access to courts in a manner insuring privacy. The district court found that the inmate failed to state a cause of action, and the inmate was liable for costs. According to the court, the inmate's civil rights complaint failed to avert any facts implicating any defendants, other than the "mail officer" at the county jail, in the alleged denial of the inmate's

rights to access to courts in a manner insuring privacy and failed to allege facts showing policy, ordinance or custom of the defendant county of opening legal mail. Therefore, the inmate failed to state an action against any defendant except the "mail officer" and was not entitled to vacation of the magistrate's opinion dismissing the complaint as to all defendants except the "mail officer."

The frivolity of the inmate's in forma pauperis civil rights action, when combined with his disregard of a prior court order, the number of lawsuits the inmate had filed in court, and his dilatory tactics in the action, compelled the district court to tax the inmate for costs and prohibit him from filing further in forma pauperis actions unless the judge to whom the case is assigned certifies that action is in good faith or until the inmate has paid the costs taxed. (Salt Lake County Jail, Utah)

1990

U.S. District Court
RIGHT OF PRIVACY

Best v. District of Columbia, 743 F.Supp. 44 (D.D.C. 1990). Inmates brought an action against the District of Columbia and District of Columbia officials, alleging they were videotaped without their consent while they were handcuffed and chained. On the defendants' motion to dismiss or for summary judgment, the U.S. District Court found that the District of Columbia was a suable entity under Section 1983 as the District was a municipality, rather than a state or territory that was immune from suit under Section 1983, and the allegations were sufficient to state a claim for violation of the plaintiffs' privacy rights. (Lorton Reformatory, Lorton, Virginia)

U.S. District Court
MEDICAL CARE

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. Appeals Court
ATTORNEY-CLIENT
COMMUNICATION

Burton v. Nault, 902 F.2d 4 (6th Cir. 1990). A prisoner appealed a decision by the U.S. District Court to grant summary judgment for the prison officials that the prisoner had brought a civil rights action against. The appeals court affirmed the lower court decision finding that the prison officials were justified in reading an unmailed letter addressed to the prisoner's attorney which was found next to the prisoner after an attempted suicide. Prison officials must demonstrate that regulations authorizing the censorship of a prisoner's mail furthers one of the substantial interests of security, order, or rehabilitation and the limitation of the prisoner's first amendment freedoms must be no greater than is necessary or essential to the protection of the particular governmental interest involved. If there were any first amendment concerns arising out of actions of prison officials in reading the letter, the actions were justified by the need of prison officials to determine if the letter mentioned any drug use in the attempted suicide. (Marquette Branch Prison, Michigan)

U.S. District Court
RIGHT OF PRIVACY
STAFF OF
OPPOSITE SEX

Csizmadia v. Fauver, 746 F.Supp. 483 (D. N.J. 1990). Male prisoners challenged a policy of allowing female guards to patrol housing units where they might see naked prisoners, and the guards challenged the prison policy of designating certain positions as "male only" or "female only." Upon consolidation of the actions, the federal district court found that the inmates had no clearly established privacy or free exercise right in not being viewed naked or in states of undress by opposite-sex corrections officers at the time they filed the Section 1983 action against corrections officers and officials, thus officials were entitled to qualified immunity against the inmates' claims for damages. It was also found that the corrections officers did not have a clearly established right to serve in all staff positions involving opposite-sex inmates at the time they filed the suit complaining of the corrections department's gender-based restrictions, and thus the department officials were entitled to qualified immunity against the officers' claims for damages. (New Jersey Department of Corrections)

U.S. District Court
OBSERVATION BY
STAFF

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
HEALTH

Harris v. Thigpen, 727 F.Supp. 1564 (M.D. Ala. 1990). Inmates in the Alabama prison system, who were administratively segregated as Acquired Immune Deficiency Syndrome (AIDS) carriers, brought action against prison officials alleging that Alabama's testing of inmates for AIDS upon induction into, and before discharge from, the penal system violated the Constitution. The district court denied the relief requested and found that testing did not constitute an unreasonable search or seizure and did not violate the inmates' privacy rights.

According to the court, Alabama's testing of inmates for Acquired Immune Deficiency Syndrome (AIDS) upon induction into, and before discharge from, the state penal system did not constitute either an unreasonable search and seizure or a violation of the inmates' right to privacy. The regulations were reasonably related to prime considerations of penal confinement, safety and security, and there was no alternative method to protect the safety of other inmates and custodian officers and the security of the institution from the spread of disease.

Although the court noted that "the basic claims of the plaintiffs are strongly appealing to the humanitarian nature...", nevertheless, the court ruled that the case involved a balance between the rights of the affected inmates with those of unaffected inmates and with the State's rights and duties to manage the prison. Relying on a number of other court decisions upholding a state's right to require blood tests in various contexts, the court found that Alabama's policy did not violate the inmates' constitutional rights to privacy nor was it an unlawful search and seizure. (Alabama Prison)

U.S. District Court
STAFF OF
OPPOSITE SEX

Merritt-Bey v. Salts, 747 F.Supp. 536 (E.D. Mo. 1990), affirmed, 938 F.2d 187. A black male inmate brought a Section 1983 action against correctional officers, alleging that a strip search violated his Fourth Amendment rights. On the defendants' motion for summary judgment, the U.S. District Court found that the inmate's Fourth Amendment rights were not violated when he was strip searched prior to being placed in administrative segregation after having committed two conduct violations, consisting of verbal assault of a correctional officer and carrying contraband, within a span of 15 minutes. According to the court, the search was reasonably related to prison objectives, including the prevention of introduction of weapons or other contraband into the institution. The presence of a female prison guard during the search did not present a constitutional violation; the fact that female correctional officers might be able to view strip searches of male prisoners did not render the search policy violative of the prisoners' privacy rights. There were legitimate penological interests in both "providing equal employment opportunities and the security interests in deploying available staff efficiently." Even assuming that the correctional officer stated, during the strip search of the inmate, "[s]o, it's not true what they say about all blacks anyway," there was no constitutional violation. The inmate alleged only a single, isolated remark, which on its face was not harassing, and does not comprise a constitutional violation. (Potosi Correctional Center, Missouri)

State Appeals Court
STAFF
DRUG TESTING

Seelig v. Koehler, 554 N.Y.S.2d 201 (A.D. 1 Dept. 1990). An Article 78 proceeding was brought seeking a judgment enjoining implementation of a corrections department directive authorizing additional mandatory random drug tests for probationary corrections officers. The petition was dismissed by the state supreme court, and appeal was taken. The supreme court, appellate division, affirming the decision, found that two additional random, unannounced, drug tests of all probationary correction officers were supported by substantial governmental interest and did not constitute unreasonable searches and seizures or a violation of the right of privacy, though samples were obtained under direct observation, in that the membership in a paramilitary force such as the Corrections Department diminishes the individual's privacy expectations and since, even with advance notice, over two percent of the probationers had tested positive for drug use in recent years. The court found no additional privacy interest implicated by the direct observation of officers, since they were already required to submit to other drug tests requiring a urine sample under direct supervision. (New York Corrections Department)

U.S. Appeals Court
STAFF OF
OPPOSITE SEX

Timm v. Gunter, 917 F.2d 1093 (8th Cir. 1990), cert. denied, 111 S.Ct. 2807. Prisoners at an all-male Nebraska state penitentiary brought a class action alleging that allowing female guards to perform pat searches and see them nude or partially nude violated their right to privacy, and the female guards asserted equal employment claims. The U.S. District Court granted the prisoners partial relief, and the male prisoners and female guards appealed. The court of appeals found that allowing female guards to pat search male prisoners on the same basis as male guards was a reasonable regulation as applied

at the Nebraska State Penitentiary, and so did not violate any privacy rights which the prisoners retained. The pat searches were performed in a professional manner that did not include instruction to deliberately search an inmates' genital and anal areas, the prisoners' privacy rights had to be balanced against legitimate equal employment rights of male and female guards and against internal security needs of the prison, and the administrators' decision that allowing pat searches on a sex-neutral basis was not an unreasonable regulation. In addition, the surveillance of male prisoners by female guards performed on the same basis as surveillance of prisoners by male guards did not violate any privacy interests which prisoners might retain. The sex-neutral visual surveillance of prisoners and the goal of the prison security was rationally connected, the prisoners had alternative means available to retain their privacy, and prison administrators were in the best position to balance competing interests present in the context of visual surveillance techniques. It was also found that the differences in privacy protections afforded male and female prisoners in the Nebraska penal system did not violate the Fourth Amendment equal protection, although female prisoners were afforded more privacy protections at an all-female institution than male prisoners were afforded at the all-male institution. The male and female prisoners were found to be not similarly situated due to differences in security concerns at the two institutions that reflected differences in the number and age of prisoners, the kinds of crimes committed by them, the length of sentences, and the frequency of incidents involving violence, escape, or contraband. (Nebraska State Penitentiary)

U.S. Appeals Court
OBSERVATION BY
STAFF

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. Appeals Court
ATTORNEY-CLIENT
COMMUNICATION
MEDIA

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. District Court
MEDICAL ISSUES

Benavides v. Bureau of Prisons, 771 F.Supp. 426 (D. D.C. 1991). An inmate sought the release of medical records compiled by the Bureau of Prisons. The district court found that the Bureau regulations giving the inmate's treating physician the responsibility to determine which records the inmate may have access to, was inconsistent with requirements of the Privacy Act. The intention of the Act is to enable "any individual to gain access to his (government) record or to any [government-maintained] information pertaining to him." The Act specifically requires agencies to produce medical records. It permits agencies to devise "special procedures" for disclosure of medical records, but the purpose of such procedures must be to protect the individual's privacy from intrusion by others, not to withhold records from the person who is himself the subject of the records. (Federal Correctional Institute, Bastrop, Texas)

U.S. Appeals Court
STAFF OF
OPPOSITE SEX

Cookish v. Powell, 945 F.2d 441 (1st Cir. 1991). An inmate sued prison officials pursuant to Section 1983 alleging that a visual body cavity search conducted in the presence of female correctional officers violated his Fourth Amendment rights. The U.S. District Court denied the prison officials' motion for summary judgment on the basis of a qualified immunity defense, and the prison officials appealed. The court of appeals found that the prison officials' reasonable, although mistaken, conclusion that an emergency existed, permitting the search within visual range of prison guards of the opposite sex, did not subject the prison officials to personal liability. In this case, an emergency obviously existed during a disturbance and riot, and the court found that the defendants could have reasonably concluded that an emergency still existed in the immediate aftermath of the

riot at which time the search took place. As long as this conclusion was reasonable, even if it were mistaken, the defendants should not be held liable. (New Hampshire State Prison)

U.S. District Court
AIDS
CONFIDENTIAL
INFORMATION

Doe v. City of Cleveland, 788 F.Supp. 979 (N.D. Ohio 1991). An arrestee brought a civil rights action against a city. The district court found that the arrestee's Fourth Amendment rights were not violated by 27-hour detention, as a jurisdiction providing judicial determinations of probable cause within 48 hours of arrest, as a general matter, did not violate a persons Fourth Amendment rights. The court also found that regulations which permitted the disclosure of the fact that the prisoner was suspected of having AIDS only to certain persons did not violate the prisoner's constitutionally-protected privacy rights; and evidence did not show that the city had a policy of deliberately failing to train itself with respect to confidentiality of booking records when the fact that the prisoner was suspected of having AIDS was improperly disclosed. (Sixth Police District Headquarters, Cleveland Police Department, Ohio)

U.S. Appeals Court
AIDS
RIGHT OF PRIVACY

Harris v. Thigpen, 941 F.2d 1495 (11th Cir. 1991). Inmates who had tested positive for the Human Immunodeficiency Virus (HIV) brought a civil rights action challenging various policies and procedures of the Alabama Department of Corrections. Non-HIV general population inmates intervened as defendants and the case was consolidated with similar actions pending in various federal courts. The U.S. District Court denied relief and the inmates appealed. The court of appeals found that, assuming that prisoners who had tested positive for HIV enjoyed constitutionally protected privacy interest in preventing non-consensual disclosure of their HIV-positive diagnoses, such disclosure, as a result of the Alabama DOC policy of uniformly segregating HIV-positive inmates from the general prison population, did not violate such prisoners' privacy rights as any such right was outweighed by legitimate penological interests of the DOC. (Alabama Department of Corrections)

U.S. District Court
BLOOD TEST

Jones v. Murray, 763 F.Supp. 842 (W.D. Va. 1991), modified, 962 F.2d 302. A prisoner filed suit challenging the constitutionality of Virginia legislation which directs the Virginia Department of Corrections to take and store the blood of a convicted felon for subsequent DNA analysis. Prison officials moved for summary judgment. The U.S. District Court granted the motion, finding that the legislation did not violate the plaintiffs Fourth Amendment right. The court found that, to the extent that the DNA analysis reveals identification characteristics, the plaintiffs indicated no legitimate expectation of privacy; the state has a significant interest in deterring and detecting recidivist acts by convicted felons, and the search in extracting blood was minimal. The court also found that the Virginia legislation requiring convicted felons to provide blood samples for DNA testing did not violate the ex post facto clause, even though the prisoners convicted prior to the statute's effective date were required to provide the state with a blood sample prior to release from prison. On appeal, the court modified the lower court ruling, finding that the legislation violated the ex post facto clause to the extent that it could be enforced to modify mandatory parole. (Virginia Department of Corrections)

U.S. District Court
MEDIA
RIGHT OF PRIVACY

Jones/Seymour v. LeFebvre, 781 F.Supp. 355 (E.D. Pa. 1991), affirmed, 961 F.2d 1567. An inmate brought a civil rights action against a prison official claiming that his constitutional rights were violated when he was filmed by a television cameraman, without his consent, while he was walking down a main public corridor in the prison. The district court found that the inmate's allegation that he was filmed without his consent failed to state a claim for violation of the Fourth Amendment right to be free from unreasonable searches and seizures, as there is no legitimate expectation of privacy in a public corridor in a prison. The inmate did not state a claim for violation of a privacy right protected by the Fourteenth Amendment. Even if the film was broadcast, no revelation of private facts or information was asserted. All that might be revealed to the public were facts which were already public, that the inmate had been convicted and was incarcerated in the state penitentiary. An administrative directive which combined mandatory language that an inmate's consent be obtained before he was individually filmed, with a disclaimer that the directive was not intended to create any rights; did not create a predictable liberty interest on which the inmate could base a claim of violation of procedural due process. (State Correctional Institute, Graterford, Pennsylvania)

U.S. District Court
AIDS
MEDIA

Lipinski v. Skinner, 781 F.Supp. 131 (N.D.N.Y. 1991). An arrestee brought an action against law enforcement and prison officials alleging that they violated his constitutional rights by disclosing his HIV-positive status to a newspaper. The arrestee sought to depose the newspaper's reporters and editors in order to learn the source of their information. The newspaper moved to quash the depositions and to obtain a protective order. The district court found that the editorial writer failed to demonstrate that the confidentiality of his sources or information were jeopardized by the mere taking of his deposition and,

thus, was not entitled to absolute immunity under New York's Shield Law. Under New York law, journalists for the newspaper were entitled to qualified immunity from the arrestee's attempt to depose them. The journalists were responsible for articles which appeared some time after the original article disclosing the HIV-positive status and, thus, it was unlikely that the journalists possessed information regarding the initial disclosure. The newspaper editors were not entitled to qualified immunity under New York law. The reporter who had originally reported the story had told the arrestee that she was assigned the story by one of her editors. Discovering who gave the reporter the lead and where that individual acquired that information was critical to the arrestee's claim that law enforcement or prison officials released confidential medical information about him in violation of his rights, and the information the arrestee sought was not obtainable from other sources. The arrestee's discovery, however, was limited to questions relative to the initial disclosure of his HIV test results to the newspaper. (Broome Co. Jail, New York)

U.S. District Court
AIDS
RIGHT OF 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. Appeals Court
AIDS

Robbins v. Clarke, 946 F.2d 1331 (8th Cir. 1991). A prisoner brought a Section 1983 action alleging conspiracy to conceal the identity of prisoners testing positive for human immunodeficiency virus (HIV), cause of AIDS (Acquired Immune Deficiency Syndrome), failure to take precautions to protect healthy prisoners from exposure to HIV, and failure to take precautions to protect uninfected prisoners from exposure to hepatitis and tuberculosis. The U.S. District Court dismissed the complaint, and the prisoner appealed. The court of appeals found that the district court decision that prison conditions, including the presence of HIV-positive prisoners in the general prison population, was not cruel and unusual punishment collaterally estopped litigation of the issue that the Eighth Amendment was violated by involuntary and unprotected exposure to prisoners testing positive for HIV, and cause of AIDS as the issues were the same. Furthermore, the district court decision that evidence failed to show higher levels of infectious and contagious diseases among inmates collaterally estopped litigation of the claim that the prisoners' rights were violated by the failure to make an effort to protect them from exposure to hepatitis and tuberculosis. (Medium Security, Nebraska State Penitentiary)

U.S. District Court
VIEW BY STAFF
STAFF OF
OPPOSITE SEX

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 inmate's Fourth and Fourteenth Amendment right to privacy was not violated on grounds that female correctional officers had an opportunity to view inmates in various stages of nudity while they showered, used the toilet, or during strip searches. The prison rules prohibited female guards from conducting strip searches except in emergency situations, privacy screens precluded full view of inmates while they showered, and brief observations which may have revealed inmates in various stages of undress during periodic tier checks were a necessary part of the correctional officer's duties and essential to maintain security of the institution. (Washington State Penitentiary, Walla Walla, Washington)

U.S. District Court
TELEPHONE CALLS

U.S. v. Noriega, 764 F.Supp. 1480 (S.D. Fla. 1991). An inmate moved to dismiss an indictment charging narcotics-related offenses. The district court found that the monitoring and recording of the inmate's telephone conversations with his attorney did not prejudice the inmate and did not violate the Sixth Amendment right to counsel, as the receipt of the attorney-client conversations was not intentional, and no information contained in the conversations was used in any way by the prosecution. In addition, the inmate consented to the prison recording of telephone conversations in their entirety, and, thus, Title III of Omnibus Crime Control and the Safe Streets Act permitted the interception of telephone calls, where the orientation manual, telephone sticker, and consent form contained warnings that use of prison telephone constituted a consent to monitoring, and where the inmate signed a document explicitly stating that use of prison telephones constituted a consent to monitoring. The inmate had no legitimate expectation of privacy in telephone conversations which he knew were subject to monitoring and recording by prison officials, and, thus, the Fourth Amendment was inapplicable. It was also found that trial subpoenas could not be used to obtain recordings of the inmate's telephone conversation before they were to be offered in evidence, as the first subpoena was issued by the prosecution before the tapes even existed, and the subpoenas were a broad dragnet, aimed at bringing in anything and everything contained in recordings regardless of identifiable or foreseeable significance and were an unwarranted expedition without leave of court. (Metropolitan Correctional Center, Miami, Florida)

- U.S. District Court
OBSERVATION BY
STAFF
RIGHT OF PRIVACY
- Arey v. Robinson, 819 F.Supp. 478 (D. Md. 1992). An inmate brought an action against prison officials, alleging his right to privacy was violated by the design of a prison bathroom and that he was wrongfully found guilty of violating disciplinary rules. On report and recommendation of a United States Magistrate Judge, the district court found that the design of bathroom facilities at the prison dormitory violated the inmate's privacy rights. The combined effect of the open dormitory and open bathroom area put inmates on display virtually twenty-four hours a day no matter how personal an activity they were involved in, and the state failed to show that the open bathroom area was necessary to prevent assaults. (Jessup Pre-Release Unit, Maryland Correctional Pre-Release System)
- U.S. District Court
RIGHT OF PRIVACY
STAFF OF OPPOSITE
SEX
- Canedy v. Boardman, 801 F.Supp. 254 (W.D. Wis. 1992), reversed, 16 F.3d 183. A male prison inmate brought a Section 1983 civil rights suit alleging that a female prison guard's participation in a strip search and daily observations of male inmates violated the inmate's Fourth Amendment right to personal privacy. The district court found that the female prison guard's observation of male inmates during a strip search and in various stages of undress did not violate the male inmates' right of personal privacy. The institution had a responsibility to maintain security and to accommodate the rights of female employees to equal employment opportunities. The appeals court reversed the decision and ruled that the inmate was entitled to a reasonable accommodation to prevent unnecessary observations of his naked body by female guards. (Columbia Correctional Institution, Portage, Wisconsin)
- U.S. District Court
ATTORNEY-CLIENT
COMMUNICATIONS
- Casey v. Lewis, 834 F.Supp. 1553 (D. Ariz. 1992). Prisoners brought an action alleging that prison officials violated their right of access to courts. The prison system's treatment of prisoner telephone calls to attorneys violated the prisoners' right to access to courts. The prisoners were arbitrarily denied confidential attorney-client calls. The lack of a system-wide policy allowed individual prisons to set arbitrary standards that allowed for improper denial of calls and prison staff were not required to justify the denials in writing. Furthermore, the prisoners were forced to speak to their attorneys on monitored lines or within hearing range of prison staff. (Arizona Department of Corrections)
- U.S. Appeals Court
RIGHT OF PRIVACY
STAFF OF
OPPOSITE SEX
- Letcher v. Turner, 968 F.2d 508 (5th Cir. 1992). An inmate brought a Section 1983 action alleging that the presence of female guards during a strip search invaded his constitutional right to privacy. The U.S. District Court dismissed the case, and the inmate appealed. The appeals court, affirming the decision, found that the presence of female guards during a strip search of a male inmate following a food throwing incident that involved eighteen or nineteen inmates did not violate a constitutional right of privacy. (Winn Correctional Center, Louisiana)
- U.S. District Court
AIDS
RIGHT OF PRIVACY
- Muhammad v. U.S. Bureau of Prisons, 789 F.Supp. 449 (D.D.C. 1992). An inmate sued the Bureau of Prisons, seeking information pursuant to the Freedom of Information Act (FOIA) and Privacy Act, and the Bureau moved to dismiss. The district court found that the inmate's failure to request documents directly from agencies constituted "failure to exhaust administrative remedies;" thus, his suit was premature, and the court would dismiss his Freedom of Information Act and Privacy Act claims without prejudice to renewal once administrative remedies had been exhausted. (United States Bureau of Prisons)
- U.S. District Court
RIGHT OF PRIVACY
STAFF OF
OPPOSITE SEX
- Riddick v. Sutton, 794 F.Supp. 169 (E.D.N.C. 1992). An inmate brought an action against a superintendent and female guards to recover for violation of constitutional rights by female guards viewing the inmate in a state of undress while using the shower or toilet. A U.S. Magistrate Judge recommended granting the defendants' summary judgment motion. The district court adopted the recommendation and found that allowing female guards to work posts that involved the possibility of guards viewing a nude inmate using the shower or toilet was reasonably related to legitimate penological interests and was a de minimis infringement of the right to privacy. The practice was rationally related to maintaining internal security and equal employment hiring. In addition, inmates were allowed to take a towel into the shower or a newspaper to the toilet, the bottom panels of the shower windows were painted, cafe-type doors were added to the bathroom areas, and the female guards maintained a professional demeanor. (Currituck Correctional Center, Maple, North Carolina)
- U.S. Appeals Court
PRIVACY ACT
RECORDS
- Sellers v. Bureau of Prisons, 959 F.2d 307 (D.C. Cir. 1992). An inmate filed an action under the Privacy Act against the Bureau of Prisons and Parole Commission, claiming that the agencies maintained incorrect information in the inmate's files. The United States District Court granted summary judgment for the agencies, and the inmate appealed. The appeals court, reversing and remanding, found that the agencies did not satisfy the requirements of the Privacy Act by simply noting in the inmate's files that he disputed some of the information contained therein. The challenged information was capable of being verified. (District of Columbia)

- U.S. Appeals Court
DRUG TESTING
RIGHT OF PRIVACY
STAFF OF
OPPOSITE SEX
- Sepulveda v. Ramirez, 967 F.2d 1413 (9th Cir. 1992), cert. denied, 114 S.Ct. 342. 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. Appeals Court
TELEPHONE CALLS
- U.S. v. Horr, 963 F.2d 1124 (8th Cir. 1992). A defendant was convicted in the U.S. District Court of conspiring to possess a firearm in prison and to escape, and attempting to possess a firearm in prison and to escape, and he appealed. The court of appeals found that the taped telephone conversations in which the prison inmate attempted to arrange an escape were admissible because the inmate, who was instructed at the prison orientation that inmate telephone calls were monitored and recorded, signed a form indicating that he was aware of the prison's telephone policy, and, thus, implied to the taping of his phone conversations. In addition, the defendant's allegations that he would have been labeled a prison "snitch" if he had reported to prison authorities that a fellow inmate had threatened to kill him if he did not come up with money to buy a gun to be used in an escape attempt was inadequate, without more, to demonstrate that the defendant had no reasonable opportunities to avoid the harm, as was required for a jury instruction on law of coercion or duress in prosecution of the inmate. (Federal Medical Center, Rochester, Minnesota)
- 1993
- U.S. District Court
NUDITY
STAFF OF
OPPOSITE SEX
- Canell v. Armenikis, 840 F.Supp. 783 (D.Or. 1993). Penitentiary inmates brought a Section 1983 action against prison officials, challenging female guards' viewing of unclothed male inmates. The defendants moved to dismiss for failure to state a claim. The district court found that the Constitution does not prohibit a female guard from viewing an unclothed male inmate under circumstances in which identical viewing would be proper if the viewer were a male guard. According to the court, the gender of the guard is irrelevant as long as there would be justification for the guard to view the unclothed male inmate and the guard behaves appropriately. (Oregon State Penitentiary)
- U.S. District Court
NUDITY
RIGHT OF PRIVACY
- Canell v. Beyers, 840 F.Supp. 1378 (D.Or. 1993). A prison inmate brought a suit against prison officials and a county, challenging body cavity searches allegedly conducted in full view of clerical workers, other inmates, or other bystanders. On a defense motion to dismiss for summary judgment on grounds of qualified immunity, the district court found that the prison officials were not entitled to qualified immunity from civil rights liability even if such viewings by clerical workers, other inmates, and other bystanders were inadvertent. There was evidence that screening was not always in place. The county, which jointly operated the prison facility, which assisted in its design and construction, and which had considerable input in its procedures and duty to implement its policies, was a proper defendant. (Oregon Department of Corrections Intake Center)
- U.S. Appeals Court
RIGHT OF PRIVACY
STAFF OF
OPPOSITE SEX
- Fortner v. Thomas, 983 F.2d 1024 (11th Cir. 1993). Inmates brought a Section 1983 action against prison officials alleging violations of their constitutional right to privacy. The United States District Court denied an amendment to the complaint to add disciplinary officers as additional defendants, dismissed the due process claims, and dismissed the complaint on the ground of qualified immunity. The inmates appealed. The appeals court, affirming in part, reversing in part and remanding, found that the inmates have a constitutional right to bodily privacy. However, the inmates' constitutional right to bodily privacy was not clearly established at the time female correctional officers viewed inmates while they were nude and, thus, the correctional officials were entitled to qualified immunity from civil damages liability. (Georgia State Prison)
- U.S. District Court
RIGHT OF PRIVACY
TELEPHONE CALLS
- Griffin-El v. MCI Telecommunications Corp., 835 F.Supp. 1114 (E.D.Mo. 1993) affirmed 43 F.3d 1476. 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
CONFIDENTIAL
INFORMATION
- Latimore v. Widseth, 986 F.2d 292 (8th Cir. 1993), cert. denied, 114 S.Ct. 1124. An inmate brought a Section 1983 action against a prosecutor to recover for injuries caused by a prison attack after the prosecutor revealed to the media that the inmate had agreed to

testify against gang members in a murder case. The U.S. District Court denied the prosecutor's motion for summary judgment, and he appealed. The court of appeals, affirming and remanding, found that the prosecutor was not entitled to qualified immunity in the inmate's 1983 action for being assaulted as a result of the prosecutor's statements. The plea agreement indicated that the inmate's statements regarding roles of the members in the murder were to remain confidential unless the inmate was called as a government witness. The prosecutor knew or should have known that the public revelation regarding the inmate's willingness to testify would likely lead to a prison attack. The court also found that whether the prison attack against the inmate was caused by the prosecutor's statements to the media involved questions of fact precluding summary judgment, although the inmate's name was on a witness list and his willingness to cooperate was matter of public record of the plea hearing. (Minnesota)

U.S. Appeals Court
NUDITY
STAFF OF
OPPOSITE SEX

Strickler v. Waters, 989 F.2d 1375 (4th Cir. 1993), cert. denied, 114 S.Ct. 393. An inmate in a city jail brought a suit against the Commonwealth of Virginia, the city, the city sheriff, and the Department of Corrections for their alleged violation of his constitutional rights concerning his conditions of confinement. The U.S. District Court granted the defendants' motions for summary judgment, and the inmate, appealed. The court of appeals found that the sheriff was not liable under Section 1983 for his subordinates' alleged violation of the inmate's constitutional rights when the inmate's genitals were allegedly exposed to staff members of the opposite sex. The sheriff had instituted precautions to prevent such unreasonable exposure by placing curtains on the showers and taking steps to ensure that female officers walked the cell block only at regular intervals so that their appearance could, to some extent, be anticipated. (Portsmouth City Jail, Virginia)

U.S. District Court
PSYCHOLOGICAL
SERVICES
STAFF

Thompson v. City of Arlington, Tex., 838 F.Supp. 1137 (N.D. Tex. 1993). A police officer sued a city police department and individual employees of the city alleging that their requirement that she disclose mental health records violated her civil rights. The city required her to disclose records as they were created in her treatment, following a suicide attempt, as a condition for considering her for reinstatement to full duty. The defendants moved to dismiss. The district court found that the privacy interests of the police officer in her mental health records were outweighed by the public interest of the city police department in having full information in their hands as to whether the officer was mentally capable of performing her job. The scope of information sought by the city police department was not constitutionally too great. The court found that the individual defendants were protected by the doctrine of qualified immunity; however, the allegations stated a claim against the city under Title VII and the Texas Commission on Human Rights Act. (Arlington Police Department, Arlington, Texas)

1994

U.S. Appeals Court
AIDS
CONFIDENTIAL
INFORMATION

A.L.A. v. West Valley City, 26 F.3d 989 (10th Cir. 1994). An arrestee brought an action against a city and police officers. The U.S. District Court found that the arrestee lacked standing and he appealed. The appeals court, reversing and remanding, found that the arrestee's allegations of direct psychological injury stemming from police officers' statements that the arrestee had human immunodeficiency virus (HIV) were sufficient to satisfy the "injury in fact" requirement for standing to pursue constitutional and state law claims based on such disclosure. Although subsequent tests showed that the arrestee was not in fact infected with HIV, it was believed that the arrestee had HIV at the time the statements were made. The actual validity of test results on which officers based their statements was irrelevant to whether the arrestee had a reasonable expectation of privacy in the results. (West Valley City Police Department, Utah)

U.S. Appeals Court
NUDITY
RIGHT OF PRIVACY
STAFF OF
OPPOSITE SEX

Canedy v. Boardman, 16 F.3d 183 (7th Cir. 1994). An inmate sued a prison for Section 1983 violations resulting from invasion of privacy where female prison guards were routinely allowed to conduct strip searches and observe his naked body. During a shakedown search of his housing unit, two female prison guards searched him. The U.S. District Court dismissed the suit, and the inmate appealed. The appeals court found that the inmate was entitled to reasonable accommodations to prevent unnecessary observations of his naked body by female guards. The court noted that while all forced observations or inspections of a naked body implicate privacy concerns, it is generally considered a greater invasion to have one's naked body viewed by a member of the opposite sex. (Columbia Correctional Institution, Portage, Wisconsin)

U.S. Appeals Court
AIDS
RIGHT OF PRIVACY

Doe v. Wigginton, 21 F.3d 733 (6th Cir. 1994). An inmate brought a Section 1983 action against prison officials in their official capacity for their failure to test him for Human Immunodeficiency Virus (HIV) infection upon request in accordance with state policy, and for subsequent disclosure to a corrections officer of his HIV infection. The U.S. District Court granted summary judgment in favor of the defendants and the inmate appealed. The court of appeals, affirming the decision, found that the inmate's alleged constitutional

right to privacy was not violated due to the disclosure to a corrections officer of the inmate's HIV infection. (Kentucky State Reformatory)

U.S. Appeals Court
OBSERVATION BY
STAFF
RIGHT OF
PRIVACY

Elliott v. Lynn, 38 F.3d 188 (5th Cir. 1994). A prisoner who was subjected to a visual body cavity search in the general presence of other inmates, guards and nonsearching officers brought a Section 1983 action against the Secretary of the Louisiana Department of Corrections, alleging that the search violated his Fourth Amendment rights. The U.S. District Court entered summary judgment for the Secretary and the prisoner appealed. The appeals court, affirming the decision, found that although the privacy of the prisoner was compromised, the search was constitutionally reasonable. An emergency situation created by an increasing number of murders justified the immediate search of inmates. Because the crisis required immediate action and because of the large number of inmates, the Secretary of the Louisiana Department of Corrections was justified in conducting strip searches in the most time-efficient place and manner available. This meant the searches were conducted on a collective rather than individual basis. Although the Secretary's airplane pilot and news media personnel could have observed the search from a walkway that opened into the room where the searches were conducted, the record did not show that they demonstrated any interest in viewing the searches. (Louisiana State Penitentiary)

U.S. Appeals Court
MAIL

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. District Court
DRUG TESTING
RIGHT OF PRIVACY

Hansen v. California Dept. of Corrections, 868 F.Supp. 271 (N.D.Cal. 1994). An employee of the California Department of Corrections brought a suit seeking a temporary restraining order to prevent a member of the staff from observing her as she produced a urine sample pursuant to an agreed upon drug test. The district court found that the department could not require that visual observation take place, absent a showing of a specific reason to fear that the employee would tamper with the sample. The court noted that visual observation of an employee undergoing a urine test is only appropriate when deemed to be necessary in order to ensure reliability of a sample. (California Department of Corrections)

U.S. District Court
RIGHT OF PRIVACY

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 the prisoner alleged a cognizable claim for relief against a police officer for violation of his right to privacy by the alleged sexual assault of the prisoner. (Pacific Grove Police Department and Monterey County Sheriff's Department, California)

U.S. District Court
NUDITY
OBSERVATION BY
STAFF
RIGHT OF
PRIVACY
STAFF OF
OPPOSITE SEX

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
TELEPHONE CALLS

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 non-inmates. (Shawangunk Correctional Facility, New York)

U.S. District Court
ATTORNEY-CLIENT
COMMUNI-
CATIONS
TELEPHONE CALLS

Young v. Larkin, 871 F.Supp. 772 (M.D. Pa. 1994), affirmed, 47 F.3d 1163. A pretrial detainee filed a civil rights action against prison officials complaining about treatment during pretrial detention. On the defendants motion for summary judgment the district court found that the detainee's civil rights were not violated by his alleged lack of private access to a telephone for legal phone calls, as calls were made from his cell rather than from an enclosed room. The inmate was single-celled, and the mere allegation that prison guards had the opportunity to listen to his conversations was insufficient to show a violation of his right of access to courts. (State Correctional Institution, Dallas, Pennsylvania)

1995

U.S. District Court
AIDS
MEDICAL CARE

Adams v. Drew, 906 F.Supp. 1050 (E.D.Va. 1995). A pretrial detainee who was HIV positive brought a civil rights suit against prison officials, alleging the officials violated his right of privacy and failed to protect him from other inmates. The district court granted summary judgment for the officials, in part, ruling that the detainee did not have a right to privacy of medical information where it was alleged that prison medical staff inadvertently allowed other inmates to discover that the prisoner was receiving AZT. The court also found that prison officials who did not know that the detainee was in danger of being attacked by other inmates could not be held liable under the due process clause. However, the court found that summary judgment was precluded for the detainee's claim that officials displayed deliberate indifference to his safety. The inmate was attacked by other inmates after he had asked officials that he be moved from the cell block in which he was incarcerated because he believed he would be assaulted. (Virginia Beach Correctional Center, Virginia)

U.S. Appeals Court
AIDS

Anderson v. Romero, 72 F.3d 518 (7th Cir. 1995). An inmate who was infected with the human immunodeficiency virus (HIV) sued prison officials alleging violation of his constitutional right of privacy and the Illinois AIDS Confidentiality Act. The district court denied the officials' motion to dismiss and they appealed. The appeals court found that the inmate's claim regarding disclosure of his HIV status to other inmates or prison staff and other measures taken against him on the basis of his HIV status was barred by the doctrine of official immunity. The court noted that HIV-positive inmates can be segregated from the rest of the population, in view of the prevalence of HIV in prisons, the amount of violence and homosexual intercourse. (Stateville Penitentiary, Illinois)

U.S. District Court
MEDICAL CARE

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. 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. (New York Department of Correctional Services)

U.S. District Court
RIGHT OF PRIVACY
NUDITY

Ellis v. Meade, 887 F.Supp. 324 (D.Me. 1995). A pretrial detainee filed a § 1983 action against a jail officer and jail administrator seeking compensation for alleged mistreatment while confined at the jail. The district court entered judgment for the defendants, finding that the male officer's comments to the detainee, "How are you doing little boy," and "How's the little guy doing," did not constitute sexual harassment. The court also held that the officer's patting of the detainee on the buttocks did not constitute a "search" for Fourth Amendment purposes and did not violate the detainee's right to privacy, nor did it constitute "punishment" in violation of the detainee's due process rights. The court found that the officer's actions of patting the detainee were immune from liability on an assault and battery claim and that the officer's observation of the detainee while naked did not violate the detainee's Fourth Amendment privacy rights. The court noted that the officer's purpose in patting the inmate was not to punish, but to placate the detainee, which was rationally connected to the officer's stated purpose and was not excessive. The court commented that while the officer's actions were possibly mistaken and ill-advised, they were not so egregious that they exceeded as a matter of law the scope of any discretion the officer could have possessed. (Penobscot County Jail, Maine)

U.S. Appeals Court
STAFF
PSYCHOLOGICAL
SERVICES

Flynn v. Sandahl, 58 F.3d 283 (7th Cir. 1995). A corrections officer brought a § 1983 action seeking an injunction to prevent a warden from ordering him to submit to a psychological examination. The district court granted summary judgment for the warden based on qualified immunity. The appeals court affirmed, finding that the warden did not deny the officer due process by failing to provide him with a hearing in which he could challenge the necessity of the examination. The court also found that even if the warden's order violated the officer's right to privacy, the officer's right would give way to considerations of public interest. The warden had informed the officer of the complaints that were the basis for the examination and

the officer refused the warden's offer to meet to discuss the complaints. The officer's coworkers had complained that the officer had threatened them with physical harm. The court noted that corrections officers must be able to depend on one another to carry out their duties and to protect each other. (Shawnee Correctional Center, Illinois)

U.S. Appeals Court
BLOOD TEST

Gilbert v. Peters, 55 F.3d 237 (7th Cir. 1995). Several offenders who were convicted for sex offenses challenged an Illinois statute that was enacted after they had been convicted, requiring all incarcerated sex offenders to submit blood specimens to the Department of State Police prior to final discharge, parole or release. The district court dismissed the action with prejudice and the appeals court affirmed, finding that the statute did not violate the ex post facto clause. The court held that the ex post facto clause does not prohibit every alteration of a prisoner's confinement that may work to his disadvantage, but that only measures which are both retroactive and punitive fall within the purview of the clause. The court held that any sanctions that might result from an inmate's refusal to comply with the statute would be disciplinary measures and would not violate the ex post facto clause. (Dixon Correctional Center, Illinois)

U.S. Appeals Court
STAFF OF OPPOSITE
SEX

Hayes v. Marriott, 70 F.3d 1144 (10th Cir. 1995). A male prison inmate brought a § 1983 action against officials alleging violation of his Fourth, Eighth and Fourteenth Amendment rights during a body cavity search. The inmate alleged that the search was conducted in view of several female prison officials and staff. The district court dismissed the case and the inmate appealed. The appeals court affirmed in part, reversed in part, and remanded the case for further proceedings, finding summary judgment was precluded by material issues of fact concerning the reasonableness of the search. The inmate alleged that he was unnecessarily subjected to the search in the presence of over 100 people, including female secretaries and case managers from other buildings. The court noted that the prison officials' explanation of the search was not sworn, did not include affidavits based on personal knowledge and did not explain which female staff members were allowed to view the search and what their functions were. (Arkansas Valley Correctional Facility, Colorado)

U.S. District Court
BLOOD TEST
SEARCHES

Kruger v. Erickson, 875 F.Supp. 583 (D.Minn. 1995). A state inmate petitioned for a writ of habeas corpus challenging the constitutionality of his having to provide a blood sample for deoxyribonucleic acid (DNA) analysis. The district court found that prison officials' taking of a blood sample from the state inmate for purposes of criminal investigation was properly done and did not offend the due process clause. Prison officials took blood from the inmate for DNA analysis pursuant to a Minnesota statute, procedures employed by the prison health services unit were performed according to medically acceptable protocols developed by the Minnesota Bureau of Criminal Apprehension (BCA), and a trained laboratory technician drew the blood. In addition, the withdrawing of the state inmate's blood did not amount to unnecessary and wanton infliction of pain prohibited by the Eighth Amendment. The withdrawal of the blood for DNA database was a search and seizure, but it was reasonable. The statute authorizing the test served a legitimate governmental interest of assisting investigation and prosecution of sex crimes, and a trained technician took the blood according to Minnesota BCA policy. The court also found that taking the state inmate's blood pursuant to Minnesota statute, which was not penal in nature, did not violate the ex post facto clause. (Minnesota Correctional Facility, Stillwater, Minnesota)

U.S. District Court
CONFIDENTIAL
INFORMATION
FREEDOM OF
INFORMATION
ACT

Kuffel v. U.S. Bureau of Prisons, 882 F.Supp. 1116 (D.D.C. 1995). An inmate brought an action to obtain documents under the Freedom Of Information Act (FOIA). The district court found that the social security numbers of the inmate's possible visitors were exempt from disclosure and that the names and addresses of the inmate's victims were exempt. A burglary-robbery suspect's album containing pictures and identification records obtained from law enforcement officers and the names of local law enforcement officers were exempt from disclosure. The identities of agents of the Bureau of Alcohol, Tobacco, and Firearms were exempt from disclosure. A case file pertaining to criminal prosecution against the inmate that remained pending was also exempt from disclosure. (Federal Medical Center, Rochester, Minnesota)

U.S. Appeals Court
BLOOD TESTS

Rise v. State, 59 F.3d 1556 (9th Cir. 1995). Prisoners filed a § 1983 suit alleging that collection of blood samples for a DNA data bank violated their Fourth Amendment rights and was a prohibited ex post facto punishment. The district court dismissed the case the appeals court affirmed. The appeals court held that the Oregon statute which required felons convicted of murder or specific sexual offenses to submit a blood sample for a DNA data bank was rationally related to the public's interest in preventing recidivism and in accurately identifying murderers and sex offenders. The court found that requiring a blood sample from felons, even if they were convicted before enactment of the statute, did not violate the ex post facto law because its purpose was not to punish convicted felons. The court also held that the felons' due process rights did not require a hearing before being required to submit a blood sample. The court noted that gathering genetic information for identification purposes from the blood of convicted murderers or sexual offenders does not constitute more than a minimal intrusion on their Fourth Amendment rights. (Oregon Department of Corrections)

U.S. Appeals Court
VISITOR
AUTOMOBILE

Spear v. Sowders, 71 F.3d 626 (6th Cir. 1995). A prison visitor sued prison officials under § 1983 alleging that a strip search and a search of her car when she visited an inmate violated the Fourth Amendment. The district court granted summary judgment for the officials on the basis of qualified immunity. The appeals court affirmed in part, reversed in part and remanded the case. The court found that information supplied by a confidential informant that an inmate "was receiving drugs every time a young unrelated female visitor visited" gave prison guards reasonable suspicion and justified a body cavity search of the visitor. The court noted that if prison officials had detained the visitor without probable cause and told her she would not be permitted to depart without submitting to a search, those circumstances would have violated her right to be free from being detained absent probable cause. Prison visitors can be subjected to some searches, such as a pat-down or metal detector sweep, merely as a condition of visitation absent any suspicion, and visitors seeking entry to a controlled environment acknowledge a lesser expectation of privacy. Prison officials may not search a visitor who objects without giving the visitor a chance to abort the visit and depart. A visitor does not consent to an invasive search simply by appearing at the prison for a visit even if he or she may consent to less invasive searches merely by entering the facility. However, the court found that fact questions existed about the exact scope of the search of the visitor's car or whether a sign was posted and visible notifying the visitor that her car would be searched, making summary judgment inappropriate with regard to that search. (Northpoint Training Center, Kentucky)

1996

U.S. District Court
MEDICAL CARE

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. District Court
RIGHT TO TREATMENT

Brown v. McBride, 929 F.Supp. 1132 (N.D.Ind. 1996). An inmate brought a pro se § 1983 action against prison officials. The district court held that the inmate failed to state an Eighth Amendment violation when he was allegedly placed in a section of a prison where he was denied education programs and rehabilitative programs. The court noted that prisoners are not entitled to educational, vocational, or rehabilitative programs. (Western Correctional Center, Indiana)

U.S. Appeals Court
NUDITY
OBSERVATION BY
STAFF

Canedy 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. District Court
STAFF
DRUG TESTING

Hansen v. California Dept. of Corrections, 920 F.Supp. 1480 (N.D.Cal. 1996). A female correctional officer who was subjected to direct observation of her urination during drug testing brought suit against corrections officials, seeking damages under § 1983 for unlawful search and violation of her right to privacy. The district court found that some defendants were entitled to qualified immunity as it was not clearly established at the time of the testing that direct observation under the presented circumstances violated constitutional norms. The court found that supervising officers were not absolutely immune from damages under California law as they did not exercise discretion, and that the immunity of the other defendants could not be determined on summary judgment. The court found that direct observation of the procedure violated the officer's right to privacy guaranteed by the California Constitution, absent reasonable, individualized and articulable suspicion of the intent to tamper with the sample. (CTF-Soledad, California)

U.S. Supreme Court
CONFIDENTIAL
INFORMATION
PSYCHOLOGICAL
SERVICES

Jaffee v. Redmond, 116 S.Ct. 1923 (1996). Survivors of a man whom a police officer shot and killed sued the officer and village, alleging that the officer violated the deceased's constitutional rights by using excessive force. The district court entered judgment for the plaintiffs and the defendants appealed. The appeals court reversed. On review by the U.S. Supreme Court the Court held that statements made by the defendant police officer to a licensed social worker in the course of psychotherapy and notes taken during their counseling sessions were protected by

federal law from compelled disclosure. The Court noted that privileged communications between a psychotherapist and her patient served the public interest by facilitating appropriate treatment for individuals suffering the effects of mental or emotional problems; if the privilege were rejected then confidential conversations between psychotherapists and their patients would surely be chilled. The Court ruled that the federal privilege that clearly applies to psychiatrists and psychologists also extends to licensed social workers in the course of psychotherapy, with equal force. (Village of Hoffman Estates, Illinois)

U.S. District Court
PRIVACY 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. District Court
PSYCHOLOGICAL
SERVICES

Molesky v. Walter, 931 F.Supp. 1506 (E.D.Wash. 1996). An inmate filed a § 1983 action against prison officials alleging he was compelled to undergo a psychological evaluation prior to his placement in minimum custody in violation of his constitutional rights. The district court granted summary judgment for the officials, finding that the examination did not involve a level of restraint which exceeded the inmate's sentence in such an unexpected fashion as to give rise to protection under the due process clause. The court also found that the examination did not amount to cruel and unusual punishment because it was not an atypical or significant hardship. According to the court, if the inmate had a right to privacy it was justifiably curtailed by the examination which promoted the legitimate penological purposes of determining the need for immediate medical, dental or mental health attention and identifying any need for the continuation of medications or other care. The court further found that the examination did not violate the inmate's equal protection rights. (Airway Heights Corrections Center, Washington)

U.S. Appeals Court
BLOOD TEST

Schlicher v. (NFN) Peters, I and II, 103 F.3d 940 (10th Cir. 1996). Prison inmates challenged the constitutionality and execution of a Kansas statute that provided for collection of blood and saliva specimens from certain convicted felons for use by the State Bureau of Investigation. The district court denied the inmates declaratory and injunctive relief and the inmates appealed. The appeals court affirmed, finding that the statute and its execution did not violate the Fourth Amendment prohibition against unreasonable search and seizure. (Kansas)

U.S. Appeals Court
AIDS

Tokar v. Armontrout, 97 F.3d 1078 (8th Cir. 1996). A former inmate infected with the HIV virus brought a § 1983 action against former prison officials claiming that conditions in the segregation unit for HIV-positive inmates constituted cruel and unusual punishment and that his placement in the unit violated his right to privacy. The district court granted summary judgment in favor of the officials and the appeals court affirmed. The appeals court held that the former inmate failed to show that the combination of broken windows and leaking roof in his housing unit caused a deprivation of an essential human need such as food, warmth or exercise; the inmate's cubicle did not have a window and the roof above his cubicle did not leak, and the inmate was able to use a blanket to stay warm before broken windows in the unit were repaired. The court also found that the inmate failed to establish that the alleged filthiness of toilet facilities in the housing unit violated the Eighth Amendment, noting that the inmate admitted that he had never asked for cleaning supplies. The appeals court held that the officials were entitled to qualified immunity with regard to the inmate's claim for violation of his right to privacy. The court noted that the inmate did not have a clearly established right to nondisclosure of his HIV status at the time he was segregated. (Jefferson City Correctional Center, Missouri)

U.S. District Court
TELEPHONE CALLS

U.S. v. Perez, 940 F.Supp. 540 (S.D.N.Y. 1996). Two detainees charged with various offenses moved to dismiss their indictment. The district court found that the detainees gave implied consent to the recording of telephone conversations while confined, despite the fact that there was no evidence of the detainees' actual knowledge of monitoring by officials. The detainees were provided with a handbook upon admission to the facility that explained the policy of monitoring inmate phone calls, and each detainee signed a form confirming his understanding that his use of telephones constituted consent to the monitoring policy. Signs were also posted near telephones in English and Spanish, warning inmates that calls were subject to monitoring. (Metropolitan Correctional Center, Federal Bureau of Prisons, New York City)

U.S. Appeals Court
TELEPHONE CALLS
RIGHT OF PRIVACY

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)

U.S. District Court
RIGHT OF PRIVACY
VISITOR

U.S. v. Walton, 935 F.Supp. 1161 (D.Kan. 1996). A defendant in a criminal case who was a detainee in a correctional institution moved to suppress a letter which was seized by a correctional officer. The district court ruled that the detainee did not have a reasonable expectation of privacy in the contents of an envelope he gave to an officer to be delivered to a visitor. The court found that the detainee's Fourth Amendment rights were not violated when the officer opened the envelope and read the letter it contained, where the envelope was not sealed, was not properly marked as legal mail, was addressed to the detainee rather than a court or his lawyer, and where the detainee knowingly and voluntarily gave the envelope to the officer. (Corrections Corporation of America's Leavenworth Detention Center, Kansas)

U.S. Appeals Court
MAIL
TELEPHONE CALLS

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
PRIVACY ACT

Armstrong v. U.S. Bureau of Prisons, 976 F.Supp. 17 (D.D.C. 1997). A former inmate sought damages under the Privacy Act from the Bureau of Prisons (BOP) and other defendants because they allegedly denied her right to access and amend her prison records. The district court held that the Privacy Act claim was barred by a two-year statute of limitations and that the former inmate could not maintain a Privacy Act claim against unnamed individuals. According to the court, in order to constitute intentional and willful conduct under the Privacy Act, a violation by a government agency must be so patently egregious and unlawful that anyone undertaking the conduct should have known it was unlawful. The inmate had sought to amend records that are maintained in BOP's Inmate Central Record System. (Federal Medical Center in Lexington, Kentucky, and Federal Prison Camp at Bryan, Texas)

U.S. District Court
FAMILY
RELATIONSHIPS

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 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. District Court
INTERPRETERS
MEDICAL CARE

Franklin v. District of Columbia, 960 F.Supp. 394 (D.D.C. 1997). A class of Hispanic prisoners who were or would be incarcerated in correctional institutions operated by the District of Columbia sought injunctive and declaratory relief for alleged violations of the First, Fifth, and Eighth Amendments under § 1983. The district court held that the District's failure to provide qualified interpreters for Hispanic prisoners' medical and mental health needs rose to the level of deliberate indifference and violated the Eighth Amendment. The court found no valid penological justification for disclosing a prisoner's medical condition by using correctional officers or other inmates as interpreters in medical encounters. The court noted that to satisfy the Eighth Amendment, a medical facility must be adequately staffed and access to medical services cannot be delayed in a systematic manner due to inadequate staffing. The court found that the District's failure to provide Hispanic prisoners with qualified interpreters at disciplinary proceedings and parole hearings was an affront to due process. However, the court held that while the District did not offer the same programs in Spanish as they offered in English, these programming decisions did not constitute denial of equal protection under the Fifth Amendment, noting that Hispanic prisoners were not barred from participation in prison programs because of their race or national origin. (District of Columbia)

U.S. District Court
ATTORNEY-CLIENT
COMMUNICATION
VIDEO
COMMUNICATION

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 that questions of fact precluded summary judgment on the claims that the jail's video conferencing system did not permit confidential attorney-client discussions, and whether a substantial number of inmates could easily utilize the system. The court held that to establish a constitutional violation for lack of privacy for attorney-client consultations, it was enough that harm appeared imminent, to the extent that any inmate might be hesitant to disclose names and information relevant to his or her attorney's investigation and necessary to secure advice. (San Francisco Jail No. 3, California)

U.S. Appeals Court
OBSERVATION BY
STAFF
STAFF OF
OPPOSITE SEX

Somers v. Thurman, 109 F.3d 614 (9th Cir. 1997). A male inmate brought a civil rights suit against female guards and prison officials alleging that visual body cavity searches performed by the guards, and their watching while he was showering naked, violated his Fourth and Eighth Amendment rights. The district court denied the guards' motions for summary judgment and they appealed. The appeals court reversed and remanded, finding that it was not clearly established in October 1993 that male inmates had a Fourth Amendment privacy interest which prohibited cross-gender searches. The court also held that the inmate failed to state a claim under the Eighth Amendment based on allegations that female guards pointed and joked while observing him showering or while conducting a body cavity search of him. According to the court, the inmate did not allege that the guards intended to humiliate him or that the searches occurred without any penological justification. The court noted that, while it does not approve, the exchange of verbal insults between inmates and guards is a constant, daily ritual observed in the nation's prisons. (California State Prison-Los Angeles)

U.S. Appeals Court
DRUG TESTING
RIGHT OF PRIVACY

Thompson v. Souza, 111 F.3d 694 (9th Cir. 1997). A prisoner sued prison officials for damages under § 1983 alleging that he was subjected to an improper strip search and urinalysis drug test. The officials moved for summary judgment and appealed when the district court denied their motion. The appeals court reversed and remanded with instructions, finding that the visual strip search of the prisoner's body cavities did not violate a clearly established Fourth Amendment right. The appeals court held that the search was not maliciously and sadistically conducted for the purpose of causing harm, and thus did not violate the prisoner's due process rights. The court also found that a nonrandom, compelled urinalysis test did not violate the prisoner's alleged privacy interests under the Fourth Amendment, especially considering that 16 of the 124 prisoners selected tested positive for drugs. The prisoner had complained that he was directed to run his fingers around his gums after manipulating his genitalia even though the prison guidelines suggested that genitalia inspection be the last step of a strip search. The prisoner also alleged that the search was conducted in view of other prisoners. The court found that the use of a bathroom as the location for the urinalysis test was not unreasonable, even though the floor was damp, the prisoner did not have shoes, and a prison official stood within eight inches of the prisoner's side continuously watching him urinate into a small plastic bottle. (California Men's Colony)

U.S. District Court
ATTORNEY-CLIENT
COMMUN.
RIGHT TO PRIVACY

Williams v. Price, 25 F.Supp.2d 605 (W.D.Pa. 1997). Death row inmates challenged their conditions of confinement in a civil rights action. The district court granted summary judgment in favor of the officials for most of the allegations. The court found that strip searches of inmates, including viewing of bodily cavities, before and after sessions with their attorneys, did not violate the inmates' Fourth Amendment rights. The court also found that the inmates were not denied equal protection because they were allowed only one hour of recreation per day, while inmates in another death row facility had two hours per day. The court held that the inmates' equal protection rights were not violated when they were denied access to recreational materials that were made available to inmates at other death row facilities, where there were more prisoners in their facility and contraband had been discovered. The court did not grant summary judgment to the defendants on the claim that failure to provide a soundproofed area for conversations between inmates and their attorneys violated the inmates' right to privacy. (State Correctional Institution at Greene, Pennsylvania)

U.S. District Court
ATTORNEY-CLIENT
COMMUN.
RIGHT TO PRIVACY

Williams v. Price, 25 F.Supp.2d 623 (W.D.Pa. 1997). Prisoners sued corrections officials, alleging their privacy and free speech rights were violated because they did not have a place to have private conversations with their attorneys without being overheard by others. The district court held in favor of the prisoners and ordered declaratory relief. The court found that the prisoners had a constitutional right of privacy that was violated, and they had a First Amendment right to confidential oral communications with their attorneys which was violated. The prisoners asserted that the ability of others to overhear their conversations prevented them from discussing private matters with their attorneys. (State Correctional Institution at Greene, Pennsylvania)

U.S. District Court
RIGHT TO PRIVACY

Anderson v. Sundquist, 1 F.Supp.2d 828 (W.D.Tenn. 1998). After having three suits against a prison dismissed as frivolous, a prisoner filed a fourth action. The district court held that the prisoner would be required to pay the \$150 filing fee for the fourth action, even though the action would be immediately dismissed if the prisoner sought to proceed in forma pauperis. The court ruled that it could apply sanctions to the prisoner in addition to those provided for by statute. The district court held that the prisoner's privacy right in his cell was not violated by prison inspections. (West Tenn. High Security Facility)

U.S. Appeals Court
RIGHT TO PRIVACY
AIDS

Davis v. District of Columbia, 158 F.3d 1342 (D.C.Cir. 1998). An inmate brought a § 1983 action against the District of Columbia and correctional officials, alleging violation of his right to privacy. The district court dismissed the action, citing the provision of the Prison Litigation Reform Act (PLRA) that prohibits inmates from bringing a federal action for a mental or emotional injury suffered while in custody without making a prior showing of a physical injury. The appeals court affirmed, finding that the fact that the inmate may have been entitled to nominal damages did not save his action from dismissal under PLRA. The court noted that PLRA does not prevent actions for injunctions or declaratory judgments in which no allegation of prior physical injury are made. The inmate had sought compensatory damages, alleging that officials violated his right of privacy by disclosing his HIV status. The inmate alleged that he suffered weight loss, appetite loss and insomnia as the result of officials' disclosure of his status to others. (District of Columbia Central Prison at Lorton, Virginia)

U.S. Appeals Court
INTERPRETERS
MEDICAL CARE

Franklin v. District of Columbia, 163 F.3d 625 (D.C.Cir. 1998). Spanish-speaking prisoners incarcerated in eight District of Columbia correctional facilities brought a class action under § 1983 alleging that the District violated their First, Fifth and Eighth Amendment rights as well as federal and local statutes by failing to provide qualified interpreters when they appeared at parole and disciplinary hearings and when they sought medical care. The district court found that the District violated the Fifth and Eighth Amendments and entered an injunction. The appeals court vacated in part and reversed in part. The appeals court held that the prisoners lacked standing to assert due process challenges regarding parole hearings for misdemeanants because they did not name any members of the class who went before the parole board as misdemeanants and did not understand the proceedings because of lack of proficiency in English. Upon learning that the authority for parole of felons had been transferred to the United States Parole Commission since the district court had ruled, the appeals court stated that "why neither of the parties, and why especially the District of Columbia never alerted us to this statute is beyond comprehension." The appeals court found that failure to provide interpreters at all disciplinary hearings, adjustment board hearings, housing determinations, and classification decisions did not violate due process. The appeals court also found that the District's failure to provide interpreters for prisoners during medical consultations was not cruel and unusual punishment. (District of Columbia)

U.S. District Court
INTERPRETERS
TELEPHONE CALLS

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. District Court
AIDS
MEDICAL CARE

Hetzel v. Swartz, 31 F.Supp.2d 444 (M.D.Pa. 1998). The administratrix of the estate of a county prison inmate who died from AIDS while confined brought a § 1983 action against a prison mental health counselor. The district court granted judgment for the counselor after a bench trial, finding that the counselor was not deliberately indifferent to the inmate's medical needs. The counselor had denied the inmate's requests for counseling to cope with his AIDS diagnosis. During the counselor's initial sessions with

the inmate, the inmate was angry about missing medical records and was determined to recover compensation from the prison. The counselor decided that other inmates among his 100-inmate caseload were more in need of his time. The court also ruled that the counselor's release of information regarding the inmate's diagnosis of AIDS did not violate the inmate's privacy rights under a state law. The counselor released information about the inmate to a doctor and a nurse at the prison, who were entitled to the information under state law. (Luzerne County Prison, Pennsylvania)

U.S. District Court
SEX OFFENDERS

Lanni v. Engler, 994 F.Supp. 849 (E.D.Mich. 1998). A parolee challenged the constitutionality of a sex offender registration and community notification statute. The district court dismissed the action, finding that the statute did not violate the ex post facto clause, the prohibition against cruel and unusual punishment, or the equal protection clause. The court also found that the statute did not violate the parolee's right to privacy. The court held that the legislative intent of the statute was regulatory, rather than punitive, for the purposes of double jeopardy. (Michigan Legislature)

U.S. District Court
RIGHT TO PRIVACY

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. The court held that a search of the inmate's cell did not violate the Fourth Amendment, and that prisoners do not have a reasonable expectation of privacy within the confines of their cells. (Attica Correctional Facility, New York)

U.S. District Court
RIGHT TO PRIVACY
SEX OFFENDERS

Lile v. McKune, 24 F.Supp.2d 1152 (D.Kan. 1998). A prisoner challenged the constitutionality of a prison's sex offender treatment program that required a complete and written disclosure of a prisoner's sexual history, including all uncharged sex offenses, and that used polygraph examinations and penile plethysmograph testing. The district court held that the program violated the Fifth Amendment's privilege against self-incrimination but that immunity protected the prisoner's incriminating program disclosures from being used against him in later criminal proceedings. The court found that use of the penile plethysmograph testing did not violate a prisoner's Fourth Amendment privacy rights. Although such testing arguably involved the most private part of a prisoner's body, the court held that use of the testing did not violate the Fourth Amendment because the governmental interest in rehabilitation outweighed the prisoner's right to be free from such an intrusive testing procedure. The court noted that the sexual abuse treatment program (SATP) imposed significant and adverse consequences to a prisoner's classification, housing and privileges if he refused to participate in the required programming, and therefore the SATP operated to compel the disclosure of incriminating testimony in violation of a prisoner's Fifth Amendment rights. (Lansing Correctional Facility, Kansas)

U.S. District Court
MAIL

U.S. v. Carrozza, 2 F.Supp.2d 126 (D.Mass. 1998). Two defendants who were being prosecuted for violation of the Racketeer Influenced and Corrupt Organizations Act (RICO) moved to suppress prison correspondence between them. The district court denied the motion, finding that the defendants had no reasonable expectation that the contents of their letter would remain private. The court also held that the forwarding of a letter to other law enforcement officials did not violate prison regulations governing the handling of incoming mail, and did not violate the defendants' due process rights. (Correctional Facility, Plymouth, Massachusetts)

U.S. District Court
RIGHT TO PRIVACY

Warburton v. Goord, 14 F.Supp.2d 289 (W.D.N.Y. 1998). An inmate sued corrections officials alleging violation of his rights with regard to verbal abuse and the search of his legal materials. The district court dismissed the case, finding that the inmate's claim that he was verbally abused, taunted and threatened by prison officers was not actionable under § 1983 absent some physical injury. The court also found that prison officers' search of the inmate's law library desk, memory typewriter, and crate of legal materials, without more, was not a violation of the inmate's limited right to privacy. (Groveland Correctional Facility, New York)

U.S. District Court
RIGHT TO PRIVACY

Warburton v. Underwood, 2 F.Supp.2d 306 (W.D.N.Y. 1998). A prisoner was granted permission to proceed in forma pauperis in his § 1983 action. The district court held that a delay of 14 days in serving the prisoner with court papers for a pending action did not deny him access to court, because the Constitution requires no more than reasonable access to the courts. According to the court, the prisoner's right to privacy was not violated by the actions of a prison employee who appeared at a deposition of the prisoner and introduced herself to others, allegedly with the intent to "inflamm" the prisoner. The court noted that the prisoner had only a limited right to privacy and that the employee did not make herself privy to confidential and privileged information. (Groveland Correctional Facility, New York)

U.S. District Court
RIGHT OF PRIVACY

Williams v. Calderon, 48 F.Supp.2d 979 (C.D.Cal. 1998). An offender sentenced to death sought habeas corpus relief. The district court granted the petition in part, finding that if the basis for the trial court's decision to shackle the offender during his trial is not clear from the record, an evidentiary hearing must be held to determine whether the shackling was justified.

The court did not support the offender's allegations that his privacy rights were violated while he was in jail awaiting trial. (California State Prison at San Quentin)

U.S. District Court
ATTORNEY-CLIENT
COMMUN.

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. District Court
SEX OFFENDERS

Akella v. Michigan Dept. of State Police, 67 F.Supp.2d 716 (E.D.Mich. 1999). Homeowners whose address was incorrectly listed in Michigan's sex offender registry joined two persons who were required to register under the Michigan Sex Offender Registration Act in an action challenging the constitutionality of the Act. The district court dismissed the action, finding that the Act did not violate the plaintiffs' due process rights. According to the court, individuals who were required to register under the Act did not allege a substantial risk of severe bodily harm when they alleged that they were subjected to threats, anonymous letters telling them to move, loss of housing, and reduced educational opportunities for themselves and their children. The court also found that the plaintiffs had no legitimate privacy interest in preventing the compilation and dissemination of truthful information which was already a matter of public record, and the state's interest in preventing sex offenses justified the intrusion on any privacy interests the individuals held in their home addresses. (Michigan Sex Offender Registration Act)

U.S. District Court
CROWDING
RIGHT OF PRIVACY

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
RIGHT TO PRIVACY
VIEW BY STAFF

MacDonald v. Angelone, 69 F.Supp.2d 787 (E.D.Va. 1999). A state prisoner sued corrections officials alleging his right to privacy was violated by a prison policy that prohibited coverings over his cell door observation windows, even when he was using the toilet. The district court granted summary judgment for the officials, finding that the prison policy was a sensible and reasonable security measure that did not violate the prisoner's right to privacy. The court noted that inmates have a right to be protected from gratuitous and unnecessary observation while they use their cell toilets, but that the prisoner had alternative means to gain privacy, such as covering himself with a sheet or towel to create a "privacy shield" while he used the toilet. (Greensville Corr. Center, Virginia)

U.S. Appeals Court
SEX OFFENDERS

Paul P. v. Verniero, 170 F.3d 396 (3rd Cir. 1999). A class action suit was brought challenging a New Jersey statute that established a system of registration and community notification for certain sex offenders. Summary judgment was granted for the defendants by the district court. The appeals court affirmed the decision, finding that the law did not violate the offenders' privacy rights or require disclosures that may place a strain on offenders' family relations. The court held that the government's interest in preventing sex offenses outweighed the offenders' privacy interests. The court noted that while the law might place a strain on offenders' familial relationships it did not restrict offenders' freedom of action with respect to their families. (New Jersey)

U.S. Appeals Court
MAIL

U.S. v. Gordon, 168 F.3d 1222 (10th Cir. 1999). A defendant convicted of possession with the intent to distribute cocaine base appealed, challenging the interception of letters he mailed to an inmate at a correctional facility. The appeals court held that the defendant did not have a reasonable expectation of privacy in letters he mailed to an inmate at a correctional facility, which were intercepted by a prison officer. The court noted that the defendant was fully aware that prison officials could lawfully, and were in fact likely to, inspect his letters. (El Dorado Correctional Facility, Kansas)

U.S. District Court
MAIL

U.S. v. Heatley, 41 F.Supp.2d 284 (S.D.N.Y. 1999). A pretrial detainee moved to suppress evidence seized from his nonlegal correspondence. The district court denied the motion, finding that although the detainee had an expectation of privacy in his nonlegal mail, the evidence was secured under a valid warrant. The court noted that even though the detainee had signed a form

acknowledging that prison staff could open and read his general correspondence, the detainee was not "signing away any remnant of protection the law otherwise might have afforded him." (Metropolitan Correctional Center, New York)

U.S. District Court
TELEPHONE CALLS

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
RIGHT TO PRIVACY
MAIL

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)

2000

U.S. District Court
STAFF OF OPPOSITE
SEX

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 found that the correctional defendants were not entitled to qualified immunity when sued in their personal capacities for violation the male prisoner's privacy rights, because female officers could and did regularly view his genitals and other private areas of his body while he showered. The court held that there were fact issues as to whether the defendants reasonably believed that they were not violating one of the prisoner's clearly established rights. But the court found that the Prison Litigation Reform Act (PLRA) barred the prisoner's claims of emotional distress and sexual dysfunction, allegedly caused by the corrections officials' actions, because such psychosomatic injuries did not qualify as a "physical injury" under the provisions of PLRA. (Red Onion State Prison, Virginia)

U.S. District Court
MAIL
RIGHT OF PRIVACY

Ballance v. Young, 130 F.Supp.2d 762 (W.D.Va. 2000). A state prisoner brought a pro se federal civil rights suit against prison officials, arising out of their seizure of several items of his personal property. The district court held that the prisoner had no reasonable expectation of privacy in his cell that would make seizure of a letter from his cell a Fourth Amendment violation that could be addressed in a § 1983 suit. The court found that the decision by officials to confiscate the prisoner's scrapbook and clippings, in accordance with a prison regulation that prohibited such items, was reasonable in light of security concerns that the metal parts of scrapbooks could be used as weapons and that razors and other contraband could be hidden in the clippings or scrapbooks, and in light of the time-consuming or extreme nature of other alternatives, such as x-raying cells. The court noted that the officials did not need reasonable suspicion to search prisoner cells as part of their policy of performing random searches. The court also held that the prisoner was afforded sufficient post-deprivation remedies to satisfy any due process concerns arising from the seizure of an attorney's letter that contained hair samples and, allegedly, two money orders, where the inmate did receive notice of a disciplinary hearing held under the prison regulation forbidding abuse of mail. (Wallens Ridge State Prison, Virginia)

U.S. District Court
MEDICAL CARE
INTERPRETERS

Cortes v. Johnson, 114 F.Supp.2d 182 (W.D.N.Y. 2000). A Spanish-speaking inmate brought a civil rights action against a prison superintendent alleging violation of his right to privacy. The district court granted summary judgment to the superintendent, finding that she did not violate the inmate's right to privacy by failing to provide medically-qualified interpreters of Spanish rather than inmate interpreters or non-medically qualified interpreters. The court noted that the inmate failed to present any evidence that knowledge of his condition was disseminated to inappropriate persons. (Orleans Correctional Facility, New York)

U.S. District Court
SEX OFFENDERS

Doe v. Ward, 124 F.Supp.2d 900 (W.D.Pa. 2000). A convicted sex offender filed a complaint seeking preliminary and permanent injunctive relief in connection with the application of the Pennsylvania Registration of Sex Offenders Act, to the extent that he had been subjected to community notification for an out-of-state conviction. The district court granted the offender's motion, finding that the offender did not waive the process according to in-state offenders prior to community notification when he applied to transfer to Pennsylvania under the terms of the Interstate Compact Concerning Parole. The court noted that once a sending state grants permission, the receiving state must assume supervision and treat the offender the same as in-state offenders. (Pennsylvania Board of Probation and Parole)

U.S. Appeals Court
AIDS

Herring v. Keenan, 218 F.3d 1171 (10th Cir. 2000). A prisoner brought a *Bivens* action against a federal probation officer alleging that his rights had been violated when the officer told his sister

and employer that he had tested positive for the Human Immunodeficiency Virus (HIV). The district court refused to dismiss the action. The appeals court reversed and remanded, finding that the prisoner alleged a violation of a constitutional right, but that his right to privacy in the nondisclosure of his HIV status was not clearly established at the time the disclosure was made. (United States District Court for the District of Colorado)

U.S. District Court
AIDS
MEDICAL CARE
INTERPRETERS

Leon v. Johnson, 96 F.Supp.2d 244 (W.D.N.Y. 2000). A Spanish-speaking state prisoner who was diagnosed with acquired immune deficiency syndrome (AIDS) brought a § 1983 action. The district court granted summary judgment in favor of the defendants. The court found that a delay in receiving medication that resulted from prison officials' failure to apprise the prisoner in Spanish of the prison's medical policies did not violate the Eighth Amendment. The court held that failure to provide Spanish-speaking medical staff or interpreters did not violate the inmate's right to privacy. (Orleans Correctional Facility, New York)

U.S. District Court
SEX OFFENDER
RIGHT OF PRIVACY

Paul P. v. Farmer, 80 F.Supp.2d 320 (D.N.J. 2000). A class action suit was brought by persons required to register under a sex offender notification law (Megan's Law). The appeals court held that the law did not violate the plaintiffs' constitutional rights to privacy and remanded the case for consideration of the procedures for notification. The district court held that state guidelines for distributing notices under the statute unreasonably infringed on the privacy rights of sex offenders and had to be redrafted to reasonably limit disclosure to those who were entitled to receive it. According to the court, there was evidence of widespread dispersal of the information to persons not authorized to receive it and that counties used inconsistent methods of distributing the notices. (New Jersey Registration and Community Notification Act)

U.S. District Court
SEX OFFENDERS

Searcy v. Simmons, 97 F.Supp.2d 1055 (D.Kan. 2000). 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 for the defendants. The court held that the inmate's refusal to reveal potentially incriminating information about his sexual history did not violate his right against self incrimination and that penile plethysmograph and polygraph examinations did not violate his substantive due process rights. The court noted that the program was voluntary and program requirements were reasonably related to valid penological interests in rehabilitating sex offenders. The court also found that the inmate was not deprived of procedural due process when prison officials removed his personal property after he was denied privileges and shipped it to his relatives without a pre-deprivation hearing, where the inmate was provided with the opportunity to specify where to send the property but refused to do so. (Hutchinson Correctional Facility, Kansas)

U.S. Appeals Court
RIGHT TO PRIVACY

Sterling v. Borough of Minersville, 232 F.3d 190 (3rd Cir. 2000). The executrix for the estate of an arrestee who committed suicide after an officer threatened to disclose his suspected sexual orientation brought a § 1983 action asserting violations of the arrestee's rights to privacy and equal protection rights. The district court denied qualified immunity for some of the defendants and they appealed. The appeals court affirmed, finding that an officer's threat to disclose the arrestee's suspected homosexuality violated the arrestee's constitutional right to privacy and that the officer and a fellow officer were not entitled to qualified immunity. The arrestee had committed suicide after his release from custody. (City of Minersville Police Department, Pennsylvania)

U.S. District Court
MEDICAL ISSUES

Webb v. Goldstein, 117 F.Supp.2d 289 (E.D.N.Y. 2000). A state parolee brought a pro se § 1983 action alleging civil rights violations in connection with his medical examination and the release of his prison medical records to law enforcement officials as part of a rape investigation. The district court dismissed the case, finding that the parolee did not have a Fourth Amendment expectation of privacy in his medical records and that the disclosure of his records did not violate his Eighth Amendment rights to be free from cruel and unusual punishment. (Sullivan Correctional Facility, New York)

U.S. District Court
NUDITY
VIEW BY STAFF

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
SEX OFFENDERS

A.A. v. New Jersey, 176 F.Supp.2d 274 (D.N.J. 2001). Convicted sex offenders challenged the constitutionality of a New Jersey constitutional provision and the Internet Registry Act amendment to the state's "Megan's Law" statute, that authorized a system for making sex offender registration information publicly available on the Internet. The offenders moved for preliminary injunctive relief and the court granted the motion in part. The court found that the Internet disclosure statute was not punitive in its effects or intent and that the compilation and

dissemination of publicly-available information on offenders did not violate their privacy rights. The court noted that the legislature expressly disavowed any intent to inflict additional punishment on offenders and stated that the statute was intended solely for the protection of the public. The legislature prescribed penalties to deter the misuse of information. But the court found that offenders' home addresses were not adequately safeguarded by the Internet disclosure system and the court issued a preliminary injunction limiting disclosure to offenders' county of residence. (New Jersey)

U.S. Appeals Court
ATTORNEY-CLIENT
COMMUNICATION

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 that 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
PSYCHOLOGICAL
SERVICES

Swan v. U.S., 159 F.Supp.2d 1174 (N.D.Cal. 2001). A federal prison inmate brought an action against the United States and a prison staff psychologist alleging they failed to prevent an attack by another inmate, in violation of his Eighth Amendment rights. The district court granted summary judgment for the defendants. The court held that the psychologist did not act with deliberate indifference to the inmate's safety and was under no legal duty to disclose the inmate's confidential communications regarding a possible risk of harm from other inmates, or to pursue, on the inmate's behalf, protection that would have required disclosure of the inmate's counseling session statements. The inmate claimed that he provided information to the psychologist prior to the attack, who should have acted to prevent it. (Federal Corrections Institute, Dublin, California)

U.S. District Court
PAROLE

U.S. v. Replogle, 176 F.Supp.2d 960 (D.Neb. 2001). In a prosecution for drug possession, the defendant moved to suppress evidence found in his house. The district court denied the motion, finding that while the defendant had a legitimate expectation of privacy in his house and the search was not voluntary, the warrantless search was valid because it was conducted pursuant to a valid probation order. The court noted that the defendant's probation officer was authorized to conduct warrantless searches and the probation order stated that the probationer "shall consent" to such searches. The probation officer knew that the defendant had violated a condition of his probation and a judge had advised the officer that she could visit the probationer and conduct a search. (U.S. District Court, Nebraska)

2002

U.S. Appeals Court
SEX OFFENDERS

Ainsworth v. Stanley, 317 F.3d 1 (1st Cir. 2002). Convicted sex offenders sued a state corrections department alleging violation of their Fifth Amendment right against self-incrimination. The department required offenders to disclose their histories of sexual misconduct without offering immunity for statements made in connection with the program, in order to participate in the department's sex offender program. The district court dismissed the action and the appeals court affirmed. The United States Supreme Court granted certiorari, vacated, and remanded for reconsideration in light of *McKune v. Lile*. On remand, the appeals court held that the program did not violate the Fifth Amendment. The court noted that criminological studies and social science research found that admission of crimes was a necessary prerequisite for successful treatment of sex offenders. The court held that the reduced likelihood of parole for offenders who refused to participate in the program did not constitute a penalty sufficient to compel incriminating speech. (New Hampshire Department of Corrections)

U.S. District Court
CONFIDENTIAL
INFORMATION
MEDIA

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
MAIL

Brown v. Williams, 36 Fed.Appx. 361 (10th Cir. 2002). A state prisoner brought a pro se § 1983 action against prison officials, challenging the handling of his mail from his attorney and from a radio station. The district court dismissed the case and the appeals court affirmed. The appeals court held that the fact that a mail package sent by an attorney was never received by the prisoner, and that another package from the attorney was opened in the prisoner's presence by prison officials, did not amount to a deprivation of the prisoner's First Amendment right or his right to counsel or right of access to the courts. The court also found that prison officials' interception of incoming correspondence addressed to the prisoner from a radio station and an outgoing letter to the radio station's address, was reasonable in light of the personal nature of the correspondence. The incoming letter contained a check for the prisoner and was sent by his godmother, who worked for the radio station. The court noted that prison officials may regulate correspondence thought to be disguised as privileged mail. (Lea County Corr'l Facility, Oregon)

U.S. Appeals Court
SEARCHES

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 held that correctional officials did not use excessive force when they physically and mechanically restrained the prisoner and used a stun gun against him during two cell entries. 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. The appeals court held that strip-searching the male prisoner in front of female employees did not constitute cruel and unusual punishment. (Kettle Moraine Correctional Institution, Wisconsin)

U.S. Appeals Court
RIGHT OF PRIVACY
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
STAFF OF OPPOSITE
SEX
VIEW BY STAFF

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
STAFF OF OPPOSITE
SEX

Milledge v. McCall, 43 Fed.Appx. 196 (10th Cir. 2002) [unpublished]. A male state prisoner brought a § 1983 action alleging Fourth Amendment violations resulting from a strip search that was allegedly conducted in the presence of female correctional officers. The district court dismissed the action and the appeals court affirmed. The appeals court held that a private correctional facility that provided services on behalf of a state was a "facility" for the purposes of the Prison Litigation Reform Act (PLRA), but a provision of the Act barred a prisoner civil action alleging emotional injury while in custody without a prior showing of a physical injury. (Crowley County Correctional Facility, Colorado)

U.S. Appeals Court
NUDITY
OBSERVATION BY
STAFF
RIGHT OF PRIVACY
STAFF OF OPPOSITE
SEX
VIEW BY STAFF

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
ATTORNEY-CLIENT
COMMUNICATION

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
DRUG TESTING

Saulsberry v. Arpaio, 41 Fed.Appx. 953 (9th Cir. 2002). A detainee brought an action against a county sheriff alleging violation of his Fourth and Eighth Amendment rights. The district court entered judgment for the sheriff and the appeals court affirmed. The appeals court held that a physician working for the sheriff's office ordered catheterization and drug screening for the detainee solely for medical purposes, not for any administrative or investigative reasons, and therefore the tests did not violate the Fourth Amendment. (Maricopa Co. Sheriff's Office, Arizona)

U.S. District Court
PRIVACY ACT

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
PAROLE

U.S. v. Reyes, 283 F.3d 446 (2nd Cir. 2002). A federal offender who was serving a term of supervised release appealed denial of his motion to suppress evidence that was identified during a home visit by probation officers. The appeals court held that the offender had a severely diminished expectation of privacy, making it reasonable and lawful for probation officers to walk on to his driveway during a required home visit and to observe what they may see in plain view. The court noted that terms of the offender's supervised release mandated home visits "at any time." (U.S. District Court, Northern District of New York)

U.S. Appeals Court
SEARCHES

Willis v. Artuz, 301 F.3d 65 (2nd Cir. 2002). A state prisoner sued prison officials, alleging violation of his Fourth Amendment rights as the result of a warrantless search of his cell. The district court dismissed the action and the appeals court affirmed. The appeals court held that the warrantless search, conducted at the request of police who were seeking evidence of an uncharged crime, did not violate the prisoner's right to be free of unreasonable searches, even though the search did not serve any purpose related to prison security, because the prisoner was a convicted offender, not a pretrial detainee. (Green Haven Corr'l Facility, New York)

2003

U.S. Appeals Court
STAFF OF OPPOSITE
SEX
SEARCHES

Calhoun v. Detella, 319 F.3d 936 (7th Cir. 2003). A male state prisoner sued prison employees under § 1983, alleging that a strip search conducted in the presence of female officers violated his Eighth Amendment rights. The district court dismissed the case for failure to state a claim and the prisoner appealed. The appeals court affirmed in part, and vacated and remanded in part. The appeals court held that the prisoner's allegations stated an Eighth Amendment claim. The prisoner alleged that he was strip searched in front of female officers, that the officers made explicit gestures during the search and forced him to perform sexually provocative acts, and that the female officers were invited spectators. The appeals court also held that the Civil Rights of Institutionalized Persons Act (CRIPA) that barred federal civil actions by prisoners for mental or emotional injuries without a showing of physical injury, did not foreclose an action for nominal or punitive damages for violations that did not involve a physical injury. (Stateville Correctional Center, Illinois)

U.S. District Court
CONFIDENTIAL
INFORMATION
RECORDS

Dennison v. Pennsylvania Dept. of Corrections, 268 F.Supp.2d 387 (M.D.Pa. 2003). A discharged employee sued a state corrections department and co-workers, asserting claims that included violation of Title VII, state human relations laws, wrongful discharge, and violation of a state whistleblower law. The district court granted summary judgment in part, and denied it in part. The court held that the employee's termination for distributing confidential inmate records to

non-authorized persons did not violate his free speech rights. The court held that summary judgment was precluded by factual issues concerning his retaliation claim based on his verbal protestations of alleged discrimination, his § 1983 conspiracy claim, his Title VII claims based on reports of his employer's discrimination practices, and his whistleblower claims. The court held that speech concerning racial discrimination in the state's parole determinations was a matter of public concern. The employee had disseminated confidential prison records in an effort to address the alleged discrimination. The court found that the employee's interests did not outweigh the department's interest in keeping inmate psychological records confidential. (Pennsylvania Department of Corrections, State Correctional Institution- Mahanoy)

U.S. District Court
RECORDS

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. District Court
DNA

Padgett v. Ferrero, 294 F.Supp.2d 1338 (N.D.Ga. 2003). Convicted felons brought an action for injunctive relief seeking to have a Georgia law requiring DNA sampling of all convicted felons declared unconstitutional. The district court granted summary judgment in favor of the defendants. The court held that the DNA sampling law was not an unreasonable search and seizure, did not violate the convicted felons' privacy rights, did not violate the ex post facto clause, and did not violate due process. (George Department of Corrections)

U.S. District Court
VIEW BY INMATES
MEDICAL CARE

Rodriguez v. Ames, 287 F.Supp.2d 213 (W.D.N.Y. 2003). A state prisoner brought a civil rights action against a physician, alleging violation of his constitutional right to privacy. The district court granted summary judgment for the physician. The court held that the prisoner's right to privacy was not violated by the physician's visual rectal exam, even though the exam occurred in his cell in the presence of his cellmate. The court noted that the examination was cursory and it was necessary to plan an appropriate course of treatment, and that the cellmate, doctor and nurse were all men. According to the court, prisoners have a limited right to bodily privacy under the Eighth Amendment. The prisoner had sought \$750,000 for what he described as his "degradation and extreme humiliation." (Collins Correctional Facility, New York)

U.S. District Court
SEARCHES
STAFF OF OPPOSITE
SEX

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)

U.S. District Court
RIGHT TO PRIVACY
VIEW BY INMATES

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)

U.S. District Court
SEARCHES

Skundor v. McBride, 280 F.Supp.2d 524 (S.D.W.Va. 2003). An inmate brought claims against corrections officials, challenging visual body cavity searches. The district court granted summary judgment in favor of the defendants. The court held that the prison practice of performing visual body cavity searches when dangerous, sequestered prisoners left a recreation area, was rationally

related to the legitimate penological objective of staff safety and did not violate the prisoners' Fourth Amendment rights. The court noted that there was a potential for the exchange of weapons in the recreation area, and that prisoner privacy was addressed by using only male staff to perform the searches, and positioning the staff between the inmate and anyone else who might view him. According to the court, the searches were an efficient way to steadily process the large number of inmates seeking recreation, and there were no readily available alternatives to the recreation yard searches. (Mount Olive Correctional Center, West Virginia)

U.S. Appeals Court
SEARCHES

Stewart v. Lyles, 66 Fed.Appx. 18 (7th Cir. 2003). [unpublished] A state inmate brought suit under § 1983 alleging that prison officers violated his constitutional rights by conducting a strip search in a public place, and then escalating the invasiveness of the search when he complained. The district court dismissed the complaint and recorded a "strike" against the inmate under the *in forma pauperis* statute. The inmate appealed and the appeals court vacated and remanded. The court held that the inmate stated a valid Eighth Amendment claim by alleging that the body cavity searches were not motivated by security or compliance concerns, but instead grew out of a malicious desire to harass him. The court also found that the inmate stated a retaliation claim under the First Amendment by alleging that officers singled him out for body cavity searches because he protested allegedly improper strip searches. (Stateville Correctional Center, Illinois)

U.S. Appeals Court
TELEPHONE CALLS

U.S. v. Gangi, 57 Fed.Appx. 809 (10th Cir. 2003) [unpublished]. A defendant who was convicted for bank fraud challenged the taping of his jail telephone calls. The appeals court held that it was not objectively reasonable for the detainee to have any expectation of privacy in his outgoing calls from jail, and that the detainee impliedly consented to the taping of his calls from jail. The court noted that the detainee was cognizant of detention settings, which permitted a strong inference that he fully understood the fact that jail telephones were monitored. According to the court, the detainee was a "keen observer of detail" and was presumed to have seen signs above other telephones that provided notice of telephone monitoring. The court held that the Fourth Amendment is not triggered by the routine taping of outgoing jail calls. (Uinta County Detention Center, Wyoming)

U.S. District Court
TELEPHONE CALLS

U.S. v. Roy, 349 F.Supp.2d 60 (D.Mass. 2003). A detainee charged with drug, firearms and witness tampering offenses moved to suppress the contents of his telephone conversations that were recorded when he was in custody. The district court denied the motion, finding that the detainee impliedly consented to the recording of his telephone conversations because he was informed that his calls were subject to monitoring and recording, he chose to proceed with the conversations, and those to whom the defendant made the calls expressly consented to participate in possibly recorded telephone conversations. (Worcester County House of Corrections, Massachusetts)

U.S. District Court
DNA

U.S. v. Stegman, 295 F.Supp.2d 542 (D.Md. 2003). The government filed a notice of violation of conditions of supervised release after an offender refused to comply with a probation officer's order to submit a blood specimen pursuant to the DNA Analysis Backlog Elimination Act. The offender moved to dismiss the case and the district court denied the motion. The court held that the application of the Act did not violate the Ex Post Facto Clause, did not violate the Fourth Amendment, did not violate the separation of powers doctrine, and did not violate the offender's double jeopardy rights. (Maryland)

2004

U.S. Appeals Court
RIGHT OF PRIVACY
MEDIA
INTERNET

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. District Court
STAFF OF OPPOSITE
SEX
SEARCHES

Lay v. Porker, 371 F.Supp.2d 1159 (C.D.Cal. 2004). A state prison inmate brought a pro se § 1983 Fourth Amendment action against a corrections officer, alleging that he had been subjected to an overly intrusive body search in the presence of a female officer. The district court granted summary judgment in favor of the officer. The court held that the officer's alleged subsection of the inmate to a needlessly intrusive unclothed body cavity search in the presence of a female officer violated the Fourth Amendment, but the officer was entitled to qualified immunity because there was no clearly established right of inmates to be free from bodily exposure to officers of the opposite sex at the time of the search. (California Men's Colony)

U.S. Appeals Court
RECORDS
VISITOR
PRIVACY ACT

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
STAFF OF OPPOSITE
SEX
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
RIGHT OF PRIVACY

Nash v. McGinnis, 315 F.Supp.2d 318 (W.D.N.Y. 2004). A prisoner filed a suit seeking injunctive relief in his civil rights action against prison officials and prison employees. The district court held that the prisoner's allegations were sufficient to state a § 1983 claim for violation of his First Amendment right to free flowing mail. The prisoner alleged that prison employees deliberately tampered with his legal, personal and political incoming and outgoing mail without justification or cause. The court also held that the prisoner did not have a legitimate expectation of privacy in his prison cell that was protected by the Fourth Amendment. (Southport Correctional Facility, New York)

U.S. Appeals Court
LITERATURE
PUBLICATIONS

Shakur v. Selsky, 391 F.3d 106 (2nd Cir. 2004). A state prisoner brought claims under § 1983 against corrections officers and officials alleging various constitutional violations and violations of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court dismissed the prisoner's complaint with prejudice, and the prisoner appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that the prisoner stated a legally cognizable First Amendment claim by alleging that a prison regulation that banned all literature from outside organizations unless those organizations had been approved, did not authorize officers' confiscation of his literature. The prisoner alleged that the materials were confiscated because of the officers' personal prejudice, and that the officers failed to invoke a media committee's review of the material as required by procedures. The officers had confiscated 26 books and pamphlets of "New Afrikan political literature." (Great Meadows Correctional Facility, New York)

U.S. District Court
SEARCHES

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. District Court
TELEPHONE CALLS

U.S. v. Faulkner, 323 F.Supp.2d 1111 (D.Kan. 2004). Three detainees who were indicted on charges of attempting to kill a government witness moved to suppress recordings of their jail telephone conversations. The court held that the detainees had impliedly consented to the recording of telephone conversations because notices that conversations might be recorded were posted throughout the facility, and a recorded warning was given before the commencement of long distance calls. The district court noted that the recordings made by employees of a private corrections company, were not covered by the wiretapping exemption that was applicable when the interception was done by law enforcement officers. (Corrections Corporation of America, Leavenworth, Kansas)

2005

U.S. District Court
NUDITY
RIGHT TO PRIVACY

Birdine v. Gray, 375 F.Supp.2d 874 (D.Neb. 2005). A pretrial detainee brought a § 1983 action against jail employees claiming violation of his right to be free of punishment and his right to privacy. The district court dismissed the complaint. The court held that the detainee did not have a privacy right that would allow him to cover the window of his cell with towels, noting that the cell contained a privacy wall which allowed for partial privacy while using the toilet. The court found that the inmate's privacy rights were not violated when he was moved from one cell to another, naked. The inmate had removed all of his clothes and refused to put them back, and jail staff moved him unclothed to a cell closer to their station where he could be constantly watched. (Lancaster County Jail, Nebraska)

U.S. Appeals Court
SEARCHES

Conyers v. Abitz, 416 F.3d 580 (7th Cir. 2005). A state prison inmate brought a § 1983 action against prison officials, challenging a search imposed on him when he left a prison chapel. The inmate also claimed that prison officials hindered his observance of a religious fast, violating his right to religious exercise. The district court granted summary judgment for the officials on the ground that the inmate failed to exhaust his claims. The inmate appealed. The appeals court affirmed in part, and vacated and remanded in part. The court held that any Fourth Amendment privacy interest that the inmate had in not being frisked upon leaving a prison chapel was insufficient to overcome the judicial deference generally afforded to prison officials when they are evaluating what is necessary to preserve institutional order and discipline. The court noted that the officials produced evidence that they had a legitimate security interest in frisking inmates as they left the prison chapel because the chapel was a hotbed of contraband exchanges. (Illinois)

U.S. Appeals Court
SEX OFFENDERS
DNA

Doe v. Moore, 410 F.3d 1337 (11th Cir. 2005). Florida sex offenders filed a class action challenging the constitutionality of Florida's sex offender registration and notification scheme and its DNA collection statute. The district court dismissed the action and the offenders appealed. The appeals court affirmed, finding that the registration and notification scheme did not violate the offenders' substantive due process rights or the Equal Protection Clause. The court found that the Sex Offender Act did not unreasonably burden the offenders' right to travel. The court also held that the DNA collection statute did not give rise to substantive due process rights. (State of Florida)

U.S. District Court
BLOOD TEST

Henderson v. Belfueil, 354 F.Supp.2d 889 (W.D.Wis. 2005). A prison inmate brought a civil rights suit against a police detective who took a blood sample from the inmate as part of a criminal investigation of a prison assault. The district court granted summary judgment for the detective in part, and denied it in part. The court held that the detective did not violate the Eighth Amendment in having the inmate's blood drawn, where the sample was not taken to cause the inmate pain, but rather to further legitimate penal and law enforcement interests. The court found that fact issues as to whether the inmate consented to the blood draw precluded summary judgment on the inmate's Fourth Amendment claim. (Redgranite Correctional Institution, Wisconsin)

U.S. District Court
MEDICAL CARE
RECORDS

Hubbs v. Alamao, 360 F.Supp.2d 1073 (C.D.Cal. 2005). A person who had been civilly confined at a state hospital as a sexually violent predator (SVP) brought a pro se § 1983 action alleging violation of his constitutional rights. The district court held that the plaintiff's right to privacy was not violated when the defendants reviewed his medical records when assessing whether he was a sexually violent predator. According to the court, the state had a compelling government interest in identifying, confining and treating SVPs that outweighed the plaintiff's right to privacy in his medical records. The court found that the plaintiff's civil conspiracy and equal protection claims were barred because they implied the invalidity of his commitment. (Atascadero State Hospital, California)

U.S. Appeals Court
DNA

Nicholas v. Goord, 430 F.3d 652 (2nd Cir. 2005). Convicted felons brought a § 1983 action against state officials and others, arguing that a state DNA-database statute violated their Fourth Amendment rights. The district court dismissed the action and the felons appealed. The appeals court affirmed. The court held that the extraction and analysis of convicted felons' blood for DNA-

indexing purposes constituted a search that implicated the Fourth Amendment, but that this search was justified under the “special needs” exception. (New York State Department of Correctional Services)

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 Co. Jail, Maine)

U.S. Appeals Court
DNA

Padgett v. Donald, 401 F.3d 1273 (11th Cir. 2005). Incarcerated felons brought an action seeking injunctive relief, asking the court to find a state statute requiring DNA sampling of all convicted felons unconstitutional. The district court granted summary judgment in favor of the defendants and the felons appealed. The appeals court affirmed. The appeals court held the statute did not violate the prisoners’ rights to privacy under the state constitution nor under the Fourteenth Amendment. The court found that the state’s legitimate interest in creating a permanent identification record of convicted felons for law enforcement purposes outweighed the minor intrusion involved in taking prisoners’ saliva samples and storing their DNA profiles, given the prisoners’ reduced expectation of privacy in their identities. (Georgia Department of Corrections)

U.S. Appeals Court
ATTORNEY/CLIENT
COMMUNICATION
TELEPHONE CALLS

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 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. District Court
SEARCHES

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 was 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)

2006

U.S. District Court
DRUG TESTING

Davies v. Valdes, 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 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. District Court
ATTORNEY-CLIENT
COMMUNICATIONS

Glisson v. Sangamon County Sheriff's Department, 408 F.Supp.2d 609 (C.D.Ill. 2006). A detainee brought a civil rights action against county defendants and a police officer, alleging various violations of his constitutional rights in connection with his arrest and detention. The defendants moved to dismiss. The district court dismissed in part and declined to dismiss in part. The court held that the detainee sufficiently stated claims under the Eighth Amendment and Due Process Clause of the Fourteenth Amendment against a jail and a correctional officer with respect to both his first and second detentions. The court found that the detainee, who was awaiting a probation revocation hearing, sufficiently stated a claim under the Eighth and Fourteenth Amendments by alleging that the county jail maintained policies and customs that tolerated cruel and unusual punishment of convicted prisoners and pretrial detainees, and that the correctional officer strapped him to a wheelchair for several hours, forcing him to urinate on himself and to sit in his urine for several hours, while he was in a manic state. The inmate alleged that the jail and correctional officer knew of his mental condition because it was documented and that the officer's and jail's acts were intentional with malice and reckless disregard for his federally protected rights. The court held that the detainee sufficiently stated denial of access to courts claims against a county jail and correctional officers by alleging that the jail maintained a policy and practice of arbitrarily denying inmates' confidential consultations with their attorneys and that the officers directly participated in the arbitrary and capricious denial of his access to counsel. The court found that the detainee stated an equal protection claim against a county jail and officer by alleging that the jail maintained a policy and practice that discriminated against him because of his mental illness, and that an officer discriminated against him in terms of the type of confinement on the basis of mental illness. (Sangamon Co. Jail, Village of Grandview Police, Ill.)

U.S. District Court
ATTORNEY-CLIENT
COMMUNICATION

Lonegan v. Hasty, 436 F.Supp.2d 419 (E.D.N.Y. 2006). Defense attorneys brought a *Bivens* action against officials of a federal Bureau of Prisons (BOP) facility, claiming that the statutory and constitutional rights of themselves and their inmate clients were violated through the practice of videotaping meetings. The district court denied the defendants' motion to dismiss in part, and granted it in part. The court held that: (1) the statute of limitations had not run on the claim that the Wiretap Act was violated; (2) a claim was stated that conversations were actually recorded, as required under the Wiretap Act; (3) a claim was stated that the interception was intentional; (4) a claim was stated that "oral communications" were made with the expectation that they not be recorded; (5) there was no qualified immunity from the Wiretap Act claims; (6) a claim was stated under the Fourth Amendment; (7) there was no qualified immunity from the Fourth Amendment claim; (8) a claim of personal involvement by a warden was stated; and (9) the availability of Fourth Amendment relief precluded a claim under Fifth Amendment. The plaintiffs, attorneys employed by the Legal Aid Society of New York, claimed that, by secretly recording their conversations with certain detainees at the federal Bureau of Prisons' Metropolitan Detention Center ("MDC"), located in Brooklyn, New York, the defendants violated Title III of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (the "Wiretap Act" or "Title III"), and the Fourth and Fifth Amendments of the U.S. Constitution. BOP personnel told the attorneys that video cameras were not on during their meeting with their clients, but a subsequent BOP investigation concluded that visual and sound recordings existed for many of the attorney/client meetings. (Metropolitan Detention Center, Federal Bureau of Prisons, New York)

U.S. District Court
MEDICAL

Niemic v. Maloney, 448 F.Supp.2d 270 (D.Mass. 2006). An inmate in state correctional facility brought action against corrections officials and health care providers alleging that the health care providers improperly shared his medical records. The district court held that health care providers who provided medical services at the correctional facility did not violate inmate's Fourth Amendment rights when they exchanged medical information with corrections officers without the inmate's informed consent. The court found that the corrections officers had a reasonable need to know that the inmate's drug test showed use of heroin and cocaine. (MCI-Cedar Junction, Massachusetts)

U.S. Appeals Court
MEDICAL ISSUES

Pabon v. Wright, 459 F.3d 241 (2nd Cir. 2006). A pro se state prisoner sued prison physicians and private consulting physicians under § 1983, alleging that they violated Eighth Amendment by providing inadequate treatment for his Hepatitis C. The district court entered summary judgment in favor of the physicians and the prisoner appealed. The appeals court affirmed. The court held that the prisoner's due process right to refuse medical treatment carries with it a concomitant right to such information as a reasonable patient would deem necessary to make an informed decision, and that the prison officials' action of requiring the prisoner to undergo a liver biopsy before considering him eligible for Hepatitis C treatment was not a violation of his due process rights. The court also found that the prisoner's right to receive medical information was not clearly established when he had a liver biopsy. The court noted that prison officials may administer treatment to a prisoner despite that prisoner's desire to refuse treatment, without violating the prisoner's due process rights, if, in the exercise of their professional judgment, the officials reasonably determine that providing such treatment furthers a legitimate penological interest. (Green Haven Correctional Facility, New York)

U.S. District Court
TELEPHONE CALLS

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. District Court
MEDICAL ISSUES

Sykes v. McPhillips, 412 F.Supp.2d 197 (N.D.N.Y. 2006). The personal representatives for a mother and son's estates brought a civil rights action under § 1983 against various employees of a substance abuse correctional facility where the son had been confined, a private hospital which provided emergency medical services to the son, and a physician. The representatives alleged constitutional violations arising from the delivery of emergency medical services during the son's incarceration, as well as a state law malpractice/negligence claim. The hospital and physician moved for summary judgment on the issue of their “state actor” status. The district court granted the motion, holding that neither the hospital nor the physician were a “state actor” for the purposes of § 1983. According to the court, hospitals and physicians that provide care outside of the prison facility may be held to be state actors for purposes of § 1983 when they work pursuant to a contract, but the private hospital did not voluntarily assume the function of the state by accepting the correctional facility's delegation of its duty to provide emergency medical care to the prisoner. The court noted that the hospital did not have an implied contract with the correctional facility to provide emergency medical services when it treated the prisoner, given that it was federally mandated to do so by the Emergency Medical Treatment and Active Labor Act (EMTALA). The prisoner suffered from diabetes while confined at the facility and the plaintiffs alleged that the defendants were deliberately indifferent to his medical needs. The defendants maintained that the prisoner received the same medical care as any other patient, regardless of his prisoner status. The plaintiff disputed this by pointing out that corrections officers exercised continual custody over the prisoner in a manner that interfered with the confidentiality normally accorded the health information of free patients, the hospital accommodated the officers' constant attendance upon the prisoner, and the state paid for his medical care. (Hale Creek Alcohol and Substance Abuse Correctional Treatment Center, New York)

U.S. Appeals Court
SEARCHES

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)

U.S. Appeals Court
TELEPHONE CALLS

U.S. v. Morin, 437 F.3d 777 (8th Cir. 2006). A defendant was convicted in district court and he appealed. The appeals court affirmed, finding that recordings of the defendant's jailhouse telephone calls were admissible for sentencing purposes. The court found that the defendant impliedly consented to the warrantless tape-recording of his jailhouse telephone calls, and thus, the recordings were admissible for sentencing purposes. The defendant had been given a prisoners' handbook that informed him that his jailhouse calls would be monitored, and there were signs above the phones in the prison informing him of that fact. (North Dakota)

U.S. District Court
VISITOR
SEARCHES

Zboralski v. Monahan, 446 F.Supp.2d 879 (N.D.Ill. 2006). A visitor to a state treatment and detention facility brought a § 1983 action against facility officers, alleging that she was illegally searched prior to visits. The visitor moved to proceed in forma pauperis, and the district court granted the motion. The court held that the visitor stated Fourth Amendment claims based on

unreasonable patdowns and “Rapiscan” scans, an invasion of privacy claim, and an assault and battery claim. The visitor alleged that she was illegally searched prior to visits, claiming invasion of privacy under Illinois law based on intrusion upon seclusion, alleging that her virtual naked image was captured through the Rapiscan machine, kept, and viewed hours later by officers. The court noted that the visitor was neither a patient nor under any criminal investigation. The visitor also alleged that an officer caused her to reasonably believe that she would place her fingers in the visitor's vaginal area, and physically touched her in such a manner at least four times. (Illinois Department of Human Services Treatment and Detention Facility, Joliet, Illinois)

2007

U.S. District Court SEARCHES

Bullock v. Sheahan, 519 F.Supp.2d 763 (N.D.Ill. 2007). Male jail inmates brought a class action against a county and county sheriff alleging violations of the Fourth and Fourteenth Amendments based on an alleged policy and/or practice under which male inmates were subjected to strip searches upon returning to a county department of corrections for out-processing after having been ordered released. The sheriff and county moved to strike certain portions of the inmates' motion for summary judgment. The district court granted the motion in part and denied in part. The court held that the sheriff and county had notice of the male jail inmates' claims challenging the policy and practice, despite allegations that the claims regarding the inmates having to strip in a large non-private group setting came as a surprise to the county and the sheriff because they were never addressed by inmates during fact or expert discovery. The court found that factual allegations contained in the complaint satisfied the notice pleading standards with respect to all claims, and that the county and sheriff did not provide specific evidence of any misrepresentations or sandbagging other than an affidavit stating that discovery did not focus on the privacy issue. (Cook County Department of Corrections, Illinois)

U.S. Appeals Court SEARCHES

Campbell v. Miller, 499 F.3d 711 (7th Cir. 2007). An arrestee brought a § 1983 action against a police officer and city, alleging that a strip search violated his Fourth Amendment rights. The district court entered judgment, upon jury verdict, in favor of the defendants and denied the arrestee's motion for judgment as a matter of law. The arrestee appealed. The appeals court affirmed in part, reversed in part and remanded. The court held that evidence was sufficient to support a jury verdict that police officers had reasonable suspicion to believe that the arrestee was concealing contraband, as would justify a strip search and body cavity search of the arrestee, for the purpose of the arrestee's § 1983 unreasonable search claim. The court noted that the plaintiff was arrested for narcotics possession, when an officer first encountered the arrestee the officer reasonably believed that the plaintiff fit the description of a man who had just engaged in a drug transaction. The officer testified that he saw the arrestee drop a bag of marijuana and then disregarded repeated commands to stop moving away. But the court found that a strip and body cavity search conducted on the arrestee in an open backyard was not reasonable, and thus, the search violated the arrestee's Fourth Amendment rights. The search involved nudity and visual inspection of the anal area, the backyard was exposed to the neighbors, the arrestee's friend was able to watch the search and others could have watched as well, and no exigency justified such a public exposure. The court concluded that the city was not liable under § 1983 for the arresting officer's unreasonable conduct. Although the city had a policy that any officer making an arrest had to conduct a body search of the prisoner, there was no policy requiring the search to be conducted in public, the decision to conduct the search in an open and exposed area was what rendered the search unconstitutional, and that decision was made by the officer. (City of Indianapolis, Indiana)

U.S. District Court PRIVACY ACT RECORD

Conklin v. U.S. Bureau of Prisons, 514 F.Supp.2d 1 (D.D.C. 2007). A federal inmate brought a pro se action against the Bureau of Prisons (BOP) under the Privacy Act alleging that the copy of his pre-sentence investigation report (PSI) in the BOP's files contained incorrect statements about him, resulting in his classification as a “high custody” inmate. The district court granted the BOP's motion to dismiss. The court held that fact issues as to the date on which the prisoner knew or had reason to know of allegedly incorrect statements in the copy of his PSI in BOP files precluded dismissal as untimely. The court held that amendment of the copy of the inmate's PSI in BOP files was not an available remedy and damages were not an available remedy. (Beckley Federal Correctional Institution in Beaver, West Virginia)

U.S. District Court RIGHT OF PRIVACY

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. According to the court, a deputy's alleged recording of the detainee in a jail dormitory with a cell phone video camera, if proven, was not a violation of any constitutional right to privacy, inasmuch as the detainee had no expectation of privacy while in a public area of the jail, and any possible harm to the detainee's reputation was so speculative as to be non-existent. (River Parish Correction Center, Louisiana)

U.S. Appeals Court DNA

U.S. v. Kriesel, 508 F.3d 941 (9th Cir. 2007). The government petitioned to revoke supervised release of a felon who refused to submit a DNA sample. In response, the convicted felon challenged the constitutionality of the Justice for All Act, which expanded coverage of the DNA Act to require DNA samples from all convicted felons on supervised release. The felon also challenged the regulation issued pursuant to the Justice for All Act. The district court upheld the constitutionality of the Justice for All Act and the validity of the regulation. The felon appealed. The appeals court affirmed. The court held that requiring a convicted felon on supervised release to provide a DNA sample, even through drawing of blood, did not constitute an illegal search. The court found that the government's significant interests in identifying supervised releasees, preventing recidivism, and solving past crimes outweighed the diminished privacy interests of the convicted felon. (United States District Court for the Western District of Washington)

- U.S. District Court
DNA
RECORDS
- Wilson v. Wilkinson*, 608 F.Supp.2d 891 (S.D.Ohio 2007). A state prisoner brought a § 1983 action against state officials, challenging the constitutionality of a state statute requiring the collection of DNA specimens from convicted felons. The parties cross-moved for summary judgment. The district court held that the collection of a DNA specimen was not an unreasonable search and seizure, and that a DNA sample did not implicate the prisoner's Fifth Amendment privilege against self-incrimination. The court noted that law enforcement's interest in obtaining DNA for a database to solve past and future crimes outweighed the prisoner's diminished privacy rights. According to the court, the prisoner did not have a fundamental privacy interest protected by substantive due process in the information contained in a DNA sample and the profile obtained pursuant to the state statute. The court noted that the prisoner, as a convicted felon, did not enjoy the same privacy rights as did ordinary citizens. (Ross Correctional Institution, Ohio Department of Rehabilitation and Correction)
- 2008**
- U.S. District Court
RIGHT TO PRIVACY
- Bellamy v. Wells*, 548 F.Supp.2d 234 (W.D.Va. 2008). A pretrial detainee brought a § 1983 action against police officers and a chief of police for initiating and surreptitiously recording conversations with him while he was in custody on an indictment for rape. The district court entered judgment for the defendants in part. The court held that the detainee's allegations that police officers initiated and surreptitiously recorded conversations with him while he was in custody, and that incriminating statements he made during these conversations were subsequently used against him at trial, stated a cognizable claim under § 1983 for violation of his Fifth Amendment right against compelled self-incrimination. While in a hospital, the detainee spoke with an officer who was guarding him. When police learned of these conversations, they had the officer wear a recording device and they recorded subsequent conversations. The detainee was never given his Miranda warning during the course of these conversations. (City of Waynesboro, Virginia)
- U.S. District Court
RIGHT TO PRIVACY
SEARCHES
- 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 court found that potentially discharged male inmates, for whom there was no longer any basis for detention, had a privacy interest with regard to strip searches which was arguably greater than that of pretrial detainees. According to the court, the county's policy of strip searching all male discharged inmates in large group settings in which inmates were placed at approximately an arm's length apart when searched violated the Fourth Amendment. (Cook Co. Dept. of Corrections, Illinois)
- 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 CARE
NUDITY
STAFF OF
OPPOSITE SEX
SEARCHES
- 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 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. Appeals Court
OBSERVATION BY
STAFF *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
PRIVACY ACT
RECORDS *Jackson v. Federal Bureau of Prisons*, 538 F.Supp.2d 194 (D.D.C. 2008). A federal prisoner brought an action under the Privacy Act against the Bureau of Prisons (BOP) and the United States Parole Commission, alleging that the defendants failed to maintain accurate records regarding his sentence and criminal history, and refused to amend the inaccurate files. The district court held that the BOP's inmate record systems were exempt from the Privacy Act's access and amendment requirements and civil remedies provision. The court found that the Parole Commission's decision-making files were also exempt from the Privacy Act's amendment provisions. The court held that the prisoner failed to show that the Parole Commission willfully or intentionally failed to maintain accurate records. (Rivers Correctional Institution, North Carolina)
- U.S. Appeals Court
DNA- Deoxy
Ribonucleic Acid *Kaemmerling v. Lappin*, 553 F.3d 669 (D.C.Cir. 2008). A federal prisoner sought to enjoin application of the DNA Analysis Backlog Elimination Act (DNA Act), alleging the Act violated his rights under the Religious Freedom Restoration Act (RFRA) and the First, Fourth, and Fifth Amendments. The district court dismissed the action for failure to exhaust administrative remedies. The prisoner appealed. The appeals court affirmed. The court held that the prisoner's allegation that DNA collection burdened his free exercise of religion failed to state a claim under the First Amendment and RFRA. The court found that the potential criminal penalty for failure to cooperate with the collection of a DNA sample did not violate RFRA. According to the court, the collection of prisoner DNA furthers a compelling government interest using the least restrictive means. The court also found that the DNA Act does not violate equal protection despite the fact that it requires collection of DNA only from felons who are incarcerated or on supervised release, rather than those who are no longer under the supervision of the Bureau of Prisons (BOP), where the BOP's measure of control over supervised and incarcerated felons makes it significantly easier to collect their DNA samples. The court noted that the extraction, analysis, and storage of the prisoner's DNA information did not call for the prisoner to modify his religious behavior in any way, did not involve any action or forbearance on the prisoner's part, and did not interfere with any religious act in which the prisoner was engaged. (Federal Corr. Institution, Seagoville, Texas)
- U.S. District Court
AIDS-Acquired
Immune
Deficiency
Syndrome
HEALTH
RIGHT TO PRIVACY *Ringgold v. Lamby*, 565 F.Supp.2d 549 (D.Del. 2008). An inmate filed a § 1983 action against a correctional officer, alleging deliberate indifference amounting to cruel and unusual punishment based on the officer's alleged refusal to let him leave his cell early to serve food and the officer's alleged discussion of his hygiene and HIV status with another prisoner. The district court granted the officer's motion for summary judgment. The court held that the officer's alleged discussion of the prisoner's hygiene and HIV status with another prisoner was only verbal harassment and therefore could not be cruel and unusual punishment. The court noted that the inmate's right to privacy under the Fourteenth Amendment prohibited the officer from making any statements to another prisoner about the inmate's hygiene and HIV status, and the statements did not involve correctional goals or institutional security. The court found that the officer's refusal to allow the inmate to leave his cell to serve a meal as a prison food worker was a good faith error and not cruel and unusual punishment, where the officer thought that the inmate worked on a different crew. (Howard R. Young Correctional Institution, Rhode Island)
- U.S. Appeals Court
ATTORNEY-CLIENT
COMMUNICA-
TIONS
TELEPHONE CALLS *Sherbrooke v. City of Pelican Rapids*, 513 F.3d 809 (8th Cir. 2008). An arrestee sued a city and its police officers alleging that his Fourth Amendment rights were violated when officers recorded one side of his conversation with his attorney. The district court entered summary judgment for the arrestee and the defendants appealed. The appeals court reversed and remanded, finding that the recording of the conversation with the attorney did not constitute a search. The court found that the police officers' recording of one side of the suspect's conversation with his attorney, pursuant to a standard operating procedure of recording detainees who were awaiting a blood alcohol content breath test, did not constitute a search inasmuch as the suspect could not reasonably expect that the conversation was private. The court noted that officers were present when the call was made in an open room at the police station and the suspect acknowledged that the recording was "fine" with him. (City of Pelican Rapids, Minnesota)
- U.S. District Court
RECORDS
RIGHT TO PRIVACY *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
RIGHT TO PRIVACY
SEARCHES *Streeter v. Sheriff of Cook County*, 576 F.Supp.2d 913 (N.D.Ill. 2008). Current or former pretrial detainees filed a class action under § 1983 against a county sheriff and the county, challenging a strip search policy at the county jail, alleging it violated their Fourth and Fourteenth Amendment rights. The district court denied summary judgment for the defendants. The court held that the detainees stated a claim for violation of their Fourth Amendment rights in connection with group strip searches that were allegedly conducted in an unreasonably intrusive manner and went on longer than penologically necessary. The court also found that the detainees stated a claim for violation of their rights

under the Due Process Clause of the Fourteenth Amendment in connection with group strip searches that were allegedly conducted in a manner intended to humiliate and embarrass the detainees, and that went on longer than necessary. (Cook County Jail, Illinois)

U.S. District Court
CONFIDENTIAL
INFORMATION
SEX OFFENDERS

Swift v. Tweddell, 582 F.Supp.2d 437 (W.D.N.Y. 2008). An inmate brought a pro se § 1983 action against a sheriff, deputies, and jail employees. The district court denied the defendants' motion for summary judgment. The court found that jail officials did not act with deliberate indifference to the inmate's safety, in violation of the Eighth Amendment, in connection with a corrections officer's alleged disclosure to other inmates that the inmate had been charged with rape. The court noted that following the disclosure, the inmate spoke with a captain who agreed to, and did remove another inmate who had allegedly taunted him about the rape charge from the inmate's housing unit. The inmate was not harmed, or placed in imminent danger, as a result of the disclosure. According to the court, disclosure to other inmates that the inmate had been charged with rape did not violate any of the inmate's privacy rights, since the information was not privileged or otherwise protected, and the inmate was also a sentenced offender under the authority of the New York State Department of Correctional Services. (Steuben County Jail, New York)

U.S. Appeals Court
TELEPHONE CALLS

U.S. v. Conley, 531 F.3d 56 (1st Cir. 2008). After denial of his motion to suppress phone calls between him and an inmate in a correctional facility, a defendant pled guilty in the district court to making a false statement to a government agency. The defendant appealed. The appeals court affirmed. The appeals court held that the inmate consented to the monitoring of his phone calls with the defendant, and therefore no Wiretap Act violation occurred. The court noted that the paperwork required to obtain a personal identification number (PIN) needed to place calls required consent to monitor calls, the inmate had received his PIN, placards placed near telephones warned that calls were subject to monitoring, recorded messages announced the monitoring of calls, and the inmate's conversations indicated that he was aware his calls were being recorded. (Maine Correctional Center)

U.S. Appeals Court
CONFIDENTIAL
INFORMATION
TELEPHONE CALLS

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
DNA- Deoxy
Ribonucleic Acid

Wilson v. Collins, 517 F.3d 421 (6th Cir. 2008). A state prisoner brought a § 1983 action against state officials challenging the constitutionality of Ohio's DNA Act that required the collection of DNA specimens from convicted felons. The district court granted summary judgment to the defendants and the prisoner appealed. The appeals court affirmed. The court held that collection of a DNA specimen pursuant to the statute was not an unreasonable search and seizure and that the prisoner did not have a fundamental privacy interest in the information contained in a DNA specimen. (Ohio Department of Rehabilitation and Correction)

U.S. District Court
SEARCHES
VISITORS

Zboralski v. Monahan, 616 F.Supp.2d 792 (N.D.Ill. 2008). The wife of a civilly committed resident of a state treatment and detention facility brought an action against facility employees, in their individual and official capacities, alleging claims under § 1983 for violations of her Fourth and Fourteenth Amendment rights, as well as claims for invasion of privacy and assault and battery, in connection with a series of searches the employees performed on her when she was visiting a resident. The court denied the employees' motion for summary judgment, in part. The court held that a hearing was required in order to develop the record on the issue of the reasonableness of the searches. The court held that summary judgment was precluded by fact issues as to whether the wife agreed to undergo a scan each and every time she entered the facility, and as to whether one employee intentionally touched the wife's vaginal area during pat-down searches. The court denied immunity to the employee and found that, as a matter of first impression, requiring the wife to submit to a scan in order to visit her husband amounted to an unconstitutional condition. The facility employed X-ray technology to conduct a body search of visitors. The court noted that questions to be addressed at a hearing included how the machine actually worked and the quality of the images it produced, and how reasonable persons would feel being subjected to such a scan. According to the court, to determine whether a body scan of a prison visitor is akin to a pat-down or strip search, the key factor is the level of embarrassment and intrusion that the visitor searched feels. (Illinois Department of Human Services' Treatment and Detention Facility, Joliet, Illinois)

2009

U.S. District Court
PRIVACY ACT
RECORDS

Brown v. Federal Bureau of Prisons, 602 F.Supp.2d 173 (D.D.C. 2009). A federal prisoner filed an action under the Privacy Act alleging that the Federal Bureau of Prisons (BOP) deliberately and willfully did not maintain accurate records and reports about gangs and gang members which caused him to be housed with inmates from whom he should have been kept separate, jeopardizing his safety and resulting in serious physical injury from attacks. The BOP filed a motion to dismiss, and the district court granted the motion. The court found that the Inmate Central Records System maintained by the BOP was exempt from the amendment requirements and civil remedies provisions of the Privacy Act; therefore, the federal prisoner could not sue the BOP for damages under the Privacy Act for information not maintained or incorrectly maintained in the BOP's Inmate Central Records System. According to the court, the Administrative Procedure Act (APA) was not available to the federal prisoner to address alleged inadequate and inaccurate record keeping by BOP, since BOP was not required to maintain accurate records. The court also noted that suit under APA was not available to the prisoner even under a liberal construction of his complaint as a challenge to the decision of the Bureau of Prisons (BOP) of where to house him, since the prisoner's place of imprisonment, and his transfers to other federal facilities, were specifically exempted from challenge under APA. (Federal Bureau of Prisons, District of Columbia)

U.S. District Court
SEARCHES

Bullock v. Dart, 599 F.Supp.2d 947 (N.D.Ill. 2009). Inmates filed a § 1983 action challenging the constitutionality a county's policies of performing blanket strip searches on male, but not female, inmates returning to county jail from court hearings at which charges against them were dismissed, and of providing privacy screens for female discharges but not male discharges. After entry of summary judgment in the inmates' favor, the defendants moved for reconsideration. The district court granted the motion in part. The court held that male inmates were similarly situated to female potential discharges. The court found that fact issues remained as to whether the county's policies were justified, and whether security considerations prevented the county from segregating inmates against whom charges had been dismissed before they returned to their divisions. The defendants asserted that the much greater number of male inmates in county custody and the differences in the nature and frequency of dangerous incidents in each population justified the policy. The court held that the county's policy and practice of segregating female possible discharges from the remainder of female court returns, such that female actual returns could elect to avoid strip searches, but not segregating male possible discharges in a similar manner, was not gender-neutral on its face, for the purposes of the Equal Protection Clause. (Cook County Department of Corrections, Illinois)

U.S. District Court
RIGHT OF PRIVACY
SEARCHES

Cox v. Ashcroft, 603 F.Supp.2d 1261 (E.D.Cal. 2009). A prisoner brought a § 1983 action against the United States Attorney General, several federal prosecutors, and the owner and employees of a privately-owned federal facility in which the prisoner was incarcerated, alleging constitutional violations arising from his arrest, prosecution, and incarceration. The district court dismissed the action. The court held that the prisoner did not have any Fourth Amendment rights to privacy in his cell, and thus did not suffer any constitutional injury as a result of the search of his cell and the confiscation of another inmate's legal materials. The court found that regulations at a privately-owned federal prison facility prohibiting the prisoner from having the legal papers of another inmates in his cell did not chill the prisoner's exercise of his First Amendment right to provide legal assistance to fellow inmates, thus precluding liability on the part of the prison and its employees in the prisoner's § 1983 action alleging First Amendment retaliation. The court noted that the regulations reflected a legitimate penological objective in regulating when and where such assistance was provided. The court found that the prisoner lacked standing to bring a claim against the warden of a privately-owned federal prison facility, alleging that paying the prisoner at a rate below minimum wage violated the Fair Labor Standards Act (FLSA). The court noted that prisoners were not "employees" within the meaning of FLSA. (Taft Correctional Institution, Wackenhut Corrections Corporation, California)

U.S. District Court
SEARCHES
STAFF OF
OPPOSITE
SEX

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
MEDICAL CARE

Hunter v. Amin, 583 F.3d 486 (7th Cir. 2009). The sister of a pretrial detainee who committed suicide in a county jail brought an action on her own behalf, and as the personal representative of the estate of her deceased brother, against a jail psychiatrist, county sheriff, and the county, asserting claims under § 1983, as well as claims of medical malpractice. The district court granted summary judgment in favor of the defendants and the sister appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the county jail's policy that prevented the pretrial detainee from speaking to the jail psychiatrist without a jail officer being present did not violate the detainee's constitutional rights, so as to serve as the basis for holding the county liable for the detainee's death under § 1983. According to the court, the pretrial detainee had a constitutional right to adequate mental health treatment, but there was no evidence suggesting that the detainee could not have received adequate mental health treatment in the presence of a corrections officer. The appeals court held that summary judgment was precluded by a genuine issue of material fact as to whether the jail psychiatrist committed medical malpractice by discontinuing the medication of the detainee who later committed suicide. (St. Clair County Jail, Illinois)

U.S. District Court
SEARCHES
VIEW BY INMATES

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 court 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. District Court
PRIVACY ACT
RECORDS

Lynn v. Lappin, 593 F.Supp.2d 104 (D.D.C. 2009). A federal prisoner brought a pro se action against the Bureau of Prisons director and a prison warden, alleging that the defendants used false and inaccurate records to willfully and intentionally make adverse decisions concerning the prisoner. The district court dismissed the action. The court held that the Privacy Act provided the prisoner's exclusive remedy, and that the prisoner could not maintain a claim under the Act, where the Department of Justice (DOJ) had properly exempted the Bureau of Prisons' inmate central record system entirely from the Act's access and amendment requirements. (Administrative Maximum Facility, Federal Bureau of Prisons, Florence, Colorado)

U.S. Appeals Court
MEDICAL CARE

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 noted that the searches were carried out by medical professionals in the relatively private, sanitary environment of a hospital, upon suspicion that the prisoner had contraband, namely a cell phone, in his rectum, and with no abusive or humiliating conduct on the part of the law enforcement officers or the doctors.

But 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. According to the court, an x-ray, as a much less invasive procedure, could have confirmed the results.

The court held that the prisoner's signed consent form for the exploratory surgery of his abdomen did not preclude the prisoner's claim that he was deprived of his Fourth Amendment rights, where the prisoner was pressured and intimidated into signing the consent, had been under constant surveillance for more than a day prior to the surgery, had been forced to submit to searches, x-rays, and invasive rectal examinations prior to his signing the consent form, and had twice been forced to excrete on a floor in the presence of prison personnel.

The court held that the prisoner's allegations against correctional officers were sufficient to allege that the officers caused the hospital's forced exploratory surgery on the prisoner, as required to state a § 1983 claim against the officers. The prisoner alleged that the officers were directly involved in all phases of the search for contraband and in the ultimate decision to transport the prisoner to the hospital for a rectal examination or a medical procedure to remove the foreign object purportedly lodged in the prisoner's rectum. According to the court, the prisoner's allegation that correctional officers exerted pressure on hospital physicians that examined the prisoner was sufficient to allege the state compulsion necessary to state a claim of § 1983 liability against a surgeon. 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, Río Piedras Medical Center)

U.S. Appeals Court
RIGHT TO PRIVACY
SEARCHES
STAFF OF
OPPOSITE SEX

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
SEARCHES

Serna v. Goodno, 567 F.3d 944 (8th Cir. 2009). A patient of a state mental hospital, involuntarily civilly committed as a sexually dangerous person pursuant to a Minnesota sex offender program, brought a § 1983 action against a program official and against the head of the state's Department of Human Services. The patient alleged that visual body-cavity searches performed on all patients as part of a contraband investigation violated his Fourth Amendment rights. The district court granted summary judgment for the defendants, and the patient appealed. The appeals court affirmed. The court held that visual body-cavity searches performed on all patients of a state mental hospital, as part of a contraband investigation following the discovery of a cell-phone case in a common area, did not infringe upon the Fourth Amendment rights of the patient involuntarily civilly committed to the facility as a sexually dangerous person. According to the court, even though facility-wide searches may have constituted a disproportionate reaction, cell phones presented a security threat in the context of sexually violent persons, there was a history of patients' use of phones to commit crimes, and the searches were conducted in a private bathroom with no extraneous personnel present and in a professional manner with same-sex teams of two. (Minnesota Sex Offender Program, Moose Lake, Minnesota)

U.S. District Court
RIGHT TO PRIVACY

Sital v. Burgio, 592 F.Supp.2d 355 (W.D.N.Y. 2009). A state prisoner brought a § 1983 action against corrections officers, a hearing officer, and a deputy superintendent employed by New York State Department of Correctional Services (DOCS). The defendants moved for summary judgment on all claims, and the prisoner moved for summary judgment on all but one of his claims. The district court granted the defendants' motion for summary judgment. The court held that no evidence supported a finding that alleged false disciplinary reports were issued with a retaliatory motive. The court held that the conditions of the prisoner's confinement in a drug-watch room, where he was held for six days so that officers could examine his feces to see if they contained drugs, and during his nine-month stay in a special housing unit (SHU) did not constitute violations of his Eighth Amendment right to be free from cruel and unusual punishments giving rise to the § 1983 claim. According to the court, although the conditions were unpleasant, evidence did not support a finding that the conditions were particularly severe, or that they jeopardized the prisoner's health or safety. The court found that legitimate penological interests of maintaining prison security and discipline, particularly concerning the suspected smuggling and possession of illegal drugs, outweighed any privacy right enjoyed by a state prisoner, and thus the prisoner failed to state a § 1983 claim related to the prisoner being forced to defecate in full view of other persons in the drug-watch room. (Attica Correctional Facility, New York)

U.S. District Court
OBSERVATION BY
STAFF
VISITORS

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
OBSERVATION BY
STAFF
TELEPHONE CALLS

Walker v. Gomez, 609 F.Supp.2d 1149 (S.D.Cal. 2009). A prisoner brought an action against the California Department of Corrections and Rehabilitation, alleging violations of their settlement agreement with the prisoner that resulted from a prior complaint, discrimination based on race as a policy, and retaliation. The prisoner moved to enforce the settlement agreement and for monetary sanctions. The court held that the prison officials' conduct of placing the prisoner under lockdown for a period of 10 days following incidents of riots and attempted murder was not a severe restriction on the prisoner's activities amounting to a breach of the terms of the prior settlement agreement. According to the court, a prison counselor's conduct of staying in the same room as the prisoner while he completed confidential calls did not amount to retaliation in violation of the settlement agreement. (Calipatria State Prison, California)

2010

U.S. District Court
MAIL

Akers v. Watts, 740 F.Supp.2d 83 (D.D.C. 2010). A federal inmate brought a civil rights action against various officials, employees, and agents of the Federal Bureau of Prisons (BOP), Federal Bureau of Investigation (FBI), United States Attorney's Office for the District of Kansas, and the United States Marshals Service (USMS) in their individual capacities, alleging, among other things, that the defendants conspired to violate his constitutional rights by restricting his communications with persons outside the prison. The district court granted the federal defendants motion to dismiss. The court held that it did not have personal jurisdiction in the federal inmate's civil rights action against the Bureau of Prisons (BOP) officials, employees, and agents, a Federal Bureau of Investigation (FBI) agent, a Kansas Assistant United States Attorney (AUSA), or the United States marshals, where the complaint made no allegations that such defendants had any personal connection with District of Columbia other than their federal employment, and the mere fact that the defendants were federal government employees, affiliated with agencies that were headquartered or maintained offices in the District of Columbia, was insufficient to render them subject to suit in their individual capacities. The court held that restrictions imposed upon, and the Bureau of Prisons (BOP) interferences with, the correspondence of federal inmate, who had initiated fraudulent schemes from prison on more than one occasion and used the mail in furtherance of his efforts, served a legitimate penological interest by limiting the inmate's ability to manipulate or swindle others, and thus did not violate the inmate's First Amendment rights. The court noted that the inmate had no reasonable expectation of privacy in his non-legal mail, and therefore restrictions placed upon the inmate's correspondence following his repeated efforts to initiate new fraudulent schemes while incarcerated did not violate the Fourth Amendment. (Administrative Maximum, Florence, Colorado, Federal Bureau of Prisons)

U.S. District Court
STAFF OF OPPO-
SITE SEX

Ambat v. City and County of San Francisco, 693 F.Supp.2d 1130 (N.D.Cal. 2010). Sheriff's deputies brought an action against a city and county, alleging various claims including retaliation, and that a gender based staffing policy violated Title VII and California's Fair Employment and Housing Act (FEHA). Cross-motions for summary judgment were filed. The district court granted summary judgment for the defendants in part, and denied in part. The court held that the sheriff's department policy that only female deputies would be assigned to female-only housing units was implemented to protect the interests that amount to the essence of the Sheriff's business, including safety and privacy, as

required to establish a bona fide occupational qualification as a defense to the deputies' claims of employment discrimination under Title VII and California's Fair Employment and Housing Act (FEHA). The court noted that the policy was implemented to prevent sexual misconduct and inappropriate relationships between male deputies and female inmates, to alleviate male deputies' fears of false accusations of misconduct resulting in a reluctance to supervise female inmates closely, which created opportunities for smuggling and use of contraband, and to prevent female inmates from being required to dress and undress in front of male deputies.

The court found that the sheriff was entitled to deference in his policy judgment to implement the department policy that only female deputies would be assigned to female-only housing units and in determining whether the policy was reasonably necessary to achieve issues of safety and privacy and to ensure normal operation of the jails, as required to establish a bona fide occupational qualification as a defense to the deputies' claims of employment discrimination under Title VII and California's Fair Employment and Housing Act (FEHA). The court noted that, despite not conducting formal studies or seeking consultation, the policy was based upon the sheriff's experience and observations over thirty years as sheriff and conversations with senior officials and jail commanders over several months. The court noted that suggested non-discriminatory alternatives to the sheriff's department policy, including cameras and additional training, were not feasible alternatives that furthered the objectives of safety, security and privacy. Installation of cameras in the units was cost-prohibitive and did not address privacy concerns or the fact that misconduct took place outside of the units, additional training would not eliminate sexual abuse since deputies already knew it was forbidden, and there was no effective testing or screening method to identify deputies who might engage in sexual misconduct.

The court found that the fact that the deputy made statements to the National Academy of Arbitrators, alleging that the sheriff was influenced by financial contributions and nepotism and that the sheriff's general counsel had engaged in sex tourism was a legitimate, non-retaliatory reason to terminate the deputy under Title VII and the California Fair Employment and Housing Act. (San Francisco Sheriff's Department, California)

U.S. District Court
NUDITY
SEARCHES
VIEW BY STAFF

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. The court held that the prisoner's allegations were factually sufficient to state a colorable § 1983 claim for violations of his Fourth Amendment right to be free of unlawful searches and Eighth Amendment right to be free of cruel and unusual punishment. The prisoner alleged that whenever he was moved from his cell to any other location he was made to stand in a brightly lit shower in full view of female employees, made to strip naked, place his bare feet on a filthy floor covered in insects and scum, spread his buttocks, lift his penis, then put his fingers in his mouth without any opportunity to wash his hands, and that the process was unnecessary because inmates were in full restraints, escorted and solitary at all times. (High Desert State Prison, Nevada)

U.S. District Court
NUDITY
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. (Dist. of Columbia, Corrections Corporation of America, Correctional Treatment Facility)

U.S. District Court
SEARCHES
VIEW BY STAFF

Jones v. Price, 696 F.Supp.2d 618 (N.D.W.Va. 2010). A male inmate brought a § 1983 action against a correctional officer alleging that the officer violated his constitutional rights by requiring him to undergo a strip search in a non-private area in front of a female booking clerk. The district court denied the officer's motion for summary judgment. The court held that summary judgment was precluded by genuine issues of material fact as to whether the correctional officer conducted the strip search in a reasonably necessary manner. The court noted that the inmate's right to keep his genitals private from unreasonable exposure to members of the opposite sex was clearly established at the time of the search. (Tygart Valley Regional Jail, West Virginia)

U.S. District Court
SEARCHES
STAFF OF OPPOSITE
SITE SEX

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. 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)

2011

U.S. District Court
VIEW BY INMATES

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. District Court
MEDIA
VISITORS

Battle v. A & E Television Networks, LLC, 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. District Court
TELEPHONE CALLS

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 held that a pretrial detainee had no reasonable expectation of privacy in telephone calls made from within jail to individuals other than his attorney, and thus jail officials did not violate the detainee's Fourth Amendment rights by monitoring his calls to his former spouse. The court held that the county inmates lacked standing to raise a claim that the county jail's lack of a law library violated their due process rights, where the inmates did not claim that they attempted to exercise the right of self-representation and did not otherwise have access to legal materials. According to the court, the county jail's removal of its law library was rationally related to its interest in reducing expenses, and thus did not violate the inmates' equal protection rights. The court noted "...because Plaintiff's claim for law library is not explicitly or implicitly guaranteed by the Constitution, it is not a fundamental right. Therefore, the prison's policy need only bear a rational relationship to a legitimate state interest." (Cuyahoga County Jail, Ohio)

U.S. Appeals Court
SEARCHES
STAFF OF OPPOSITE
SEX
VIEW BY STAFF

Byrd v. Maricopa County Sheriff's Dept., 629 F.3d 1135 (9th Cir. 2011). A male pretrial detainee, proceeding pro se, brought a § 1983 action against a female cadet and a sheriff's department, alleging violations of the Fourth and Fourteenth Amendments. The district court entered judgment in favor of the defendants. The ruling was affirmed on appeal. After granting a rehearing en banc, the appeals court reversed and remanded. The appeals court held that the strip search of the male pretrial detainee by a female cadet was unreasonable in violation of the Fourth Amendment, where the cadet touched the detainee's inner and outer thighs, buttocks and genital area with her latex gloved hand through very thin boxer shorts, the female cadet moved the detainee's penis and scrotum in the process of conducting the search, the cadet wore only jeans and a white t-shirt without any identification other than a name printed on the back of the shirt, ten to fifteen non-participating officers watched the search, and at least one person videotaped the search. (Maricopa County Sheriff, Arizona)

U.S. District Court
MEDICAL ISSUES
MEDICAL CARE

Davidson v. Desai, 817 F.Supp.2d 166 (W.D.N.Y. 2011). An inmate at a state prison filed a pro se § 1983 action against prison officials and medical staff alleging that they had been deliberately indifferent to his serious medical needs, and had interfered with his attempts to file grievances regarding his medical care, in violation of the First, Eighth, and Fourteenth Amendments. The defendants moved alternatively for judgment on the pleadings and 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 state inmate's shoulder surgery, related to his degenerative disc disease, was delayed because of the inmate's refusal to submit to a pre-operative chest x-ray, or

whether it was delayed due to the prison's deliberate indifference to his serious medical needs. According to the court, the inmate's allergies were not a "sufficiently serious condition" under the Eighth Amendment, and thus prison officials' failure to provide the inmate with allergy treatment did not constitute deliberate indifference, where the inmate had undergone allergy testing, allergy sensitivity injections were recommended, but when the inmate arrived for allergy injections he objected to the fact that the injection serum had not been drawn into a syringe within his view and refused the injections. The court also found that the inmate's breathing difficulties and possible asthma did not constitute "sufficiently serious conditions" under the Eighth Amendment, and thus prison officials' failure to house the inmate in a prison infirmary where levels of allergens were allegedly lower than levels in other parts of prison was not deliberate indifference. The court held that summary judgment was precluded by genuine issues of material fact as to whether the inmate suffered serious health problems caused by exposure to environmental tobacco smoke (ETS), and whether officials knew of, yet disregarded an excessive risk to the inmate's health.

According to the court, there was no evidence that prison officials' delays in providing the inmate with an updated prescription to his corrective eyeglass lenses had resulted in symptoms which impaired his daily activities, as required to support the inmate's claim against the prison for deliberate indifference to his serious medical needs. The court noted that the inmate was able to order glasses from an outside source, he made no claims that the lack of a proper prescription had resulted in eye strain or headaches, and during the delay, the inmate was able to continue to research and write in support of his legal actions. The court held that the state prison's sick call procedures, which required that, prior to seeing a physician or nurse practitioner, the inmate discuss his medical issues with a nurse while in close proximity to other inmates at sick call such that others were able to overhear medical concerns, did not violate the inmate's right to privacy under the Fourteenth Amendment. The court noted that the inmate's medical conditions were not so unusual so as to provoke an intense desire to preserve confidentiality, nor would result in hostility and intolerance from others if disclosed. (Elmira Correctional Facility, New York)

U.S. District Court
TELEPHONE CALLS

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. Appeals Court
PRIVACY ACT
RECORDS

Prison Legal News v. Executive Office for U.S. Attorneys, 628 F.3d 1243 (10th Cir. 2011). The publisher of a legal journal brought a Freedom of Information Act (FOIA) action against the Executive Office for United States Attorneys (EOUSA), seeking disclosure of a videotape depicting the aftermath of a brutal prison murder and autopsy photographs of the victim. The district court granted partial summary judgment in favor of the EOUSA and the plaintiff appealed. The appeals court affirmed in part and dismissed the appeal in part. The court held that: (1) the FOIA personal privacy exemption for law enforcement records barred disclosure of the portion of the prison videotape depicting the victim's body after the murder and the autopsy photographs; (2) the FOIA personal privacy exemption for law enforcement records barred disclosure of a portion of the audio recording from the prison videotape; and (3) the public domain doctrine did not override the exemption. (United States Penitentiary, Florence, Colorado)

2012

U.S. Appeals Court
MEDIA

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. District Court
SEARCHES

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
MEDICAL ISSUES
NUDITY
RESTRAINTS

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. District Court
SEARCHES
VIEW BY INMATES
VIEW BY STAFF

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 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. District Court
MEDIA

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." (Penn. Department of Corrections)

U.S. District Court
DNA- Deoxy
Ribonucleic
Acid
RECORDS

U.S. v. Fricosu, 844 F.Supp.2d 1201 (D.Colo. 2012). A defendant moved for an order requiring that the DNA sample taken when she presented herself to the United States Marshal for processing and any DNA profiles developed from it be destroyed. The district court denied the motion. The court held that the defendant's Fourth Amendment rights were not violated when the sample was taken and was later furnished to the FBI for analysis and inclusion in a Combined DNA Index System. The court noted that although a vast amount of sensitive information could be mined from the defendant's DNA, the statute authorizing the taking of the sample specified for the limited purposes for which the DNA profile could be used. (United States Marshal, Denver, Colorado)

U.S. District Court MAIL	<i>U.S. v. Ligambi</i> , 886 F.Supp.2d 492 (E.D.Pa. 2012). A detainee who was charged with various crimes, including racketeering, moved to suppress an outgoing prison letter seized by prison officials. The district court denied the motion. The court held that the defendant, who was in prison while charged with various crimes, including racketeering, did not have a reasonable expectation of privacy in his outgoing non-privileged mail. The court noted that prison regulations permitted officials to seize correspondence when it might contain information concerning criminal activities, it was established practice to inspect non-privileged mailings to promote discipline in the institution, and the defendant had a reputation for involvement with organized crime. (South Woods State Prison, Southern State Correctional Facility, New Jersey)
U.S. District Court ATTORNEY-CLIENT COMMUNICATIONS TELEPHONE CALLS	<i>U.S. v. Salyer</i> , 853 F.Supp.2d 1014 (E.D.Cal. 2012). A defendant in a criminal prosecution moved to suppress recordings of telephone calls he made while in pretrial detention, and the government moved for an order permitting it to listen to and use the recordings. The district court granted the motions in part and denied in part. The court held that most of the recorded conversations were not covered by attorney-client privilege, and conversations in which legal advice was the predominate purpose were covered by the attorney-client privilege. The court noted that attorney-client communication was not the predominate purpose of telephone conversations between defendant and attorney who was a friend and who did not represent him in the criminal case. (Sacramento County Jail, California)
U.S. Appeals Court NUDITY VIEW BY STAFF	<i>Watison v. Carter</i> , 668 F.3d 1108 (9 th 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 NUDITY	<i>Woods v. City of Utica</i> , 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. Appeals Court RIGHT OF PRIVACY OBSERVATION BY STAFF	<i>Arnzen v. Palmer</i> , 713 F.3d 369 (8 th 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-
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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)

U.S. District Court
RECORDS

Brooks v. U.S. Dept. of Justice, 959 F.Supp.2d 1 (D.D.C. 2013). A federal prisoner brought an action against the Department of Justice (DOJ) alleging violations of the Privacy Act. DOJ moved to dismiss. The district court granted the motion. The court held that a constitutional claim arising from alleged violations of the Privacy Act was not cognizable. The court also found that the prisoner could not maintain an action under the Privacy Act seeking reassessment of his custody classification by BOP and a designation to a lower security facility, based on alleged errors in information in the presentence investigation report (PSI) that had been prepared in connection with his prior offense, which BOP allegedly relied on in deeming him ineligible for designation to a lower security facility. The court noted that BOP had exempted the Inmate Central Records System and the files maintained therein from the substantive provision of the Act regarding its recordkeeping obligations. (U.S. Dept. of Justice, Bureau of Prisons)

U.S. District Court
SEARCHES
STAFF OF
OPPOSITE SEX

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
RIGHT TO PRIVACY

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 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. Appeals Court
MEDIA
RIGHT OF PRIVACY

Doe v. Gangland Productions, Inc., 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)

U.S. Appeals Court
SEARCHES
STAFF OF
OPPOSITE SEX
VIEW BY STAFF

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
SEARCHES
TELEPHONE CALLS
VISITORS

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
SEARCHES
STAFF OF
OPPOSITE SEX
VIEW OF INMATES
VIEW OF STAFF

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
SEARCHES
VIEW OF INMATES
VIEW OF STAFF

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
DRUG TESTING

Terbush v. Massachusetts ex rel. Hampden County Sheriff’s Office, 987 F.Supp.2d 109 (D.Mass. 2013). An inmate brought a state court action against the Commonwealth of Massachusetts, a medical doctor, a registered nurse, and a physician assistant, alleging deliberate indifference to his serious medical needs and asserting claims under the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The inmate alleged that his inability to provide a urine sample while participating in a day reporting program, was due to an alleged “Shy Bladder Syndrome” condition as well as subsequent medical issues following his return to a correctional facility. The day reporting program provided home-based incarceration for selected inmates with the goal of transitioning them back to the community. Inmates were still “incarcerated” but were allowed to live at home under strict reporting conditions, including drug testing. When the inmate could not produce a urine sample upon his admission to the program, he was returned to jail. The defendants removed the action to federal court, and moved for summary judgment. The district court granted the motion. The court found that the inmate’s alleged “Shy Bladder Syndrome” condition was not a “disability” under the ADA, and even if the condition was a disability, the inmate did not meet the essential eligibility requirements for participation in the program and, therefore, was not a “qualified individual with a disability” under the ADA. The court noted that inmate had often refused to cooperate with medical advice, he received extensive medical care on practically a daily basis, sometimes multiple times a day, the inmate failed to inform anyone at the facility of his urinary retention until two or three days after returning to the facility, the inmate was sent to a hospital when he complained about his urinary retention, and while the inmate did not see an outside urologist until approximately one month later, at that point his medical issues were resolved. (Hampden County Sheriff’s Department Day Reporting Program, Hampden County Correctional Center, Massachusetts)

U.S. District Court
SEARCHES

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. District Court
MEDIA

Von Kahl v. Bureau of Nat. Affairs, Inc., 934 F.Supp.2d 204 (D.D.C. 2013). A prisoner brought an action against a legal publisher, alleging libel in summary of his mandamus petition published more than 20 years after his criminal convictions. The court held that: (1) the publisher’s statement that the prisoner “showed no hint of contrition” with respect to the murders of deputy United States Marshals was actionable; (2) the prisoner was not “libel proof”; (3) the prisoner was a limited purpose public figure, but the complaint alleged sufficient facts supporting a claim of actual malice; (4) the summary did not falsely impute that the prisoner had been accused of a crime and thus was not libelous per se; and (5) the prisoner pled sufficient facts showing special harm to support a claim for special damages. (Bureau of National Affairs, Inc., Criminal Law Reporter, District of Columbia)

U.S. District Court
VIEW BY STAFF

Williams v. Community Solutions, Inc., 932 F.Supp.2d 323 (D.Conn. 2013). State prison inmates brought an action against state department of corrections (DOC) officials and others, alleging that they were subjected to sexual abuse, harassment, and threatening conduct at a residential reentry work-release program, and asserting both federal constitutional claims and state law tort claims. The state officials moved to dismiss. The district court granted the motion in part, and denied in part. The court held that the alleged sexual abuse, harassment, and threats perpetrated against the state prison inmates by staff did not rise to the level of a deprivation of the inmates’ Eighth Amendment rights. According to the court, although staff allegedly stayed in the bathroom with inmates and watched them give urine samples, touched inmates on their buttocks and genitals on a few occasions, and made inappropriate comments toward inmates, such alleged conduct involved isolated incidents and was not sufficiently serious or severe to amount to cruel and unusual punishment. The court found that the inmates failed to state a Fourth Amendment claim for violation of their constitutional right to bodily privacy, absent an allegation of an invalid search or seizure. (Connecticut Department of Corrections, Residential Re-entry Work-Release Program, Community Solutions, Inc., Bloomfield Connecticut)

2014

U.S. Appeals Court
VIEW BY STAFF
STAFF OF OPPO-
SITE SEX
OBSERVATION BY
STAFF

Ambat v. City and County of San Francisco, 757 F.3d 1017 (9th Cir. 2014). Current and former sheriff's deputies brought an action against a city and county, alleging various claims including retaliation and that a policy prohibiting male deputies from supervising female inmates in housing units of jails operated by the county violated Title VII and California's Fair Employment and Housing Act (FEHA). The district court granted the defendants' motion on gender discrimination claims and denied the plaintiffs' motion for reconsideration. The plaintiffs appealed. The appeals court affirmed in part, reversed in part, and vacated in part, and dismissed the appeal in part. The court held that the county was not entitled to summary judgment based on a bona fide occupational qualification (BFOQ) defense, in light of fact issues as to whether a reasoned decision-making process, based on available information and experience, led to the sheriff's adoption of the policy such that the policy would be entitled to deference. The court also found fact issues as to whether the policy of excluding male deputies because of their sex was a legitimate proxy for reasonably necessary job qualifications. The court noted that the primary justification for the policy was to protect the safety of female inmates by reducing the possibility of sexual harassment and abuse by male deputies, a secondary justification was that employing male deputies in female housing pods posed a threat to jail security because of a threat of manipulation, a tertiary justification was protecting the privacy interests of female inmates, and the final justification was promoting female inmates' rehabilitation. (San Francisco Sheriff's Department, California)

U.S. District Court
SEARCHES
STAFF OF OPPO-
SITE SEX
VIEW BY STAFF

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
MEDIA

Brown v. Pepe, 42 F.Supp.3d 310 (D.Mass. 2014). An inmate, a convicted felon who was recaptured following escape from custody, brought an action against a correctional facility officer and a state police trooper under § 1983 and § 1985 for violations of his Fourth, Eighth, and Fourteenth Amendment rights after the officer and trooper required him to perform a "perp walk" in front the news media to be photographed following his recapture, and after the trooper photographed himself with the inmate by taking a "selfie." The trooper moved for judgment on the pleadings. The district court granted the motion, finding that: (1) the "perp walk" did not violate the defendant's Fourth Amendment rights; (2) the trooper's privately-taken "selfie" was a de minimis intrusion; (3) the walk was not cruel and unusual; and (4) the walk did not affect a tangible protectable interest. (DeKalb County Jail, Georgia)

U.S. District Court
MEDICAL ISSUES
MEDICAL CARE
RECORDS

Doe v. Beard, 63 F.Supp.3d 1159 (C.D.Cal. 2014). A state prisoner who was HIV-positive, brought an action against a medical technician, the technician's supervisor, corrections officers, and the California Department of Corrections and Rehabilitation (CDCR), alleging violations of his right to privacy under the Fourteenth Amendment Due Process Clause and the California constitution, based on the defendants' failure to retrieve the prisoner's medical file, which had been delivered to another prisoner. The defendants moved to dismiss for failure to state a claim. The district court denied the motion. The court held that the prisoner stated a § 1983 claim against corrections officers and a medical technician for violation of his right to privacy under the Fourteenth Amendment's Due Process Clause by alleging that they acted with deliberate indifference to a substantial risk of serious harm when they failed to retrieve his medical file, even after the prisoner explained that it had fallen into the hands of another prisoner and that he was receiving threats based on his HIV-positive status. The court found that prison officials were not entitled to qualified immunity from the prisoner's § 1983 claim, where the prisoner's right to medical privacy was clearly established and a reasonable prison official would have been on notice that he or she could not violate the prisoner's right to medical privacy without a legitimate penological objective. (California Institute for Men)

U.S. District Court
VIEW BY STAFF
STAFF OF OPPO-
SITE SEX

Gethers v. Harrison, 27 F.Supp.3d 644 (E.D.N.C. 2014). A female employee of a county detention center brought Title VII gender discrimination and retaliation claims against her employer after she was terminated for allegedly being untruthful regarding a situation in which she was present while a male detainee on suicide watch used the shower. The county moved for summary judgment. The district court granted the motion, finding that the employee failed to demonstrate that she was meeting job expectations or that she was engaged in a protected activity. The employee had been demoted for violating a detention center policy by being present while a male detainee on suicide watch showered naked despite the presence of two male officers, and for extracting the detainee from his cell by herself, creating a risk of danger. The court noted that the male detention officers who assisted male detainees on a suicide watch to shower were not similarly situated to the female detention officer who was also present, under the detention center's policy prohibiting officers of the opposite sex from being present while a detainee showered; the court noted that the proper comparison would be a male officer remaining in a shower area while a female prisoner showered, and there was no indication that such male officer would not also be punished. (Wake County Sheriff's Office, Detention Center, North Carolina)

- U.S. District Court
MAIL
FAMILY RELATIONSHIPS
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 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
DRUG TESTING
- Meeks v. Schofield*, 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. According to the court, the state prison's decision to remove exterior bathroom doors and refusal to put at least one door back to accommodate the prisoner, who allegedly suffered from paruresis, a mental anxiety disorder that made it difficult to urinate without complete privacy, was not intentionally discriminatory and did not violate the ADA. (Lois M. DeBerry Special Needs Facility, Tennessee)
- U.S. Appeals Court
AIDS- Acquired Immune Deficiency Syndrome
MEDICAL ISSUES
- Nunes v. Massachusetts Dept. of Correction*, 766 F.3d 136 (1st Cir. 2014). Prisoners with HIV brought an action against the Massachusetts Department of Correction, a prison healthcare provider, and various corrections officials, challenging the decision to dispense HIV medication only in single doses at the dispensing window, alleging violation of the Eighth Amendment, the Rehabilitation Act, and the Americans with Disabilities Act (ADA). The district court granted summary judgment to the defendants. The prisoners appealed. The appeals court affirmed. The court held that: (1) the prison's change in the method for dispensing HIV medication did not violate the Eighth Amendment; (2) the requirement that prisoners obtain their HIV medication from the prison's dispensing window did not violate any right to privacy; (3) the change to dispensing HIV medication only at the prison's dispensing window was not disparate treatment; and (4) the prison offered a reasonable accommodation to a prisoner who claimed an inability to visit the dispensing window by offering to move the prisoner to the prison's medical unit. The court noted that prison doctors had raised concerns about a lack of privacy and whether prisoners would maintain their drug regimen, and the prison delayed implementing the change to investigate those concerns, and found no evidence that the provision of HIV medication from the dispensing window resulted in inadequate medical care. (Massachusetts Department of Corrections)
- U.S. District Court
INTERNET
EXPUNGEMENT
RECORDS
- Taha v. Bucks County*, 9 F.Supp.3d 490 (E.D.Pa. 2014). An arrestee brought an action against a county, a county correctional facility, and companies that operated websites publishing mug shot and arrest information, alleging that the defendants published his expunged arrest record in violation of Pennsylvania's Criminal History Record Information Act (CHRIA), and that the companies violated a Pennsylvania statute prohibiting the unauthorized use of a name or likeness and committed an invasion-of-privacy tort of "false light." The company moved to dismiss. The district court granted the motion in part and denied in part. The court held that the arrestee's allegations that the company selectively published his expunged arrest record and mug shot on its website in order to falsely portray him as a criminal, and created a false impression regarding his criminal history and character, were sufficient to state a "false light" claim against the company under Pennsylvania law. (Citizens Information Associates, LLC, Bucks County Correctional Facility, Pennsylvania)

2015

- U.S. District Court
SEARCHES
STAFF OF OPPOSITE SEX
- 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. Appeals Court
NUDITY
STAFF OF OPPO-
SITE SEX
VIEW BY INMATES

Chavarriaga 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
DNA- Deoxy Ribo-
nucleic Acid

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 the 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. Appeals Court
VIEW BY STAFF
VIEW BY INMATES

King v. McCarty, 781 F.3d 889 (7th 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. Appeals Court
SEARCHES
STAFF OF OPPO-
SITE SEX

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
SEARCHES
VIEW BY STAFF
STAFF OF OPPO-
SITE SEX
VIEW BY INMATES

Story v. Foote, 782 F.3d 968 (8th Cir. 2015). An inmate brought a § 1983 action against four corrections officers for violation of his Fourth Amendment rights arising from a visual body-cavity search that allegedly took place in view of a female officer and other inmates, during which the officer allegedly called the inmate a derogatory name. The district court dismissed the case and the inmate appealed. The appeals court affirmed. The court held that the visual body-cavity inspection search after the inmate returned to the correctional facility from outside the institution did not violate a clearly established right, as would preclude the qualified immunity defense, and the manner in which the search was conducted did not violate a clearly established right. According to the court, such a search was not unreasonable considering the serious security dangers inherent at a correctional institution and the institution's strong interest in preventing and deterring the smuggling of contraband into the prison.

The court noted that the manner in which the search was conducted did not violate the inmate's rights. The inmate alleged that a female officer observed the search on a video screen in a master control room, that the search was conducted in the presence of other inmates, and that the officer called him a "monkey" during the search. According to the court, there was a rational connection between the sex-neutral visual surveillance of inmates and the goal of prison

security. The court found that the staffing adjustments that would have been necessary to prevent the female officer from viewing the search would have interfered with the female officer's equal employment opportunities and burdened the prison. The court noted that the inmate did not allege that a more private, equally secure, and cost-effective means of conducting the search was available away from other inmates, and a single use of a term with potential racial overtones was not unconstitutional race discrimination. (Williams Correctional Facility, Arkansas)

U.S. District Court
PRIVACY ACT
RECORDS

Vaden v. U.S. Department of Justice, 79 F.Supp.3d 207 (D.D.C. 2015). A federal prisoner filed suit under the Privacy Act against the Department of Justice, seeking injunctive relief for the correction of alleged inaccuracies with respect to the determination of his custody classification and security level. The prisoner sought damages. The Department filed a motion to dismiss for failure to exhaust administrative remedies, and the prisoner filed a motion for summary judgment. The district court dismissed the action. The court held that the prisoner's failure to exhaust administrative remedies did not warrant dismissal under the provisions of the Prison Litigation Reform Act (PLRA), but the prisoner's custody classification and determination of security level were part of an inmate central records system that was expressly exempt from agency obligations under the Privacy Act. (Federal Bureau of Prisons, United States Penitentiary—II, Coleman, Florida)

2016

U.S. Appeals Court
SEX OFFENDERS

Belleau v. Wall, 811 F.3d 929 (7th Cir. 2016). A citizen, who had previously been convicted of second degree sexual assault of a child but was no longer under any form of court-ordered supervision, brought an action against Wisconsin state officials, alleging that a Wisconsin statute, requiring certain persons who had been convicted of serious child sex offenses to wear global positioning system (GPS) tracking devices for the rest of their lives, violated his rights under the Ex Post Facto Clause and the Fourth Amendment. The district court entered summary judgment in the citizen's favor. The appeals court reversed the decision. The court held that the statute did not violate the Fourth Amendment, where the loss of privacy from the requirement to wear the device-- that the Department of Corrections used device to map the wearer's whereabouts so that police would be alerted to the need to conduct an investigation if the wearer was present at a place where a sex crime was committed-- was very slight compared to the societal gain of deterring future offenses by making persons who were likely to commit offenses aware that they were being monitored. According to the court, the statute did not impose punishment, and thus did not violate the Ex Post Facto Clause. (Wisconsin Department of Corrections)

SECTION 34: PROGRAMS- 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.

1970

U.S. District Court
REHABILITATION

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 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". Punishment that is not inherently cruel and unusual may become so by reason of the manner in which it is inflicted. (Arkansas Prison System)

1971

U.S. District Court
COUNSELING

Jones v. Wittenberg, 330 F.Supp. 707 (N.D. Oh. 1971), aff'd, 456 F.2d 854 (6th Cir. 1972). Court orders establishment of counseling and other programs in the jail. (Lucas County Jail, Ohio)

1972

U.S. District Court
EDUCATIONAL
VOCATIONAL

Brenneman v. Madigan, 343 F.Supp. 128 (N.D. Ca. 1972). Pretrial detainees must have opportunities to participate in educational, vocational and recreational programs comparable to those of sentenced misdemeanants. (Alameda County Jail Facility, California)

U.S. District Court

Hamilton v. Landrieu, 351 F.Supp. 549 (E.D. La. 1972). All inmates, including pretrial detainees, shall be eligible to participate in rehabilitative programs. Rehabilitative programs shall be immediately established and maintained. (Orleans Parish Prison, Louisiana)

U.S. District Court
TRAINING
REHABILITATION

Taylor v. Sterrett, 344 F.Supp. 411 (N.D. Tex. 1972), reh'g denied, 420 U.S. 983 (1974). Court orders jail officials to provide inmates with a program of recreation. The absence of any programs for training and rehabilitation may have constitutional significance where in the absence of such a program, conditions and practices which exist actually militate against reform and rehabilitation. (Dallas County Jail, Texas)

U.S. District Court
RIGHT TO
TREATMENT

Wyatt v. Stickney, 344 F.Supp. 373 (M.D. Ala. 1972). The constitutional "right to treatment" is affirmed by the court's decision to establish minimum standards of care and treatment which patients are granted by the U.S. Constitution. (Bryce Hospital, Tuscaloosa, Alabama)

1974

U.S. District Court
ADMINISTRATIVE
SEGREGATION
EDUCATIONAL
ART

Wilson v. Beame, 380 F.Supp. 1232 (E.D. N.Y. 1974). Inmates in administrative segregation are entitled to substantially the same rights and privileges as the general population. Inmates in administrative segregation are entitled to group religious services, under the less drastic alternatives test. Inmates in administrative segregation are entitled to education and art programs offered to the general population. (House of Detention For Men, Brooklyn, New York)

1975

U.S. District Court
VOCATIONAL
EDUCATIONAL
ALCOHOL/DRUG
PSYCHIATRIC

Alberti v. Sheriff of Harris Co., 406 F.Supp. 649 (S.D. Tex. 1975). County officials shall provide for the maintenance of adequate vocational and educational programs. 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. Jail officials shall establish a psychiatric screening and examination program, utilizing the services of a volunteer or paid psychiatrist, and shall design new procedures for housing inmates with mental or emotional difficulties. (Harris County Jail, Texas)

U.S. Appeals Court
REHABILITATION

McCray v. Sullivan, 509 F.2d 1332 (5th Cir. 1975), cert. denied, 423 U.S. 859 (1974). Failure to provide inmates a rehabilitation program, by itself, does not constitute cruel and unusual punishment. (Alabama State Penitentiary)

U.S. District Court
REHABILITATION

Miller v. Carson, 401 F.Supp. 835 (M.D. Fla. 1975), aff'd, 563 F.2d 741 (5th Cir. 1977). Where it can be shown that prison conditions are so bad as to constitute cruel and unusual punishment, the relief to be afforded may properly include an order compelling the provision of basic rehabilitative services and facilities. (Duval County Jail, Florida)

U.S. District Court
PRETRIAL
DETAINEES

Padgett v. Stein, 406 F.Supp. 287 (M.D. Penn. 1975). Pretrial detainees should not be forced to participate in rehabilitative programs. (York County Prison, Pennsylvania)

1976

U.S. District Court
COUNSELING
EDUCATIONAL

Mitchell v. Untreiner, 421 F.Supp. 886 (N.D. Fla. 1976). Counseling, educational, and religious programs must be established. (Escambia County Jail, Pensacola, Florida)

U.S. District Court
DRUG

Moore v. Janing, 427 F.Supp. 567 (D. Neb. 1976). Absence of drug withdrawal program contributes to finding of unconstitutionality. (Douglas County Jail, Nebraska)

1977

U.S. District Court
COUNSELING
EDUCATIONAL
RELEASE
CRISIS
INTERVENTION

Ahrens v. Thomas, 434 F.Supp. 873 (W.D. Mo. 1977), aff'd, 570 F.2d 288. Any group and individual counseling programs which may be established shall be staffed by properly trained professionals. Correctional personnel shall be selected on the basis of merit. The total lack of recreation and exercise facilities and programs violates due process. Any group and individual counseling programs which may be established shall be staffed by properly trained professionals. Basic and remedial educational programs may be established in the new facility. Work release, vocational training release, and educational release programs may be established for the new facility. An appropriate crisis intervention program may be established in the new facility. Rehabilitation programs, counseling, work release, and vocational programs are not constitutionally required. (Platte County Jail, Missouri)

U.S. Appeals Court
EDUCATIONAL

French v. Heyne, 547 F.2d 994 (7th Cir. 1977). Restriction on inmate money raising to finance educational programs must have a rational basis. Though not constitutionally required, classification must have a rational basis for providing vocational educational programs to long-term inmates but not to short-term inmates or inmates with degrees. Prior classification was not found sufficient. (Indiana State Reformatory)

1979

U.S. District Court
RIGHT TO
TREATMENT
JUVENILES

Johnson v. Solomon, 484 F.Supp. 278 (D. Md. 1979). Committed juveniles have a right to treatment and rehabilitation. (Mental Hospital, Maryland)

1980

U.S. District Court
PARITY-MALE/
FEMALE

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)

U.S. District Court
PSYCHOLOGICAL

Griffin v. Smith, 493 F.Supp. 129 (W.D. N.Y. 1980). Allegations that inmates of the Special Housing Unit are denied access to psychological and mental health care specialists state a claim upon which relief can be granted. (Attica Correctional Facility, New York)

U.S. District Court
PSYCHOLOGICAL
RIGHT TO
TREATMENT

Santori v. Fong, 484 F.Supp. 1029 (E.D. Penn. 1980). A statutorily established policy of provision of psychiatric and psychological services to pretrial detainees does not create an enforceable entitlement to such services. (Chester County Farm Prison, Pennsylvania)

1983

U.S. Appeals Court
RIGHT TO
TREATMENT
JUVENILES

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 *parens 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 *parens 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)

1985

U.S. District Court
COUNSELING

Spratt v. County of Kent, 621 F.Supp. 594 (D.C. Mich. 1985). A Michigan sheriff had the right to inform a social worker not to mix religious counseling with psychological counseling. The plaintiff claimed he was a "Pentecostal Christian," and an evangelist spreading the Gospel. When the counselor continued to quote from the Bible and encourage spiritual participation, the sheriff suspended and ultimately fired him. The court upheld the discharge finding no religious discrimination or violations in equal protection. (Kent County, Michigan)

U.S. District Court
PARITY- MALE/
FEMALE

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. (Corr. Inst. for Women, Kentucky)

U.S. District Court
RIGHT TO
TREATMENT
PSYCHOLOGICAL
COUNSELING

Morales Feliciano v. Romero Berceño, 672 F.Supp. 591 (D. P.R. 1986). According to a federal court, prison overcrowding, inmate idleness, and the threat of violence among inmates, combined with the continuous frustrations of reasonable expectation produced by administrative incompetence, resulted in an ascertainable psychological deterioration in the Puerto Rican prison population. The psychological deterioration inflicted on inmates in the prison system was an unnecessary and wanton infliction of pain in violation of prisoners' Eighth Amendment protections against cruel and unusual punishment. Insofar as the Puerto Rican prison administration was under a statutory duty to provide rehabilitative programs through which inmates could earn time credits towards early release, unavailability of any form of useful work, study or even recreation, where none of the physical conditions of confinement met constitutional standards, combined with continuous frustrations of reasonable expectations produced by administrative incompetence, inflicted serious psychological harm on inmates, which was independently cognizable under the Eighth Amendment. When inmates' opportunities to study or work within prison were taken away by irregularities in the classification system or the prison administration's inability to provide a safe environment, inmates were deprived of liberty interest implicating a statutorily created expectation that imprisonment could be shortened by work and study. Inmates of Puerto Rican jails were denied due process as a result of inefficient, inexperienced, and often incompetent social-penal counseling system, which had a severe negative impact on inmates' opportunities to establish eligibility for parole and to actually be heard in a timely manner by a parole board. (Commonwealth of Puerto Rico)

1987

U.S. Appeals Court
RIGHT TO
TREATMENT

Hernandez v. Johnston, 833 F.2d 1316 (9th Cir. 1987). A prisoner challenged state prison officials alleging that certain statements in his prison file were false and deprived him of liberty without due process. The inmate argued that the statements that classified him as a "violent offender" and stated that he needed a "structured setting" were incorrect since the burglary offense for which he was incarcerated was nonviolent. The inmate felt that, without due process findings, the court should "put a stop to the prison policy of using pseudo-legalistic, psychological, etc., terms against prisoners." The appeals court ruled that even if a state Criminal Records Privacy Act created a liberty interest in accurate prison record information, it applied to criminal history record information, not opinions or evaluations. The court also held that the prisoner had no state or federal constitutional right to a particular classification status. Finally, neither a due process clause nor Washington law creates a liberty interest in prison education or rehabilitation classes. (McNeil Island Corrections Center)

U.S. District Court
RIGHT TO
TREATMENT

McBride v. Illinois Dept. of Corrections, 677 F.Supp. 537 (N.D. Ill. 1987). An appeals court ruled that prison conditions that are harsh or cause discomfort do not necessarily violate the Eight Amendment. Odors in the correctional facility, including odors from cellmate, odors from toilet, and odors from spray used to control roach infestation, did not constitute constitutionally prohibited cruel and unusual punishment. The plaintiff challenged his conditions of confinement in a civil rights complaint. The court also ruled that a lack of rehabilitative programs did not give rise to an actionable civil rights claim. (Stateville Correctional Center, Illinois)

U.S. Appeals Court
RELEASE
WORK/STUDY

Mahfouz v. Lockhart, 826 F.2d 791 (8th Cir. 1987). An Arkansas Department of Corrections regulation which prohibits any person convicted of a sex crime from participating in work/study release programs for inmates housed outside corrections facilities was upheld by a federal appeals court because it relates to a legitimate governmental purpose--preventing sex crimes. The plaintiff, an inmate serving a sentence for conviction of three counts of sexual abuse involving minors, filed suit alleging his constitutional rights were violated due to the denial of the opportunity to participate in these programs. The appeals court held that state could distinguish sex offenders from other inmates and properly exclude them from work release programs and that Arkansas statutes and regulations did not establish a protectable interest in participating in work release programs. (Arkansas Department of Corrections)

1988

U.S. District Court
EQUAL PROTECTION
PARTICIPATION
RACIAL
DISCRIMINATION

Brown v. Sumner, 701 F.Supp. 762 (D. Nev. 1988). An inmate who was denied hobby craft privileges to practice as a television and radio repairman brought a civil rights complaint against prison officials. The defendant sought summary judgment. The district court found that substantial issues of material fact existed as to whether the inmate was denied privileges on the basis of race, precluding summary judgment and denying the motion. The Constitution prohibits prison supervisors from using race as a factor in determining which prisoners can participate in which programs. While a prison inmate does not have an eighth amendment right to participate in a work program, he does have an eighth amendment right to be considered for those programs that do exist without regard to his race, color, or national origin. Where a state has established a particular program, all prisoners have fourteenth amendment equal protection rights regarding administration of that program. (Northern Nevada Correctional Center)

1989

U.S. District Court
HANDICAPPED

Bonner v. Arizona Dept. of Corrections, 714 F.Supp. 420 (D. Ariz. 1989). A deaf inmate brought an action against a state correctional facility alleging deprivation of his rights under a statute prohibiting discrimination against handicapped persons by programs receiving federal financial assistance. The U.S. District Court granted summary judgment for the state, and the inmate appealed. The appeals court affirmed in part, reversed in part and remanded the case. On remand, the District Court found that the Civil Rights Restoration Act, which defined the term "program or activity" in the Handicapped Act to include all operations of a department or agency receiving federal funds was entitled to retroactive effect. (Arizona State Prison)

U.S. Appeals Court
PARITY-
MALE/FEMALE
WORK/STUDY

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. Appeals Court
EQUAL PROTECTION
WORK/STUDY

Coakley v. Murphy, 884 F.2d 1218 (9th Cir. 1989). When a state prison inmate was approved for work release, he was transported to a center where work release inmates live. He informed a counselor, upon his arrival, that he would not sign a copy of the work release agreement, which stipulated the conditions under which the inmates participated in the program. He was warned that if he failed to sign the agreement, he would be sent back to the penitentiary. He persisted in refusing to sign, stating that the agreement was illegal, that he was "civilly dead" as a prisoner under state law, and that he was therefore precluded from entering into contracts. He also said that if he signed, the agreement would be void because it was signed under duress. As a result of this persistent refusal, the inmate was returned to the penitentiary. He brought a Section 1983 action to challenge the denial of a hearing upon the transfer from the work release program to the penitentiary. The U.S. District Court dismissed the action, and the inmate appealed. The appeals court affirmed the lower court decision, ruling that the case was analogous to transfer from one institution to another within a state prison system; Idaho law placed no restrictions on transfers from work release centers, and there was no constitutional right to rehabilitation. The court of appeals found that the inmate had no due process liberty or property interest limiting the transfer from a work release program to the penitentiary upon the inmate's failure to sign a work release agreement and that the requirement that the inmate sign a work release agreement was rationally related to the legitimate interest in insuring that the inmate understand the obligations and therefore equal protections were not violated. (Idaho State Penitentiary, Boise)

U.S. District Court
EDUCATIONAL
RIGHT TO
TREATMENT

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 state prison officials' denial of the inmate's request to participate in a continuing legal education program outside the prison did not infringe on a liberty interest protected by a due process clause. Use of the permissive term "may" in statutes governing the establishment of minimum security release programs rendered the decision to deny the educational training discretionary with prison administrators. (Indiana State Prison, Michigan City)

1990

U.S. District Court
EDUCATIONAL
VOCATIONAL
RIGHT TO
TREATMENT

Buffington v. O'Leary, 748 F.Supp. 633 (N.D.Ill. 1990). A prisoner sued a prison official under Section 1983, alleging Eighth and Fourteenth Amendment deprivation. The U.S. District Court found that the prisoner was not denied constitutional rights by being deprived of education and vocational programs available elsewhere in the prison as the constitution simply does not require prison officials to provide educational, rehabilitative, or vocational programs. (Stateville Correctional Center, Illinois)

U.S. District Court
PARTICIPATION
DUE PROCESS
EQUAL PROTECTION

Glidden v. Atkinson, 750 F.Supp. 25 (D. Me. 1990). An inmate brought a civil rights action against a prison supervisor, alleging a violation of due process and equal protection rights. On the supervisor's motion to dismiss, the district court found that the complaint failed to state a cause of action for which relief could be granted. The inmate, who was suspended from a craftroom program, was not deprived of any due process absent a showing of any legal or regulatory authority supporting his claimed entitlement to participate in the program, and the allegation that a second prisoner, who was also found with contraband, did not suffer punishment as severe as that meted out to the inmate was insufficient, without more, to state a cause of action for violation of equal protection. (Maine State Prison)

U.S. District Court
RIGHT TO
TREATMENT

Griffin v. Coughlin, 743 F.Supp. 1006 (N.D.N.Y. 1990). Inmates in a protective custody unit brought a suit seeking injunctive relief to remedy allegedly unconstitutional conditions in the unit. The district court found that the conditions at the protective custody unit did not violate equal protection or Eighth Amendment guarantees. According to the court, the appropriate analysis for an equal protection claim is whether the unequal treatment bears a reasonable relationship to legitimate penological interests. The protective custody unit functions to protect inmates who cannot remain in the general prison population. Complaints of boredom, frustration and hostility arising out of the idleness of protective custody inmates did not amount to an Eighth Amendment violation; furthermore, neither the extent to which protective custody inmates were segregated from one another nor the noise level in the protective custody unit violated the Eighth Amendment, and protective custody inmates have no Eighth Amendment right to prison work and educational activities. (Clinton Correctional Facility, New York)

U.S. Appeals Court
RIGHT TO
TREATMENT

Meis v. Gunter, 906 F.2d 364 (8th Cir. 1990). An inmate at the Nebraska State Penitentiary brought a civil rights action for money damages and injunctive relief. The U.S. District Court determined that the inmate's constitutional rights had been violated and that the inmates were entitled to access to some, not all, institutional documents. On appeal and cross-appeal, the appeals court found that the inmate failed to show that he himself had actually been injured or was likely to be injured by the lack of access to prison documents containing inmate conduct standards and thus lacked a standing to make a due process argument regarding the lack of such access. The inmate did not have a constitutional right to documents setting out programs and opportunities available to inmates and criteria for their eligibility. A Nebraska statute requiring the posting at conspicuous places throughout the institution of rules and policies concerning inmate rights and developmental opportunities, work or education programs, and complaint procedures did not create a liberty interest for federal constitutional purposes. (Nebraska State Penitentiary)

U.S. Appeals Court
EQUAL PROTECTION
PARTICIPATION
PARITY- MALE/
FEMALE
VOCATIONAL

Smith v. Bingham, 914 F.2d 740 (5th Cir. 1990), cert. denied, 111 S.Ct. 1116. An inmate at a county correctional facility in Mississippi filed a suit alleging statutory and constitutional violations from the failure to allow him to attend vocational training with female inmates. The U.S. District Court found that the inmate failed to prove a claim of sex discrimination under the equal protection clause, and the inmate appealed. The court of appeals, affirming the lower court decision, found that equal protection was not violated by the policy prohibiting male prisoners from enrolling in vocational classes at the women's prison. The state's interest in prison security was an important governmental objective, and that policy was directly and substantially related to furthering that interest. (Rankin County Correctional Facility, Mississippi)

U.S. District Court
ADMINISTRATIVE
SEGREGATION

Armstrong v. Lane, 771 F.Supp. 943 (C.D. Ill. 1991). An inmate brought a civil rights action challenging the constitutionality of the Illinois Department of Corrections' "Circuit Rider" program, in which difficult-to-control inmates were transferred from segregation unit to segregation unit among various state prisons. The district court found that the program did not subject the inmate to conditions of confinement so brutal as to implicate the Eighth Amendment. The inmate had no right to a hearing or any other procedures with respect to prison officials' decision to place him on the Circuit Rider program. First, due to the absence of regulations concerning the program, the court found that the plaintiff had no protected interest in not being a circuit rider. Furthermore, the undisputed facts showed that the inmate posed a great security risk and requires close supervision, thus justifying placement in the tightly-controlled program. Placement was also justified in light of the inmate's extensive criminal history and lack of institutional adjustment. (Illinois Department of Corrections)

U.S. Appeals Court
PARTICIPATION
RELEASE

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
COUNSELING
RIGHT TO
TREATMENT

Bailey v. Gardebring, 940 F.2d 1150 (8th Cir. 1991), cert. denied, 112 S.Ct. 1516. An inmate, convicted for kidnapping, sexually abusing and murdering a 13-year-old girl, brought a federal habeas corpus petition as well as civil rights claims under Section 1983 challenging his civil commitment as a psychopathic personality and his transfer from a security hospital to a prison. Various treatment programs are available there, though none specifically geared to sexual offenders. The U.S. District Court granted summary judgment to the defendants on the civil rights claim, and the inmate appealed. There is no evidence of the existence of any cure or even of any generally accepted method of treatment for sexual psychopaths like the inmate. Hence, the appeals court found that the failure of the prison administrators to provide the inmate with the precisely tailored psychiatric treatment he sought could not fairly be described as "deliberate indifference." (Minnesota Correctional Facility, Minnesota)

U.S. Appeals Court
EQUAL PROTECTION
PARITY- MALE/
FEMALE

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 DOC)

U.S. Appeals Court
EQUAL PROTECTION
WORK RELEASE

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. Appeals Court
PARTICIPATION
EQUAL PROTECTION
RACIAL
DISCRIMINATION

La Bounty v. Adler, 933 F.2d 121 (2nd Cir. 1991). A black inmate allegedly required to complete training before he could become eligible for a maintenance electrician program brought a pro se action alleging Eighth Amendment and equal protection violations. The U.S. District Court dismissed, and the inmate appealed. The court of appeals found that the inmate who alleged that similarly situated white inmates, unlike the plaintiff inmate, were given work assignments without having to complete a training program and that no blacks had been assigned as institution electricians for ten years, stated an actionable equal protection claim in connection with the alleged racially discriminatory treatment of his request for work assignment as an electrician, but the alleged exclusion of the inmate from the prison's maintenance electrician program did not constitute "punishment" for Eighth Amendment purposes. (Green Haven Correctional Facility, New York)

U.S. District Court
RIGHT TO
TREATMENT

Lato v. Attorney General of the U.S., 773 F.Supp. 973 (W.D. Tex. 1991). Deportable aliens brought an action against the Attorney General and others to challenge a transfer, without notice, to the county's contract detention facility. The U.S. District Court found that the transfer complied with due process and equal protection clauses; deportable aliens shared common needs and concerns and had less need for extensive work and educational programs. (Contract Confinement Facilities, Bureau of Prisons)

U.S. District Court
PARTICIPATION

Lott v. Arroyo, 785 F.Supp. 508 (E.D. Pa. 1991). An inmate brought a civil rights action against prison officials after he was transferred from a group home to a correctional facility. On the officials' motion for summary judgment, the U.S. District Court found that the inmate had no right to remain at the group home and had no constitutional enforceable right to participate in the program. (State Correctional Institution, Graterford, Pennsylvania)

U.S. District Court
TREATMENT
PROGRAMS

Mace v. Amestoy, 765 F.Supp. 847 (D.Vt. 1991). Revocation of a defendant's probation on grounds that the defendant refused to admit he had sexual intercourse with his stepdaughter as required for completion of a sexual offender treatment program, which was a condition of probation, was affirmed by the Vermont Supreme Court. The defendant petitioned for writ of habeas corpus alleging that revocation of his probation violated his Fifth Amendment right against self-incrimination, his due process right to fair notice of his probation conditions, and his First Amendment right against coerced speech. The U.S. District Court adopted a recommendation and report of a magistrate judge, and found that the probationer received fair notice of his probation conditions, where the defendant was told at the beginning of his attendance at the sexual therapy group that he would have to take responsibility for all of his sexual conduct in order to successfully complete the program and the probation officer, as well as therapist, put the defendant on actual notice that his failure to admit sexual intercourse was interfering with successful completion of the treatment program. Thus, revocation of probation on such grounds was not a violation of due process. However, the probationer could not be forced to incriminate himself. If a state wishes to carry out rehabilitative goals and probation by compelling offenders to disclose their criminal conduct, it must grant them immunity from criminal prosecution. The revocation of probation on grounds that the probationer refused to admit to sexual intercourse with his stepdaughter violated the defendant's Fifth Amendment rights against self-incrimination. (Orange County Mental Health, Randolph, Vermont)

U.S. District Court
PARTICIPATION
RELEASE
TREATMENT
PROGRAMS

Patterson v. Webster, 760 F.Supp. 150 (E.D. Mo. 1991). Missouri prisoners brought a Section 1983 action against Missouri state and prison officials, challenging the creation and implementation of the Missouri sexual offenders program (MOSOP). The defendants moved to dismiss. The district court found that the application of MOSOP is not limited to those sexual offenders convicted of "sexual assaults" only. In addition, the failure to complete the program can only push back potential parole; it cannot extend an actual sentence. Furthermore, the prisoners could not argue that the program unconstitutionally interfered with parole, as prisoners did not have protected liberty interest in parole. Neither Missouri's parole statute nor parole board regulations created such an interest, and the prisoners did not allege the existence of any customs, regulations, or practices that would give them liberty interest in parole. (Missouri Department of Corrections)

U.S. District Court
ALCOHOL/DRUGS
PARTICIPATION
REHABILITATION

Stafford v. Harrison, 766 F.Supp. 1014 (D. Kan. 1991). A prison inmate brought a civil rights action alleging his constitutional rights were violated by an alcohol rehabilitation program he was required to complete while at prison. The U.S. District Court found that requiring the inmate to participate in the treatment program modelled on precepts of Alcoholics Anonymous did not interfere with the inmate's practice of his religion or establish religion and impose the religion on the inmate. There was a strong and legitimate penological interest in assuring that inmates received appropriate treatment for substance abuse before their release, and the program was widely used in prison. Moreover, participation in the program did not seriously burden the inmate's religious beliefs, in that the spiritual element of the program was flexible and the inmate did not show that the program caused him to abandon or contravene any tenet of his faith. (Larned State Security Hospital, Kansas)

U.S. District Court
RIGHT TO
TREATMENT

Williams v. McGinnis, 755 F.Supp. 230 (N.D. Ill. 1991). A state prisoner brought an action to compel a transfer to another facility. On motion for preliminary injunction, the U.S. District Court found that the prisoner did not have a constitutional right to be transferred. He was not entitled to an injunction requiring his transfer to another facility based on allegations that he was endangered at the prison where he was being confined, where the only attack upon him happened more than a year earlier and, since then, prison officials had taken steps to secure his safety by placing him in protective custody. His desire to be transferred to another facility so that he could participate in programs there was not sufficient for him to prevail on the merits because prison officials are not required by the constitution to provide educational, rehabilitative, or vocational programs. (Menard Correctional Center, Illinois)

1992

U.S. District Court
HANDICAPPED
PARTICIPATION
RIGHT TO
TREATMENT

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. Appeals Court
REHABILITATION

Stewart v. Davies, 954 F.2d 515 (8th Cir. 1992). A Kansas prisoner who would have been eligible for parole under Kansas law brought an action challenging his transfer to a prison in Iowa, where he was ineligible for parole and thus denied rehabilitative programs which would be considered by the Kansas Parole Board. The U.S. District Court denied relief and the prisoner appealed. The appeals court, affirming the decision, found that the inmate had no liberty interest in eligibility for parole or rehabilitative programs. The Iowa prison officials made their determination of eligibility for rehabilitation programs based upon types of sentences received under Iowa law. These determinations were not arbitrary and capricious. In addition, his due process rights were not violated when he was transferred to Iowa. (Iowa State Penitentiary, Fort Madison, Iowa)

U.S. Appeals Court
EDUCATIONAL
EQUAL PROTECTION
VOCATIONAL

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 court found that the inmate failed to establish an equal protection violation arising from the denial of access to education and vocational opportunities. The inmate, who was required to be on lock-down status during most of each day for safety and security, did not show that he was treated differently from other inmates who were similarly situated in the general population. The inmate had access to self-study materials, college correspondence courses, and library materials. (Moberly Training Center for Men, Missouri) some extent, be anticipated. (Portsmouth City Jail, Virginia)

1993

U.S. District Court
EDUCATIONAL
EQUAL PROTECTION
PRETRIAL
DETAINEES
RIGHT TO
TREATMENT

Donnell C. v. Illinois State Bd. of Educ., 829 F.Supp. 1016 (N.D.Ill. 1993). School-aged pretrial detainees in a county jail filed an action against the state Board of Education concerning alleged inadequate education. The state filed a motion to dismiss. The district court found that the allegation of inadequate education by the pretrial detainees sufficiently stated a claim of violation of substantive due process to overcome a motion to dismiss. The detainees alleged that only about 40% of the detainees in need of special educational services were receiving the needed services, and that instruction was lacking on the educational basics of reading and math, or even lacking altogether. The allegations of inadequate education also sufficiently stated a claim of violation of equal protection to overcome a motion to dismiss, absent a showing by the state of a rational relationship between the lack of education and maintaining security. The state merely made apocryphal claims that the county jail's actions were justified to avoid burdensome litigation by the prisoners. The detainees had a constitutionally protected due process property interest in participation in educational programs during detention, and the interest was not diminished by a probable cause hearing or indictment process undertaken before confinement. Finally, the court found that the Individuals with Disabilities Education Act (IDEA) applied to the school-aged pretrial detainees' claims of inadequate

education, in light of the application of the Act to state correctional facilities by the Department of Education's Office of Special Education and Rehabilitative Services, and absent any showing that the Department's regulations were arbitrary or capricious. (Cook County Jail, Illinois)

U.S. District Court
REMOVAL FROM
PROGRAM
TREATMENT
PROGRAMS

Klos v. Haskell, 835 F.Supp. 710 (W.D.N.Y. 1993). A New York state inmate brought a Section 1983 action challenging the constitutionality of his removal from a shock incarceration program. The district court found that the inmate's removal from the shock incarceration program did not implicate the inmate's procedural due process rights because the inmate did not have a protected liberty interest in remaining in the program. The inmate's removal was based not on his behavior while in the program, but on new information regarding circumstances of the inmate's crimes. Regulations concerning removal provided for a hearing only when the removal was premised on conduct while in the program. (Monterey Shock Incarceration Facility, New York)

U.S. District Court
REHABILITATION
TREATMENT
PROGRAMS

Sundby v. Fiedler, 827 F.Supp. 580 (W.D. Wis. 1993). An inmate brought a Section 1983 action alleging that prison officials and employees violated his due process rights by compelling him to participate in a sex offender treatment program. The prison officials and employees moved for summary judgment. The district court, granting the motion, found that the inmate possessed a limited liberty interest in refusing to participate in the program. However, that interest was overcome by correctional officials' legitimate penological interest in promoting the inmate's rehabilitation. (Oshkosh Correctional Institution, Wisconsin)

1994

U.S. District Court
DUE PROCESS
EDUCATIONAL
LIBERTY INTEREST
PARTICIPATION

Bollig v. Fiedler, 863 F.Supp. 841 (E.D.Wis. 1994). A prison inmate brought a suit against correctional officials and employees alleging a due process violation when he was ordered to attend an educational program for prisoners who have committed sex offenses and who have refused treatment. On the defendants' motion for summary judgment, the district court found that the requirement that the inmate attend the educational program did not violate his liberty interest. No drugs or other bodily intrusions or restraints were involved and no greater degree of confinement was implicated; also, the forced participation in the program did not subject the inmate to conditions qualitatively different from punishment characteristically suffered by a person convicted of a crime. Even if the inmate had a liberty interest in being free to refuse to participate in the program, the inmate was afforded procedural due process where the inmate was given notice and an opportunity to be heard. The state's interest in rehabilitation outweighed any burden on the inmate from the forced attendance at the program. (Oshkosh Correctional Institution, Wisconsin)

U.S. Appeals Court
EDUCATIONAL
EQUAL PROTECTION
PARITY- MALE/
FEMALE
VOCATIONAL

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
PARITY- MALE/
FEMALE

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
REHABILITATION
TREATMENT
PROGRAMS

Scarpino v. Grosshiem, 852 F.Supp. 798 (S.D. Iowa 1994). Inmates and the civil liberties association brought a suit against public officials to challenge the operation of an alcoholic rehabilitation program at a correctional facility. On the officials' motion for summary judgment the district court found that prison officials enjoyed qualified immunity from liability on establishment clause claims arising from the prisoners' participation in the program which had a heavy religious component. A reasonable official in the officials' position in 1991-92 could have believed that the program's purpose was to help inmates

overcome addiction, that its primary effect was to help them do so, and that no significant interest with religion was involved. Prison officials were entitled to qualified immunity on the inmates' free expression claims arising from their participation in the program. Reasonable officials in the position of the defendants could have believed at the time that the program, which allegedly had a heavy religious component, was rationally related to the legitimate purpose of treating inmates' addictions, and that alternate means of exercising constitutional rights of free expression existed. (Clarinda Correctional Facility, Clarinda, Iowa)

U.S. District Court
EDUCATIONAL
DRUG
PSYCHIATRIC

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 provided for increased educational and substance abuse programs and expanded provisions for medical care including mandatory psychiatric evaluations for all prisoners upon their admittance. (Maximum Control Complex, Indiana Dept. of Corrections, Westville)

U.S. District Court
EQUAL PROTECTION
PARTICIPATION

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
EDUCATIONAL
EQUAL PROTECTION
PARITY- MALE/
FEMALE

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 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 in prison 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
JUVENILES
HANDICAPPED
REHABILITATION

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 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. (S. C. Dept. of Juv. Justice)

U.S. District Court
EDUCATIONAL
EQUAL PROTECTION
RIGHT TO
TREATMENT
VOCATIONAL

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. Appeals Court
DUE PROCESS
RELEASE

Browning v. Vernon, 44 F.3d 818 (9th Cir. 1995). A class of inmates brought an action against prison officials, alleging due process violations in connection with a program under which individuals were placed in correctional institutions to be evaluated for potential release on probation. The U.S. District Court denied the officials' motion for summary judgment and the officials appealed. The appeals court, affirming the decision, found that the inmates had a protected liberty interest in objective and reliable rehabilitation reports and that the liberty interest was clearly established when the prison officials allegedly denied such interest. An Idaho Supreme Court decision explicitly stated that such interest existed, and such a decision was binding. In addition, prison officials did not act reasonably in light of a preexisting law mandating due process in connection with the program, and therefore, the officials were not qualifiedly immune from the suit alleging denial of due process. The officials should have known, even though no court had found, that they violated the inmates' rights when they informed the inmates only 24 hours in advance of an evaluation rebuttal hearing, failed to give the inmates copies of recommendations regarding probation, and immediately placed inmates in solitary confinement so that they could not contact witnesses or use the law library. The lower court found that due process requires that the prison provide such inmates with staff assistance to contact witnesses and access to a telephone to contact legal counsel. An inmate does not have the due process right to personally contact witnesses. The court also found that inmates are entitled to a written notice of the right to call witnesses at the rebuttal hearing. They are also entitled to copies of staff evaluations or chronological reports, as well as full psychiatric evaluations completed on sex offenders or others. (N. Idaho Correctional Inst.)

U.S. District Court
PARITY-MALE/FEMALE
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 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. 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
DUE PROCESS
LIBERTY INTEREST
WORK/STUDY

Dominique v. Weld, 880 F.Supp. 928 (D.Mass. 1995). A state inmate brought an action against prison officials alleging that his removal from a work release program deprived him of due process in violation of Section 1983 and the Massachusetts Civil Rights Act (MCRA). The district court found that the inmate did not have a constitutionally protected liberty interest in remaining in the program. The program granted the inmate some freedom, but not the broad freedoms granted to a parolee, and the program was similar to halfway house programs in which prisoners did not have constitutionally derived liberty interests. The revision of the work release program regulations, which rendered the inmate ineligible for the program, did not constitute ex post facto punishment. The revision was motivated by safety concerns, not a desire to impose further punishment on inmates, and participation in the program was a privilege which the state was entitled to revoke if it found such a measure necessary to ensure community safety. The court also found that the inmate did not have a constitutionally protected liberty interest in retaining his driver's license. The due process clause does not independently support such a liberty interest, and there was no state law or regulation which would support findings that the inmate could reasonably expect to receive and retain his driver's license. The fact that the inmate had used his license without incident for several years did not create a reasonable expectation that he would retain his license indefinitely. (MCI-Lancaster, Massachusetts)

U.S. District Court
PARITY- MALE/
FEMALE
VOCATIONAL

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
DUE PROCESS
LIBERTY
INTEREST
PARTICIPATION

Klos v. Haskell, 48 F.3d 81 (2nd Cir. 1995). A New York State inmate brought a Section 1983 action challenging the constitutionality of his removal from a "shock incarceration program" which provided a voluntary alternative to traditional incarceration for selected youthful, nonviolent offenders. The U.S. District Court granted the motion for summary judgment brought by the defendant correctional facility and the Department of Correctional Services officials, and the inmate appealed. The appeals court, affirming the decision, found that the inmate did not have enforceable liberty interest in remaining in the program, so as to have entitled to him due process protections. No substantive predicates limited the state's discretion to approve or disapprove applications for enrollment in the program. Also, the inmate had no legitimate expectation that he would continue in and complete the program. The inmate could not show that particularized standards or criteria guided the state's decisionmakers. (Monterey Shock Incarceration Facility, New York)

U.S. District Court
DUE PROCESS
EDUCATIONAL

McGuinness v. Dubois, 891 F.Supp. 25 (D.Mass. 1995). An inmate filed a § 1983 action against corrections officials challenging his confinement in a disciplinary unit. The district court granted summary judgment for the defendants in part, and denied it in part. The court found that a regulation authorizing placement in the Departmental Disciplinary Unit (DDU) for up to ten years did not violate a statute limiting confinement in the isolation unit to 15 days. The court found that denial of the inmate's request for a prison officer to testify in his disciplinary hearing violated his right to procedural due process; however, corrections officials were entitled to qualified immunity for failure to train and supervise because mere negligence is insufficient to impose § 1983 liability on supervisors. The court also ruled that the inmate was denied a state created liberty interest in educational programs without due process because his rights were violated in the disciplinary hearing that resulted in his placement in DDU, where inmates in DDU were prohibited from participating in any educational programs or activities. (Massachusetts Correctional Institution-Cedar Junction)

U.S. District Court
SEX OFFENDERS
EQUAL PROTECTION

Neal v. Shimoda, 905 F.Supp. 813 (D.Hawai'i 1995). An inmate brought a § 1983 action against prison officials alleging that their labeling of him as a "sex offender" violated his constitutional rights. The inmate had been compelled to participate in a sex offender treatment program, which required the inmate to admit his guilt. The inmate had refused to admit his guilt, affecting his chances for parole and preventing him from being transferred to a minimum security facility. The district court granted summary judgment for the defendants, finding that the inmate had no constitutional liberty interest in a furlough or in freedom from being classified as a sex offender. The court ruled that the prison's policies did not create a protected liberty interest and that placement of the inmate in the prison's sex offender treatment program did not violate equal protection or the Eighth Amendment. The court noted that even if an inmate was not convicted of any sex offense, the state had a legitimate interest in denying untreated sex offenders parole, furlough and minimum security classification based on their high rate of recidivism. The sex offender treatment program was not overbroad by including inmates who engaged in sexual misconduct during the course of nonsexual offenses. Denying the inmate parole or transfer to a minimum custody facility because he refused to admit guilt, which was the first step necessary for completion of the sex offender treatment program, did not violate the inmate's right against self-incrimination as the program was not a proceeding in which the answers could incriminate the inmate in future criminal proceedings. The program's requirement that the inmate not be in denial about his crime did not violate his Fifth Amendment right to be free from compelled testimony in light of the recognition that rehabilitation, including acceptance of responsibility, is an important sentencing consideration. (Halawa Correctional Facility, Hawai'i)

U.S. District Court
DUE PROCESS
EDUCATIONAL
EQUAL PROTECTION

Nicholas v. Riley, 874 F.Supp. 10 (D.D.C. 1995). A New York state prisoner filed a pro se proceeding challenging a law prohibiting the award of Pell Grant funds to federal or state prisoners. The district court found that the denial of the Pell grants to prisoners solely because of their status as prisoners did not violate equal protection. In addition, the prisoner did not have any constitutional entitlement to continued receipt of Pell Grant funds triggering procedural due process protections prior to the revocation. The statute terminating prisoners' eligibility for Pell Grant awards for college courses did not violate the prisoners' substantive due process rights where the denial of the Pell Grant monies clearly and reasonably effectuated government purposes of fiscal responsibility, reduction of fraud, and other purposes. Any action by the Secretary of Education to prohibit the award of Pell Grant funds to the prisoner fully comported with the clear language and legislative history of the statute denying further Pell Grant monies to prisoners, and such action complied with the Administrative Procedure Act. (Collins Correctional Facility, Collins, New York)

U.S. Appeals Court
EQUAL PROTECTION
PARITY- MALE/
FEMALE

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)

1996

U.S. District Court
ALCOHOL/DRUGS

Boyd v. Coughlin, 914 F.Supp. 828 (N.D.N.Y. 1996). An inmate filed a § 1983 civil rights action against correctional facility officials alleging violation of his First Amendment rights. The Muslim inmate challenged the requirement that he attend Alcoholics Anonymous (AA) or Narcotics Anonymous (NA) meetings as a condition of participation in the Family Reunion Program (FRP). The inmate refused to attend the meetings, alleging that the requirement conditions his participation in the FRP on his learning, knowing, believing and/or working with the "Twelve Steps of Alcoholics Anonymous" which he alleged was a religious program. The inmate asserted that the officials should have provided an alternative treatment. The inmate claimed that the Free Exercise Clause of the First Amendment was violated by forcing him to participate in a religious program that was offensive to--and incompatible with--his religious faith. The district court granted the defendants' motion to dismiss, finding that any alleged impingement on the inmate's constitutional rights was arguably permissible. The court found that the prison's alcohol and substance abuse program did not constitute excess state entanglement with religion in violation of the establishment clause. The court also found that the principal and primary purpose of the prison's treatment program requiring inmates to attend AA or NA meetings was not to promote or inhibit religion in violation of the establishment clause. (Eastern Correctional Facility, New York)

U.S. District Court
DUE PROCESS
PARTICIPATION

Byrd v. Moseley, 942 F.Supp. 642 (D.D.C. 1996). An inmate brought a pro se § 1983 action alleging that he was denied permission to participate in a program in retaliation for filing a previous lawsuit. The district court dismissed the case in part, and granted summary judgment to the defendants. The court found that the inmate had no constitutional right to participate in a particular educational or vocational program, and that he failed to show that he had been the victim of retaliation. The court also found that a nonprofit corporation, which operated the "Take it From Me" program at the prison, did not act under the color of state law. (District of Columbia Maximum Security Facility, Lorton, Virginia)

U.S. District Court
RIGHT TO
TREATMENT

Douglas v. DeBruyn, 936 F.Supp. 572 (S.D.Ind. 1996). An inmate who was assigned to the "idle unit" of a prison filed an in forma pauperis complaint alleging violation of § 1983. The district court found the complaint to be frivolous within the meaning of the in forma pauperis statute. The court held that the absence of a job, and the absence of vocational, educational and rehabilitation programs does not violate due process. The court noted that while such programs and activities might be useful and productive as a matter of correctional policy, the absence of them does not create any atypical and significant hardships on an inmate in relation to the ordinary incidents of prison life. According to the court, to sustain a viable Eighth Amendment violation the inmate would have to allege that conditions in the idle unit constituted an excessive risk to his health or safety. The court also noted that inmates have no constitutional right to recreation and that only the objective harm that can result from significant deprivation of movement implicates the Eighth Amendment. (Correctional Industrial Complex, Indiana)

U.S. District Court
EDUCATIONAL
PARITY-MALE/FEMALE
VOCATIONAL

Glover v. Johnson, 931 F.Supp. 1360 (E.D.Mich. 1996). Female prisoners moved to hold prison officials in an ongoing class action which challenged educational and vocational opportunities available to female prisoners in Michigan. The district court held prison officials in contempt of various orders relating to court access, vocational programs, and apprenticeship programs at women's facilities. The court found that the officials' clear, positive and repeated violation of orders warranted significant monetary contempt sanctions. The court found prison officials in contempt of orders requiring vocational programs at women's prisons, to the extent that they denied court-ordered programming to some female inmates based upon their custody level. The officials were also found in contempt for not providing a work pass program at camp facilities and not providing inmates at camp facilities the opportunity to transfer to facilities which provided vocational, apprenticeship and prison industry programming. The court also found that some eligible inmates were denied an opportunity to participate in court-ordered programming by being transferred directly to camp facilities. The court found prison officials in contempt of orders regarding apprenticeship programs because electrician maintenance, landscape gardener, and building maintenance apprenticeships were never filled before the contempt motion was filed and the subsequently-established positions provided inadequate training and instruction and the officials did not actively recruit apprentices. The prison officials had argued that the electrical maintenance and other apprenticeship programs were not appropriate to the prison setting; the court responded by noting that the prison officials

themselves had selected the apprenticeships to be offered and never sought to modify the court order. (Michigan Department of Corrections)

U.S. Appeals Court
EDUCATIONAL
ADMINISTRATIVE
SEGREGATION
LIBERTY INTEREST

Higgason v. Farley, 83 F.3d 807 (7th Cir. 1996). A prisoner filed a civil rights action challenging his placement in a segregation unit. The district court dismissed the prisoner's claim for injunctive relief and granted summary judgment to the defendants. The prisoner appealed. The appeals court affirmed in part, reversed and remanded in part, and vacated and remanded in part. The appeals court found that restrictions on the prisoner's movement in the segregation unit were not an atypical and significant hardship in violation of the Eighth Amendment. Segregated prisoners generally had to stay in the vicinity of their cells and could never enter another prisoner's cell, and the unit was regularly put on lockdown status more frequently and for longer periods of time than the general population. The court also ruled that denial of access to educational programs, which resulted from the prisoner's placement in the segregation unit, did not infringe on a protected liberty interest despite the contention that he was thus deprived of an opportunity to earn good time credits. The court noted that even if the prisoner had been given the opportunity to participate in programs, it was not inevitable that he would complete an educational program and earn good time credits. (Indiana State Prison)

U.S. Appeals Court
ALCOHOL/DRUGS

Kerr v. Farrey, 95 F.3d 472 (7th Cir. 1996). An inmate brought a § 1983 action against corrections officials alleging that requiring him to attend religious-based narcotics rehabilitation meetings violated his constitutional rights. The district court granted summary judgment to the defendants but the appeals court reversed and remanded. The appeals court found that requiring the inmate to attend meetings upon pain of being rated a higher security risk and suffering adverse effects for parole eligibility violated the establishment clause, but that the defendants were entitled to qualified immunity. The court held that under the establishment clause the inmate could not be forced to attend meetings of an organization for narcotics rehabilitation whose program referred to "God, as we understood Him." (Oakhill Correctional Institution, Wisconsin)

U.S. District Court
SEX OFFENDER
REHABILITATION
RIGHT TO TREATMENT

Richmond v. Cagle, 920 F.Supp. 955. (E.D.Wis. 1996). A prisoner sued prison officials under § 1983 for failing to provide him with sex offender treatment and rehabilitation services. The district court dismissed the case as frivolous, finding that a prisoner does not have a protected liberty interest in receiving treatment while in prison. (Oshkosh State Corr'l Inst., Wisconsin)

1997

U.S. District Court
EQUAL
PROTECTION
RACIAL
DISCRIMINATION

Franklin v. District of Columbia, 960 F.Supp. 394 (D.D.C. 1997). A class of Hispanic prisoners who were or would be incarcerated in correctional institutions operated by the District of Columbia sought injunctive and declaratory relief for alleged violations of the First, Fifth, and Eighth Amendments under § 1983. The district court held that the District's failure to provide qualified interpreters for Hispanic prisoners' medical and mental health needs rose to the level of deliberate indifference and violated the Eighth Amendment. The court found no valid penological justification for disclosing a prisoner's medical condition by using correctional officers or other inmates as interpreters in medical encounters. The court noted that to satisfy the Eighth Amendment, a medical facility must be adequately staffed and access to medical services cannot be delayed in a systematic manner due to inadequate staffing. The court found that the District's failure to provide Hispanic prisoners with qualified interpreters at disciplinary proceedings and parole hearings was an affront to due process. However, the court held that while the District did not offer the same programs in Spanish as they offered in English, these programming decisions did not constitute denial of equal protection under the Fifth Amendment, noting that Hispanic prisoners were not barred from participation in prison programs because of their race or national origin. (District of Columbia)

U.S. Appeals Court
SEX OFFENDER
EQUAL PROTECTION

Johnson v. Baker, 108 F.3d 10 (2nd Cir. 1997). A state prison inmate brought a § 1983 action against prison officials challenging a prison policy that required the inmate to admit to sex offenses of which he had been convicted as a prerequisite to participation in the prison's sex offender program. Admission to the sex offender program was itself required for admission to a program that permits inmates to spend extended periods of time with their spouses and family. The district court dismissed the case and the inmate appealed. The appeals court affirmed, holding that the policy in question did not violate the inmate's right to equal protection or his right against self-incrimination. The court found that the prison officials did not violate the prisoner's Fifth Amendment right against self-incrimination, as long as the adverse consequence was imposed for failure to answer a relevant inquiry and not for refusal to give up a constitutional right; however, the state may not seek a court order compelling answers to its questions about an alleged offense, require a waiver of immunity, or insist that answers be used in a criminal proceeding. The court noted that the inmate's unwillingness to admit to criminal sexual activity rendered him unlikely to benefit from the rehabilitative process. (Auburn Correctional Facility, New York)

U.S. District Court
ALCOHOL/DRUG

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
PARITY--Male/Female

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. District Court
RIGHT TO TREAT-
MENT
VOCATIONAL

Luedtke v. Gudmanson, 971 F.Supp. 1263 (E.D.Wis. 1997). A prisoner brought a § 1983 action against a warden, petitioning the court to proceed in forma pauperis. The district court held that the complaint was frivolous, warranting dismissal. The court found that the prisoner had no liberty interest in receiving vocational training and that the lack of vocational training does not impose an atypical and significant hardship on a prisoner. (Oshkosh Correctional Institution, Wisconsin)

U.S. Appeals Court
SEX OFFENDER

Neal v. Shimoda, 131 F.3d 818 (9th Cir. 1997). Two state prisoners brought separate § 1983 actions against prison officials and administrators of a state's sex offender treatment program. They claimed that labelling them as sex offenders and compelling them to admit guilt violated their constitutional rights. The district court granted summary judgment for the defendants and the prisoners' appeals were consolidated. The appeals court held that the sex offender treatment program did not violate the Ex Post Facto Clause because denying a prisoner's eligibility for parole so that he could participate in treatment was not punishment. But the appeals court found that labelling a prisoner who was not convicted of a sex offense as a "sex offender" without a hearing, and requiring the successful completion of a treatment program as a precondition for parole eligibility, created a liberty interest protected by due process. The appeals court held that a prisoner is entitled to an advance statement of the reasons for the classification and to a hearing at which he can present a defense. According to the court, a prisoner convicted of a sex offense received all process to which he was due when he was notified that he was classified as a sex offender due to his conviction. The court found that a prisoner whose labeling as a sex offender violated due process was entitled to injunctive relief. The appeals court affirmed in part, reversed and remanded in part with instructions. The appeals court instructed the district court to issue an injunction ordering the Hawaii Parole Authority to remove "sex offender" from one of the prisoner's classifications unless and until he is provided with a hearing that provides him with the procedural protections contained in Wolff. (Hawaii Sex Offender Treatment Program)

U.S. Appeals Court
DRUG

Stiver v. Meko, 130 F.3d 574 (3rd Cir. 1997). An inmate who had been convicted of a nonviolent offense sought a sentence reduction under the Violent Crime Control and Law Enforcement Act on the ground that he had successfully completed a drug treatment program during his prison term. The federal Bureau of Prisons (BOP) denied the sentence reduction because the inmate had previous convictions for violent offenses. The district court denied the petition and the appeals court affirmed. The appeals court held that the Bureau regulation reasonably construed "convicted of a nonviolent offense," as used in the Act, to mean all convictions, and not just the conviction for which the inmate is currently incarcerated. The appeals court also held that the regulation did not violate the ex post facto clause or double jeopardy. (Federal Bureau of Prisons)

U.S. Appeals Court
TREATMENT
PROGRAMS

Venegas v. Henman, 126 F.3d 760 (5th Cir. 1997) cert. denied 118 S.Ct. 1679.. A prisoner filed for a writ of 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. (Fed.l Bur. of Prisons)

U.S. Appeals Court
RIGHT TO TREATMENT
HANDICAPPED

Yeskey v. Com. of Pa. Dept. of Corrections, 118 F.3d 168 (3rd Cir. 1997). A state prison inmate who was denied admission to a boot camp program due to a history of hypertension brought an action alleging violation of the Americans with Disabilities Act

(ADA). The district court dismissed the case and the inmate appealed. The appeals court reversed and remanded, finding that the ADA and Rehabilitation Act sections prohibiting the exclusion of disabled persons from government programs were applicable to state prison programs and that state prisoners can be qualified individuals entitled to protection under both acts. According to the appeals court decision, "...the question of applicability of the ADA to prisons is an important one, especially in light of the increased number of inmates, including many older, hearing-impaired, and HIV-positive inmates, in the nation's jails." (Motivational Boot Camp Program, Pennsylvania Department of Corrections)

1998

U.S. District Court
ALCOHOL/DRUG

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
SEX OFFENDERS
EQUAL PROTECTION

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. Appeals Court
ALCOHOL/DRUG

Kerr v. Puckett, 138 F.3d 321 (7th Cir. 1998). A former inmate brought a civil rights action against prison officials, alleging that "brainwashing" of prisoners as part of substance abuse programs violated the Eighth Amendment. The district court ruled that the defendants were immune from liability and that the action was barred by the Prison Litigation Reform Act (PLRA). The appeals court affirmed, holding that the alleged "brainwashing" was not cruel and unusual punishment. The court also found that the PLRA provision barring prisoners from bringing suit for mental or emotional injury without a prior showing of physical injury did not apply to the suit filed by an inmate after he was released on parole. The inmate had previously filed suit protesting the religious components of some treatment programs, leading to a 1996 appeals court ruling that held that a prison violates the establishment clause of the First Amendment by making benefits such as parole contingent on receiving religious instruction and professing religious faith. (Wisconsin)

U.S. District Court
SEX OFFENDER

Lile v. McKune, 24 F.Supp.2d 1152 (D.Kan. 1998). A prisoner challenged the constitutionality of a prison's sex offender treatment program that required a complete and written disclosure of a prisoner's sexual history, including all uncharged sex offenses, and that used polygraph examinations and penile plethysmograph testing. The district court held that the program violated the Fifth Amendment's privilege against self-incrimination but that immunity protected the prisoner's incriminating program disclosures from being used against him in later criminal proceedings. The court found that use of the penile plethysmograph testing did not violate a prisoner's Fourth Amendment privacy rights. Although such testing arguably involved the most private part of a prisoner's body, the court held that use of the testing did not violate the Fourth Amendment because the governmental interest in rehabilitation outweighed the prisoner's right to be free from such an intrusive testing procedure. The court noted that the sexual abuse treatment program (SATP) imposed significant and adverse consequences to a prisoner's classification, housing and privileges if he refused to participate in the required programming, and therefore the SATP operated to compel the disclosure of incriminating testimony in violation of a prisoner's Fifth Amendment rights. (Lansing Correctional Facility, Kansas)

U.S. Appeals Court
SEX OFFENDER

Morstad v. Dept. of Corrections & Rehab., 147 F.3d 741 (8th Cir. 1998). A former inmate convicted of gross sexual imposition against his daughter brought an action against state officials and prison officials alleging violation of § 1983 in connection with an assault by a fellow inmate. The district court ruled in favor of the defendants and the appeals court affirmed. The appeals court held that the alleged failure of a psychologist to find an outpatient sexual offender treatment program for the inmate that would not require the inmate to admit culpability for the sexual assault of his daughter, causing the inmate to be confined for treatment

in the prison, did not support a § 1983 action against the psychologist in his individual capacity. According to the court, the psychologist's evaluation did not proximately cause the fellow inmate's assault, as required to support a negligence claim. As a result of the decision to treat the inmate in confinement, he was held at a state prison where he was housed with another inmate who had a history of violent behavior. The cellmate attacked the inmate with a baseball bat, causing permanent brain damage. (North Dakota State Penitentiary)

U.S. Appeals Court
ALCOHOL/DRUG

Orr v. Hawk, 156 F.3d 651 (6th Cir. 1998). A federal prisoner convicted of possession of a firearm by a previously convicted felon, and various drug charges, petitioned for a writ of habeas corpus seeking a reduction in his sentence based on his completion of a drug treatment program. The district court dismissed the petition. The appeals court reversed and remanded, finding that an amendment to the Bureau of Prisons (BOP) regulation governing sentence reductions was applicable, even though it was not enacted until after the prisoner sought a reduction. The court found that the regulation was entitled to no greater deference than the BOP's internal interpretive rules, and that the felon-in-possession offense was a "nonviolent offense." (Federal Prison Camp, Millington, Tennessee)

U.S. Appeals Court
DRUG/ALCOHOL

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. District Court
DRUG/ALCOHOL

Ross v. Keelings, 2 F.Supp.2d 810 (E.D.Va. 1998). An inmate challenged the constitutionality of his forced participation in a drug rehabilitation program that allegedly contained a religious study component. The district court found that prison officials violated the Establishment Clause of the First Amendment by forcing the inmate to attend the program, but that the officials had qualified immunity from the suit because the inmate's rights were not clearly established at the time that they compelled the inmate's attendance. The inmate had been forced to participate in a Therapeutic Community program which included the goal of "...teaching life, coping and spiritual skills...to help an inmate develop his own spirituality." (Indian Creek Corr'l Center, Virginia)

U.S. Appeals Court
ALCOHOL/DRUG

Ruble v. Fleming, 160 F.3d 213 (5th Cir. 1998). An inmate filed a petition challenging the execution of his sentence following completion of a residential drug treatment program and denial of early release. The district court dismissed the petition and the appeals court affirmed. The appeals court held that a prison regulation that makes an inmate ineligible for early release if the inmate is not eligible to participate in community-based treatment was a permissible exercise of the Bureau of Prison's discretion. The court found that the regulation did not violate the due process clause or equal protection. (Fed. Bureau of Prisons)

U.S. District Court
DRUG/ALCOHOL
EQUAL PROTECTION

Warburton v. Underwood, 2 F.Supp.2d 306 (W.D.N.Y. 1998). A prisoner was granted permission to proceed in forma pauperis in his § 1983 action. The district court held that a delay of 14 days in serving the prisoner with court papers for a pending action did not deny him access to court, because the Constitution requires no more than reasonable access to the courts. The court held that the coerced participation of the inmate in a Narcotics Anonymous (NA) program violated the establishment clause of the First Amendment because the program had a religious basis. The prisoner alleged that he was not offered a secular alternative, and the court found that the program's emphasis on God, spirituality, and faith in a "higher power" indicated that the underlying basis of the program was religious. The court denied qualified immunity to the prison officials who allegedly conspired to deny the prisoner his earned good time credits unless he participated in the NA program. (Groveland Corr'l Facility, New York)

U.S. Appeals Court
SEX OFFENDER

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)

1999

U.S. Appeals Court
RELEASE
REMOVAL FROM
PROGRAM
LIBERTY INTEREST
WORK RELEASE

Asquith v. Department of Corrections, 186 F.3d 407 (3rd Cir. 1999). A state prisoner brought a civil rights suit against state correctional officials and a contractor who operated a prerelease center, claiming that his due process rights were violated by his termination from a work release program. The district court dismissed the case as frivolous but the appeals court reversed and remanded. On remand the district court granted summary judgment for the defendants and the prisoner appealed. The appeals court held that the prisoner did not have a

protected liberty interest in remaining in the work release program, either under the due process clause or under state law. The court found that the conditions imposed on the prisoner's conduct at the halfway house, where he lived under a work release program, amounted to institutional confinement and thus his removal from the halfway house did not trigger the protections of due process. The prisoner had returned to the house smelling of alcohol and had failed a breathalyzer test, and was immediately removed from the halfway house and returned to prison. (Volunteers of America, under contract to the New Jersey Department of Corrections)

U.S. Appeals Court
ALCOHOL/DRUG

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. District Court
EDUCATIONAL
JUVENILES

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. Appeals Court
SEX OFFENDERS

Glauner v. Miller, 184 F.3d 1053 (9th Cir. 1999). A state prisoner brought a § 1983 action challenging a Nevada statute that requires a panel to certify that certain sexual offenders are not a menace to the health, safety or morals of others, prior to parole eligibility. The district court dismissed the action and the appeals court affirmed, finding that the statute did not violate the prisoner's right to equal protection and the statute was not void for vagueness. The court noted that heightened recidivism concerns for sexual offenders provided a rational basis for requiring more scrutiny in parole matters than other classes of criminals. (Nevada)

U.S. District Court
EDUCATIONAL
VOCATIONAL
PARITY-MALE/
FEMALE

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. District Court
SEX OFFENDERS

King v. Greenblatt, 53 F.Supp.2d 117 (D.Mass. 1999). A state moved to terminate consent decrees which were in place approximately 25 years to govern operations at a treatment facility for civilly-committed sexually dangerous persons. The district court terminated the consent decrees, finding that the underlying conditions that existed when the decrees were entered had been remedied. The court noted that the provisions of the Prison Litigation Reform Act (PLRA) did not apply to civilly committed persons, who were not "prisoners" under the Act. (Massachusetts Treatment Center for Sexually Dangerous Persons, Bridgewater, Massachusetts)

U.S. Appeals Court
ALCOHOL/DRUG

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
VOCATIONAL
ADA-Americans with
Disabilities Act

Murdock v. Washington, 193 F.3d 510 (7th Cir. 1999) U.S. cert. den. at 120 S.Ct. 2015. An inmate sued prison officials alleging violation of the Americans with Disabilities Act (ADA) and denial of due process as the result of their refusal to allow him to participate in a prison culinary arts program because he refused to submit to an HIV test. The district court dismissed the action and the appeals

court affirmed. According to the appeals court, the ADA section that limited medical testing for disabilities applies to discrimination in employment, not to prisons. The prison had a policy that required any inmate who wished to participate in the vocational program to submit to an HIV test. (Taylor Correctional Center, Illinois)

U.S. Appeals Court
EQUAL PROTECTION
SEGREGATION
TREATMENT
PROGRAMS

Onishea v. Hopper, 171 F.3d 1289 (11th Cir. 1999). State inmates who tested positive for the human immunodeficiency virus (HIV) brought a class action suit against prison officials challenging segregation of prison recreational, religious and educational programs based on inmates' HIV-positive status. The inmates alleged that the practices were unconstitutional and violated the Rehabilitation Act. At the male prison at which HIV-positive male inmates were housed they were excluded from participation in various prison jobs, vocational classes, inmate barber jobs, laundry jobs, gardening, and other activities and programs. The district court denied relief after a bench trial and the inmates appealed. The appeals court affirmed in part and vacated and remanded in part. On remand the district court again denied relief and the inmates again appealed. The appeals court affirmed. The appeals court held that a "significant risk" of HIV transmission existed for any prison program in which HIV-positive inmates sought participation. The appeals court affirmed the district court's finding that integrated programs would risk violence and that segregation of HIV-positive inmates was not an exaggerated response. The court also affirmed the finding that hiring additional guards to accommodate integration of programs was too costly and imposed an undue burden on the prison system. The court noted that the Rehabilitation Act did not require a state corrections department to do whatever it was legally capable of doing to accommodate HIV-positive inmates. (Limestone Correctional Facility and Julia Tutwiler Prison for Women, Alabama Department of Corrections)

U.S. District Court
SEX OFFENDERS

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. Appeals Court
ADA-Americans with
Disabilities Act
HANDICAPPED

Randolph v. Rodgers, 170 F.3d 850 (8th Cir. 1999). A hearing impaired inmate sued corrections officials alleging violation of his rights because he was not provided with a sign language interpreter. The district court granted the inmate's motion for summary judgment, finding liability under the Americans with Disabilities Act (ADA), the Rehabilitation Act, and a state statute, and issued a permanent injunction. The appeals court vacated the judgment with regard to enforcement of the state statute, finding that the Eleventh Amendment barred enforcement. The appeals court reversed and remanded in part, finding that the inmate established a prima facie case regarding federal violations but that issues of fact precluded summary judgment. The court noted that there was substantial evidence that providing a sign language interpreter created safety and security issues and placed a financial burden on the prison. The appeals court held that although the inmate had been provided with some form of medical care and educational training, and was able to participate in disciplinary and classification proceedings, he had not received the full benefits solely because of his disability. (Jefferson City Correctional Center, Missouri)

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

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. (Cowley County Jail, Kansas)

U.S. District Court
SEX OFFENDER

Searcy v. Simmons, 68 F.Supp.2d 1197 (D.Kan. 1999). An inmate brought a § 1983 action against correctional officials seeking a preliminary injunction to compel the officials to allow him to participate in a treatment program for sex offenders without conditions. The district court denied the inmate's request, finding that the policy of reducing the inmate's privileges because he refused to fill out an "admission of responsibility" form did not violate his privilege against self-incrimination because the inmate retained the right to choose whether to enter the program and the loss of privileges did not rise to the level of compulsion. The form requires the inmate to list all past behavior that may have constituted a sex offense, whether the inmate was ever arrested, charged or convicted as a result of the conduct. The court also held that the condition which required the inmate to submit to a plethysmograph examination which used explicit sexual material did not violate the inmate's religious freedoms. (Sexual Abuse Treatment Program, Hutchinson Correctional Facility, Kansas)

U.S. Appeals Court
SEX OFFENDER

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 Diag. & Treat. Ctr., N.J.)

2000

U.S. District Court
ALCOHOL/DRUG

Alexander v. Schenk, 118 F.Supp.2d 298 (N.D.N.Y. 2000). An inmate brought a § 1983 action alleging that his First and Thirteenth Amendment rights were violated because he was compelled to participate in an alcohol and substance abuse program that had religious components. The district court found that the inmate was coerced into participating, in violation of the Establishment Clause. The court noted that the inmate objected to attending program meetings during his initial interview, constantly complained about his enrollment in the program, refused to sign the enrollment contract, raised issues of the program's religious aspects with prison officials, and was ordered to return to the group sessions despite officials' knowledge that he objected to them on religious grounds. The court denied qualified immunity for the officials. The court awarded nominal damages of \$1. The court held that requiring the inmate to work without compensation while incarcerated did not violate the Thirteenth Amendment, which expressly did not prohibit involuntary servitude imposed as a legal punishment for a crime. (Cayuga Correctional Facility, New York)

U.S. Appeals Court
DRUG/ALCOHOL

Bowen v. Hood, 202 F.3d 1211 (9th Cir. 2000). Dozens of federal prisoners brought separate actions for habeas corpus relief challenging the decision of the federal Bureau of Prisons that prisoners whose crime of conviction involved possession, carrying or use of a firearm were ineligible for early release based on the successful completion of a drug treatment program. The district court ruled in favor of the prisoners and the Bureau appealed. The appeals court affirmed in part and reversed in part. The appeals court held that the Bureau validly exercised its discretion in barring armed felons from eligibility but that the Bureau could not retroactively apply such a restriction to prisoners who had already been provided with a determination of eligibility. (Federal Correctional Institution, Sheridan, Oregon)

U.S. Appeals Court
JUVENILES
EDUCATIONAL

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. Appeals Court
HANDICAPPED
ADA- Americans with
Disabilities Act

Cassidy v. Indiana Dept. of Corrections, 199 F.3d 374 (7th Cir. 2000). A blind inmate brought an action against the Indiana Department of Corrections alleging violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The district court granted partial judgment in favor of the defendants and the inmate appealed. The appeals court affirmed, finding that the provision of the Prison Litigation Reform Act (PLRA) that banned prisoner civil actions for mental or emotional damages without a prior showing of physical injury applies to constitutional torts and that the provision barred the inmate's claims. The inmate had alleged that the department had denied him access to programs, services, activities and benefits that it provides to non-disabled inmates in its custody. (Wabash Valley Correctional Facility, Indiana)

U.S. Appeals Court
SEX OFFENDERS

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
DRUG/ALCOHOL

Cook v. Wiley, 208 F.3d 1314 (11th Cir. 2000). An inmate challenged a federal Bureau of Prison (BOP) decision to deny him a sentence reduction for having completed a program because he had been convicted of being a felon in possession of a firearm. The district court dismissed the action

and the inmate appealed. The appeals court affirmed, finding that the BOP reasonably interpreted the statute allowing for the sentence reduction. (Federal Prison Camp, Talladega, Alabama)

U.S. District Court
EDUCATIONAL
I.D.E.A.- Individuals
WITH Disabilities in
Education Act
JUVENILES

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. Appeals Court
ALCOHOL/DRUG

King v. Morrison, 231 F.3d 1094 (8th Cir. 2000). A federal inmate petitioned for habeas corpus relief challenging the federal Bureau of Prisons (BOP) determination that he was ineligible for a sentence reduction based on his completion of a drug abuse treatment program. The district court denied relief and the inmate appealed. The appeals court remanded with direction, finding that the application of a BOP program statement that treated conviction for being a felon in possession of a firearm as a "crime of violence" could not render the inmate ineligible for early release. (Federal Correctional Institution, Forrest City, Arkansas)

U.S. District Court
SEX OFFENDER
DUE PROCESS

Searcy v. Simmons, 97 F.Supp.2d 1055 (D.Kan. 2000). 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 for the defendants. The court held that the inmate's refusal to reveal potentially incriminating information about his sexual history did not violate his right against self incrimination and that penile plethysmograph and polygraph examinations did not violate his substantive due process rights. The court noted that the program was voluntary and program requirements were reasonably related to valid penological interests in rehabilitating sex offenders. The court also found that the inmate was not deprived of procedural due process when prison officials removed his personal property after he was denied privileges and shipped it to his relatives without a pre-deprivation hearing, where the inmate was provided with the opportunity to specify where to send the property but refused to do so. (Hutchinson Correctional Facility, Kansas)

U.S. Appeals Court
SEX OFFENDER

Sharp v. Weston, 233 F.3d 1166 (9th Cir. 2000). Officials moved to dissolve an injunction against a state commitment center for persons civilly committed as sexually violent predators. The district court denied relief and issued an order detailing additional steps to be taken to provide center residents with constitutionally adequate treatment. The appeals court affirmed, finding that the officials failed to show that dissolution of the injunction was warranted, and that the scope of the order detailing additional steps to be taken by the center was not an abuse of discretion. (Special Commitment Center, Washington)

U.S. Appeals Court
SEX OFFENDER
RIGHT TO
TREATMENT
DUE PROCESS
EQUAL PROTECTION
ADA- Americans with
Disabilities Act

Stanley v. Litscher, 213 F.3d 340 (7th Cir. 2000). An inmate brought a suit alleging that denial of his application to participate in a sex offender program violated the Americans with Disabilities Act (ADA) and his constitutional rights. The district court dismissed the suit and the inmate appealed. The appeals court affirmed in part, vacated in part and remanded with instructions. The appeals court held that the denial of the inmate, who claimed he was disabled by a condition of psychopathy, did not violate the inmate's right to equal protection because the state could rationally conclude that psychopaths did not benefit from such intra-prison programs and that they spoiled such programs for less aggressive inmates. The court found that admission to sex offender programs was not a liberty or property interest protected by due process and that the Eighth Amendment did not require the state to "treat" the inmate's psychopathy more aggressively. (Wisconsin Department of Corrections)

U.S. Appeals Court
EARLY RELEASE

Ward v. Booker, 202 F.3d 1249 (10th Cir. 2000). Former federal inmates brought habeas actions challenging a nationwide federal Bureau of Prisons rule which initially denied them a sentencing reduction available to certain inmates who successfully completed a drug treatment program. The inmates had their sentences enhanced for possession of a firearm. The district court granted relief and the Bureau appealed. The appeals court affirmed, finding that the BOP regulation which categorically denies eligibility for sentence reductions was invalid. The court also found that the case was not moot on the ground that the prisoners had been released to halfway houses to finish the custodial portion of their sentences. (Federal Prison Camp in Leavenworth, Kansas)

U.S. Appeals Court
ALCOHOL/DRUG

Warren v. Miles, 230 F.3d 688 (5th Cir. 2000). An offender convicted for drug charges petitioned for habeas corpus relief and was denied by the district court. The appeals court affirmed, finding that a revised federal Bureau of Prisons program statement that prohibits inmates convicted of drug-related conspiracy from receiving early release based on the completion of a drug abuse program if they were serving enhanced sentences for a possession of a weapon, did not violate the Ex Post Facto clause. The appeals court also held that the Bureau did not abuse its discretion by relying on the prisoner's sentence enhancement to categorically deny him consideration for early release. (Fed. Corr'l Institute at Bastrop, Texas)

U.S. Appeals Court
VOCATIONAL
DRUG

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. The appeals court held that the inmate did not state a claim for violation of his First Amendment rights by alleging his mail was delivered in an untimely manner where he alleged only one instance in which his mail was delayed. But the appeals court found that the inmate stated a claim against a library supervisor for retaliation in denial of his access to a library. The inmate had filed a grievance against the library supervisor for allegedly denying him library access to prepare pro se for a criminal trial and the supervisor then denied him any access to the library. (Wabash Valley Correctional Center, Indiana)

2001

U.S. District Court
ALCOHOL/DRUG

Bausch v. Sumiec, 139 F.Supp.2d 1029 (E.D.Wis. 2001). A parolee brought a § 1983 action alleging that mandatory attendance in a drug treatment program with religious components violated the Establishment Clause. The district court denied summary judgment for the defendants, finding that it was precluded by fact questions. (Wisconsin Department of Corrections)

U.S. District Court
ALCOHOL/DRUG

Garvin v. Terhune, 157 F.Supp.2d 416 (D.N.J. 2001). A prisoner brought a § 1983 action challenging the decision by prison officials to deny him reduced custody status because he refused to participate in a drug treatment program that had a religious component. The district court granted summary judgment in favor of the defendants, finding that compelling the prisoner to participate in the program in order to receive reduced custody status did not violate his constitutional rights, even assuming he was not in need of the program. According to the court, where the drug treatment program was not oppressive, punitive or otherwise harsh in its consequences, it was within prison officials' discretion to order the inmate to participate in the program in order to receive reduced custody status. The inmate objected to the Nu Way Drug Treatment Program, which is operated by a private provider, and is modeled on the 12 step program of Alcoholics Anonymous and Narcotics Anonymous. (South Woods State Prison, Bridgeton, New Jersey)

U.S. District Court
SEX OFFENDERS

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 Correctional Institution, Wisconsin)

U.S. Supreme Court
ALCOHOL/DRUGS

Lopez v. Davis, 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)

2002

U.S. Appeals Court
SEX OFFENDER

Ainsworth v. Stanley, 317 F.3d 1 (1st Cir. 2002). Convicted sex offenders sued a state corrections department alleging violation of their Fifth Amendment right against self-incrimination. The department required offenders to disclose their histories of sexual misconduct without offering immunity for statements made in connection with the program, in order to participate in the department's sex offender program. The district court dismissed the action and the appeals court affirmed. The United States Supreme Court granted certiorari, vacated, and remanded for reconsideration in light of *McKune v. Lile*. On remand, the appeals court held that the program did not violate the Fifth Amendment. The court noted that criminological studies and social science research found that admission of crimes was a necessary prerequisite for successful treatment of

sex offenders. The court held that the reduced likelihood of parole for offenders who refused to participate in the program did not constitute a penalty sufficient to compel incriminating speech. (New Hampshire Department of Corrections)

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

Arlt v. Missouri Department of Corrections, 229 F.Supp.2d 938 (D.Mo. 2002). An inmate brought an action under Title II of the Americans with Disabilities Act (ADA) and the Rehabilitation Act, alleging that corrections officials failed to provide him with accommodations for taking a high school equivalency test. The district court held that the department of corrections was liable under the Rehabilitation Act to the disabled inmate who allegedly lost his premium-pay job due to the department's refusal to make accommodations. The court awarded damages in the form of back pay from the date he lost his premium-pay job to the date he was transferred to a different facility. The court noted that it was undisputed that the inmate, who was blind in one eye and has learning disabilities, was disabled within the meaning of the Rehabilitation Act, and that the accommodations requested (extra time to complete the test, as recommended by two psychologists) did not constitute an undue burden on the prison. (Missouri Department of Corrections, Moberly)

U.S. District Court
ALCOHOL/DRUGS

Freedom From Religion Foundation, Inc. v. McCallum, 179 F.Supp.2d 950 (W.D.Wis. 2002). A private organization challenged the constitutionality of a state's funding of a faith-based, long-term alcohol and drug addiction treatment program. The district court granted the plaintiffs' motion for summary judgment in part, and denied it in part. The district court held that the funding that the faith-based treatment program received under a state workforce grant represented governmental indoctrination of religion in violation of the Establishment Clause. The court noted that it was not possible to separate the religious components of the treatment program from its secular ones. The court was unable to determine if offenders participated in the program of their own free choice, and was therefore unable to determine if funding the program received from the state corrections department violated the Establishment Clause. The court ordered a trial to make that determination. (Wisconsin Department of Corrections and Faith Works Milwaukee, Inc.)

U.S. District Court
REMOVAL FROM
PROGRAM
DRUG

Galloway v. Suffolk County Correctional Facility, 232 F.Supp.2d 4 (E.D.N.Y. 2002). A parole violator filed a § 1983 action alleging that prison officials deprived him of his right to due process when they removed him from a substance abuse program. The district court denied the officials' motion for judgment on the pleadings, finding that the parole violator had a state-conferred liberty interest in continued participation in the program, and therefore could not be discharged from the program without a hearing, even though he signed an application stating that a decision to remove him from the program was final. The court held that the county prison's High Impact Incarceration Program (HIIP) was a "substance abuse program" governed by state Mental Hygiene Law. The program involved sixty days of intensive therapy and a six-month aftercare phase. (Suffolk County Correctional Facility, New York)

U.S. District Court
EDUCATIONAL

Johnson v. Medford, 208 F.Supp.2d 590 (W.D.N.C. 2002). A state prisoner brought a § 1983 action against correctional officials and medical personnel, alleging denial of medical care and denial of opportunities for educational programs. The district court dismissed the case, finding that the prisoner's alleged "flat feet" were not a serious medical condition, as required to establish a deliberate indifference claim. The court held that the alleged denial of the prisoner's request to take a correspondence course for paralegal training did not violate any of the prisoner's constitutional rights. The court noted that an inmate of a state prison does not have a constitutional right to an education. (Marion Correctional Institution, North Carolina)

U.S. Appeals Court
SEX OFFENDER
RIGHT TO
TREATMENT

Leamer v. Fauver, 288 F.3d 532 (3rd Cir. 2002). A state prisoner filed a § 1983 action challenging his placement on a prison's restricted activities program (RAP). The district court dismissed the case and the prisoner appealed. The appeals court reversed and remanded, finding that the state's unique former statutory scheme for sex offenders, which predicated the term of sentence on a prisoner's response to treatment, created a liberty interest in treatment and a right to treatment for the purposes of both procedural and substantive due process analyses. (Adult Diagnostic Treatment Center, N.J.)

U.S. Appeals Court
SEX OFFENDER

Lile v. McKune, 299 F.3d 1229 (10th Cir. 2002). A state inmate brought a § 1983 claim against prison officials, alleging that a sexual abuse treatment program and corresponding regulations and policies violated his Fifth Amendment right against self-incrimination. The district court granted summary judgment for the inmate and the appeals court affirmed. The United States Supreme Court (122 S.Ct. 2017) reversed and remanded, finding that alterations in the inmate's prison conditions resulting from his refusal to participate in a Sexual Abuse Treatment Program (SATP) were not so great as to constitute compulsion for the purposes of the Fourth and Fifth Amendments. The appeals court vacated its prior opinion and remanded the case to the district court with instructions to dismiss the complaint in its entirety. (Kansas Department of Corrections)

U.S. District Court
EDUCATIONAL
EQUAL
PROTECTION
ADMINISTRATIVE
SEGREGATION

Little v. Terhune, 200 F.Supp.2d 445 (D.N.J. 2002). A prisoner housed in a maximum security prison brought a civil rights suit against state prison officials for allegedly violating his equal protection rights by failing to provide him with educational programming while he was confined in an administrative segregation unit. The district court held that the denial of educational programming to prisoners in administrative segregation did not violate equal protection on the basis that the programs were available to the general prison population, to younger inmates in

administrative segregation, or to all inmates in segregation units at other institutions. The court noted that although inmates do not have a constitutional right to educational and work programs, once the state grants such rights to prisoners it may not invidiously discriminate against a class of inmates in connection with those programs unless the difference in treatment is rationally related to the legitimate governmental interest to justify the disparate treatment. The court found a legitimate connection, where prison officials' allocation priorities for the scarce resource of educational services responded to security concerns and budget restraints. The court also found that there was a legitimate government interest in promoting innovative prison programs that might be stymied by a requirement that there be system-wide uniformity. (N.J. State Prison)

U.S. Appeals Court
INCENTIVES

Love v. McKune, 33 Fed.Appx. 369 (10th Cir. 2002). Four prison inmates brought a civil rights action challenging their forced participation in a prison incentive level system that tied inmate privileges to participation in programs and good behavior. The district court dismissed the action and the appeals court affirmed. The appeals court held that forced participation did not violate the inmates' Fourteenth Amendment due process rights. The Internal Management Policy and Procedure (IMPP) system assigned inmates to one of four levels. Each level had a corresponding level of privileges, such as television ownership, handicrafts, participation in organizations, use of outside funds, canteen expenditures, incentive pay, and visitation. The system had been previously upheld by the state supreme court, which found that none of the restrictions denied to inmates on lower levels infringed on inmates' property or liberty interests and therefore did not implicate due process protection. The appeals court noted that denying an inmate the use of certain electronic equipment does not impose a significant hardship, nor do restrictions on canteen purchases or the types of purchases and personal property allowed. (Lansing Correctional Facility, Kansas)

U.S. District Court
WORK/STUDY
REMOVAL FROM
PROGRAM

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. Supreme Court
SEX OFFENDER
INCENTIVES

McKune v. Lile, 536 U.S. 24 (2002). A Kansas prisoner convicted of rape and related crimes was ordered to participate in a Sexual Abuse Treatment Program (SATP) several years before his scheduled release. The program requires inmates to complete and sign an "admission of responsibility" form in which they accept responsibility for the crimes for which they have been sentenced, and to complete a sexual history form detailing all prior sexual activities, even if the activities constitute uncharged criminal offenses. This information is not privileged and might be used against them in future criminal proceedings. The prisoner was informed that if he refused to participate, his prison privileges would be reduced, resulting in the automatic curtailment of his visitation rights, earnings, work opportunities, ability to send money to family, canteen expenditures, access to a personal television, and other privileges. He would also be transferred to a potentially more dangerous maximum-security unit. He refused to participate, arguing that the required disclosures would violate his Fifth Amendment privilege against compelled self-incrimination. A federal appeals court upheld summary judgment for the prisoner, finding that the use of these incentives violated the Fifth Amendment. The U.S. Supreme Court reversed the judgment of the appeals court, concluding that the program serves a vital penological purpose--rehabilitation--and that offering prisoners minimal incentives to participate did not amount to compelled self-incrimination. The Court noted that the prisoner's refusal did not extend his prison term nor affect his eligibility for good-time credits or parole. According to the Court, transfer to a less desirable maximum-security unit is not designed to punish prisoners, but is incidental to a legitimate penological purpose. (Kansas)

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

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 2 and one-half days for every month he was confined. (North Central Correctional Facility, Massachusetts)

U.S. District Court
SEX OFFENDER

Munoz v. Kolender, 208 F.Supp.2d 1125 (S.D.Cal. 2002). A civil detainee who was confined in a county jail under the provisions of California's Sexually Violent Predator Act brought a § 1983 action against a county sheriff, challenging his confinement and the conditions of his confinement. The district court granted summary judgment in favor of the sheriff. The court held that the Act had a dual purpose, to remove dangerous sexually violent predators from society and to provide them with treatment, and that confinement pursuant to the Act was civil in nature, rather than criminal and punitive. The court found that the prisoner's allegations that he was handcuffed while speaking with his lawyer, subjected to strip searches, provided with poor food and with clothes in poor condition, were insufficient to support a § 1983 Eighth Amendment violation. (San Diego County Jail, California)

U.S. District Court
EQUAL PROTECTION
RELIGIOUS CONTENT

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
SEX OFFENDER
EQUAL PROTECTION

Reed v. McKune, 298 F.3d 946 (10th Cir. 2002). A state prison inmate brought a § 1983 action against corrections officials, challenging their policy regarding participation 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 requiring the inmate to suffer revocation of privileges and denial of parole if he declined to participate in the program, did not violate the Due Process or Ex Post Facto clauses, nor did it violate the inmate's rights against self-incrimination. (Lansing Correctional Facility, Kansas)

U.S. Appeals Court
SEX OFFENDER

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)

U.S. Appeals Court
DRUGS/ALCOHOL
PLRA-Prison Litigation
Reform Act

Thompson v. Davis, 295 F.3d 890 (9th Cir. 2002). A state prisoner who had a history of substance abuse brought an action for prospective injunctive relief against state parole officials, alleging that the parole authority followed an unwritten policy of automatically denying parole to prisoners with substance abuse histories, in violation of the American with Disabilities Act (ADA). The district court dismissed the action; the appeals court reversed and remanded. On remand the district court dismissed the action and the prisoner appealed. The appeals court reversed and remanded, finding that a parole board may not categorically exclude a class of disabled people from consideration for parole because of their disabilities, under the provisions of ADA. The court found that while the term "qualified individual with a disability" under ADA does not include an individual who is currently engaging in the illegal use of drugs, the ADA does protect individuals who have successfully completed, or are participating in, a supervised drug rehabilitation program and are no longer using illegal drugs. (California Youth and Corrections Agency, Calif. Board of Prison Terms)

2003

U.S. Appeals Court
SEX OFFENDER

Allison v. Snyder, 332 F.3d 1076 (7th Cir. 2003). Persons who were civilly confined under the Illinois Sexually Dangerous Persons Act brought a § 1983 action seeking damages and injunctive relief, alleging that the Act was implemented in an unconstitutional manner. The district court denied the defendants' motion for summary judgment and they appealed. The appeals court reversed, finding that persons civilly confined under the Act could be placed in a state prison and subjected to the prison's rules, without violating due process. The court also found that a sex offender group therapy program for persons civilly confined under the Act did not violate their privilege against compelled self-incrimination or the due process clause. The court noted that any incriminating statements made during therapy could be suppressed at a criminal trial, and that

the state's use of the program was not outside of professional therapeutic norms. (Big Muddy Correctional Center, Illinois)

U.S. District Court
ALCOHOL/DRUGS

Clanton v. Glover, 280 F.Supp.2d 1360 (M.D.Fla. 2003). An inmate in a city corrections facility who had participated in a voluntary drug treatment program brought a § 1983 action. The inmate alleged that the disciplinary measures he suffered for refusing to participate in "group closures" that ended program meetings and that featured an inmate-led prayer, constituted a violation of the Establishment Clause. The district court denied summary judgment for the defendants, finding that it was precluded by fact issues as to whether the prayers constituted a city endorsement of, or coercion of religious activity. The court noted that the inmate was not required to verbalize the prayer, but that inmates were required to stand together as a group while the prayer was recited or face the loss of good time credits. (City of Jacksonville, Florida)

U.S. Appeals Court
RELEASE

Freedom From Religion Foundation, Inc. v. McCallum, 324 F.3d 880 (7th Cir. 2003). A taxpayer group sought to enjoin state authorities from funding a halfway house that incorporated Christianity into its treatment program, alleging that such funding constituted establishment of religion. Following a bench trial, the district court entered judgment in favor of the state. The taxpayers appealed and the appeals court affirmed, finding that the funding did not violate the Establishment Clause. The court noted that offenders were free to choose between the halfway house and secular programs, there was no evidence that parole officers were influenced by their own religious beliefs in recommending the halfway house to offenders, and all the other programs with which the state contracted were secular. The halfway house incorporated programs similar to Alcoholics Anonymous. (Faith Works Milwaukee, Inc.)

U.S. District Court
SEGREGATION

Lewis v. Washington, 265 F.Supp.2d 939 (N.D.Ill. 2003). State inmates filed a class action under § 1983 alleging that prison officials violated their constitutional rights while they were in protective custody. The district court granted summary judgment for the officials, in part. The court held that officials were entitled to qualified immunity because it was not clearly established that inmates in temporary protective custody after they appealed denial of their requests for permanent protective custody, had First Amendment rights to communal religious services, and Fourteenth Amendment rights to programs and services equivalent to those offered to other inmates. (Stateville Correctional Center, Illinois)

U.S. District Court
RELEASE

Pak v. U.S., 278 F.Supp.2d 263 (D.Conn. 2003). An offender filed a motion to vacate, set aside, or correct his sentence. The district court denied the motion, finding that the offender was not eligible for early release based on his alleged rehabilitation during incarceration. The inmate had been sentenced to 48 months imprisonment and three years supervised release. The offender had argued that proper psychiatric treatment and medical counseling were only available outside the confines of prison, that early release was warranted based on his rehabilitation progress and a petition signed by approximately 100 people, and that the four fundamental goals of sentencing had been accomplished. (Connecticut)

U.S. Appeals Court
SEX OFFENDER

West v. Schwabke, 333 F.3d 745 (7th Cir. 2003). Civilly committed sex offenders brought a § 1983 action against employees of a state treatment facility, alleging that therapeutic seclusion as practiced at the facility violated their due process rights. The district court denied summary judgment for some of the employees and they appealed. The appeals court affirmed, finding that the offenders were entitled, as a matter of due process, to the exercise of professional judgment as to the needs of residents and that due process requires that the conditions and duration of involuntary civil confinement bear some reasonable relation to the purpose for which the persons are committed. (Wisconsin Resource Center, Sand Ridge Secure Treatment Center)

2004

U.S. District Court
SEX OFFENDER
DUE PROCESS
REMOVAL FROM
PROGRAM

Beebe v. Heil, 333 F.Supp.2d 1011 (D.Colo. 2004). A prison inmate sued a state, claiming that his due process rights were violated when he was expelled, without notice or explanation, from a sex offender treatment program that he was required to complete in order to be eligible for parole. The district court denied judgment on the pleadings for the state. The court held that the inmate had a cognizable property interest in being retained in the programs and had stated a claim that his procedural and substantive due process rights were violated. (Colorado Department of Corrections)

U.S. District Court
SEX OFFENDER

Donhauser v. Goord, 314 F.Supp.2d 139 (N.D.N.Y. 2004). A state prisoner inmate brought a pro se civil rights action seeking declaratory, injunctive and monetary relief. The district court held that the inmate's allegations supported a claim for violation of the inmate's Fifth Amendment privilege against self-incrimination and that preliminary injunctive relief was warranted. The court enjoined prison officials from requiring, as part of the Sexual Offender Counseling Program, participants to divulge their history of sexual conduct, including illegal acts for which no criminal charges had been filed. (Oneida Correctional Facility, New York)

U.S. District Court
ALCOHOL/DRUG
RIGHT TO
TREATMENT

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. District Court
ALCOHOL/DRUG
RELEASE

Turner v. Hickman, 342 F.Supp.2d 887 (E.D.Cal. 2004). An inmate filed a § 1983 action claiming that corrections officials had established religion in violation of the First Amendment by demanding that he participate in a drug treatment program to be eligible for consideration for parole. The district court held that requiring inmates, as a condition for being granted parole, to participate in a drug treatment program based on the concept of a higher power to which participants had to submit, was an establishment of religion prohibited by the First Amendment. According to the court, even though the program's literature said that it was "not a religious program," it unequivocally and wholeheartedly asserted that belief in "God" was a fundamental requirement of participation. The court noted that the inmate had standing to raise a claim, even though he was allegedly a Christian. The court entered an injunction, prohibiting officials from considering the prisoner's refusal to participate in Narcotics Anonymous at any point in time, as a basis for denying parole. (California Department of Corrections)

U.S. Appeals Court
SEX OFFENDER
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
RELEASE
LIBERTY INTEREST

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
EDUCATIONAL
JUVENILES

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. Appeals Court
REHABILITATION

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. 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
ALCOHOL/DRUG
REMOVAL FROM
PROGRAM
REQUIREMENTS

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
ALCOHOL/DRUG

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 Corr'l Institution, Sheridan, Oregon)

U.S. District Court
JUVENILES

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
RELEASE
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
DRUG/ALCOHOL

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
VOCATIONAL
RIGHT TO
TREATMENT

Daniels v. Crosby, 444 F.Supp.2d 1220 (N.D.Fla. 2006). An inmate brought a § 1983 suit against corrections officials, alleging that they violated his due process rights by unconstitutionally depriving him of wages, occupational training, and other benefits. The district court granted summary judgment in favor of the defendants. The court held that the inmate had no liberty or property interest in wages for his work in prison, possession of particular items of personal property, or involvement in rehabilitative programs. The court noted that the Kentucky inmate, incarcerated in Florida for a Kentucky offense pursuant to an interstate corrections compact, had no liberty or property interest, and that while Kentucky officials may have owed a legal duty to the inmate to provide such benefits, Florida corrections officials did not. The inmate had argued that Kentucky pays prisoners for work they do in prison at the rate of \$1 per day and that Florida owed him these back wages. He claimed entitlement to pay, to possess the same kind of personal property (typewriter, television, stereo receiver, ice chest, hot pot, bed linen) he was allowed to possess in Kentucky, and to enroll in a vocational trade as he was allowed to do in Kentucky. (Florida Department of Corrections)

U.S. District Court
SEX OFFENDER

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 Correctional Institution, Houtzdale, Pennsylvania)

U.S. District Court
SEX OFFENDER

Fox v. Lappin, 409 F.Supp.2d 79 (D.Mass. 2006). A federal prisoner brought suit against the Director of the Federal Bureau of Prisons and a warden, seeking declaratory judgment that his classification as a sex offender based on a 1981 state sexual assault conviction was improper. The prisoner also challenged the Bureau's failure to consider him for community center placement based on his failure to participate in a sex offender program. The district court held that a federal prisoner cannot be designated as a sex offender based on a state sex offense for purposes of the federal statute requiring that notice be given to state and local authorities of an inmate's release if the inmate has been designated as a sex offender, and that designated sex offender register in the

state in which he will reside, because the Attorney General's authority under the statute is limited to designating federal offenses as sex offenses. The court found that as a matter of inmate classification, a prisoner's classification as a sex offender on basis of state sexual assault conviction was not an abuse of discretion. The court held that the BOP policy that categorically excludes inmates with sex offender safety factors from placement in community corrections centers is a permissible interpretation of the rule and that the BOP did not abuse its discretion in denying an inmate designated as a sex offender placement in a community corrections center based on his failure to participate in a mandatory sex offender program. The court noted that the federal statute governing pre-release custody of a federal prisoner does not create a liberty interest in the prisoner's transfer to the less restrictive environment of community center placement, as the statute does not mandate community center placement nor any placement in a less restrictive environment, it merely insures placement under pre-release conditions except where no such placement is practicable. (Federal Medical Center, Devens, Massachusetts)

U.S. District Court
PARTICIPATION

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
EDUCATIONAL
IDEA-Individuals With
Disabilities Education
Act

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
EDUCATIONAL
JUVENILES

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, N.Y. City Dept. of Corrections, Rikers Island)

U.S. District Court
RELIGIOUS
REQUIREMENT

Moeller v. Bradford County, 444 F.Supp.2d 316 (M.D.Pa. 2006). Taxpayers and a former inmate of a county prison sued the county, the U.S. Department of Justice, and a private organization providing vocational rehabilitation services to inmates, claiming that funding of the group, which proselytized for the Christian religion, was a violation of Establishment Clause. The district court dismissed the case in part, and the county moved for judgment on the pleadings. The court held that it had jurisdiction over claims that payments to religious organizations violated the state constitution and that the plaintiffs sufficiently stated a claim that the county violated the Establishment Clause, despite the claim that funding was race neutral, where there was no other vocational program funded in the county prison system. According to the court, the county was coercing inmates into involvement with Christianity, as the only way to get valuable rehabilitation benefits. The court also found that a claim was stated that the county engaged in employment discrimination based on religion. The court held that the taxpayers had standing to bring suit when Congressional appropriations were used to finance the organization's efforts to proselytize for the Christian religion, undertaken concurrently with vocational training. The court described the program, operated by the Firm Foundation as follows: "The program not only provides vocational training, but spends a significant amount of time and resources on religious discussions, religious lectures, and prayer. The Firm Foundation describes its program as a prison ministry. It requires its staff to adhere to Christian beliefs and to share these beliefs when the opportunity arises. The Firm Foundation routinely proselytizes to the inmates in the vocational training program, and does not make an effort to segregate government funds for the purely secular purpose of vocational training." Funding for the program was derived from a federal grant under the Workforce Investment Act from the United States Department of Labor. The Firm Foundation also received funds from Bradford County and the Pennsylvania Commission on Crime and Delinquency. (Bradford County Correctional Facility, Pennsylvania)

U.S. District Court
PSYCHOLOGICAL
RIGHT TO
TREATMENT

Price v. Wall, 428 F.Supp.2d 52 (D.R.I. 2006). An inmate brought a § 1983 suit against corrections officials, alleging that he was intentionally transferred to the facility where he was confined in an effort to frustrate his rehabilitation, in retaliation for his filing of a motion to compel compliance with a state court order, in violation of the First Amendment. The defendants moved to dismiss. The district court held that the inmate stated a First Amendment retaliation claim where he alleged that corrections officials intentionally transferred him to the facility in retaliation for his court action. According to the court, the question was not whether the defendants had a right to transfer the inmate, but whether such action was accomplished for an unlawful purpose. The inmate had been required, as a condition of his sentence, to complete certain rehabilitative programs, including psychological and psychiatric treatment while incarcerated. After not receiving any of the court-mandated treatment, the inmate filed a motion in the state courts seeking to compel the Department of Corrections to comply with the state court order. After several skirmishes, the Department of Corrections agreed to provide the inmate with the court-mandated treatment. The parties further agreed that if the inmate successfully completed the first round of treatment, the Department of Corrections would upgrade his classification status, permitting him to participate in further rehabilitative treatment as mandated by the state court. The inmate successfully completed his first round of treatment and appeared before a classification board for review of his classification status. Based on his successful completion of the initial round of treatment and pursuant to the agreement between the inmate and the Department, the board recommended that the inmate's classification be upgraded. But the defendants refused to permit an upgrade and instead launched no less than three separate, unrelated investigations into

various matters, delaying the inmate's classification status upgrade and prohibiting him from participating in further rehabilitation. (Rhode Island Department of Corrections)

U.S. District Court
LIBERTY INTEREST

Tanner v. Federal Bureau of Prisons, 433 F.Supp.2d 117 (D.D.C. 2006). An inmate brought an action against the federal Bureau of Prisons, alleging that his pending transfer to another facility would deprive him of participation in vocational training programs. The inmate moved for a preliminary injunction. The district court denied the motion. The court held that the inmate failed to demonstrate the likelihood of success on his due process claim, as required to obtain a preliminary injunction preventing his transfer, where removal from programs did not constitute an atypical or significant deprivation of the inmate's rights, nor did it affect the duration of his sentence, as may have impaired his protected liberty interests. But the court found that the inmate demonstrated that he would suffer an irreparable injury if injunctive relief were not granted, as required to obtain a preliminary injunction, because the transfer was certain to result in the loss of access to an aquaculture program in which he was employed, loss of pay grade and loss of eligibility for a cable technician program. (Federal Correctional Institution Fairton, New Jersey, United States Penitentiary Leavenworth, Kansas)

2007

U.S. District Court
REHABILITATION

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. (Central Detention Facility, D.C. and Correctional Treatment Facility operated by the Corrections Corporation of America)

U.S. District Court
EQUAL PROTECTION
LIBERTY INTEREST
VOCATIONAL

Boulware v. Federal Bureau of Prisons, 518 F.Supp.2d 186 (D.D.C. 2007). A federal prisoner brought a pro se action against the Bureau of Prisons (BOP) and various BOP officials in their official and individual capacities, seeking to compel them to provide the prisoner with some of the marketable vocational opportunities provided to similarly situated offenders housed in other federal facilities. The defendants moved to dismiss and the court granted the motion. The court held that the court lacked subject matter jurisdiction to hear the Administrative Procedure Act (APA) claim. The court found that the prisoner failed to state a claim against individual BOP officials. According to the court, the prisoner did not have a liberty interest to participate in vocational programs of his choice as required to sustain a due process claim and the prisoner could not sustain an equal protection claim. The court held that the BOP's failure to provide additional programs did not violate the prisoner's right to participate in programs. According to the court, the unavailability of a program at a particular prison is not an atypical deprivation of rights in violation of the due process clause, but rather merely leaves the prisoner with the normal attributes of confinement. (United States Bureau of Prisons' Rivers Correctional Institution ("RCI") in Winton, North Carolina)

U.S. District Court
RELEASE
REMOVAL FROM
PROGRAM
DUE PROCESS

Gutierrez v. Joy, 502 F.Supp.2d 352 (S.D.N.Y. 2007). A pro se prisoner brought a § 1983 action against the state and various state corrections officials in their official and individual capacities, alleging that the officials violated his due process rights when he was removed from a temporary release program. 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 state corrections officials followed required procedures governing state temporary release program hearings, specifically whether a prisoner participating in the program received notice of the reasons for a Temporary Release Committee hearing and an opportunity to reply to the charges against him before he was transferred to another location and removed from the temporary release program. According to the court, the proceeding that was held in the prisoner's absence to determine his status in the temporary release program, without an opportunity for him to speak on his own behalf, did not fulfill the requirements of fairness and due process, and resulted in prejudice toward the inmate, notwithstanding the fact that the prisoner was under investigation. The court noted that even if the facts of the case were undisputed and made it clear that the prisoner violated the regulations of the program, the Temporary Release Committee retained discretion to recommend that he not be removed from the program. According to the court, the short letter provided by corrections officials to the prisoner could not cure any deprivation of due process resulting from his absence from a hearing regarding his program status, as the letter did not afford the prisoner the ability to dispute the claims against him pertaining to his alleged violation of program rules. (Fulton Corr' Facility, New York)

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

Herman v. County of York, 482 F.Supp.2d 554 (M.D.Pa. 2007). The estate of a prisoner who had committed suicide in a county prison sued the county, a warden, the prison health service, and nurses, asserting Eighth Amendment claims under § 1983, claims under the Americans with Disabilities Act (ADA), and state medical malpractice claims. The defendants moved for summary judgment. The district court granted the motions in part and denied in part. The court found that the prisoner was not denied access to county prison's programs or services because of disability, and any failure by the county and warden to prevent his suicide thus was not discrimination in services, programs, or activities of a public entity in violation of ADA. The prisoner denied thoughts of suicide, he told a nurse that he did not wish to take anti-depressant medications which had been prescribed for him, and a nurse told him to return to mental health services if necessary. (York County Prison, Pennsylvania)

- U.S. District Court
VOCATIONAL
TRAINING
INCENTIVES
- 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. According to the court, Massachusetts statutes that authorize the corrections commissioner to provide for education, training and employment programs and to establish a system of inmate compensation did not create a protected property interest for inmates in any job or in compensation for a job, for the purposes of a due process claim. The court noted that authorization was dependent on several contingencies, including appropriation of funds, and conferred complete discretion upon the commissioner over programs. The court found that a rational basis existed for differences in levels of compensation received by state prison barbers and kitchen workers in prison vocational programs, based on difficulties in recruiting prisoners, hours, and the demanding nature of the culinary arts program, such that the lesser compensation received by the prisoner enrolled in the barber training program and providing services to other inmates did not violate equal protection. (Souza Baranowski Correctional Center, Massachusetts)
- U.S. District Court
EQUAL PROTECTION
LIBERTY INTEREST
REQUIREMENTS
VOCATIONAL
- Marshall v. Federal Bureau of Prisons*, 518 F.Supp.2d 190 (D.D.C. 2007). A District of Columbia prisoner incarcerated in a federal facility brought a pro se civil rights action, seeking to compel the Federal Bureau of Prisons (BOP) and its officials to provide him with the same marketable vocational opportunities it provided to similarly situated District of Columbia prisoners housed in federal facilities. The prisoner was denied the opportunity to participate in a heating and air conditioning technology program. The defendants moved to dismiss and the district court granted the motion. The court held that the prisoner could not pursue a *Bivens* action against individual BOP officials without seeking money damages. The court also found that failure to provide the prisoner with the opportunity to participate in a vocational program did not violate due process because the prisoner did not have a protected liberty interest in participating in the program. The court held that the prison program's age requirements did not violate equal protection and that the failure of the BOP to allow the prisoner to participate in a vocational program did not violate his statutory and regulatory rights. According to the court, the prison's requirement that District of Columbia prisoners be between the ages of 18 and 25 in order to participate in the program, was rationally related to a legitimate purpose of program, to prepare younger inmates for reentry into society. (United States Bureau of Prisons' Rivers Correctional Institution, Winton, North Carolina)
- U.S. District Court
RELIGION
REMOVAL FROM
PROGRAM
- Monk v. Williams*, 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 because the inmate failed to appeal the prison administrator's denial of his grievance. (Howard R. Young Correctional Institution, Delaware)
- U.S. District Court
EQUAL PROTECTION
PARITY-MALE/FEMALE
PARTICIPATION
VOCATIONAL
- 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 Correction Center, North Dakota)
- U.S. District Court
REQUIREMENTS
SEX OFFENDER
- Schnitzler v. Reisch*, 518 F.Supp.2d 1098 (D.S.D. 2007). An inmate who was a practicing Jehovah's Witness brought a § 1983 action against a secretary of corrections, warden, and prison officials, alleging that a prison's sex offender treatment program violated his religious beliefs by requiring his participation in explicit group discussions of a sexual nature as well as viewing certain images. The defendants moved for summary judgment and the district court granted the motion in part and denied in part. The court held that the prisoner's First Amendment rights were not violated by participation in the program, but the prisoner stated a claim for violation of his statutory free exercise of religion under the Religious Land Use and Institutionalized Persons Act (RLUIPA). The court held that the § 1983 claims against the secretary and warden were not based upon the theory of respondeat superior. The court found that summary judgment was precluded by a genuine issue of material fact as to the level of personal involvement of the warden and the Secretary of the South Dakota Department of Corrections in the determination that no alternative form of sex offender treatment program should be provided to the prisoner. (Mike Durfee State Penitentiary, Springfield, South Dakota)

2008

- U.S. District Court
JUVENILES
TREATMENT
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
RELEASE
TREATMENT PROGRAM
- Arrington v. Daniels*, 516 F.3d 1106 (9th Cir. 2008). Prisoners filed numerous petitions for a writ of habeas corpus, asserting that a regulation implemented by the federal Bureau of Prisons (BOP) violated the Administrative Procedure Act (APA) by categorically excluding prisoners convicted of offenses involving possession, carrying, or use of firearms from early release for the successful completion of a residential substance abuse program. The district court denied the petitions and the prisoners appealed. The appeals court reversed and remanded. The court held that the regulation was invalid under the Administrative Procedure Act (APA), since the BOP failed to articulate a rationale for the regulation so as to provide a means for reviewing the reasonableness of the agency's categorical exclusion of a class of nonviolent offenders from eligibility for early release. The court noted that the BOP's general desire for uniformity in the application of the regulation did not explain why the exclusion rule was promulgated, as the uniformity could have been accomplished in any number of ways. (Sheridan Correctional Institution, Federal Bureau of Prisons, Oregon)
- U.S. District Court
PARTICIPATION
REHABILITATION
RELIGION
- Bader v. Wren*, 532 F.Supp.2d 308, (D.N.H. 2008). A state prisoner brought a § 1983 action against the commissioner of a Department of Corrections, alleging that a prison rehabilitation program violated the Establishment Clause by improperly endorsing religion as part of the rehabilitative process. The parties cross-moved for summary judgment. The district court granted summary judgment for the defendants. The court held that the rehabilitation program, "Alternatives to Violence," was not religious. According to the court, the state prison's recommendation that the prisoner participate in a violence rehabilitation program did not constitute coercive pressure advancing a religion, or excessive governmental entanglement in religion, as required to support a finding that primary effect of recommendation was to advance religion in violation of the Establishment Clause. The court noted that although the program was rooted in the non-violent philosophy of a certain religion, the program was secular, not religious, given that nothing about the program promoted, advanced, or even subtly endorsed that religion. The court found that program guides did not allude to, invoke, or call upon any religious books, scriptures, passages or moral code, the program did not implement any cognizable religious practice or methodology, and, notwithstanding the program's identification of a "Transforming Power," the program was explicitly individualistic, relying primarily on the participant's ability to change himself. (New Hampshire State Prison)
- U.S. District Court
RELIGION
- Freedom From Religion Foundation, Inc. v. Olson*, 566 F.Supp.2d 980 (D.N.D. 2008). An organization that opposed government endorsement of religion and its members brought an action against the state of North Dakota, and officials from various state and county agencies, alleging that they improperly directed taxpayer funds to the support of religion in violation of the Establishment Clause. The organization sought declaratory and injunctive relief. The district court dismissed the case. The court held that the members of the organization lacked standing to sue state officials and lacked municipal taxpayer standing to sue county officials. The court noted that the action did not attack any legislative action or appropriation, but rather challenged the discretionary distribution of funds made by executive branch officials carrying out their official duties. The suit challenged public funding of the Dakota Boys and Girls Ranch that provides residential treatment and educational services to children referred for treatment by North Dakota government agencies, including state correctional agencies. The ranch is a publicly accredited Christian organization, and receives taxpayer appropriations pursuant to disbursement programs authorized by the North Dakota Legislative Assembly. The organization alleged that allocation of public funds to the ranch violates "the fundamental principle prohibiting government endorsement of religion by disbursing taxpayer appropriations for the operation of a faith-based organization that includes the integration of religion as an inherent component of services provided." (North Dakota Department of Corrections and other state and local agencies)
- U.S. District Court
ADA-Americans with
Disabilities Act
DRUG
REMOVAL FROM
PROGRAM
- Kula v. Malani*, 539 F.Supp.2d 1263 (D.Hawai'i 2008). A state prisoner brought a pro se civil rights complaint pursuant to § 1983 against a substance abuse counselor, social worker, and prison officer, seeking monetary damages and injunctive relief. The prisoner alleged that while incarcerated, the defendants violated his due process rights under the Americans with Disabilities Act (ADA). The district court held that the prisoner's termination from a prison drug rehabilitation program because he was found guilty of an administrative infraction, rather than by reason of his drug addiction itself, did not constitute discrimination under the Americans with Disabilities Act (ADA), notwithstanding the prisoner's contention that prison officials had fabricated misconduct charges against him. The court noted that the prisoner had no due process right to participate in a drug rehabilitation program under the Americans with Disabilities Act (ADA). (Saguaro Correctional Center, Arizona)

<p>U.S. Appeals Court PARTICIPATION RELEASE REQUIREMENTS</p>	<p><i>Miller v. Whitehead</i>, 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)</p>
<p>U.S. District Court DUE PROCESS EQUAL PROTECTION LIBERTY INTEREST RIGHT TO TREATMENT SEX OFFENDER</p>	<p><i>Patrick v. Raemisch</i>, 550 F.Supp.2d 859 (W.D.Wis. 2008). A state prisoner brought a civil rights action under § 1983 against prison officials and employees, alleging the defendants violated his Eighth Amendment, equal protection, and due process rights by impeding his access to discretionary and mandatory parole and to a sex offender treatment program. The district court dismissed the case. The court held that the prisoner's claim challenging the legality of his ongoing incarceration was not cognizable under § 1983. According to the court, the prisoner did not have protected liberty interest in treatment programs or discretionary parole that would support his due process claim. The court found that the prisoner's right to equal protection was not violated. (Racine Correctional Institution, Wisconsin)</p>
<p>U.S. District Court PARTICIPATION SEX OFFENDER</p>	<p><i>Pentlarge v. Murphy</i>, 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)</p>
<p>U.S. Appeals Court ADA- Americans with Disabilities Act VOCATIONAL</p>	<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 the current and ongoing violations of pretrial detainees' constitutional rights. The court found that an injunction relating to restrictions of detainees' religious rights based on security concerns was narrowly drawn and extended no further than necessary to correct the violation of the federal right of pretrial detainees in administrative segregation. The injunctive order, with its provision for the curtailment or elimination of pretrial detainees' religious rights based on security concerns, provided for no more than a minimum level of ongoing participation in religious activities. The court held that providing pretrial detainees housed in administrative segregation only 90 minutes of exercise per week, less than 13 minutes per day, constituted punishment in violation of due process standards. The court found that an order requiring that inmates in administrative segregation be permitted exercise at least twice each week for a total of not less than 2 hours per week was necessary to correct the current and ongoing violation. 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>
<p>U.S. Appeals Court SEX OFFENDER TREATMENT PROGRAM</p>	<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 held that the failure of the clinical director to transfer the offender to the newer, more comfortable and sanitary unit of the facility did not amount to deliberate indifference, even assuming that the director knew of the allegedly poor conditions of confinement that included cockroach infestations. The court noted that the director decided that a transfer would contravene the offender's treatment objectives because the rooms in the new unit were double occupancy. The court noted that the offender had refused to participate in sex offender treatment programs and he had a history of sexual aggression with other inmates. (Joliet Treatment and Detention Facility, Illinois Department of Human Services)</p>

- U.S. District Court
ADA- Americans with
Disabilities Act
PARTICIPATION
- Williams v. Hayman*, 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)
- 2009**
- U.S. District Court
LIBERTY INTEREST
SEX OFFENDER
- 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. Center, West Virginia)
- U.S. District Court
ADA-Americans with
Disabilities Act
PARTICIPATION
- 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. Appeals Court
ADA-Americans with
Disabilities Act
HANDICAPPED
PARTICIPATION
- Mason v. Correctional Medical Services, Inc.*, 559 F.3d 880 (8th Cir. 2009). A state prisoner brought an action against the manager of his prison housing unit and the director of prison medical services, alleging that they violated his Eighth Amendment rights by failing to facilitate or render adequate medical treatment. The prisoner also brought an action against the Missouri Department of Corrections (MDOC), alleging violations of the Americans with Disabilities Act (ADA). The district court granted summary judgment in favor of the director and the MDOC. Following a jury verdict in favor of the manager, the district court denied the prisoner's post-trial motion for judgment as a matter of law. The prisoner appealed. The appeals court affirmed. The court found that recreational activities, medical services, and educational and vocational programs at state prisons are "benefits" within the meaning of the ADA, and qualified individuals with a disability are entitled to meaningful access to such benefits. The court held that the blind prisoner was provided with meaningful access to prison benefits, including library benefits, which required him to read and write, as required by the ADA. According to the court, given the sufficiency of the accommodations provided, the prison was not required to provide alternative accommodations such as Braille materials or computer software that would read written materials aloud. The prisoner was provided with an inmate reader, who was available to read to the prisoner in person and to create audio tapes of written material at the prisoner's request. The prisoner was also granted access to audio materials by mail and to a tape recorder. The court held that the prison did not deny the blind prisoner meaningful access to prison facility benefits, in violation of the ADA, when it did not provide the prisoner with a trained outside assistant capable of assisting him in his day-to-day activities. The prisoner was provided with an inmate assistant, and the court found that it would be unduly burdensome to require the prison to furnish the prisoner with a trained handler from outside the prison, given that such a person would not be trained in safety and security matters, and would require the escort of a prison guard at all times. The court found that the prison did not deprive the blind prisoner of meaningful access to the prison's exercise and recreation facilities, in violation of the ADA, where the prison provided the inmate an assistant who walked with the prisoner, and the prisoner chose not to engage in other activities, such as weightlifting. According to the court, the prisoner was not denied meaningful access to his prison housing unit's ADA compliance officer, in violation of the ADA. The prisoner knew the identity of the ADA compliance officer, the officer had answered requests that the prisoner submitted and had not refused the prisoner's requests for assistance, and the prisoner was not entitled to a general disability assessment. (Northeast Correctional Center, Mo.)
- U.S. District Court
ALCOHOL/DRUGS
ADA- Americans with
Disabilities Act
EQUAL PROTECTION
PARTICIPATION
- 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 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 required. 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. According to the court, the county and county sheriff failed to establish that they were not recipients of federal funds, as would render them beyond the reach of the Rehabilitation Act's requirements.

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. The court found no evidence that the detainees were excluded from electronic monitoring or drug rehabilitation programs by the county department of corrections, as would support their Americans with Disabilities Act (ADA) claim. (Cook County Department of Corrections, Illinois)

U.S. Appeals Court
EQUAL PROTECTION
VOCATIONAL
WORK/STUDY

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. District Court
CRISIS INTERVENTION

Vann v. Vandebrook, 596 F.Supp.2d 1238 (D.Wis. 2009). A prisoner brought a § 1983 action against a crisis intervention worker, registered nurse, and several corrections officers, alleging deliberate indifference to a serious medical need in violation of the Eighth Amendment. The prisoner moved to proceed in forma pauperis and for the appointment of counsel. The district court granted the motion to proceed in part and denied in part, and denied the motion for appointment of counsel. The court held that the prisoner stated a § 1983 claim against the intervention worker and the unknown officer where they were aware of the prisoner's suicide risk when the worker refused to place the prisoner in an observation program and the officer provided the prisoner with a razor and a nail clipper and left the prisoner unattended. The court found that the registered nurse's failure to provide treatment to the prisoner constituted deliberate indifference to the prisoner's serious medical needs, as required for the prisoner to state a § 1983 claim for violation of the Eighth Amendment, where the prisoner had sustained 133 self-inflicted wounds that were bleeding and the nurse merely inspected his wounds. According to the court, the corrections officers who performed an emergency cell extraction of the prisoner following his suicide attempt, transported him to a day room where the prison's registered nurse performed an inspection of the prisoner's wounds, thus precluding the prisoner's § 1983 claim against the officer for deliberate indifference to his serious medical needs in violation of Eighth Amendment. (Columbia Correctional Institution, Wisconsin)

2010

U.S. District Court
ADA-Americans with
Disabilities Act
PARTICIPATION
WORK/STUDY

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 the company violated the Rehabilitation Act. (Arizona Department of Corrections, Arizona Correctional Industries, Eurofresh)

U.S. District Court
HANDICAPPED
EQUAL PROTECTION

Clark v. California, 739 F.Supp.2d 1168 (N.D.Cal. 2010). The state of California, Governor and various state prison officials filed a motion pursuant to the Prison Litigation Reform Act (PLRA) to terminate the prospective relief in a 2001 settlement agreement and an order that required them to comply with a remedial plan designed to ensure that California prisoners with developmental disabilities were protected from serious injury and discrimination on the basis of their disability. Developmentally disabled prisoners moved for enforcement of, and further relief under, the settlement agreement and order. The court held that for the purposes of a motion pursuant to the Prison Litigation Reform Act (PLRA), testimony from a few prison staff members at individual prisons did not prove systemic compliance with the remedial plan. The court held that termination of the settlement agreement and order entered pursuant to Prison Litigation Reform Act (PLRA) was unwarranted since the state defendants failed to carry their burden to show the absence of current and ongoing rights violations under ADA and Rehabilitation Act, and the prospective relief contained in the settlement agreement and order remained necessary, was sufficiently narrow, and was minimally intrusive. According to the court, the defendants failed to fulfill their obligation to provide developmentally disabled California prisoners with the accommodations and program modifications that would enable them to gain access to prison programs, services, and activities afforded non-disabled prisoners. The court found that the state defendants were not deliberately indifferent, so as to violate the Eighth Amendment, even though the state defendants had not adequately implemented the remedial plan, where the correction department’s policies provided for constitutionally acceptable treatment. The court ruled that further relief was necessary under the Prison Litigation Reform Act (PLRA) to secure the rights of class of developmentally disabled prisoners, where the defendants demonstrated an ignorance of conditions for developmentally disabled prisoners and an inability to recognize the gravity of and to remedy the problems that had been identified by the court expert and others. According to the court, the defendants demonstrated an inability to take remedial steps absent court intervention, evidence reflected that the defendants had failed to comply with the remedial plan even nine years later, and the remedial plan in its current form did not go far enough to ensure compliance with the Americans with Disabilities Act (ADA) and Rehabilitation Act. (California Department of Corrections and Rehabilitation)

U.S. Appeals Court
LIBERTY INTEREST
REMOVAL FROM
PROGRAM
DUE PROCESS

Gonzalez-Fuentes v. Molina, 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. 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)

U.S. Appeals Court PARTICIPATION RELEASE	<i>Izzo v. Wiley</i> , 620 F.3d 1257 (10 th 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)
U.S. Appeals Court SEX OFFENDER DUE PROCESS	<i>Meza v. Livingston</i> , 607 F.3d 392 (5 th 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 DRUG RIGHT TO TREATMENT	<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 PSYCHIATRIC RIGHT TO TREATMENT	<i>Paine v. Johnson</i> , 689 F.Supp.2d 1027 (N.D.Ill. 2010) <i>affirmed</i> 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. District Court HANDICAPPED ADA-Americans with Disabilities Act	<i>Paulone v. City of Frederick</i> , 718 F.Supp.2d 626 (D.Md. 2010). An arrestee, a deaf woman, brought an action against a state, a county board, and a sheriff alleging violations of the Americans with Disabilities Act (ADA), the Rehabilitation Act, and related torts. The state and sheriff moved to dismiss or, in the alternative, for summary judgment. The district court granted the motions in part and denied in part. The court held that the arrestee failed to allege that any program or activity she was required to complete following her arrest for driving under the influence (DUI) and during her subsequent probation, received federal funds, as required to state Rehabilitation Act claims against the state for discriminating against her and denying her benefits because of her deafness. The court found that the arrestee stated an ADA claim with her allegations that, after her arrest and during her detention, police officers denied her the use of a working machine that would have allowed her to make a

telephone call, help in reading and understanding forms, and access to a sign language interpreter. (Frederick County Board of County Commissioners, Frederick County Adult Detention Center, Maryland)

U.S. Appeals Court
SEX OFFENDER
DUE PROCESS

Renchenski v. Williams, 622 F.3d 315 (3rd Cir. 2010). A state inmate, who was serving a life sentence without the possibility of parole for first-degree murder, brought a pro se § 1983 action against prison officials and personnel, alleging that his forced participation in sex offender treatment therapy violated his constitutional rights. The district court granted summary judgment for the defendants. The inmate appealed. The appeals court affirmed in part and reversed in part. The court held that sex offender conditions may be imposed on an inmate who has not been convicted of a sexual offense only after due process has been afforded. The court found that the inmate had an independent liberty interest in not being labeled as a sex offender and forced into treatment, and thus was entitled to adequate process before prison officials took such actions. (Pennsylvania's Sex Offender Treatment Program, State Correctional Institution at Coal Township, Pennsylvania)

2011

U.S. District Court
PARTICIPATION
GOOD TIME

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. Appeals Court
SEX OFFENDER
EQUAL PROTECTION
PARTICIPATION

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 Dept. of Corrections)

U.S. District Court
REQUIREMENTS
SEX OFFENDER
TREATMENT
PROGRAMS
DUE PROCESS
LIBERTY INTEREST

Doe v. Heil, 781 F.Supp.2d 1134 (D.Colo. 2011.) A state prisoner convicted of a sex offense filed a § 1983 action, alleging that Department of Corrections (DOC) regulations requiring him to provide a full sexual history and to pass a polygraph examination in order to participate in a sex offender treatment program violated his constitutional rights. The defendants moved to dismiss. The district court granted the motion. The court held that the regulations did not violate the prisoner's Fifth Amendment privilege against self-incrimination. According to the court, the DOC had a legitimate penological interest in having convicted sex offenders complete a treatment program before being released on parole. The court found that the prisoner lacked a due process liberty interest in participating in a sex offender treatment program. (Colorado Department of Corrections Sex Offender Treatment and Monitoring Program)

U.S. District Court
EDUCATIONAL
IDEA- Individuals with
Disabilities Education Act
PARTICIPATION

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 the 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 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
SEX OFFENDER
VOCATIONAL

Martin v. Benson, 827 F.Supp.2d 1022 (D.Minn.2011). A civilly committed sex offender and resident of the Minnesota Sex Offender Program (MSOP) facility brought a pro se action against the chief executive officer (CEO) of MSOP, alleging the CEO violated the minimum wage provision of the Fair Labor Standards Act (FLSA) by withholding 50% of his earnings as a work-related expense to be applied toward the cost of care. The CEO moved to dismiss. The district court granted the motion. The court held that the economic reality of the civilly committed sex offender's work within the MSOP vocational work program was not the type of employment covered by FLSA. The court noted that the program was specifically designed to provide

“meaningful work skills training, educational training, and development of proper work habits and extended treatment services for civilly committed sex offenders,” and to the extent that the program engaged in commercial activity, it was incidental to the program’s primary purpose of providing meaningful work for sex offenders. According to the court, the program had few of the indicia of traditional, free market employment, as the limits on the program prevented it from operating in a truly competitive manner, and the offender’s basic needs were met almost entirely by the State. The court noted that the conclusion that the FLSA does not apply to a civilly committed sex offender should not be arrived at just because, as a committed individual, he is confined like those in prison or because his confinement is related to criminal activity, “...it is not simply an individual’s status as a prisoner that determines the applicability of the FLSA, but the economic reality itself that determines the availability of the law’s protections.” (Minnesota Sex Offender Program)

U.S. Appeals Court
RELIGION

McCullum v. California Dept. of Corrections and Rehabilitation, 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 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. The court held that a volunteer Wiccan prison chaplain lacked taxpayer standing to challenge CDCR’s paid chaplaincy program, based on violations of his First Amendment right to freedom of religion, where the chaplain did not challenge the expenditure of government funds to provide paid chaplaincies nor even the existence of denomination-specific paid chaplaincies, but rather challenged only the current allocation of chaplaincies among religious denominations and the procedure for determining such allocations. According to the court, there was no direct evidence of a retaliatory motive by the prison employee who restricted the Wiccan prison chaplain’s access to a prison, as required to support the chaplain’s First Amendment retaliation claim. The court noted that the incident resulting in restricted access occurred nearly three years after the chaplain filed a lawsuit against CDCR, and an employee’s knowledge of the suit, alone, was insufficient to raise a genuine issue of material fact as to a retaliatory motive. (California Department of Corrections and Rehabilitation)

U.S. District Court
TRAINING
WORK/STUDY

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
REMOVAL FROM
PROGRAM

Ocasio v. Konesky, 821 F.Supp.2d 571 (W.D.N.Y. 2011). An inmate, proceeding pro se, brought a § 1983 claim against a social worker employed by a Department of Correctional Services (DOCS), alleging he was wrongfully removed from a mental health program. The social worker filed a motion for summary judgment, which the district court granted. The court held that the social worker’s removal of a designation permitting the inmate to participate in an intensive mental health program administered by Department of Correctional Services (DOCS) was not retaliation for the inmate’s complaints, where the designation was based upon the worker’s observations of the inmate’s symptoms, and the conclusions were seconded by the inmate’s treating physicians and other DOCS staff. (Wende Correctional Facility, New York)

U.S. Appeals Court
REMOVAL FROM
PROGRAM
DUE PROCESS
LIBERTY INTEREST

Persechini v. Callaway, 651 F.3d 802 (8th Cir. 2011). A state prisoner filed a § 1983 action against prison officials for alleged deprivation of his due process rights by terminating him from long-term substance abuse treatment program that resulted in the mandatory execution of his 15-year sentence and his ineligibility for probation. The district court dismissed the claim for failure to a state claim. The prisoner appealed. The appeals court affirmed. The court held that the prisoner lacked a liberty interest in: (1) the outcome of a disciplinary proceeding; (2) the outcome of the action taken by a program review committee; and (3) the outcome of termination from a treatment program. The court noted that the sanction imposed by the disciplinary committee for stealing a towel, confinement to his room for ten days and referral to program review committee, was neither atypical nor significant hardships in relation to ordinary incidents of prison life. (Ozark Correctional Center, Missouri)

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

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; (5) the county's revised grievance procedure satisfied ADA; and (6) 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 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
DUE PROCESS
PARTICIPATION

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)

U.S. District Court
PARTICIPATION

Santiago-Lebron v. Florida Parole Com'm, 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 "notice 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. Supreme Court
DRUG

Tapia v. U.S., 131 S.Ct. 238 (2011). A defendant who was convicted of, among other things, smuggling unauthorized aliens into the United States, was sentenced to a 51-month term of imprisonment in order to qualify for and complete the Bureau of Prisons' Residential Drug Abuse Program (RDAP). The defendant appealed. The appeals court affirmed. The U.S. Supreme Court reversed and remanded, finding that the Sentencing Reform Act precluded the district court from lengthening the defendant's prison term to promote rehabilitation. (California)

2012

U.S. District Court
ALCOHOL/DRUGS
PARTICIPATION
RELIGION

Brooks v. Roy, 881 F.Supp.2d 1034 (D.Minn. 2012). A Native American state prisoner filed a § 1983 action, claiming that his required participation in a prison's substance abuse treatment program violated the Free Exercise Clause, the Religious Land Use and Institutionalized Persons Act (RLUIPA), the American Indian Religious Freedom Act (AIRFA), and the Minnesota Constitution. The prisoner sought an injunction assigning him at his own expense to a privately-run, Native American inpatient treatment program 200 miles from the prison, or readmitting him to the prison's program so that he would be eligible for prison benefits. The prisoner moved for a temporary restraining order or a preliminary injunction. The district court denied the motion. The court held that: (1) the Free Exercise Clause and RLUIPA claims were not actionable; (2) the First Amendment retaliation claim was not actionable; (3) the prisoner would not likely suffer irreparable harm absent a preliminary injunction; (4) the balance of hardships did not favor a preliminary injunction; (5) the public interest did not support a preliminary injunction; and (6) AIRFA lacked a private cause of action. The court noted that the prisoner failed to delineate any sincerely-held religious belief that was in any way infringed on by his participation in the prison substance abuse treatment program, as required to support his claim for infringement of his right to free exercise of religion. The prisoner referenced the Native American belief that a person must confront the root causes of substance abuse, but he did not allege that he held such a belief himself, and the program explicitly required the prisoner to examine the cause of his substance abuse and encouraged him to speak and write freely and to develop his own program for rehabilitation incorporating whatever Native American beliefs and practices he wanted, but he refused to do so. (Minnesota Correctional Facility, Faribault)

U.S. District Court
DUE PROCESS
PARTICIPATION
SEX OFFENDER

Catanzaro v. Harry, 848 F.Supp.2d 780 (W.D.Mich. 2012). A state prisoner, proceeding pro se, brought a § 1983 action against a state department of corrections, department officials, a warden, parole board members, and numerous prison and department employees, alleging violation of his due process rights, violation of the Fourth Amendment, denial of adequate medical care, his right to free exercise of religion, equal protection, access to courts, and retaliation. The district court held that: (1) the prisoner had no protected interest in early release on parole; (2) the requirement that the prisoner complete a sex-offender treatment program as condition for parole did not violate the Due Process Clause as the condition for parole did not exceed the sentence imposed on the prisoner; (3) the prisoner's conditions at sex-offender treatment facility did not implicate the prisoner's right to procedural due process, notwithstanding the fact that the prisoner did not have access to recreational facilities or a law library, the prisoner could not work, the prisoner had to arrange for his own health care, and the prisoner did not have the opportunity to attend religious services; (4) the transfer of the prisoner to facility for sex-offender treatment program did not violate his right to substantive due process; and (5) the prisoner stated a claim for violation of Free Exercise Clause. According to the court, the prisoner's complaint, alleging that a parole agent prevented him from bringing his own legal papers with him during his transfer from a sex-offender treatment facility to a prison, and that as a result, the prisoner was unable to notify the court of his address change and a lost opportunity to object to dismissal of two retaliation claims, failed to state a claim for violation of prisoner's right of access to the courts. (Cooper Street Correctional Facility, Residential Sex Offender Program [RSOP] Kalamazoo, and Probation Enhancement Program, Muskegon, Mich.)

U.S. District Court
EQUAL PROTECTION
PARTICIPATION
SEX OFFENDER

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
SEX OFFENDER
DUE PROCESS
EQUAL PROTECTION

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. District Court
ADA- Americans with
Disabilities Act
TREATMENT
PROGRAMS

Henderson v. Thomas, 891 F.Supp.2d 1296 (M.D.Ala. 2012). State prisoners, on behalf of themselves and a class of all current and future HIV-positive (HIV+) prisoners, filed a class action against prison officials, seeking declaratory judgment that the Alabama Department of Corrections' (ADOC) policy of segregating HIV+ prisoners from the general prison population violated the Americans with Disabilities Act (ADA) and the Rehabilitation Act, and seeking an injunction against further enforcement of the policy. The district court denied the officials' motion to dismiss. The court held that the prisoners' class action complaint plausibly alleged that HIV-positive prisoners suffered from an impairment that substantially limited a major life activity, as required to state claims that the ADOC HIV-segregation policy discriminated against prisoners on the basis of a disability in violation of ADA and the Rehabilitation Act. According to the court, the complaint provided information on the contemporary medical consensus regarding HIV treatment and alleged that each named plaintiff was diagnosed with HIV, that HIV was an impairment of the immune system, that HIV substantially limited the named plaintiffs in one or more major life activities, and that HIV qualified as a disability. The court found that the prisoners' class action complaint plausibly alleged that they were otherwise qualified individuals with a disability due to their HIV-positive status on the grounds that reasonable accommodations could be made to eliminate the significant risk of HIV+ prisoners transmitting HIV while integrated with other prisoners. The complaint alleged details of the programs and accommodations for which HIV+ prisoners were ineligible, alleged that all but two state penal systems had integrated HIV+ prisoners into the general prison population, and alleged that the National Commission on Correctional Health Care counseled against segregation. (Alabama Department of Corrections)

U.S. District Court
ADA- Americans with
Disabilities Act
EQUAL PROTECTION
SEGREGATION
WORK/STUDY

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
SEX OFFENDER
TREATMENT
PROGRAMS

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
EQUAL PROTECTION
RACIAL
DISCRIMINATION
REMOVAL FROM
PROGRAM

Reynolds v. Barrett, 685 F.3d 193 (2nd Cir. 2012). African-American inmates brought actions under § 1983 and § 1985 against New York State Department of Correctional Services (DOCS) employees, alleging that they were subjected to discrimination on account of their race in connection with their inmate jobs in a print shop. The actions were consolidated for discovery purposes. The district court granted summary judgment for the defendants and the plaintiffs appealed. The appeals court affirmed. The appeals court held that the disparate-impact theory of liability was not applicable to the African-American inmates' class claims against individual state officials under §§ 1981, 1983, 1985, and 1986, which relied on an equal protection racial discrimination violation as the underlying basis, since equal protection always required intentional discrimination, and disparate impact did not. At the time the suits here were filed, inmates employed in the prison print shop were paid an hourly wage, which ranged from sixteen cents to sixty-five cents per hour depending on the inmate's experience and expertise. In addition, inmates were eligible to receive an “incentive bonus” as a reward for good work. Civilian supervisors determined, in their discretion, whether a particular inmate merited promotion and higher pay. Similarly, these supervisors could recommend to the prison Program Committee—the entity tasked with assigning and removing inmates from various prison programs—that inmates be terminated from employment in the print shop. As a general matter, an inmate would be removed upon two requests. The plaintiffs alleged that print shop supervisors demoted minority inmates more often than white inmates, confined minority inmates to low-paying positions, and unfairly docked the pay of minority inmates. (Elmira Correctional Facility, New York)

U.S. Appeals Court
PARTICIPATION
SEX OFFENDER

Roman v. DiGuglielmo, 675 F.3d 204 (3rd 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. Appeals Court
DUE PROCESS
REQUIREMENTS
SEX OFFENDER

Strutton v. Meade, 668 F.3d 549 (8th Cir. 2012). A civilly-committed sex offender brought a civil rights action challenging the adequacy of his treatment at the Missouri Sexual Offender Treatment Center. The district court entered judgment in favor of the defendants, and the plaintiff appealed. The appeals court affirmed. The court found that the offender had standing to bring the due process challenge to the adequacy of Missouri's four-phase treatment program for such offenders, where he demonstrated that his alleged injury of not advancing in treatment was not due solely to his own recalcitrance and could have been due to the lack of adequate treatment resources. But according to the court, the treatment received by offender did not shock the conscience, in violation of substantive due process. The court noted that although budget shortfalls and staffing shortages resulted in

treatment modifications that were below standards set in place by the center's directors, temporary modifications in the treatment regimen of eliminating psychoeducational classes and increasing the size of process groups was neither arbitrary nor egregious, and the center sought to maintain essential treatment services in light of the challenges it faced.

The court found that the treatment center's use of the "restriction table" and the later use of a restriction area in treating the civilly-committed sex offender did not shock the conscience, and thus did not violate offender's Fourteenth Amendment due process rights. A resident assigned to the Restriction Table, which was located near a nurses' station, was not permitted to speak to another person unless that person was also seated at the table, and was only allowed to leave the table for meals, classes, process groups, and for an hour of exercise. Residents would remain at the table from early morning until late evening. Despite its name, residents assigned to the Restriction Table were not physically restrained and were allowed to stand, stretch, get a drink of water, or use the restroom as needed. Use of the table was discontinued and it was replaced with a "Restriction Area." According to the court, residents assigned to a restriction table or restriction area retained a comparatively free range of movement and activities, including the ability to get up and stretch, to leave to attend group sessions and meetings, to converse with other residents, to work on homework or legal issues, and to play cards. (Missouri Sexual Offender Treatment Center)

U.S. Appeals Court
DRUG RELEASE
TREATMENT
PROGRAMS

U.S. v. Taylor, 679 F.3d 1005 (8th Cir. 2012). Following release from prison, the district court sentenced a defendant to 24 months in prison after he admitted to violating two conditions of supervised release. The defendant appealed. The appeals court vacated and remanded, finding that consideration of the defendant's eligibility to participate in a rehabilitation program for sentencing purposes was plain error. The district court had considered the defendant's eligibility to participate in a 500-hour drug program available from the Bureau of Prisons when sentencing the defendant to 24 months for violation of supervised release. The appeals court held that this affected the defendant's rights in a manner that seriously affected fairness, integrity, or public reputation of judicial proceedings, and thus amounted to plain error. The court noted that the advisory guideline range was 6 to 12 months, and the district court may have imposed a lesser sentence if it had not focused on a particular drug treatment program within a federal institution. The defendant had failed to report to a residential facility where he was to spend 120 days and admitted to consuming alcohol. (Nebraska)

U.S. District Court
REMOVAL FROM
PROGRAM

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)

2013

U.S. District Court
DUE PROCESS
LIBERTY INTEREST
REMOVAL FROM
PROGRAM
SEX OFFENDER

Allen v. Clements, 930 F.Supp.2d 1252 (D.Colo. 2013). Inmates in the Colorado Department of Corrections (CDOC) who had been sentenced to indeterminate terms of imprisonment under the Colorado Sex Offender Lifetime Supervision Act (SOLSA) brought a class action against CDOC officials, alleging under § 1983 that the officials were arbitrarily denying them sex offender treatment and interfering with their access to counsel and courts. The officials moved to dismiss for failure to state a claim. The district court granted the motion. The court held that: (1) the inmates failed to state an Eighth Amendment claim; (2) terminating one inmate's treatment because of polygraphs did not violate due process; (3) denial of re-enrollment requests did not implicate the inmates' liberty interests; (4) termination procedures comported with procedural due process; and (5) the inmates failed to state a substantive due process claim. The court found that terminating two inmates' treatment because one had a rash and the other reported a telephone call in which his cousin mentioned seeing his children implicated the inmates' liberty interests protected by due process because the reasons for termination were not reasonably related to the goals of their treatment. But the court noted that there was no indication that the alleged deprivation extended the inmates' sentences, and that procedures providing for a treatment waitlist and for state judicial review of CDOC termination decisions existed, and the two inmates had already been able to re-enroll in treatment multiple times. (Colorado Department of Corrections)

U.S. District Court
HANDICAPPED

Armstrong v. Brown, 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)

U.S. Appeals Court
DRUG
PARTICIPATION
RELIGION

Hazle v. Crofoot, 727 F.3d 983 (9th Cir. 2013). A parolee, who was an atheist, brought an action against various state officials and a state contractor, seeking damages and injunctive relief for the deprivation of his First Amendment rights, after his parole was revoked following his refusal to participate in a residential drug treatment program that required him to acknowledge a higher power, as a condition of his parole. The contractor, Westcare, was a private regional substance abuse coordination agency, and made the arrangements for the parolee's placement in the program. After the parolee was granted partial summary judgment by the district court, a jury awarded the parolee zero damages. The district court denied the parolee's motion for a new trial, and the parolee appealed. The appeals court reversed and remanded. The court held that the parolee was entitled to an award of compensatory damages for each day that he spent in prison as a result of the violation of his First Amendment rights by various state officials.

The appeals court held that summary judgment was precluded by a genuine issue of material fact as to whether the contractor's conduct was the proximate cause of the parolee's unconstitutional imprisonment, when it contracted only with drug treatment facilities offering solely religious based programs or services, and counseled and arranged for the parolee to attend a religion-based facility as part of his state-imposed parole program, despite having been informed that the parolee was an atheist and that he objected to such religious programming. The court held that the parolee's claim under California law for an injunction preventing both a state contractor and various state officials from expending state funds in an unconstitutional manner that required parolees to participate in religious treatment programs in order to be eligible for parole, failed to provide parolees with secular or non-religious treatment alternatives, and revoked the parole of those who protested or resisted participation in religion-based treatment programs, was not rendered moot after the state issued a directive stating that parole agents could not require a parolee to attend any religious based program if the parolee refused to participate for religious reasons, where the state directive had not been implemented in any meaningful fashion. (California Department of Corrections and Rehabilitations, Board of Parole Hearings, Westcare, and Empire Recovery Center, California)

U.S. District Court
TREATMENT
PROGRAMS

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
REMOVAL FROM
PROGRAM
WORK/STUDY

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)

2014

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

Ballard v. Johns, 17 F.Supp.3d 511 (E.D.N.C. 2014). A civil detainee being considered for certification as a sexually dangerous person brought an action against federal employees, in their official capacities and in their individual capacities under Bivens, challenging various conditions of his detention, including claims concerning due process violations and inability to attend religious services. The employees moved to dismiss or for summary judgment and the detainee moved to overrule objections to requests for document production. The district court granted the employees' motion and denied the detainee's motion. The court held that: (1) the detainee did not show that federal employees, by following Federal Bureau of Prisons (BOP) regulations and policies, violated his constitutional rights; (2) the detainee was properly subjected to restrictions and disciplinary consequences of the BOP commitment and treatment program; (3) denial of the detainee's request to attend or receive religious

services while in disciplinary segregation did not unduly burden his free exercise of religion; and (4) the employees did not violate detainee's right to be free from unreasonable searches and seizures by searching his cell and seizing his property. (Federal Correctional Institution at Butner, North Carolina)

U.S. District Court
RELEASE
WORK STUDY

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 Eighth 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
HOBBIES
CRAFTS

Harrison v. Culliver, 746 F.3d 1288 (11th Cir. 2014). A state prisoner brought a § 1983 action against prison officials, relating to an inmate-on-inmate assault with a box cutter, and asserting an Eighth Amendment violation based on deliberate indifference to a substantial risk of serious harm. The district court granted summary judgment to the prison officials and denied the prisoner's motion to proceed in forma pauperis. The prisoner appealed. The appeals court affirmed. The appeals court held that: (1) past incidents of inmate-on-inmate violence involving weapons did not constitute a substantial risk of serious harm; (2) the prison's policies for monitoring a back hallway in which the prisoner was attacked did not create a substantial risk of serious harm; (3) lack of oversight of the prison's hobby craft shop did not create a substantial risk of serious harm; and (4) prison officials were not deliberately indifferent with respect to oversight of the hobby shop. (W.C. Holman Correctional Facility, Alabama)

U.S. Appeals Court
DRUG
RELIGION

Jackson v. Nixon, 747 F.3d 537 (8th Cir. 2014). A state prisoner brought an action against various state prison officials, challenging the prison's drug treatment program as in violation of his free exercise rights under the First Amendment. The district court dismissed the action. The prisoner appealed. The appeals court reversed and remanded. The court held that the prisoner stated a § 1983 claim against prison officials for violation of his First Amendment free exercise rights with allegations that he was an atheist, that he was required to attend and complete a substance abuse treatment program that had religious components and invoked religious tenets in order to be eligible for early parole, that due to the religious components of the program and the prison's failure to transfer the prisoner to a secular treatment program, his choices were to withdraw from the program or remain exposed to those religious elements. He chose to withdraw from the program, and was denied early release as a result. The court found that the director of the state department of corrections (DOC) could be held personally liable under § 1983 for the alleged violation of the atheist state prisoner's First Amendment free exercise rights, where under Missouri law, the director was responsible for administering the treatment program, and establishing rules and policies determining how, when, and where offenders could be admitted into or removed from the treatment program. According to the court, the director of the prison's substance abuse treatment program could be held personally liable under § 1983 for the alleged violation of the prisoner's First Amendment free exercise rights, where the program director allegedly could have allowed the prisoner to avoid the religious portions of the program, but still remain enrolled in the program. (Western Reception, Diagnostic, and Correctional Center, Missouri)

U.S. District Court
SEX OFFENDER
TREATMENT PROGRAM
RIGHT TO TREATMENT
DUE PROCESS

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 held that the patients' allegations that commitment to MSOP essentially amounted to lifelong confinement, equivalent to a lifetime of criminal incarceration in a facility resembling, and run like, a medium to high security prison, sufficiently stated a § 1983 substantive due process claim pertaining to the punitive nature of the patients' confinement. 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. (Minnesota Sex Offender Program)

U.S. Appeals Court
EDUCATIONAL

Los Angeles Unified School Dist. v. Garcia, 741 F.3d 922 (9TH Cir. 2014). The question of who pays when a student between the ages of 18 and 22 who is eligible for special education services in California and is incarcerated in a county jail, was certified to the Supreme Court of California for the interpretation of the California Education Code, section 56041. Reviewing the Supreme Court's decision, the federal appeals court held that the cost of the student's education is borne by the school district where the student's parent resides. (Los Angeles County Sheriff's Department, County of Los Angeles, Los Angeles County Office of Education, California Department of Education)

U.S. District Court
ADA- Americans with
Disabilities Act
RIGHT TO TREATMENT

Meeks v. Schofield, 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. According to the court, the state prison's decision to remove exterior bathroom doors and refusal to put at least one door back to accommodate the prisoner, who allegedly suffered from paruresis, a mental anxiety disorder that made it difficult to urinate without complete privacy, was not intentionally discriminatory and did not violate the ADA. The court held that the transfer of the prisoner to a medical housing unit did not result in denial of access to prison programs and services available to the general population, so as to support an ADA claim of discrimination on the basis of a perceived disability. The court noted that the transfer was intended to accommodate the prisoner's complaints about bathroom doors being removed in the general housing unit, and the prisoner was allowed to continue his prison job, have access to the law library, and participate in the same activities he was allowed to participate in while he was housed with the general population. (Lois M. DeBerry Special Needs Facility, Tennessee)

U.S. District Court
SEX OFFENDER
REQUIREMENTS

Reinhardt v. Kocow, 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 (CDCO) 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 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. (Colorado Department of Corrections, Sex Offender Management Board)

U.S. District Court
EQUAL PROTECTION
RELIGION

Richard v. Fischer, 38 F.Supp.3d 340 (W.D.N.Y. 2014). 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. The court found that the inmate's allegations that no other inmate in the prison was "isolated by programming" or restricted to an employment position in his or her cellblock, that the inmate was isolated to programs in his cellblock, presumably because of his race and religion, and that prison employees tasked with assigning work refused to place the inmate on a waiting list for his desired program, when waiting lists were open to "all others," sufficiently stated that the inmate was treated differently than similarly-situated individuals, supporting the inmate's § 1983 claim that employees denied him equal protection by restricting him to employment opportunities in his cellblock. (Five Points Correctional Facility, New York)

U.S. District Court
EQUAL PROTECTION
PARITY MALE/FEMALE

Sassman v. Brown, 73 F.Supp.3d 1241 (E.D.Cal. 2014). A male prisoner filed a civil rights action against the Governor of California and the Secretary of the California Department of Corrections and Rehabilitation (CDCR), claiming violation of the Equal Protection Clause by exclusion of men from California's Alternative Custody Program (ACP). The California Penal Code allows only female inmates to participate in the voluntary ACP in lieu of confinement in a state prison. The prisoner moved for a preliminary injunction to prevent continued exclusion of male prisoners from ACP based on their gender. The district court denied the motion for an injunction. The district court held that the prisoner had a likelihood of success on the merits of the claim, but that it was unlikely that the prisoner could show irreparable harm absent an injunction. The prisoner had unsuccessfully applied to participate in the ACP and was similarly situated to female state prisoners who applied and were approved. According to the court, where the male prisoner met all gender-neutral eligibility criteria required by regulations implementing the ACP, and assuming that female prisoners and their children would benefit more from ACP than male prisoners and their children, perpetuated the stereotype that women were more fit to parent and more important to their families than men. The court found that restricting applicants to only women state prisoners was not substantially related to the important government interests of family reunification and community

reintegration, and thus, the male prisoner had a likelihood of success on the merits of his claim. (Alternative Custody Program, California)

U.S. Appeals Court
SEX OFFENDER
DUE PROCESS
EQUAL PROTECTION
REHABILITATION

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
SEX OFFENDER
REMOVAL FROM
PROGRAM
DUE PROCESS

Thomas v. Adams, 55 F.Supp.3d 552 (D.N.J. 2014). Civilly-committed sexually violent predators (SVP) brought an action against corrections officials, and other defendants, challenging the adequacy of treatment after they were transferred to a new facility for SVPs. The defendants moved to dismiss. The district court granted the motions in part and denied in part. The inmate's claimed that he was diagnosed as a sexually violent predator (SVP) requiring treatment, and after he was transferred to a different facility his prescribed amount of therapy was reduced, and eventually denied without any mental health evaluation. The inmate alleged that the denials were based on his placement in a segregated housing unit (SHU). The court held that the inmate sufficiently alleged a substantive due process challenge against high-ranking, supervising corrections officers involved in the decision to transfer SVPs to a new facility, despite the contention that the officials played no role in the inmate's day-to-day affairs. (New Jersey Sexually Violent Predator Act, Special Treatment Unit at East Jersey State Prison)

2015

U.S. District Court
ALCOHOL/DRUGS
RELEASE

Benedict v. Southwestern Pennsylvania Human Services, Inc., 98 F.Supp.3d 809 (W.D. Va. 2015). Parents of a participant in a county drug treatment program brought an action against county defendants alleging state law claims for negligence and wrongful death, and claims under § 1983 for violation of substantive due process rights under the Fourteenth Amendment, and for deliberate indifference in violation of the Eighth Amendment. The participant had died from an overdose of heroin. Following removal to federal court, the defendants moved to dismiss. The district court granted the motion. The court held that: (1) the participant's intermittent custody did not trigger Eighth Amendment protections; (2) the parents failed to allege that program operators were aware of an excessive risk; (3) participation in the program did not create a special relationship that would impose a duty to protect; and (4) the parents failed to allege a state created danger. The court noted that the participant was only required to report to custody for three hours a day, he was able to live with his parents, and was able to engage in any lawful activity he chose while not attending the program. (Westmoreland County Adult Probation/Parole Office, Westmoreland County Jail, Pennsylvania)

U.S. Appeals Court
ALCOHOL/DRUG
RELIGION

Brooks v. Roy, 776 F.3d 957 (8th Cir. 2015). A Native American inmate brought an action against a state prison official under § 1983, the Religious Land Use and Institutionalized Persons Act (RLUIPA), the American Indian Religious Freedom Act (AIRFA), and the Minnesota Constitution. The inmate alleged that a required chemical-dependency program conflicted with his religious beliefs. The district court dismissed some claims and granted summary judgment to the officials on the remaining claims. The inmate appealed. The court held that the inmate's complaint did not sufficiently put the officials on notice of the basis for his free exercise claims and give them enough information to respond adequately to the allegations in the complaint. The court noted that the inmate's complaint never specified his Native American faith, his beliefs consistent with that faith, or how the available program at his prison conflicted with his Native American beliefs. The inmate had received a chemical-dependency assessment, as all new inmates are required to have under Minnesota law, and was ordered to complete treatment program in order to be transferred to a lower-security prison, qualify for work release, and avoid disciplinary sanctions. (Minnesota Correctional Facility, Faribault)

U.S. District Court
I.D.E.A.- Individuals with
Disabilities Educ. Act
EQUAL PROTECTION

Buckley v. State Correctional Institution-Pine Grove, 98 F.Supp.3d 704 (M.D. Pa. 2015). A state prisoner, a young adult offender, brought an action alleging that a prison had violated the Individuals with Disabilities Education Act (IDEA) by failing to provide him with a free appropriate public education, and appealing a ruling to the contrary by an administrative hearing officer. The parties filed cross motions for judgment on the supplemented administrative record. The district court held that the prison violated IDEA, and the prison was required to provide compensatory education as a remedy. The court noted that the prison failed to make a particularized determination that the security interest specific to the prisoner could not otherwise be accommodated, by effectively nullifying the prisoner's individualized education program (IEP), and by not providing a free appropriate public education. After placing the prisoner in restrictive housing in response to the prisoner's assaultive behavior and rules violations, the prison did not modify the prisoner's IEP, but instead merely applied a blanket policy requiring all prisoners in restrictive housing to receive in-cell instruction only,

using non-individualized “self-study” packets and with access to a teacher only once or twice a week through a locked solid metal door in a cacophonously loud housing unit. (SCI–Pine Grove, Pennsylvania)

U.S. Appeals Court
EDUCATIONAL

Childress v. Walker, 787 F.3d 433 (7th Cir. 2015). A state prisoner brought an action under § 1983 alleging that administrators and individuals affiliated with a correctional center violated his rights under the Eighth Amendment and the Due Process Clause. The district court dismissed the action and the prisoner appealed. The appeals court reversed and remanded. The court held that the prisoner stated a claim for relief under the Eighth Amendment with allegations that the prison administrator knew that conditions of his mandatory release included a ban on computer-related material, but nevertheless instituted, condoned, or willfully turned a blind eye to the practice that placed computer-related material among his possessions. The court also found that the district court had to determine, upon the prisoner’s motion for appointment of counsel, whether the prisoner, from the confines of his present institutional situation, could adequately investigate and articulate, in accordance with established practices of § 1983 liability, familiarity of each defendant with the practices of the educational program that placed computer-related material among his possessions, even though the conditions of his mandatory release included a ban on computer-related material. (Big Muddy River Correctional Center, Illinois)

U.S. Appeals Court
SEGREGATION

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 year 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. District Court
REHABILITATION
EDUCATIONAL
SEGREGATION

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
HANDICAPPED

Pierce v. District of Columbia, 128 F.Supp.3d 250 (D.D.C. 2015). A deaf inmate who communicated with American Sign Language (ASL), but who had been forced to communicate with staff and other inmates only through lip-reading and written notes due to the lack of an interpreter to assist him, filed suit against the District of Columbia alleging discrimination and retaliation in violation of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. Both sides moved for summary judgment. The district court granted the inmate’s motion in part and denied the defendant’s motion. The court held that: (1) the prison had affirmative duty to evaluate the newly incarcerated deaf inmate’s accommodation requirements, and its failure to do so denied the inmate benefits under the Rehabilitation Act and ADA; (2) the prison was deliberately indifferent to the deaf inmate’s need for accommodation, as would support an award of compensatory damages; and (3) summary judgment was precluded by a genuine issue of material fact as to whether the prison had placed the inmate in protective custody, and kept him there, because of the inmate’s constant requests for accommodation. The court noted that the inmate’s need for accommodation was obvious, in that the inmate did not speak and communicated only through American Sign Language (ASL), and the prison was required to identify precise limitations resulting from the disability and potential reasonable accommodations by way of an interactive assessment of the inmate. According to the court, the inmate’s request for an American Sign Language (ASL) interpreter to assist him during anger management and substance abuse classes was sufficient to put the prison on notice that deaf inmate might need a similar accommodation to communicate effectively in other prison situations, such as in inmate programs, hall meetings, the orientation process, protective custody proceedings, graphic arts class, and medical consultations. (Correctional Treatment Facility, District of Columbia)

U.S. District Court
JUVENILES
ADMINISTRATIVE
SEGREGATION
EDUCATIONAL

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 35: PROPERTY- 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.

1971

U.S. Appeals Court
JEWELRY Rowland v. Jones, 452 F.2d 1005 (8th Cir. 1971). Jewelry should be banned only if it could be used as a weapon. (Nebraska Penal and Correctional Complex)

U.S. District Court
JEWELRY Seale v. Mason, 326 F.Supp. 1375 (D. Conn. 1971). Where a prison regulation limited the jewelry women prisoners might wear to a wristwatch, earrings, a ring and a necklace with a religious medal on it, the court held no infringement of any constitutional right existed. (Montville Correctional Center, Connecticut)

1973

U.S. District Court
RECEIPTS
MONEY Goldsby v. Carnes, 365 F.Supp. 395 (W.D. Mo. 1973). Personal items not permitted will be recorded on property receipts and placed in property file envelopes. Money may be left for prisoners during the day shift and the evening shift. (Jackson County Jail, Kansas City, Missouri)

1976

U.S. District Court
STORAGE Mitchell v. Untreiner, 421 F.Supp. 886 (N.D. Fla. 1976). Each inmate shall be furnished with a space or locker for storing personal items, including clothing. (Escambia County Jail, Pensacola, Florida)

1979

U.S. District Court
DISPOSITION OF
FUNDS
MONEY Hanvey v. Blakenship, 474 F.Supp. 1349 (W.D. Vir. 1979), aff'd, 631 F.2d 296 (4th Cir. 1980). Where the authorities found cash, and the prisoner was disciplined for the unauthorized possession, the state could place the funds in the prisoner benefit fund and was under no obligation to hold the money for the prisoner and return it upon his release. (Bland Correctional Center, Virginia)

U.S. Appeals Court
PROHIBITED
PROPERTY Jensen v. Klecker 599 F.2d 243 (8th Cir. 1979). Where an inmate's property is not prohibited by rules, property must be returned to the inmate on request. (State Penitentiary, North Dakota)

U.S. District Court
LOSS OF PROPERTY McKeever v. Israel, 476 F.Supp. 1370 (E.D. Wisc. 1979). A prisoner seeking damages for loss of personal property must exhaust the institutional grievance mechanisms before seeking relief in the courts. (Waupun State Prison, Wisconsin)

U.S. District Court
TRANSFER BETWEEN
PRISONERS Velarde v. Ricketts, 480 F.Supp. 261 (D. Colo. 1979). A prison rule which prohibits one prisoner from transferring property (in this case a television set) to another prisoner is valid. Such a rule is intended to prevent the use of legitimate institutional procedures by prisoners to pay gambling debts, bribes, or other illegal prisoner activities. (Colorado State Penitentiary)

1981

U.S. Supreme Court
LOSS OF PROPERTY 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)

1982

State Appeals Court SEARCH

People v. Greenwald, 445 N.Y.S.2d 865 (App. Div. 1982). Search of prisoners' inventoried items is permissible without a search warrant. The Supreme Court, Appellate Division, of New York, has ruled that police personnel were allowed to examine an arrestee's belongings after they had been inventoried and locked away.

The plaintiff had been admitted consistent with normal booking procedures at which time his personal property including his wallet was sealed in an envelope and placed in the property room. Later, a search of his wallet revealed a piece of paper with the name, address, and telephone number of one of his victims. The court upheld the search and stated:

It is now beyond doubt that under the fourth amendment an arresting officer may, without a warrant, search a person validly arrested. The fact of a lawful arrest, standing alone, authorized the search (Michigan v. Defillippo, 443 U.S. 31, 99 S.Ct. 2627; Gustafson v. Florida, 414 U.S. 260, 94 S.Ct. 488; United States v. Robinson, 414 U.S. 218, 94 S.Ct. 467). That there may be some time interval between the arrest and the subsequent taking of property for use as evidence does not change this principle, nor does the fact that 'the clothing or effects are immediately seized upon arrival at the jail, held under the defendant's name in the property room of the jail, and at a later time searched and taken for use at the subsequent criminal trial.' (United States v. Edwards, 415 U.S. 800, 94 S.Ct. 1234, 1239).

The court noted that a warrant would have been required if Greenwald had left his wallet at home.

1985

U.S. Appeals Court

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.

The Eighth Circuit Court of Appeals ruled that transfers of property, whether from coercion or voluntary, from prisoners to law enforcement officials were illegal. Policies preventing the gifts are in the public's interest, both to protect officials from being influenced by gifts and to prevent inmates from feeling compelled to give gifts. The sheriff wrongfully accepted tools and other personal property from the inmate found on a stolen truck. The inmate claimed the sheriff forced him to make the transfer threatening him that he would never see his son, who was in a state prison, if he didn't cooperate. Regardless of the circumstances, officials are forbidden from accepting property from prisoners.

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)

State Court

Johnson v. Scott, 702 P.2d 56 (Okl. 1985). Dismissal for failure to appear in a small claims action wherein the plaintiff sought to regain possession of certain personal property left at a county jail after several court appearances was violative of the plaintiff's constitutional rights of due process and access to courts where the plaintiff was imprisoned at the time of the hearing on matter and was unable to appear to present his claim. A trial court faced with a plaintiff who cannot appear and testify because he is imprisoned need not dismiss a small claims action for failure to appear but may order that the individual's testimony be taken by deposition upon written questions, by deposition taken by telephone, or by recording deposition by other than stenographic means. (State Penitentiary, Oklahoma)

U.S. District Court
LOSS OF PROPERTY

Kelly v. United States, 630 F.Supp. 428 (W.D.Tenn. 1985). When a prisoner and his property enter into the custody and possession of the marshal's service for transportation, a duty of due care arises which requires the service to inventory personal property items of value and establish a chain of custody for that property. Failure to do so constitutes a breach of that duty and renders the government liable under the Tort Claims Act. The government was liable, even though the inmate was housed in various state prison facilities during his transit, and his diamond ring very well could have been lost in any one of those institutions. (Tennessee)

U.S. District Court
MONEY

Turner v. Nevada Bd. of State Prison Com'rs., 624 F.Supp. 318 (D.Nev. 1985). Nevada inmates no longer have a property right in their work wages in respect to deductions for payment to a victim's family and payment for room and board. A statute was amended to allow deductions for room and board as of 1985. Prior to 1985 the statute read as follows: (1) The director shall: a) To the greatest extent possible, establish facilities which approximate the normal conditions of training and employment in the community; b) To the extent practicable, require each offender, except those whose behavior is found by the director to preclude participation, to spend forty hours each week in vocational training or employment, unless excused for a medical reason; c) Use the earnings from services and manufacturing conducted by the institutions and the money paid by private employers who employ the offenders or lease space or facilities within the institutions to offset the costs of operating the prison system and to provide wages for the offenders being trained or employed. The director may first deduct from the wages of any offender such amounts as the director deems reasonable to meet any existing obligation of the offender for the support of his family or restitution to any victim of his crime. The amended version was to permit maintenance deductions. It reads: The director may deduct from the wages earned by an offender from any source during his incarceration-- 1) An amount determined by the director, with approval of the board, to offset the cost of maintaining the offender in the institution, as reflected in the budget of the department; and 2) Such amounts as the director considers reasonable to meet any existing obligation of the offender for the support of his family or restitution to any victim of his crime. However, prior to the amended version, the court determined, inmates did have a property interest in wages not being deducted for room and board. Therefore, the court refused to dismiss claims brought by those inmates that prison officials violated their rights to due process. Lastly, the court found no violations in equal protection in deducting wages for room and board only from inmates who earn a gross income of \$75.00 or more a month. (Nevada Board of State Prison Commissioners)

1986

U.S. District Court
LOSS OF PROPERTY

Bean v. Cunningham, 650 F.Supp. 709 (D.N.H. 1986). An inmate filed a suit seeking money damages and declaratory and injunctive relief alleging violations of the eighth amendment and the due process clause. Following a bench trial, the district court held that: (1) the inmate failed to establish that the force applied by corrections officers during the transfer of the inmate from a medium security to a maximum security housing unit was unreasonable; (2) the inmate failed to establish that he was afflicted by serious medical needs; (3) the inmate failed to establish that the loss of folders of legal papers was intentional; and (4) the inmate failed to establish that the withholding of his books was unreasonable, given readily available alternative legal library resources, or that access to his personal books was necessary in order for him to obtain meaningful access to the courts. (New Hampshire State Prison)

U.S. District Court
DISPOSITION OF
FUNDS

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. The court affirmed that the full panoply of rights afforded criminal defendants need not be provided in a disciplinary proceeding. Thus, a judicial-style evidentiary hearing is not required. What must be furnished is notice of the case and a meaningful opportunity to meet it. The prisoner, according to the court, was provided with a meaningful opportunity to refute the case against him, and thus was not denied due process in prison disciplinary proceedings, which resulted in the freezing of his inmate's trust fund account in order to satisfy the requirement that he pay \$3,000 to the state as restitution for medical expenses incurred by state as a result of his assault on another inmate. (Nevada State Prison)

U.S. District Court
DISPOSITION OF
FUNDS

Sahagian v. Dickey, 646 F.Supp. 1502 (W.D. Wis. 1986). A prisoner, seeking to challenge a state prison practice of diverting fifteen percent of money sent to a prisoner into a release account to which the prisoner would not have access until he was released from prison, petitioned for leave to proceed without prepayment of fees and costs or security therefor. The district court held that: (1) the practice did not deprive the prisoner of substantive due process; (2) no additional procedures were required in instituting practice to ensure the prisoner procedural due process; and (3) the practice did not violate an equal protection clause by reason of exception for work release wages. Petition denied. A memorandum explained how funds were to be diverted. It stated: fifteen percent of all general inmate receipts including wages, hobby sales and gifts will be diverted to a segregated release account. The only exceptions are: a) work/study release money, b) refunds from outside purchases, c) savings account interest, d) money received from other institutions for inmates transferring in. The court ruled the practice did not deprive the inmate of constitutional rights. (Columbia Correctional Institution at Portage, Wisconsin)

1987

U.S. District Court
MONEY

Artway v. Scheidemantel, 671 F.Supp. 330 (D.N.J. 1987). According to the district court, the penalty imposed on a prisoner was found to be constitutionally defective. The prisoner had destroyed a sink in his cell. The superintendent had determined the amount for restitution to be withdrawn from the prisoner's account without a hearing or a jury trial. The court ruled that this procedure denied him of property without due process of law, and that a prisoner had a constitutionally protected property right in the monies of his prison account. (Adult Diagnostic/Treatment Center, New Jersey)

U.S. Appeals Court
MONEY

Baker v. Piggott, 833 F.2d 1539 (11th Cir. 1987), cert. denied, 108 S.Ct. 2918. Money was found in the possession of an inmate upon his transfer to another correctional facility. The inmate claimed he had planned to use the money to pay an attorney. There were, however, other means of securing counsel and it was found that he was not deprived of access to the courts, even if he was unable to retain a private attorney after the money was confiscated. Cert. den. in 108 S.Ct. 2918 (Union Correctional Institution, Florida)

U.S. Appeals Court
SOCIAL SECURITY
RETIREMENT

Davis v. Bowen, 825 F.2d 799 (4th Cir. 1987), cert. denied, 108 S.Ct. 1036. An incarcerated felon brought action challenging suspension of his social security retirement benefits. The federal district court granted the motion of the Secretary of Health and Human Services for dismissal. The felon appealed. The appeals court held that the blanket suspension of social security retirement benefits for incarcerated felons did not violate the felon's due process or equal protection rights. According to the court, the suspension was consistent with discretion granted to the Secretary in the Social Security Act and rationally promoted the legitimate underlying congressional policy goal of conserving scarce social security resources where basic economic needs of incarcerated felons are provided from other public sources.

U.S. District Court
DESTRUCTION
LOSS OF PROPERTY

Hikel v. King, 659 F.Supp. 337 (E.D.N.Y. 1987). A prisoner was taken to court to testify as a prosecution witness in a criminal trial, he took with him a document showing his conviction and sentence and another piece of paper with a summary of the testimony he planned to give. The inmate claimed that upon his return to the correctional facility he was searched and correctional officers then destroyed the two papers he had taken to court, as well as three photographs of his girlfriend. The federal district court did not find that the destruction of these documents could have impeded any suit that he could have brought. Therefore, the inmate's claim involved the deprivation of personal property rather than denial of access to the courts. As such, it was not actionable under federal civil rights law, since there was an adequate state remedy available. (Long Island Correctional Facility)

State Supreme Court
DISPOSITION OF
FUNDS

Meis v. Grammer, 411 N.W.2d 355 (Neb. 1987). A state supreme court upheld the denial of the prisoner's request to send money to a non-family member, noting that prison officials were justifiably concerned that the payment might be for an illegal debt incurred while the creditor was a fellow inmate. The prisoner had challenged prison regulations regarding the disbursement of prison funds when his request to hold a portion of his wages in a trust fund to be used to pay a debt to a friend was denied. At the time of his request the prisoner had \$135 in his fund of which \$72 were wages earned while at the prison. Prison regulations limited the use of funds earned at the prison, specifying that they could be used for the support of family members and for commissary purchases, and that funds could also be set aside to be provided to the inmate upon release. (Nebraska Department of Correctional Services)

U.S. Appeals Court
PROHIBITED
PROPERTY

Morello v. James, 810 F.2d 344 (2nd Cir. 1987). A federal appeals court ruled that the U.S. Supreme Court's 1981 decision in Parratt v. Taylor, 101 S.Ct. 1908, that bars federal civil rights suits for the deprivation of inmate property when state law provides a remedy, was not applicable to a suit in which legal materials were the subject of an alleged theft. The court explained that legal materials were constitutionally protected as providing access to court, and federal law could be invoked. Although the court did not rule on the merits of the claim, it did rule that the claim stated a cause of action under federal law for a constitutional violation and was not limited to state law remedies as were claims for deprivations of other kinds of property, reversing the district court's ruling. (Collins Correctional Facility)

State Appeals Court
SEARCH

Rochon v. Maggio, 517 So.2d 213 (La. App. 1 Cir. 1987). An inmate alleged that prison officials violated his constitutional right of access to court when they opened an envelope the prisoner had in his possession during a shakedown search. The prisoner had attempted to walk out of his cell with the envelope after being told not to bring anything with him, contending that the letter was "legal mail." The court found that the inspection of the envelope, even though no contraband was found, was justified by suspicious actions of the prisoner.

U.S. Appeals Court
DISPOSITION OF
FUNDS

Rodriguez v. James, 823 F.2d 8 (2nd Cir. 1987). An inmate sued prison officials alleging they violated his rights when they refused to mail his sealed business correspondence that was addressed to two suppliers of electronic equipment. Department of Corrections Services regulations state that business mail must be submitted unsealed and is subject to inspection and that mail that obligates an inmate's funds must receive prior approval to verify that the inmate has sufficient funds to make payment. The court ruled that the refusal to send sealed business mail was the implementation of the correctional policy of the State and granted summary judgment in favor of all defendants. (Collins Correctional Facility)

1988

U.S. Appeals Court
DISPOSITION OF
FUNDS

Blankenship v. Gunter, 707 F.Supp. 1137 (D. Neb. 1988); affirmed, 898 F.2d 625 (8th Cir. 1990). An inmate brought a Section 1983 action, alleging that the state penitentiary's failure to allow the disbursement of individual funds in a trust account to a religious charitable contribution violated his civil rights. The district court found that there is a rational, legitimate reason supporting the state prison's restrictions on the inmate's individual trust fund account disbursements sufficient to preclude the inmate from any disbursement to nonfamily members, even to charitable religious contributions; safety and contraband considerations, as well as fears of donation pressures from other inmates were sufficient, particularly since other means were available to inmates to make such donations. It was also found by the court that the identity of the source of monies in a prison trust account did not affect the penitentiary's interest in restricting disbursements. (Nebraska State Penitentiary)

U.S. District Court
LOSS OF PROPERTY

Grim v. Moore, 745 F.Supp. 1280 (S.D. Ohio 1988). A city jail detainee brought an action against jail officials and others, alleging constitutional deprivations. On the motion of jail officials and others for summary judgment, the district court found that the restrictions placed upon the detainee during his detention in the city jail for 13 hours and 41 minutes did not amount to constitutional deprivation, in view of evidence that the restrictions amounted not to an express intent to punish, but rather were reasonably related to the legitimate nonpunitive governmental objective of short term holding of prisoners. The detainee, who claimed that jail personnel confiscated his personal property upon his arrival at the jail, did not have a procedural due process claim redressable under Section 1983, given his ability to sue officials in tort, under state law; at best, the loss of his property appeared to be a random and negligent act of jail personnel. (City of Urbana Jail, Ohio)

U.S. District Court
PROHIBITED
PROPERTY

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
DISPOSITION OF
FUNDS

Prows v. U.S. Dept. of Justice, 704 F.Supp. 272 (D.D.C. 1988). A federal prisoner was fired from his job with federal prison industries for failing to comply with the Bureau of Prisons' inmate financial responsibility program. Under the program, the Bureau reviewed an inmate's financial obligations and established a plan for payment of "legitimate financial obligations," such as court-ordered payments or debts owed the federal government. On March 27, 1987, the Bureau issued a "Program Statement" which required that inmates at certain pay levels would be expected to allot not less than 50% of their monthly pay to the payment of "legitimate financial obligations." The inmate refused to comply, continuing to send voluntary support payments instead to his indigent family, an obligation he argued was "legitimate." The Bureau, recognizing as "legitimate" only the payment of his court-imposed criminal fine, fired him from his prison job for noncompliance, and the inmate filed a lawsuit. The court found that the inmate was entitled to restoration of his work assignment and pay level and back pay from the date of his termination. While the Bureau of Prisons had authority to create the Financial Responsibility Program, the 50% requirement was issued without required prior notice and rule-making procedures. The absence of these procedures rendered the requirement null and void, the court concluded. (La Tuna Fed. Corr. Inst., Anthony, New Mexico)

U.S. Appeals Court
LOSS OF
PROPERTY

Simmons v. Poppell, 873 F.2d 1243 (5th Cir. 1988). A prisoner filed a civil rights lawsuit charging that prison officials had failed to adequately investigate and locate a radio that was removed from his cell by a prison official who was not named as a defendant. The inmate appealed after the court dismissed the action as frivolous. The lower court ruled that the Due Process Clause is not implicated by a state official's negligent act causing unintended loss of property. The inmate was alerted, the appeals court noted, by the trial court that his action was frivolous, and it affirmed the dismissal of the inmate's frivolous lawsuit and ordered that he pay costs in the amount of \$75.00.

1989

State Supreme Court
PROHIBITED
PROPERTY

Blades v. Twomey, 553 N.Y.S.2d 215 (A.D. 3 Dept. 1990). An Article 78 proceeding was brought to review the determination of the superintendent of a correctional facility which denied an inmate permission to receive a typewriter. An application was dismissed by the state supreme court, and the inmate appealed. The state supreme court affirmed the decision and found that the denial was properly based on a regulation limiting the value of items possessed by the inmate, even though the regulation was not posted in the prison, and regardless of the inmate's awareness of the limit. The denial of the typewriter was not a disciplinary proceeding and thus was not subject to the statute precluding imposition of punishment on an inmate for misconduct in violation of prison rules and regulations which are not posted in the prison. Regardless of the prison inmate's awareness of a regulation establishing a \$200 limit on the value of items which may be possessed by inmates, corrections officials had a right and duty to control the property and possessions within the prison under their supervision, and could properly deny to the inmate legal assistant the possession of a typewriter with a value over \$200. (Coxsackie Correctional Facility, Greene County, New York)

U.S. District Court
PROHIBITED
PROPERTY

Darwin v. Carlson, 714 F.Supp. 34 (Civ. Div. Dist. Col. 1989). An inmate brought action against prison officials after they refused to return his radio-type player. On the defendants' motion for a summary judgment, the federal district court found that the federal prison officials did not violate the inmate's due process rights under the fifth amendment or seize his property under the fourth amendment when they refused to return the inmate's tape player that had been turned in for safe keeping after the prison policy was changed to prohibit inmates from having tape players in their cells. (Federal Correctional Institution, Oxford, Wisconsin)

U.S. Appeals Court
DESTRUCTION OF

Free v. U.S., 879 F.2d 1535 (7th Cir. 1989). A federal prisoner brought a federal tort claims action alleging that during a shakedown of his cell, prison guards either negligently or intentionally destroyed various items of personal hygiene, including toothpaste and baby powder, plus a tennis shoe. The parties consented to have the suit tried by a magistrate, who held a bench trial in the penitentiary and at its conclusion entered a judgment for the United States. The prisoner then sought permission to appeal in forma pauperis. The U.S. District Court denied the petition, and appeal was taken. The appeals court found that the federal prisoner who threatened to bring a tort-claim suit every time his cell was searched, apparently trying both to deter prison guards from searching his cell and to obtain replacement for lost, damaged, or worn out items of personal property at the government's expense, was abusing the judicial process in a classic sense of using courts to pursue ends other than vindication of claims believed to be

meritorious. Thus, he was not entitled to in forma pauperis status in appeal of the magistrate's decision in favor of the government. The request for leave to appeal in forma pauperis was denied, and the appeal was dismissed. The court ruled that abusers of the judicial process are not entitled to sue and appeal without paying normal filing fees-- indeed, they are not entitled to sue and appeal, and they are not merely not to be subsidized; they are to be sanctioned. (Federal Penitentiary, Marion, Illinois)

U.S. District Court
CROWDING
PLUMBING
TOILETS
SHOWERS

Gilland v. Owens, 718 F.Supp. 665 (W.D. Tenn. 1989). Convicted inmates and pretrial detainees brought a Section 1983 action challenging conditions at a county jail. The U.S. District Court found that the inmates and detainees failed to establish that incidents of delayed medical attention occurred with sufficient frequency to violate the eighth amendment and due process rights to medical care. It was also found by the court that the sanitary and hygiene conditions did not violate constitutional rights. Frequent and delayed repairs of the county jail toilets and showers and short-term deprivations of toilet paper, towels, sheets, blankets, mattresses, toothpaste, and toothbrushes did not violate the eighth amendment or due process rights of the inmates and detainees. The evidence failed to show any undue delay in the repair of toilets and showers, and the evidence also failed to indicate that deprivations occurred with sufficient frequency to amount to constitutional deprivation. The amount of the sheriff's budget for various categories and sources of revenue was irrelevant in the action challenging the constitutionality of the conditions at the county jail. (Shelby County Jail, Memphis, Tennessee)

U.S. Appeals Court
DISPOSITION OF
FUNDS
MONEY

Gillihan v. Shillinger, 872 F.2d 935 (10th Cir. 1989). An inmate who had been transferred from another prison brought a civil rights action against prison officials after the officials froze funds in his prison account until he paid for transportation expenses. The U.S. District Court entered a judgment in favor of the officials, and the inmate appealed. The appeals court, affirming in part, reversing in part, and remanding the case, found that the inmate's allegations were sufficient to state a civil rights claim based on the deprivation of property without due process, but freezing of the inmate's account was not cruel and unusual punishment in violation of the eighth amendment. According to the court, the inmate had a property interest in funds in his prison account for due process purposes, to the extent the funds constituted monies received from friends and family outside prisons or represented wages earned while incarcerated. Section 1983 does not distinguish between personal liberties and property rights, and the deprivation of the latter without due process gives rise to a claim under Section 1983.

Prison officials argued that the suit should have been dismissed because the inmate had adequate administrative and state remedies. But the court disagreed, noting that this was not a random and unauthorized act, but one taken pursuant to institution policy. "In such cases, the availability of an adequate state post-deprivation remedy is irrelevant..." said the court. The case was sent back to the district court to determine the exact nature and timing of the hearing due to the inmate. (Wyoming State Prison)

U.S. District Court
DISPOSITION OF
FUNDS
INTEREST

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.

Inmates had no property right under Indiana law in the interest earned on their personal funds deposited in the inmate trust fund, as the statute specifically provided that the interest earned on the inmates' personal funds deposited in the trust fund belonged to the trust, not the inmates. Restrictions imposed on the state prison inmates with respect to the withdrawal of personal funds deposited in the inmate trust fund did not deprive them of property without due process of law. The state's legitimate security interests were served by policy, since an unrestricted ability to withdraw personal funds could result in a facilitation of escape plans or the promotion of trafficking in contraband, and the inmates were still permitted to withdraw funds to pay immediate family members, to pay legitimate debts or to make authorized purchases. (Indiana State Prison, Michigan City)

U.S. Appeals Court
DISPOSITION OF
FUNDS

Rochon v. L.A. State Penitentiary Inmate Account, 880 F.2d 845 (5th Cir. 1989), cert. denied, 110 S.Ct. 742. A state prisoner serving a life sentence without a possibility of parole brought a federal civil rights action claiming that a state statutory scheme which restricted the use of incentive pay received for work performed at the prison deprived him of due process because the state provides for the turnover to the prisoner of funds in their savings account in which one half of wages was required to be placed upon the release from custody. The U.S. District Court granted summary judgment for the defendants, and the prisoner appealed. The appeals court, affirming the decision, found

that the nature of the prisoner's property interest in funds received as incentive wages solely because of the state statutory scheme could be defined by reasonable provisions of state legislation, and the restriction on the use of funds did not deprive the prisoner of equal protection or deprive him of property without due process. The funds in the savings account could only be used for specific limited purposes (education, court costs, victim repayment or the purchase of bonds), and amounts remaining in savings are turned over to prisoners upon their release from custody. The prisoner argued that he would never be released from custody due to his sentence and was therefore being deprived of his property. (Louisiana State Penitentiary)

U.S. Appeals Court
DISPOSITION OF
FUNDS

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)

1990

U.S. District Court
RECEIPTS

Ashford v. Barry, 737 F.Supp. 1 (D.D.C. 1990). An inmate brought action against corrections officers alleging denial of due process in violation of the eighth amendment. The U.S. District Court held that a prison policy of issuing receipts for seized property as soon as practicable was reasonable and did not deprive the inmate of due process. The Court also held that seizure of the inmate's sheets, blankets, and toiletries did not rise to the level of an eighth amendment violation where those articles were seized because they were being used to create a disturbance in the facility. (DC Central Detention Facility)

U.S. Appeals Court
MONEY
DISPOSITION OF
FUNDS

Blankenship v. Gunter, 898 F.2d 625 (8th Cir. 1990). Two inmates, in separate cases, challenged a prison regulation forbidding inmates from using the money in their inmate trust fund account for religious donations. The trial courts, in both instances, upheld the regulation and the inmates appealed. The U.S. Court of Appeals found that the regulation did not violate the inmates' First Amendment rights to free exercise of religion. The regulation allowed prisoners to use their trust fund accounts to assist with support of their families, make necessary purchases in the canteen and from approved vendors, or for deposit in interest bearing accounts in designated financial institutions, or for legal expenses. Inmates could open accounts outside the institution over which the prison would have no control and therefore, alternative means existed for inmates to make such donations. According to the court, restricting the use of funds was rationally related to legitimate prison security interests in controlling illegal activities such as gambling, contraband and coerced expenditures. Furthermore, too great a burden would be imposed on the prison to investigate the legitimacy of every requested donation or recipient organization. (Nebraska State Penitentiary)

U.S. District Court
LOSS OF PROPERTY
SEARCH

DeSouto v. Cooke, 751 F.Supp. 794 (E.D. Wis. 1990). A prisoner filed a pro se action pursuant to Section 1983 based on the deprivation of personal property by prison officials. The officials moved to dismiss on grounds of failure to state a claim. A U.S. Magistrate recommended dismissal. The district court denied the motion to dismiss. According to the court, the allegations that the officials purloined the prisoner's personal documents under false pretexts, that the documents were of special interest to the corrections officials because they were damaging to the department of corrections and that persons responsible for purloining the documents acted under the direction of supervisory officials at the correction facility stated a Section 1983 claim based upon deprivation of property without due process of law, and the availability of postdeprivation state law remedies did not preclude the liability of prison officials for authorized and predictable deprivation of the prisoner's property. (Fox Lake Correctional Institution, Wisconsin)

U.S. Appeals Court
DISPOSITION OF
FUNDS

Johnpoll v. Thornburgh, 898 F.2d 849 (2nd Cir. 1990). An inmate petitioned for a show cause order seeking declaratory and preliminary injunctive relief, including a stay of collection procedures under the Inmate Responsibility Program. The U.S. District Court denied the inmate's petition, and the inmate appealed. The appeals court affirmed the decision and found that the inmate was required to exhaust administrative remedies with the Bureau of Prisons before he could bring a federal action challenging the collection procedures under the Inmate Responsibility Program. The Bureau of Prisons did not exceed its statutory authority nor depart from its own regulations by administering the Inmate Responsibility Program to collect court ordered civil fines and judgments. The Inmate Responsibility Program regulations allowing prison officials to require that all inmates with debts participate, were not punitive and did not violate due process. (New York Bureau of Prisons)

U.S. Appeals Court
LIMITATIONS

Long v. Collins, 917 F.2d 3 (5th Cir. 1990). Inmates filed a pro se Section 1983 action challenging a prison administrative directive which limited total storage space inside inmate cells to four cubic feet. The U.S. District Court dismissed the complaint, and appeal was taken. The court of appeals found that the inmates had sought injunctive relief for an alleged constitutional violation, but such relief is only available through the mechanism of the *Ruiz* remedial injunction that presently operates upon the Texas prison system. "Separate individual suits may not be maintained for equitable relief from allegedly unconstitutional Texas prison conditions," because to do so would interfere with the orderly administration of the *Ruiz* class action. Hence, until the *Ruiz* injunction is lifted or modified, inmates' claims for equitable relief must be made solely through the *Ruiz* class representative. The inmates' punitive damages claim, arising out of promulgation of a facially neutral administrative directive governing prisoners' accumulation of property, by restricting permissible storage space in cells, was properly dismissed as frivolous; there was no arguable basis for a contention that prison officials maliciously, wantonly, or oppressively violated constitutional rights of prisoners by promulgating the directive, as would be required for assessment of punitive damages. (Texas Department of Criminal Justice, Institutional Division)

U.S. Appeals Court
PROHIBITED
PROPERTY

Mason v. Clark, 920 F.2d 493 (8th Cir. 1990). A prisoner brought a Section 1983 action, claiming deprivation of his due process rights by the warden's refusal to allow him to have a AM/FM radio. The U.S. District Court granted summary judgment to the warden and the prisoner appealed. The court of appeals found that an unsigned affidavit submitted by the government in opposition to the prisoner's claim of process violation did not constitute evidence sufficient to support a motion for summary judgment. Other evidence was established that there was a valid security reason for prohibiting the possession of radios. The possession of such a radio created a security risk in that it could be altered to receive radio broadcasts by the prison personnel and the state police. The regulation was constitutional because it was reasonably related to protecting prison security and there were no other reasonable alternatives. Prisoners were allowed to possess AM radios. (Arkansas Department of Corrections)

U.S. Appeals Court
DESTRUCTION OF

Orebaugh v. Caspari, 910 F.2d 526 (8th Cir. 1990). An inmate brought a Section 1983 complaint against various prison officials. The U.S. District Court dismissed the complaint and the inmate appealed. The court of appeals affirmed the decision, finding that the destruction of property taken from the inmate's cell did not violate due process. The inmate failed to show that the prison's policy of not crediting him with the value of the items taken from his cell and destroyed, but only allowing him to send replacements for the items home, was not reasonably related to a legitimate penological interest, as was necessary to the inmate's challenge to the policy. (Missouri Prison)

U.S. District Court
CONFISCATION
LIMITATIONS
PROHIBITED
PROPERTY

Savko v. Rollins, 749 F.Supp. 1403 (D. Md. 1990), affirmed, 924 F.2d 1053. Inmates brought an action challenging a state prison regulation prohibiting in-cell electric hot pots. On the prison officials' motion for summary judgment, the district court found that the prison regulation did not constitute cruel and unusual punishment in violation of the Eighth Amendment, absent an allegation that the prison food services were inadequate. In addition, the plaintiffs did not demonstrate that the food service was substandard to the point that prisoners had to provide for their own nourishment. The court also noted a valid and important interest in fire safety to support the restrictions on hot pots. Inmates also challenged a state prison regulation limiting the amount of written material they could keep in their cells. On the prison officials' motion for summary judgment, the district court found that the prison regulation limiting inmates to 1.5 cubic feet of books and other written materials in a cell did not impermissibly infringe upon the inmates' right of access to the courts, although the regulation made inmate legal research less convenient. According to the court, the plaintiffs were left with ample opportunities for access to the courts through established legal assistance programs, some prison libraries and the monthly rotation system for in-cell legal materials. There appeared to be no obvious alternatives to the limitations on the amount of material to be kept in cells which would not significantly drain prison financial resources. In addition, even if the regulation infringed the inmates' right of access to courts, the state's asserted justifications for the rule, including fire safety and prison security, furthered legitimate penological concerns, as required to satisfy federal standards. (Maryland State Correctional System)

U.S. Appeals Court
LOSS OF
PROPERTY

Sellers v. U.S., 902 F.2d 598 (7th Cir. 1990). An inmate whose property had been lost following confiscation during a prison lockdown brought a *Bivens* action against the warden and three guards. The U.S. District Court entered judgment in favor of the inmate pursuant to the Federal Tort Claims Act, after the *Bivens* action had previously been dismissed against the individuals, and appeal was taken. The court of appeals, affirming in part, reversing and remanding in part, found that remand

was required to permit the district court to address the issue of the lost books, and the marshals' failure to take appropriate steps in attempting to obtain service upon the former guards and the warden constituted good cause why the service was not effectuated within a 120-day period. The magistrate's award to the inmate of \$100 for an oil painting lost by guards in the federal prison during the inmate's incarceration was not improper; nothing in record suggested that the painting had any market value, and although the inmate attached a value of \$200 to it, the magistrate was not required to accept it. A letter from a prisoner-artist supporting the inmate's valuation of the painting was inadmissible in the inmate's action brought pursuant to the Federal Tort Claims Act. The letter was hearsay and speculative. (Federal Prison, Marion Illinois)

1991

U.S. Appeals Court DISPOSITION OF FUNDS

Abdullah v. Gunter, 949 F.2d 1032 (8th Cir. 1991), *cert. denied*, 112 S.Ct. 1995. An inmate brought a Section 1983 action against prison officials, claiming that denial of his request that \$2.00 be withdrawn from his account in the Inmate Trust Fund and sent to a religious organization violated his due process, equal protection, and free exercise rights. According to the appeals court, to state an equal protection claim, the plaintiff must show at a minimum that the state has failed to treat similarly situated persons alike. The district court held that no equal protection violation occurred in view of undisputed evidence that all inmates under the auspices of the Department of Correctional Services were denied permission to make religious or charitable contributions from their inmate trust accounts. The appeals court found that the district court abused its discretion in denying the inmate appointed counsel at trial on the First Amendment free exercise claim. The indigent prisoner lacked sufficient resources to investigate the relevant facts. The inmate and the court would have benefitted greatly from having appointed counsel to investigate relevant issues. (Nebraska State Penitentiary, Nebraska)

U.S. District Court PROHIBITED PROPERTY

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

U.S. Appeals Court LOSS OF PROPERTY

Hall v. Bellmon, 935 F.2d 1106 (10th Cir. 1991). A Native American state prisoner appealed a dismissal by the United States District Court of his claims that prison policies and procedures and action of prison employees violated his First Amendment right to free exercise of religion. The court of appeals found that the inmate did not state a claim in connection with the confiscation of his talisman, a sharp bear tooth necklace, and medicine bag, which had a thong that could be used for wearing around the neck. Prison regulations prohibiting any inmate from possessing sharp objects or items that could be worn around the neck, including religious items, were on their face reasonably related to a legitimate penological interest in protecting the safety of other inmates and prison personnel and preventing suicide attempts. Inmates were guaranteed other avenues for practice of their respective religions, including Native American beliefs, and a civil rights claim based on intentional destruction of his property in violation of due process was insufficient based on the prisoner's conclusory allegations of intent with respect to the destruction of the religious items. (Lexington Assessment and Reception Center, Oklahoma)

U.S. District Court PROHIBITED PROPERTY

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
MONEY
DISPOSITION OF
FUNDS

Muhammad v. Moore, 760 F.Supp. 869 (D. Kan. 1991). An inmate brought a pro se civil rights complaint asserting his entitlement to back pay. The U.S. District Court found that the inmate's refusal to participate in an inmate financial responsibility program warranted a reduction of prison earnings to maintenance pay of \$5 per month, and the fact that the prisoner's family was forced to provide him with funds for personal use did not identify an arguable deprivation of constitutional dimension and thus did not entitle the prisoner to relief. (U.S. Penitentiary, Leavenworth, Kansas)

U.S. District Court
DISPOSITION OF
FUNDS

Scott v. Angelone, 771 F.Supp. 1064 (D. Nev. 1991). An inmate brought an action alleging that he was denied due process when the Nevada Department of Prisons froze his inmate trust account and deducted money for medical charges. On the defendants' motion to dismiss and motion for summary judgment and the plaintiff's motion to strike, the district court found that, where an administrative regulation establishing policy and procedure of charging an inmate \$4 for each inmate-initiated, non-emergency medical visit was promulgated by the Nevada Department of Prisons, and that the Department was headed by the Board of State Prison Commissioners, the policy, practice and procedure was established with approval of the Board as required by Nevada law. It was also found that the \$4 charge per visit was a "reasonable deduction" to defray the cost of an inmate's medical care within the meaning of the Nevada statute. In addition, a predeprivation hearing was not constitutionally required for charging of medical visits or freezing of an inmate's trust account for failure to maintain a minimum balance required to cover those charges, where the inmate had to authorize a charge prior to treatment and the inmate was notified of the billing system used through posting of an Administrative Directive. Where the inmate authorized charging of his account for medical visits, had prior notice that his account would be frozen if less than a certain balance were maintained to cover those charges, and was immediately reimbursed for a wrongful charging of his account for medical visits after filing an accounting inquiry with the prison, the prison officials satisfied requirements of due process in their administration of the medical charging procedure. (Northern Nevada Correctional Center, Carson City, Nevada)

U.S. Appeals Court
PROHIBITED
PROPERTY

Thomas v. Scully, 943 F.2d 259 (2nd Cir. 1991). An inmate brought a pro se complaint alleging that a prison policy prohibiting his possession of noncommercial nude photographs violated his First Amendment rights. The U.S. District Court dismissed the complaint sua sponte, and the inmate appealed. The court of appeals found that the complaint was not so frivolous as to warrant dismissal without giving the inmate an opportunity to be heard. (Green Haven Correctional Facility, New York)

U.S. Appeals Court
DISPOSITION OF
FUNDS

Weaver v. Toombs, 948 F.2d 1004 (6th Cir. 1991). Prisoners at a state penal facility instituted a federal civil rights action against state prison officials, alleging deprivation of their constitutional rights. After granting the prisoners' motion to proceed in forma pauperis, the U.S. District Court dismissed the case. On in forma pauperis appeal, the court of appeals affirmed. The prison officials moved for an order taxing costs against the prisoners to be satisfied by a direct resort to their prison accounts. The court of appeals found that there was no constitutional basis for a rule barring collection of costs from indigent prisoners. In addition, the court of appeals had the authority to assess reasonable costs against unsuccessful in forma pauperis plaintiffs even if their claims were not deemed frivolous, malicious, or vexatious. The remand of the prisoner's civil rights action against state prison officials to the judicial officer who originally permitted the prisoners to proceed in forma pauperis was warranted to ascertain whether the prisoners, or any of them, could establish entitlement to relief from collection of costs assessed therein. The court of appeals was not equipped to deal with a hearing on the question of relief, or partial relief, or extension of time for payment of costs in the case of the in forma pauperis prisoner plaintiffs against whom assessment of costs had been made. (Ionia Maximum Correctional Facility, Michigan)

1992

U.S. District Court
PROHIBITED
PROPERTY
MONEY

Anderson v. Fiedler, 798 F.Supp. 544 (E.D. Wis. 1992). An inmate brought a Section 1983 action arising from alleged confiscation of \$150 from the inmate by prison officials; the inmate filed a petition for leave to proceed in forma pauperis. The district court denied the motion, finding that the inmate's claim that prison officials deliberately deprived him of property without due process was frivolous, precluding him from proceeding in forma pauperis. Depriving an inmate of the "right" to possess money does not violate due process; it is reasonable and necessary to prevent problems that may arise by the presence of money inside the prison, to maintain internal order and to uphold legitimate security concerns. (Oshkosh Correctional Institution, Wisconsin)

U.S. District Court
CONFISCATION

Chavers v. Abrahamson, 803 F.Supp. 1512 (E.D. Wis. 1992). An inmate brought a Section 1983 action against correctional officers based on confiscation of his law books and legal materials. On the inmate's petition to proceed in forma pauperis, the district court found that the inmate, who alleged that his only sources of income were "gifts from friends and relatives of amounts unknown," and alleged that he had debts and obligations consisting of "large amounts of money," satisfied the requirement of an in forma pauperis statute that he was unable to pay the costs of the commencing action. It was also found that the inmate's claim that confiscation of his law books and legal materials deprived him of a constitutional right to meaningful access to courts was frivolous where none of the books or materials taken could be considered essential to the pending appeal. Such books and materials, or adequate substitutes, were available in the prison law library, and the inmate acknowledged that he was allowed to keep those documents essential to ongoing litigation. In addition, the inmate's claim that confiscation of his law books and legal materials was intentional unauthorized deprivation of property without due process of law was not actionable under the Fourteenth Amendment as Wisconsin law provided him with many postdeprivation remedies. However, the court found that the inmate's claim that confiscation of his law books and legal materials deprived him of his property without due process of law stated an arguable claim for relief under the Fourteenth Amendment and Section 1983, for purposes of allowing an in forma pauperis action. There was no indication that the inmate was deprived of books and materials for security reasons, or that the inmate had an adequate opportunity to challenge the correctional facility's policy of prohibiting inmates from possessing their own law books and legal materials. (Green Bay Correctional Institution, Wisconsin)

U.S. Appeals Court
DISPOSITION OF
FUNDS

Foster v. Hughes, 979 F.2d 130 (8th Cir. 1992). Inmates brought a Section 1983 action claiming that Missouri officials arbitrarily denied them the right to place their monies in private, interest-bearing accounts. The U.S. District Court awarded summary judgment to the prison officials and the inmates appealed. The court of appeals, affirming the decision, found that the prison inmates failed to state a procedural due process claim; the application of the rule did not depend upon facts and circumstances surrounding each inmate. Furthermore, Missouri regulations did not violate substantive due process rights as the prohibition was necessary to deter escapes by preventing inmates access to available funds outside prison, to prevent inmate fraud upon those outside prison, and to prevent the use of inmate funds for illegal purposes. The prison provided inmates with an alternate method of earning interest on their funds, and providing inmates access to private accounts would seriously burden prison operations. (Missouri Department of Corrections)

U.S. District Court
DESTRUCTION OF

Stewart v. McGinnis, 800 F.Supp. 604 (N.D.Ill. 1992), affirmed, 5 F.3d 1031. A state inmate brought a civil rights action against various state and prison officials in both their individual and official capacities alleging that he suffered several constitutional violations during his incarceration at a state facility. On cross motions for summary judgment, the district court found that the inmate was transferred out of the correctional facility, and was under no threat of repeated injury. He therefore lacked standing to bring claims for declaratory and injunctive relief under Section 1983. The inmate failed to establish that the destruction of his property without notice or a hearing was a part of the correctional facility's established shakedown procedures; thus, the inmate's due process rights were not violated since there were adequate postdeprivation remedies available. (Stateville Correctional Center, Illinois)

1993

U.S. Appeals Court
CONFISCATION

Bernadou v. Purnell, 836 F.Supp. 319 (D. Md. 1993), cert. denied, 114 S.Ct. 559. An inmate filed a civil rights action against prison officials after documents were seized during a prison shakedown. The district court found that the inmate was not deprived of meaningful access to court because there was no indication that he suffered any detriment in preparing an application for postconviction relief that he began eight years earlier. According to the court, not every confiscation by prison officials of inmates' postconviction materials would amount to an actionable constitutional violation of the right of meaningful access to court; an inmate had to show actual injury to assert more than an abstract claim. (Maryland Penitentiary)

U.S. District Court
PROHIBITED
PROPERTY

Betts v. McCaughtry, 827 F.Supp. 1400 (W.D. Wis. 1993), affirmed, 19 F.3d 21. Prisoners sued prison officials under Section 1983 alleging violation of constitutional rights arising from prison regulations censoring certain musical cassettes and banning carved hairstyles, long fingernails, and the wearing of sunglasses and stocking caps indoors. The district court found that the prison's practice of screening all music cassettes carrying parental advisory labels was not a pretext for censoring rap music and did not show racial discrimination. Prisoners failed to show that the audience for the music was exclusively black, and there was no direct evidence that the purpose was to discriminate against African-American inmates. (Waupun Correctional Institution, Wisconsin)

U.S. Appeals Court
CONFISCATION
PROHIBITED
PROPERTY

Bryant v. Muth, 994 F.2d 1082 (4th Cir. 1993), cert. denied, 114 S.Ct. 559. An inmate sued prison officials alleging that the confiscation of his computer disks interfered with his constitutional right of access to courts. The U.S. District Court denied the prison officials' motion for summary judgment ruling that they were not entitled to qualified immunity. After the prison officials appealed, the court of appeals, reversing and remanding, found that the computer disks were "contraband" subject to seizure and confiscation by prison officials under Bureau of Prison regulations. The prison officials had the authority to seize and confiscate the contraband computer disks and the seizure of the disks did not interfere with the inmate's constitutional right of access to courts since his creation of the computer disks was unauthorized under regulations. (Federal Correctional Institute, Butner, North Carolina)

U.S. Appeals Court
DISPOSITION OF
FUNDS
MONEY

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
CONFISCATION

Childress v. Delo, 820 F.Supp. 458 (E.D. Mo. 1993). An inmate brought an action against prison officials, alleging violations of Section 1983 concerning restrictions imposed following an altercation that occurred when correctional officers instructed several inmates to remove gang colors displayed in a dining room. On the defendants' motion for summary judgment, the district court found that the Constitution did not require prison officials to prove that each item of property confiscated from an inmate in connection with the altercation between inmates and correctional officers be used to violate institution rules. The directive to remove all inmate property except one set of clothing, bedding, and personal hygiene products was issued for security reasons and it would have been inappropriate for the court to substitute its judicial judgment for that of expert prison administrators. Prison officials were not deliberately indifferent to the inmate's serious medical needs concerning deprivation of the inmate's property, although the inmate may have developed a foot fungus, as the foot condition was promptly treated. The court found that limitations on group religious services and religious materials following the altercation were reasonable and did not violate the inmate's First Amendment rights. All group activities, not merely religious services, were suspended. There was no indication that security concerns were exaggerated or unwarranted, inmates were allowed to request visits from the prison chaplain, and while the inmate's hard-bound Koran was confiscated, he could always have requested and received a soft-back Koran. (Potosi Correctional Center, Missouri)

U.S. District Court
DESTRUCTION OF
PROHIBITED
PROPERTY

Hardiman v. Hartley, 842 F.Supp. 1128 (N.D. Ind. 1993). A former inmate brought a civil rights action against prison officials, claiming that they violated his constitutional rights by withholding certain mail-ordered items, and ultimately destroying some of those items. The district court found that the withholding of macrame supplies based on the possibility that they could be used to facilitate an escape did not violate the inmate's First Amendment rights. In addition, the inmate did not have a viable due process claim based on failure to return items and the eventual destruction of some items. The authorities' actions were not part of any established state procedure and the inmate was able to avail himself of a postdeprivation remedy under state law. (Indiana State Prison, Michigan City, Indiana)

U.S. District Court
CONFISCATION
SEARCH

Ladd v. Davies, 817 F.Supp. 81 (D.Kan. 1993). An inmate brought a Section 1983 action alleging that confiscation of two of three packages of state-issued T-shirts from his cell during a shakedown violated due process, the Eighth Amendment, and was in retaliation for his litigation. The district court found that the removal of the T-shirts did not violate due process and was not cruel and unusual punishment; institutional orders in effect at the time of the search did not require the issuance of a confiscation slip and the removal of clothing did not cause unnecessary and wanton infliction of pain or result in the deprivation of basic human needs. Furthermore, the confiscation was not a retaliatory act for his pursuit of a legal claim; the confiscation was consonant with the institutional policy of conducting random searches for contraband, the clothing removed was state property, and no disciplinary action was taken against the inmate. (Kansas Department of Corrections)

U.S. Appeals Court
DESTRUCTION OF
PROHIBITED
PROPERTY

Watson v. Caton, 984 F.2d 537 (1st Cir. 1993). A prisoner brought an action under Section 1983 alleging that prison officials violated his federal constitutional rights with respect to medical treatment and with regard to property delivered to the prison. The U.S. District Court dismissed the complaint, and the prisoner appealed. The appeals court, affirmed in

part, vacated in part and remanded the case. The court found that a cause of action under Section 1983 was not stated by the prisoner's complaint against prison officials alleging a procedural due process violation arising from the official's alleged failure to notify him of delivery of "non-allowable property," and in the resulting destruction of property before the prisoner had a chance to have the items sent back. Evidence showed that the action was a deviation from, and not a reflection of, established state policy and procedure. (Downeast Correctional Facility and Charleston Correctional Facility, Maine)

U.S. District Court
DISPOSITION OF
FUNDS
MONEY

Webster v. Chevalier, 834 F.Supp. 628 (W.D.N.Y. 1993). Inmates brought a Section 1983 action against New York prison officials, claiming that their due process rights were violated by a mandatory prison policy requiring that \$40 in "gate money" be collected from inmates' incomes and placed in escrow accounts. The district court found that the New York legislature's decision to cease paying "gate money" from the public fund was a legitimate exercise of legislative power and not a deprivation of property and thus, the inmates failed to state a cognizable due process claim under Section 1983. The court found that the prison officials' policy of withholding funds from inmates was narrowly tailored to achieve the New York legislature's objective that inmates have at least \$40 when released from incarceration. (Groveland Correctional Facility, New York)

1994

U.S. Appeals Court
CONFISCATION

Abbott v. McCotter, 13 F.3d 1439 (10th Cir. 1994). A state prisoner, proceeding in forma pauperis, filed a Section 1983 complaint against prison guards and administrators. He alleged that they transferred him to administrative segregation without due process in violation of the Fourteenth Amendment and confiscated articles of his personal property contrary to a state-created liberty interest. The U.S. District Court dismissed the suit as frivolous and the prisoner appealed. The appeals court found that the inmate's claim that he was deprived of his property without due process when articles of his personal property were confiscated upon his transfer to administrative segregation was not frivolous and should not have been dismissed. The appeals court ruled that state prison regulations mandating that prisoners in administrative segregation be allowed to possess a variety of property arguably created a protected liberty interest. The inmate alleged that he received no predeprivation explanation of the confiscations. (Utah Department of Corrections)

U.S. Appeals Court
DISPOSITION OF
FUNDS
MONEY

Beeks v. Hundley, 34 F.3d 658 (8th Cir. 1994). Inmates who recovered a money judgment against a Missouri prison official under Section 1983 sought relief from seizure of the judgment proceeds by Iowa prison officials to satisfy the inmates' obligations under Iowa's victim restitution act. The U.S. District Court entered a judgment against the inmates and they appealed. The appeals court found that seizure of the inmates' Section 1983 damage recovery to pay victim restitution was not preempted by federal statute. (Iowa State Penitentiary)

U.S. Appeals Court
LOSS OF
PROPERTY

Del Raine v. Williford, 32 F.3d 1024 (7th Cir. 1994). A prison inmate brought a civil rights action against prison employees. The U.S. District Court dismissed the action and the inmate appealed. The appeals court found that the seizure of dictionaries from the inmate did not violate the inmate's right of access to courts. The prison law library had dictionaries available for the inmate's use, and the court found that the inmate had abundant access to federal courts. The court ruled that the loss did not deprive him of procedural due process. Prison procedures were followed in processing the inmate's property but a prison employee, in an apparently random and unauthorized act, failed to properly assure that the dictionaries were expedited to the inmate's sister according to procedures, along with the inmate's other property. (United States Penitentiary, Marion, Illinois)

U.S. District Court
PROHIBITED
PROPERTY

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. District Court
LOSS OF PROPERTY

Howard v. Leonardo, 845 F.Supp. 943 (N.D.N.Y. 1994). An inmate brought a civil rights action claiming that he was denied due process when his personal property was either lost or stolen when it was transferred from the inmate's regular cell to his involuntary protective custody (IPC) cell. The district court found for the defendants, noting that the prison provided adequate postdeprivation remedy, and in fact the inmate did file a claim with the corrections officials alleging that the property was either stolen or lost. (Great Meadow Correctional Facility, New York)

- U.S. District Court
PROHIBITED
PROPERTY
- Loose 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. The court also found that a prison regulation restricting the amount of personal property held by inmates in investigative segregation did not unconstitutionally infringe on the inmate's rights. Legitimate penological interests required the limitation of personal property by segregated inmates, who resided in maximum security cell houses. (Iowa State Penitentiary)
- U.S. Appeals Court
INTEREST
MONEY
- Mitchell v. Kirk, 20 F.3d 936 (8th Cir. 1994). An inmate filed a pro se civil rights action against various prison officials. The U.S. District Court entered judgment against the inmate and he appealed. The appeals court, affirming the decision, found that state prison regulations prohibiting individual inmate interest-bearing accounts were related to valid penological purposes and, thus, did not violate any constitutional right of the inmate. (Missouri State Prison)
- U.S. Appeals Court
CONFISCATION
- Nickens v. Melton, 38 F.3d 183 (5th Cir. 1994). An indigent prisoner brought a Section 1983 action alleging that a prison guard had taken his property without due process of law. The U.S. District Court dismissed the action as frivolous and the prisoner appealed. The appeals court, affirming the decision, found that the prisoner had an adequate postdeprivation remedy in Mississippi despite the fact that Mississippi did not allow for in forma pauperis appeals, and the prisoner was not denied a right to procedural due process. Under Mississippi law, the prisoner could have commenced a civil conversion action in forma pauperis against the prison guard. In addition, a Mississippi rule requiring prepayment of the cost for appeal in civil cases was rationally related to a legitimate government interest of offsetting expenses associated with operating an appellate court system and, thus, the rule did not violate the equal protection clause. (Parchman Penitentiary, Mississippi)
- U.S. Appeals Court
CONFISCATION
- Sims v. Mashburn, 25 F.3d 980 (11th Cir. 1994). A prisoner brought a Section 1983 action against state prison officials, alleging that his Eighth Amendment rights were violated in connection with the stripping of his cell. The U.S. District Court entered judgment for the prisoner and appeal was taken. The court of appeals, reversing the decision, found that the alleged failure of a prison guard to monitor the prisoner after his cell was stripped, which allegedly caused the prisoner to be subject to a penalty for a period longer than necessary to achieve penal objectives, did not inflict cruel and unusual punishment upon the prisoner in violation of his Eighth Amendment rights. The official was allowed deference in determining when the penal objective had been reached, and his conduct had been in compliance with policies that were in place at the institution; consequently he could not be characterized as malicious or sadistic as needed for an Eighth Amendment violation. (St. Clair Correctional Facility, Alabama)
- U.S. Appeals Court
LIMITATIONS
STORAGE
- Smith v. Colorado Dept. of Corrections, 23 F.3d 339 (10th Cir. 1994). An inmate brought an action challenging a new prison regulation eliminating storage of nonessential property for an inmate placed in maximum security or administrative segregation. The U.S. District Court dismissed the case and the inmate appealed. The appeals court, affirming the decision, found that the inmate lacked standing to challenge the amendment. Although he had twice been regressed to higher security facilities and had 27 years remaining on his sentence he did not allege any actual deprivation of property. (Colorado Department of Corrections)
- U.S. District Court
LIMITATIONS
STORAGE
- 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 provided for increased privileges with respect to keeping personal property in cells and the storage room. (Maximum Control Complex, Indiana Department of Corrections, Westville, Indiana)
- U.S. Appeals Court
LIMITATIONS
- Taylor v. Coughlin, 29 F.3d 39 (2nd Cir. 1994). A prison inmate brought a civil rights action against state prison officials for their alleged violation of his constitutional rights. The U.S. District Court dismissed the inmate's complaint and the inmate appealed. The appeals court, affirming the decision, found that a prison directive which prohibited the inmate from possessing a typewriter with a memory capacity in excess of 5,000 bytes did not violate the inmate's free speech rights. The directive was a content-neutral limitation, which sought only to regulate the means by which inmates recorded their speech. (Cayuga Correctional Facility, New York)
- U.S. Appeals Court
CONFISCATION
SEARCH
- Wycoff v. Hedgepeth, 34 F.3d 614 (8th Cir. 1994). An inmate brought an action against prison officials alleging that the search of his legal papers outside his presence was in contempt of an earlier consent decree. The U.S. District Court declined to find civil contempt and appeal was taken. The appeals court, affirming the decision, found that the discovery of bomb-making instructions in the inmate's cell was an exigent circumstance required under the previous consent decree for search of an inmate's legal papers outside the

inmate's presence. Prison officials reasonably concluded that the inmate may have concealed contraband in the papers. The shortage of prison staff justified the one-day delay following the seizure of papers before the search was conducted. The investigators who usually conducted the searches were out of prison, 17 staff members were sick or on vacation, and the emergency response team was providing security for court in session in the prison. (Iowa State Penitentiary)

1995

U.S. District Court
DISPOSITION OF
FUNDS

Delverne v. Klevenhagen, 888 F.Supp. 64 (S.D.Tex. 1995). A state inmate housed in a county jail challenged the jail policy of charging him for medical services. The district court held that the policy did not violate the inmate's equal protection rights, but that the implementation of the policy may have violated the inmate's due process rights. Nonindigent county inmates were statutorily required to pay for certain medical services, and the court found that the jail policy of not exempting state inmates was rationally related to the goals of reducing the administrative burden, curtailing frivolous requests for medical services, and avoiding an unfair tax burden on county residents. In spite of the fact that the state paid a daily fee (\$20), the fee was less than the actual cost of housing an inmate (\$41.74); therefore the state had not already paid for medical services as the inmate had argued. The court questioned the county's method of determining indigence and the administrative procedure employed for charging inmates, precluding summary judgment for the officials. The county policy requires inmates to pay between ten and sixteen dollars per visit to see a medical professional and inmates are charged three dollars for each prescription filled. The policy states that no inmate will be denied medical care based on his indigent status. The county stated that the fees are not charged until after a service is rendered, and only when the inmate has signed a document authorizing the charge to his inmate trust account. If the inmate is indigent he is not charged; if the inmate was not found to be indigent or did not apply for indigent status his trust fund is debited, even if the charge creates a negative balance. The court expressed concerns about the method and criteria used to determine indigency, based on the fact that an inmate may be declared non-indigent even though he has no funds in his trust account. (Harris County Jail, Texas)

U.S. District Court
PROHIBITED
PROPERTY

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
CONFISCATION

Hallal v. Hopkins, 947 F.Supp. 978 (S.D.Miss. 1995). Inmates who were husband and wife brought a pro se action against the administrator and deputy matron of a county detention center. The district court held that the wife had no First Amendment claim regarding deprivation of her property when she initially entered the facility and that confiscation of her property did not violate her right to privacy under the Fourth Amendment. The court found that partitioning the visitation area, permitting visitation only for periods of 20 minutes, and refusing to permit the husband and wife to visit one another were policies that were within the sound discretion of the detention center officials. However, the court found that an evidentiary hearing was warranted to determine the factual basis for an absolute ban on visitation by children under 12 years of age, and whether the ban was an exaggerated and overly broad response to security concerns under the circumstances. The court held that denying the wife legal assistance from her husband did not violate her constitutional rights. (Madison County Detention Center, Wisconsin)

U.S. Appeals Court
CONFISCATION

Saahir v. Estelle, 47 F.3d 758 (5th Cir. 1995). An inmate filed a motion for civil contempt against state prison officials alleging that they violated a consent decree in a Section 1983 action by confiscating and not returning nonreligious tapes. The U.S. District Court granted the motion and required the prison officials to return the tapes or reimburse the inmate. The prison officials appealed. The appeals court found that the state prison officials did not waive their Eleventh Amendment immunity from the enforcement of a provision of the Section 1983 consent decree by entering into a settlement agreement. The prison officials did not expressly waive their immunity and in fact argued that the settlement agreement did not cover non-religious tapes. (Texas Department of Criminal Justice)

U.S. District Court
DESTRUCTION OF
PROPERTY
SEARCH

Smith v. O'Connor, 901 F.Supp. 644 (S.D.N.Y. 1995). A pro se inmate brought a civil rights action alleging that correctional officials destroyed his personal property, including his legal papers, during a search of his cell. The district court dismissed the case, finding that a directive that required correctional officials to refrain from destroying property did not create a property interest to which due process rights could be attached. The court also held that the inmate failed to show any prejudice resulting from the destruction of his legal papers and thus failed to state a claim that he was denied access to the courts. The court noted that state law

provided a remedy for deprivation of property in its Court of Claims act, which permits an inmate to pursue a claim against the state. The inmate asserted that correctional officials stepped on his belongings and left his cell in disarray in violation of an agency directive, but the court held that failure to follow the state directive was not protected by federal law. (Sing Sing Correctional Facility, New York)

U.S. District Court
CONFISCATION

Taylor v. Cox, 912 F.Supp. 140 (E.D.Pa. 1995). An inmate challenged the constitutionality of seizure of his personal property in a pro se suit. Prison officials moved to dismiss the case, and the district court denied the motion in part, finding that the inmate had stated claims with regard to interference with access to court and interference with freedom of religion. The inmate was temporarily transferred to another state correctional facility for a parole violation hearing. The inmate claimed that certain legal and religious materials were seized from him and held in the receiving prison's property room until his parole hearing was completed. The inmate claimed that the seizure of his legal material interfered with his defense at one hearing and prevented his appearance at another hearing; the district court found that these allegations, if proved, might have infringed on the inmate's right of reasonable access to court. The court also found that the seizure of the inmate's Koran, which allegedly prevented him from engaging in religious rites, might be construed as substantial interference with his freedom of religion in violation of the Religious Freedom Restoration Act (RFRA) and with the inmate's First Amendment rights to freedom of religion. (SCI-Graterford, Pennsylvania)

U.S. District Court
LIMITATIONS
PROHIBITED
PROPERTY

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
DISPOSITION OF
FUNDS

Allen v. Cuomo, 100 F.3d 253 (2nd Cir. 1996). Inmates brought a § 1983 action against state officials challenging the constitutionality of a regulation pertaining to disciplinary surcharges and a pay lag for inmate wages. The district court granted summary judgment for the defendants and the appeals court affirmed. The appeals court held that the imposition of a mandatory \$5 disciplinary surcharge on inmates convicted of certain prison infractions did not violate their due process right to an impartial adjudicator. The inmates asserted that the surcharge gives prison disciplinary hearing officers an incentive to impose the surcharge frequently, but the court disagreed, noting that monies collected were credited to the state general fund and not to the corrections agency. The appeals court found that the fact that the surcharge did not contain a hardship waiver for indigent inmates, while other surcharges on unincarcerated persons contained such waivers, did not violate equal protection. The appeals court found that the deterrence of inmate misbehavior and the raising of revenue were legitimate penological interests, supporting the surcharge. The appeals court held that withholding a portion of inmates' wages until their release did not violate the due process clause, takings clause, or contracts clause. The policy calls for 20 percent of an inmate's wages over a 15-week period to be withheld until their release, and the court noted that while state corrections laws created an entitlement of inmates to payment for their labor, it did not create an entitlement to access their wages prior to release. The court also noted that forms signed by inmates consenting to their work assignment contained no details about how or when payments would be made. (Green Haven Correctional Facility, New York)

U.S. District Court
DISPOSITION OF
FUNDS

Arney v. Simmons, 923 F.Supp. 173 (D.Kan. 1996). Inmates brought a § 1983 action against a state secretary of corrections, challenging expenditures from an "inmate benefit fund" for a victim notification program. The district court held that no reasonable reading of the statute defining the inmate benefit fund would give rise to a legitimate expectation that all expenditures from the fund were required in some way to directly benefit inmates, and therefore the inmates failed to establish a protected liberty interest in the funds in such a way that they were entitled to a preliminary or permanent injunction. The fund is comprised primarily of commissions paid by the long distance telephone company that provides service on inmate calls, and over \$1 million currently comes into the fund each year. The corrections department used inmate benefit funds to pay for a victim notification program which notifies victims of any changes in an inmate's status; the cost of the program (for two employees) is between \$40,000 and \$80,000 per year. The department also used inmate benefit funds to pay for "capture stations" which are video imaging systems that cost approximately \$25,000 each, which generate an inmate identification card with a photo and encoded information. (Lansing Correctional Facility, Kansas)

U.S. District Court
CONFISCATION
PROHIBITED
PROPERTY

Bannan v. Angelone, 962 F.Supp. 71 (W.D.Va. 1996). An inmate filed a pro se complaint under § 1983 seeking injunctive relief with respect to a prison policy regarding personal belongings. The district court granted summary judgment in favor of the defendants, finding that the inmate had no general constitutional right to possess property while in prison. The court held that the prison policy which prohibited inmates from possessing word processors or typewriters did not constitute an unconstitutional hinderance of the inmate's access to courts, and that the prison procedures for seizing nonconforming inmate property satisfied due process. The inmate received notice of the new policy and was given 12 months to dispose of unauthorized property voluntarily. Procedures provided for notice to affected inmates and provided the right to appeal a decision before confiscation. The prison requires inmates to sign a form releasing the department of corrections from civil liability in the event that an inmate's personal property is lost or stolen; the court held that the policy did not violate the inmate's due process rights. (Virginia Department of Corrections)

U.S. District Court
DISPOSITION OF
FUNDS

Bihms v. Klevenhagen, 928 F.Supp. 717 (S.D.Tex. 1996). An inmate brought an action objecting to a requirement that he pay for his medical care. The district court held that a county could require the inmate to pay. The court found that a state is not required to provide notice to an inmate before deducting costs for medical care from an inmate's commissary account, and that a state is not required to make an advance declaration of an inmate's indigency if the state furnishes medical services without requiring payment in advance. The court also stated that inmates should be able to have small amounts of money deposited to their commissary accounts without that money being applied to their debts to the government. (Harris County Jail, Texas)

U.S. District Court
LIMITATIONS

Garrett v. Gilmore, 926 F.Supp. 554 (W.D.Va. 1996). An inmate brought a § 1983 suit seeking injunctive relief for an alleged violation of his constitutional rights when prison officials enforced limitations on the property that was allowed in personal areas in segregation. The district court held that the inmate's right of access to courts was not violated by restrictions on the amount of personal property allowed, and that any mix-up of legal papers which occurred when officers packed-up the property, or possible eventual destruction of excess property, did not violate the inmate's rights. The court noted that an inmate does not have a right to keep an unlimited amount of legal material in his personal area in prison, and that prison officials had a legitimate interest in fire safety. The court also noted that the inmate could have avoided the problem by packing away excess property when he was ordered to do so, and that the inmate failed to demonstrate any injury. (Dillwyn Correctional Center, Virginia)

U.S. Appeals Court
SEGREGATION

Hosna v. Goose, 80 F.3d 298 (8th Cir. 1996). Inmates who were housed in an administrative segregation unit for their own safety brought a civil rights action against prison officials, seeking damages and injunctive relief for alleged equal protection violations. The district court granted partial injunctive relief. The appeals court reversed the lower court's grant of injunctive relief, finding that limiting the type of property in administrative segregation cells, restricting inmates' access to prison resources, and requiring that they be handcuffed while out of their cells did not violate equal protection. Prison officials had argued that their policies were designed to reduce the possibility of danger by or to administrative segregation inmates. Inmates were only allowed out of their cells for three hours of recreation per week. When they were out of the cells, inmates were handcuffed and escorted by guards. The inmates were not allowed to attend classes, religious services, or group recreational activities, nor could they work or visit the law library. Inmates were not allowed telephone access for personal calls, their visitation privileges were more restrictive, and they were provided with less opportunity to purchase items through the canteen. (Jefferson City Correctional Center, Missouri)

U.S. Appeals Court
DISPOSITION OF
FUNDS

Mahers v. Halford, 76 F.3d 951 (8th Cir. 1996). Corrections officials appealed a district court order that enjoined them from withholding court-ordered restitution deductions from funds inmates received from outside sources without providing individualized predeprivation hearings; the district court required the officials to repay the money that was previously deducted and the officials appealed. The appeals court reversed and remanded, finding that due process was satisfied by the notice and hearing procedures provided by the Department of Corrections when engaging in the across the board policy of deducting 20 percent from all money received from outside sources. The court found that inmates are not entitled to complete control over their money while in prison and that inmates are not absolutely deprived of the benefit of their money when part of it is applied toward their restitution debts. The court noted that when an inmate leaves prison, he leaves with his restitution debts and that any payment of those debts while the inmate is incarcerated will work to his ultimate benefit. (Iowa Department of Corrections)

U.S. Appeals Court
DISPOSITION OF
FUNDS

Myers v. Klevenhagen, 97 F.3d 91 (5th Cir. 1996). A prisoner brought a § 1983 action against a sheriff alleging that the sheriff violated a state statute as well as the prisoner's constitutional rights by charging him for medical services despite his indigency. The district court granted summary judgment for the sheriff. Another prisoner brought a similar suit against the sheriff and the district court entered judgment for the prisoner. The appeals were consolidated and the appeals court held that the sheriff provided sufficient notice of the policy which charges nonindigent prisoners for medical services, and therefore did not violate prisoners' due process rights. The court also found that the state

provided an adequate postdeprivation remedy such that any unauthorized deprivation of a prisoner's property did not violate the prisoners' due process rights. (Harris County Jail, Texas)

U.S. District Court
INTEREST
LIMITATIONS

Rawls v. Sundquist, 929 F.Supp. 284 (M.D.Tenn. 1996). State death row inmates and donors who had given a satellite dish to the State of Tennessee for use by death row inmates, brought a § 1983 action against the state alleging that removal of the satellite dish violated due process and equal protection rights. The district court found that the contract clause did not create a property interest in the satellite on the part of the donors and that a prison policy governing inmate organizations did not provide death row inmates with a liberty interest in the satellite dish. The court also found that the state did not deny the inmates' equal protection rights by denying them access to the satellite dish while allowing other inmates such access. The court noted that inmates do not have a constitutional right to satellite/cable equipment for television. (Unit Two at Riverbend Maximum Security Institution, Tennessee)

U.S. District Court
DISPOSITION OF
FUNDS

Reynolds v. Wagner, 936 F.Supp. 1216 (E.D.Pa. 1996). County prison inmates filed a class action civil rights suit challenging a policy that charges inmates for their medical care. The district court held that fee for medical services programs do not, per se, violate the Eighth and Fourteenth Amendments because such programs do not necessarily involve arbitrary and burdensome procedures and do not necessarily result in interminable delays and outright denials of medical care. The court held that the county's fee program did not violate the First, Eighth or Fourteenth Amendments, or due process. The county charged \$3.00 for a nurse's visit and \$5.00 for a doctor's visit, and provided that if an inmate could not afford the fees his account was charged with a negative balance; the county could also seek to recover unpaid debts after discharge under the policy. The court found that assessing negative balances against accounts that did not have sufficient funds at the time of service did not violate Due Process where inmates could challenge individual fee assessments and where inmates were made aware of the right to challenge assessments by a description in the inmate handbook. The court found that this practice did not present a barrier to health care, especially where an inmate would never be denied health care solely because he could not afford it. The court noted that if an inmate sought medical attention less frequently as a result of the policy, it was by the inmate's own volition. The court held that a prison policy of charging for photocopying--coupled with charges for medical visits--did not violate the First Amendment. Prisoners were not forced to choose between taking their cases to court and adequate health care because a prison policy guaranteed that legal mail would be sent, and allowed an inmate with insufficient funds a small supply of personal hygiene items, mail supplies and a pencil, and three first class letters per week. (Berks County Prison, Pennsylvania)

U.S. District Court
DISPOSITION OF
FUNDS
MONEY

Robinson v. Fauver, 932 F.Supp. 639 (D.N.J. 1996). An inmate filed a § 1983 action challenging a New Jersey regulation that defined "indigent inmate," alleging the regulation violated his constitutional rights. The regulation classified an inmate as indigent when the inmate "has no funds in his or her account and is not able to earn inmate wages due to prolonged illness or any other uncontrollable circumstances" but does not classify an inmate as indigent if he or she has a verified "outside source from which to obtain funds." State officials sought to debit the prisoner's account to reimburse the State for legal photo-copying, medical co-payments, fines, court costs, and other assessments. The inmate argued that the State could not levy such assessments on funds that he might receive from outside sources, such as family and friends. The district court upheld the regulation finding it was rationally related to legitimate interests. The court found that the regulation did not violate the equal protection clause, nor did it deprive the inmate of a property interest in violation of due process. (Riverfront State Prison, New Jersey)

U.S. District Court
CONFISCATION

Wenzler v. Warden of G.R.C.C., 949 F. Supp. 399 (E.D.Va. 1996). A state prisoner brought an action against a warden seeking injunctive relief under § 1983. The district court dismissed the case, finding that the prisoner was not denied access to courts by a prison regulation that resulted in the confiscation of his typewriter. According to the court, the prisoner did not have a possessory interest in a typewriter that was protected by the due process clause. (Greensville Correctional Center, Virginia)

1997

U.S. District Court
STAMPS

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. District Court
DISPOSITION OF
FUNDS

Gardner v. Wilson, 959 F.Supp. 1224 (C.D.Cal. 1997). An inmate sued prison officials and others, challenging the constitutionality of five dollar copayments imposed on medical visits. The district court dismissed the case, finding that the copayment was not cruel and unusual punishment and did not violate equal protection. The court held that the inmate had received due process and that the law authorizing copayments was neither an ex post facto law nor a bill of attainder. The inmate was provided with due process because he was notified of the copayment policy before he initiated a medical visit, and he was provided with access to a grievance system that permitted him to challenge any erroneous charges. The court noted that assuring that inmates did not abuse their access to scarce medical services was a legitimate state purpose for requiring an inmate to pay a five dollar copayment for medical services. The inmate had requested the return of his fees because the taxpayers of California had not been provided with a rebate or the corrections department's budget had not been cut as a result of the taxpayer savings resulting from the copayment policy. The inmate also sought \$1 million in damages for "stress, anxiety, suffered mentally and emotionally and in some ways, physically as well." (California State Prison-Los Angeles County)

U.S. Appeals Court
DISPOSITION OF
FUNDS

McGore v. Wrigglesworth, 114 F.3d 601 (6th Cir. 1997). A state inmate brought a \$ 1983 action against a sheriff's department and officials for failing to serve a summons. The district court dismissed the action, and the appeals court affirmed and remanded. The appeals court set out procedures for handling prisoner and nonprisoner in forma pauperis complaints and appeals, finding that the inmate was not deprived of access to courts by the \$14.60 charge the sheriff sought for serving the summons. The appeals court found that under the Prison Litigation Reform Act (PLRA), the only issue is whether an inmate pays the entire filing fee at the initiation of a proceeding or over a period of time under an installment plan. Under PLRA, prisoners are no longer entitled to a waiver of fees and costs. The court found that by filing a complaint of notice of appeal, a prisoner waives any objection to a fee assessment by the district court, and waives any objection to the withdrawal of funds from his trust account by prison officials to pay court fees and costs. (Ingham County Sheriff's Department, Michigan)

U.S. District Court
LOSS OF PROPERTY

Melvin v. U.S., 963 F.Supp. 1052 (D.Kan. 1997). A pro se inmate brought an action against the United States under the Federal Tort Claims Act for loss of personal property from his cell. The district court denied summary judgment for the defendants, finding that once a federal prison officer agreed to lock the inmate's cell, the officer had a duty to act with reasonable care, and that fact issues as to whether the officer met that duty precluded summary judgment. The inmate alleged that the officer negligently unlocked his prison cell, allowing other prisoners to enter and take his belongings. The inmate valued the missing property at \$226.30. (United States Penitentiary, Leavenworth, Kansas)

U.S. Appeals Court
DISPOSITION OF
FUNDS

Reynolds v. Wagner, 128 F.3d 166 (3rd Cir. 1997). Inmates brought a class action suit against a county prison and warden challenging the constitutionality of a program under which the prison charged inmates a small fee (\$5) when they sought certain types of medical care. The district court entered a judgment in favor of the defendants and the appeals court affirmed. The appeals court held that the program was not per se unconstitutional under the Eighth Amendment and did not violate the Eighth Amendment as implemented. The court found that Spanish-speaking inmates did not receive deficient notice of the program due to the absence of a written Spanish translation of the program description. The program was explained in Spanish by officers and counselors to all Spanish-speaking inmates during orientation, the prison always had a Spanish-speaking employee on duty, and the medical department employed at least three nurses who were fluent in Spanish. The court held that the program did not violate procedural due process as the result of providing for fee deductions from an inmate's account even when the inmate did not sign an authorization form. The inmates had alleged that the program charged higher fees than the state Medicaid program, but the court found that the fees charged under Medicaid did not represent the maximum that could be constitutionally charged against a prisoner. According to the court, the failure of the prison to define the terms "chronic" and "emergency" which described in the inmate handbook conditions for which no fees would be assessed, did not make the program unconstitutionally vague. The court found no violation of the inmates' right of access to courts in response to the inmates' claim that the program reduced their funds available for legal mail and photocopying, where the inmates failed to establish actual or imminent interference with their access to court. (Berks County Prison, Pennsylvania)

U.S. District Court
DESTRUCTION
SEARCH

Robinson v. Ridge, 996 F.Supp. 447 (E.D.Pa. 1997). A prisoner sued state officials and employees alleging violation of his rights as the result of a random prison-wide security search. The district court held that the prisoner's right to free access to courts was not violated by the seizure of his legal materials, absent actual injury. The court also held that the seizure of the prisoner's religious materials in the course of a random security search, no matter how harmful the seizure might have been to the prisoner's religious practices, did not violate the Free Exercise Clause if it was reasonably related to the prison's legitimate penological interests. The prisoner's cell was searched as part of a prison-wide search during a declared state of emergency. During the search, the prisoner's personal property, including legal documents and articles of his Islamic faith, were thrown on the floor and swept into the trash.

The prisoner asked for a receipt and was refused. He filed a grievance and was denied relief, but was subsequently offered \$50, which he rejected. (SCI Graterford, Pennsylvania)

U.S. District Court
INTEREST
PROHIBITED
PROPERTY

Spruytte v. Govorchin, 961 F.Supp. 1094 (W.D.Mich. 1997). A state inmate brought a pro se civil rights action against corrections officials claiming retaliation and violation of his right of access to courts. The court held that the inmate lacked standing to bring a civil rights claim based on the permissibility of word processors. The court held that the inmate's right of access to court did not create a right to bring an independent lawsuit to complain of noncompliance with state court orders in litigation concerning a prisoner's right to use and possess a certain word processor. The court also found that the inmate failed to state a claim for retaliation in violation of his First Amendment rights. This federal case came from a lengthy state court action where the inmate had sued to be allowed a particular word processor. By the time the inmate eventually prevailed on appeal the specific model of word processor was no longer being manufactured, provoking another series of disputes over whether the inmate could receive a particular replacement model. A department of corrections hearing officer rejected a replacement model that was delivered to the inmate, and the inmate eventually reached a settlement in state court stipulating that a third model of word processor was acceptable. The inmate filed this federal civil rights action challenging the hearing officer's decision to reject the replacement model, alleging violation of his right of access to the courts, and alleging retaliation for his first lawsuit in the matter. The federal court found that the inmate failed to allege a property interest in a particular word processor, as required to support a procedural due process claim. (Lakeland Correctional Facility, Michigan Department of Corrections)

U.S. Appeals Court
LIMITATIONS

Weir v. Nix, 114 F.3d 817 (8th Cir. 1997). A former protective custody inmate sued prison officials under § 1983 alleging violation of his rights to free exercise of religion, and his rights under the Religious Freedom Restoration Act (RFRA). The inmate, a fundamentalist, separatist Christian, challenged the failure of officials to provide him with a spiritual advisor who shared his separatist beliefs. He also challenged the limitation of three hours per week of group worship in the chapel, holding religious services on Fridays as opposed to Sundays, allowing the inmate to have at most 25 books in his cell at one time, and prohibiting personal property--including Bibles--in the prison yard. The district court entered judgment for the officials and the appeals court affirmed, finding that the prison practices had not placed a "substantial burden" on the inmate's rights. The court noted that even though the prison chaplain was a nonseparatist who took an inclusive approach in administering the prison's Protestant service, the chaplain's beliefs were not significantly different from the inmate's, as the chaplain was himself a fundamentalist Christian who understood and preached the basic tenants of the fundamentalist faith. (Iowa State Penitentiary)

1998

U.S. District Court
LOSS OF PROPERTY

Asquith v. Volunteers of America, 1 F.Supp.2d 405 (D.N.J. 1998). A state prisoner sued corrections officials and operators of a halfway house claiming violation of his due process rights as the result of his termination from a work release program. The district court granted summary judgment in favor of the defendants, finding that the prisoner did not have a protected liberty interest in remaining in a work release program. The court noted that termination from the work release program did not alter the duration of confinement, but only affected the conditions of confinement. According to the court, the prisoner did not lose "core values of unqualified liberty" when he was terminated from a work release program that, although outside prison walls, placed strict limitations and heavily qualified privileges on participants. The court also held that the prisoner did not have a federal civil rights claim arising from the alleged failure to return his personal property upon his termination from the program, absent the lack of an adequate postdeprivation remedy. (New Jersey Department of Corr. and Volunteers of America)

U.S. Appeals Court
DISPOSITION OF
FUNDS

Christiansen v. Clarke, 147 F.3d 655 (8th Cir. 1998). A former inmate of a community corrections center brought a suit alleging that a prison had deprived him of his property without due process of law, after the prison withdrew \$2,790 from his inmate account to cover the costs for room and board during his participation in a work-release program. The district court dismissed the case and the appeals court affirmed. The appeals court held that the inmate lacked a constitutionally protected property right to the full amount of his salary from the work-release program because he did not have a constitutionally-protected right to work release. According to the court, a Nebraska statute that authorized the director of correctional services to collect from work-release inmates "such costs incident to the person's confinement" as the director deemed "appropriate and reasonable" provided the statutory authority for the prison's withdrawal of money from the prisoner's inmate account. (Community Corrections Center, Lincoln, Nebraska)

U.S. District Court
LOSS OF PROPERTY

Griffin v. DeTella, 21 F.Supp.2d 843 (N.D.Ill. 1998). A prisoner brought a § 1983 action against corrections officials alleging constitutional violations. The district court dismissed the action, finding that the prisoner failed to state due process and denial of access

to court claims related to the loss of his legal papers. The court also found that the prisoner failed to state a claim against the officials for failing to take action following the loss of his papers. According to the court, a prisoner who suffers a loss of property as the result of a random, unauthorized act of a state employee, is entitled only to an adequate post-deprivation remedy for that loss. The prisoner had complained that some of his legal papers were missing after he was transferred from one correctional facility to another, but he did not allege that the papers were purposefully taken or destroyed. The court noted that none of the prisoner's claims were dismissed because of the loss, and he suffered only a delay and inconvenience. (Stateville Correctional Facility, Illinois)

U.S. District Court
LOSS OF PROPERTY

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
DESTRUCTION OF
PROPERTY

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. The court ruled that because New York law offered the inmate an adequate remedy on his claim that his constitutional rights were violated when the prison officials took his bag of documents and personal items and later destroyed them, he could not receive relief on that claim in federal court. (Attica Correctional Facility, New York)

U.S. District Court
DISPOSITION OF
FUNDS

Loose v. Maschner, 113 F.Supp.2d 1343 (S.D.Iowa 1998). An inmate brought an action against a warden alleging that the state was violating the provisions of the Prison Litigation Reform Act (PLRA) by improperly collecting payments from his inmate account to apply against his court filing fees. The district court denied the inmate's request for an order, finding that the PLRA provision requiring monthly payments if the amount in the prisoner's account exceeds ten dollars, requires only that the balance exceed ten dollars at some time during the month, and that the inmate was not entitled to a notice of the date on which the state would collect the monthly filing-fee from his account. (Iowa State Penitentiary)

U.S. District Court
DISPOSITION OF
FUNDS
LIMITATIONS

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
DISPOSITION OF
FUNDS

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
DISPOSITION OF
FUNDS
- 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
DISPOSITION OF
FUNDS
- Murray v. Dosal, 150 F.3d 814 (8th Cir. 1998). An indigent prisoner filed a petition under the All Writs Act alleging violation of his constitutional rights arising out of the refusal of a clerk of the court to file a civil rights complaint without a partial filing fee, as mandated by the Prison Litigation Reform Act (PLRA). The district court denied the petition and the appeals court affirmed. The appeals court held that the imposition of a filing fee did not unconstitutionally burden the prisoner's right of access to courts and the fee requirement was rationally related to legitimate government interests. The appeals court also held that the assessment of the filing fee against the prisoner's prison account did not violate the principles of procedural due process. (Minnesota)
- U.S. Appeals Court
LOSS OF PROPERTY
- Nance v. Vieregge, 147 F.3d 589 (7th Cir. 1998). An inmate brought an action against a prison's property clerk, alleging that the clerk deprived him of his right of access to courts by misdirecting his possessions. The district court dismissed the case and the appeals court affirmed. The appeals court held that the inmate was not deprived of his right of access to courts by the loss of copies of his cases that he wanted to have when arguing in support of his motion for leave to withdraw his guilty plea. According to the court, the inmate did not lose any irreplaceable documents, and the inmate did not allege that his claim of actual innocence had been thwarted. (Graham Correctional Center, Illinois)
- U.S. Appeals Court
DISPOSITION OF
FUNDS
- Parrish v. Mallinger, 133 F.3d 612 (8th Cir. 1998). A state prisoner and his wife filed a § 1983 action against three prison officials who seized funds that came into the prisoner's inmate account. The officials had seized the funds to satisfy the prisoner's obligations under the Iowa Victim Restitution Act. After the district court concluded that two officials had violated the prisoner's due process rights, the appeals court remanded for further consideration. The district court granted qualified immunity to the officials and dismissed the wife's claims and the appeals court affirmed. The appeals court held that prison officials' ability to seize money that came into a state prisoner's inmate account from a source outside of the prison, and apply that money to satisfy the prisoner's valid restitution debt, did not violate the prisoner's substantive due process rights. (Iowa State Penitentiary)
- U.S. District Court
DESTRUCTION OF
PROPERTY
- Perez v. Metropolitan Correctional Center Warden, 5 F.Supp.2d 208 (S.D.N.Y. 1998). A prison inmate sought monetary damages from prison officials in a Bivens suit. The district court dismissed the case but the case was remanded on appeal on the limited question of whether the officials' alleged loss or destruction of the inmate's legal papers relating to his criminal conviction violated his constitutional right of access to courts to challenge his sentence. On remand, the district court granted summary judgment in favor of the prison officials, finding that the provision of legal counsel was sufficient to establish meaningful access to courts. The court also found that the inmate failed to establish that he was provided with ineffective counsel. The court noted that the inmate did not establish any injury since he did not allege that his attorney lacked necessary legal documentation or that the attorney was unable to raise the inmate's legal claims on appeal. (Metropolitan Correctional Center, New York)
- U.S. District Court
DISPOSITION OF
FUNDS
- 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)
- U.S. District Court
LOSS OF PROPERTY
DESTRUCTION OF
PROPERTY
- 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. According to the court, the postdeprivation remedy available to the prisoner for unauthorized confiscation of his tobacco was sufficient to satisfy due process. Under Texas law, prison inmates can be reimbursed for up to \$500 for claims of lost or damaged

property. Although a deprivation of property claim can be cognizable under the due process clause of the Fourteenth Amendment, the court held that due process is satisfied where the deprivation is random and unauthorized, and where the state has provided an adequate post-deprivation tort remedy. (Stiles Unit, Texas Department of Criminal Justice-Institutional Division)

1999

U.S. District Court DISPOSITION OF FUNDS

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. Appeals Court DISPOSITION OF FUNDS

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. Appeals Court LIMITATIONS

Cosco v. Uphoff, 195 F.3d 1221 (10th Cir. 1999). Prison inmates brought a civil rights complaint against several employees of a state corrections department claiming deprivation of property without due process and denial of access to the courts. The district court dismissed the complaint and the inmates appealed. The appeals court affirmed, finding that the *Hewitt* methodology does not apply to property and liberty interest claims arising from prison conditions. The appeals court held that the language in prison regulations governing what items inmates could keep in their cells did not create a property interest or entitlement. The court also found that new regulations limiting the amount of hobby and legal material that prisoners could keep in their cells did not create a property interest. (Wyoming State Penitentiary)

U.S. Appeals Court CONFISCATION PROHIBITED PROPERTY

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. Appeals Court PROHIBITED PROPERTY

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
DISPOSITION OF
FUNDS

McGhee v. Clark, 166 F.3d 884 (7th Cir. 1999). A federal prisoner sought an injunction against the Bureau of Prisons (BOP) to prevent the collection of further sums from him in payment of his fine and special assessment. His petition was denied by the district court and the appeals court affirmed. The prisoner had been fined \$5,000 and a special assessment of \$50 had been imposed by the sentencing court, all due "in full immediately." The appeals court held that the sentencing court was not required to establish a schedule of installment payments, and the sentencing court did not impermissibly delegate to the BOP the timing of payment of the fine by ordering immediate payment. The appeals court held that the use of the BOP's Inmate Financial Responsibility Program (IFRP) to schedule payment was proper. The court found that IFRP regulations permitted the BOP to accelerate the prisoner's payment of his fine and to count as available resources funds that the prisoner obtained from outside sources. (United States Penitentiary, Terre Haute, Indiana)

U.S. District Court
DISPOSITION OF
PROPERTY

Payton v. Horn, 49 F.Supp.2d 791 (E.D.Pa. 1999). A state prisoner brought a suit against prison officials under § 1983 challenging the withdrawal of funds from his prison account to pay for the medical expenses of an officer injured in a prison disturbance. The district court held that the prisoner failed to state a viable claim that his due process rights were violated by the withholding of funds. The prisoner had been ordered to pay a percentage of the medical costs as the result of disciplinary proceedings. (State Correctional Institution at Greene, Pennsylvania)

U.S. District Court
DISPOSITION OF
FUNDS

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
LIMITATIONS
PROHIBITED
PROPERTY

Roberts v. Cohn, 63 F.Supp.2d 921 (N.D.Ind. 1999). Prisoners brought a § 1983 action against a prison and prison officials alleging violation of their First and Fourteenth Amendment rights by a prison policy of prohibiting typewriters and word processors. The district court granted summary judgment in favor of the defendants. The court held that although inmates have a right to meaningful access to courts, this access is satisfied by providing basic materials, such as pens and paper, for the preparation of legal materials. According to the court, prison inmates do not have a constitutional right to use or possess typewriters and word processors. The court found that the policy, which allows prisoners to keep typewriters or word processors that they currently own, but prohibits prisoners from purchasing new machines, did not discriminate on the basis of suspect classifications such as race or religion. The court noted that the prisoners did not present evidence that they failed a course or program of study due to their inability to turn in typewritten work, and therefore did not show any violation of a liberty interest that they had in possessing a typewriter or word processor. (Indiana State Prison)

2000

U.S. District Court
CONFISCATION

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
CONFISCATION

Ballance v. Young, 130 F.Supp.2d 762 (W.D.Va. 2000). A state prisoner brought a pro se federal civil rights suit against prison officials, arising out of their seizure of several items of his personal property. The district court held that the prisoner had no reasonable expectation of privacy in his cell that would make seizure of a letter from his cell a Fourth Amendment violation that could be addressed in a § 1983 suit. The court found that the decision by officials to confiscate the prisoner's scrapbook and clippings, in accordance with a prison regulation that prohibited such items, was reasonable in light of security concerns that the metal parts of scrapbooks could be used as weapons and that razors and other contraband could be hidden in the clippings or scrapbooks, and in light of the time-consuming or extreme nature of other alternatives, such as x-raying cells. The court noted that the officials did not need reasonable suspicion to search prisoner cells as part of their policy of performing random searches. The court also held that the prisoner was afforded sufficient post-deprivation remedies to satisfy any due process concerns arising from the seizure of an attorney's letter that contained hair samples and, allegedly, two money orders, where the inmate did receive notice of a disciplinary hearing held under the prison regulation forbidding

abuse of mail. (Wallens Ridge State Prison, Virginia)

U.S. District Court
CONFISCATION

Searcy v. Simmons, 97 F.Supp.2d 1055 (D.Kan. 2000). 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 for the defendants. The court also found that the inmate was not deprived of procedural due process when prison officials removed his personal property after he was denied privileges and shipped it to his relatives without a pre-deprivation hearing, where the inmate was provided with the opportunity to specify where to send the property but refused to do so. (Hutchinson Correctional Facility, Kansas)

U.S. Appeals Court
DISPOSITION OF
FUNDS

Tillman v. Lebanon County Correctional Facility, 221 F.3d 410 (3rd Cir. 2000). An inmate brought a pro se § 1983 action against a county correctional facility and its warden, challenging the levying and collection of a fee for housing costs incurred during his periods of incarceration for state parole violations. The district court entered summary judgment for the defendants and the appeals court affirmed. The appeals court held that the fee of roughly \$4,000 imposed on inmate for housing costs did not violate the excessive fines clause, that the inmate was not denied procedural due process, and that the inmate was not deprived of equal protection. The county had confiscated half of the funds in his wallet and half of the funds sent on his behalf in order to partially collect the fee and turned his remaining debt over to a collection agency following his release from prison. The court noted that the inmate was not deprived of equal protection because "trustee" inmates were not charged for housing costs because they "paid" their housing costs by providing labor. The county charged inmates \$10 per day. (Lebanon County Correctional Facility, Pennsylvania)

U.S. Appeals Court
INTEREST
INMATE FUNDS

Washlefske v. Winston, 234 F.3d 179 (4th Cir. 2000). A state prisoner brought a pro se action under § 1983 alleging that prison officials took his property without just compensation when they expended the interest earned from his prison accounts for the general benefit of inmates. The district court granted summary judgment for the defendants and the prisoner appealed. The appeals court affirmed on other grounds, finding that the prisoner was not deprived of any property for the purposes of a Takings Clause analysis. The appeals court noted that the prisoner's claim that he had a property interest in the interest earned on his prison accounts, and that the state had taken that interest without just compensation, met prudential ripeness requirements since the State's use of the interest was uncontroverted and the amount was readily calculable. But the court found that the prisoner's limited right to the funds in his prison account did not derive from any traditional principle of common law, but from state laws that created limited property rights for penological purposes. (Powhatan Correctional Center, Virginia)

U.S. Appeals Court
DISPOSITION OF
FUNDS
INMATE FUNDS

Wright v. Riveland, 219 F.3d 905 (9th Cir. 2000). An inmate brought a class action suit against the secretary of a state corrections department challenging a state law that authorized a 35% deduction from all funds received by inmates from outside sources. The federal district court dismissed the constitutional claims but declared the law void in part to the extent that it impaired certain federal statutory rights. The appeals court affirmed in part, reversed in part and remanded. The appeals court held that the 35% deduction was not a "tax" within the meaning of the Tax Injunction Act but that the inmate class had sufficiently demonstrated standing to challenge the statute as violating the Excessive Fines Clause. The appeals court held that the ERISA anti-alienation provision did not prevent the corrections department from deducting funds under the state law from benefits received from ERISA-qualified pension plans. The appeals court refused to consider claims that the corrections department failed to pay interest on personal inmate savings accounts. (Washington Department of Corrections)

2001

U.S. Appeals Court
DISPOSITION OF
FUNDS

Arsberry v. Illinois, 244 F.3d 558 (7th Cir. 2001). Prison and jail inmates, inmates' families, and a public-interest law firm brought an action against a state, state agencies and officials, and telephone companies, challenging the practice by which prisons and jails each granted one telephone company the exclusive right to provide inmate telephone service in exchange for a portion of the revenues generated. The suit was brought under § 1983, the Sherman Act, and state law. The federal district court dismissed the case for lack of jurisdiction. The appeals court modified and affirmed the district court decision. According to the appeals court, the exorbitant telephone rates resulting from the challenged practice did not violate the First Amendment and the practice did not result in unconstitutional takings. The court also found that the practice did not violate anti-trust laws, and that the state officials responsible for the practice were entitled to qualified immunity from damages asserted under § 1983, given the "novelty" of the action. (Illinois)

U.S. District Court
DISPOSITION OF
FUNDS

Breakiron v. Neal, 166 F.Supp.2d 1110 (N.D.Tex. 2001). A county prisoner brought a § 1983 action seeking damages for injuries he sustained when a jail door closed on him, and for alleged intentional or deliberate deprivation of medical care. The district dismissed the damage and deliberate deprivation claims. The court also held that the county's act of deducting payments from the prisoner's inmate trust account did not violate the prisoner's rights because it was rationally related to the county's legitimate interest in the efficient use of prison resources and the prisoner was not denied medical treatment as the result of any inability to pay for medical treatment. (Hunt County Jail, Texas)

U.S. Appeals Court
LIMITATIONS

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. District Court
DISPOSITION OF
FUNDS

Keeling v. Schaefer, 181 F.Supp.2d 1206 (D.Kan. 2001). A prison inmate brought a § 1983 action against corrections officials and a private corporation that employs inmates within a corrections facility. The district court granted summary judgment to the defendants on some of the claims. The inmate was working for Impact Design, a private for-profit corporation operating within the confines of the Lansing Correctional Facility (Kansas). Impact employed inmates under the provisions of federal laws and regulations administered by the U. S. Department of Justice through the Prison Industry Enhancement Certification Program (PIECP). One of the PIECP requirements compels inmate workers to be paid the prevailing wage in the community for their labor. The inmate's job was to inventory spools of thread used in Impact's embroidery business and provide management with an accurate count of their stock. The inmate alleged that he was attacked by another inmate while he was working. The following day he was charged by prison officials with violating two prison regulations--fighting, and poor work performance. The inmate was subsequently found guilty of the fighting charge and was sentenced to 21 days in disciplinary segregation. The inmate was charged by prison officials with deliberately miscalculating a thread inventory that resulted in a loss of customer orders. The inmate argued that he was unable to complete the inventory because he was attacked by another inmate. An employee of Impact requested restitution for its losses and the prison disciplinary board ordered the inmate to pay \$2,965 in restitution. The inmate's prison account was frozen as a result of the judgment. (Lansing Corr'l Facility, Kansas)

U.S. Appeals Court
DISPOSITION OF
FUNDS

Nelson v. Heiss, 271 F.3d 891 (9th Cir. 2001). A state inmate brought a § 1983 action against corrections officials after holds were placed on his inmate trust account. The district court dismissed the action on the basis of qualified immunity and the appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the statute that provided for an exemption of veteran's benefits against the claims of creditors precluded officials from placing holds on the inmate's accounts, but that the officials were entitled to qualified immunity from liability because prior caselaw had not clearly established this exemption. The inmate's trust account was funded with payments of Veteran's Disability Benefits administered by the United States Veterans Administration. The court held that the officials' placement of a hold on the inmate's account, after the inmate authorized withdrawals for which he lacked funds and the officials provided the goods and services in expectation of future payments, did not violate the inmate's alleged due process right to predeprivation proceedings because the inmate knew, or should have known, that his account was depleted. (Calipatria State Prison, California)

2002

U.S. Appeals Court
DISPOSITION OF
FUNDS

Atchison v. Collins, 288 F.3d 177 (5th Cir.2002). An inmate filed a motion asking the federal court to compel a correction department to deduct no more than 20% of his monthly income to pay for filing fees incurred as the result of unsuccessful actions in federal court. The district court denied the motion and the appeals court affirmed. The department had been deducting 60 percent to pay for three filing fees on which the inmate owed money; the appeals court held that the twenty-percent-of-income payments provided for under the Prison Litigation Reform Act (PLRA) must be calculated "per case" rather than "per prisoner." (Texas Dept. of Criminal Justice, Eastham Unit)

U.S. Appeals Court
CONFISCATION

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
DISPOSITION OF
FUNDS

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. District Court
INMATE FUNDS
DISPOSITION OF
FUNDS

Doty v. Doyle, 182 F.Supp.2d 750 (E.D.Wis. 2002). A state prisoner petitioned for habeas relief after he was transferred to a private out-of-state prison, alleging that the state lost its authority once it shipped him beyond its boundaries. The district court denied the petition and the prisoner appealed. The district court held that the state no longer had the authority to divert a portion of the prisoner's income to release accounts while he was confined in a private out-of-state prison. But the court held that the state had the authority to continue administering the prisoner's trust account, under the terms that were in place when it was created, and therefore retained the authority to deny the prisoner's request for the return of all funds in the entire account. Officials had diverted over \$500 of the prisoner's money to be held in his name for his use upon his possible future release. (Wisconsin Dept. of Corrections, and Whiteville Correctional Facility, Tennessee)

U.S. Supreme Court
DUE PROCESS

Dusenbery v United States, 534 U.S. 161 (2002). A federal prisoner serving time for drug charges challenged the forfeiture of cash that was seized when he was arrested. The FBI had implemented an administrative process to forfeit cash that law enforcement officers had seized when they executed a search warrant for the home where he was arrested. Applicable law at the time required the agency to send written notice of the seizure and the applicable forfeiture procedures to each person who appeared to have an interest in the property. The FBI sent a notice by certified mail addressed to the prisoner, in care of the prison where he was incarcerated, as well as to the address of the residence where he was arrested and to an address in the town where his mother lived. No response was received and the money was turned over to the U.S. Marshals Service. The U.S. Supreme Court, in a 5 - 4 decision, held that this procedure was acceptable, rejecting the argument that it violated the prisoner's due process rights. The government agency seeking to forfeit an individual's property rights must attempt to provide actual notice, the Court reasoned, it does not necessarily have to successfully provide it. (Portage County Jail, Ohio)

U.S. Appeals Court
INMATE FUNDS

Floyd v. Ortiz, 300 F.3d 1223 (10th Cir. 2002). An inmate filed a petition to enforce the terms of a prior settlement agreement and to obtain contempt citations against a state director of corrections. The district court denied the petition and the inmate appealed. The appeals court reversed, finding that the district court abused its discretion by denying the inmate's request for a rehearing. The appeals court noted that the inmate, who benefited from the settlement agreement, could invoke the district court's continuing jurisdiction over the matter even though he was not a party to the original settlement agreement. The settlement addressed procedures for handling income from the inmate canteen program and interest on individual inmate accounts. The inmates alleged that income from the operation of the inmate canteen program was being deposited in the state treasury and not properly accounted for. (Colorado Department of Corrections)

U.S. District Court
PROHIBITED
PROPERTY

Giba v. Cook, 232 F.Supp.2d 1171 (D.Or. 2002). A state prisoner brought a § 1983 action, alleging various constitutional violations. The district court granted summary judgment in favor of the defendants, finding that prison officials reasonably interpreted a rule proscribing the possession of legal materials belonging to another inmate as including both copies and originals of such materials. The court held that the prisoner was not denied access to the courts and that his First Amendment rights were not violated when prison staff seized contraband contained in a box clearly labeled "confidential- legal matters" while the prisoner was not present. The court noted that although a prison officer scanned the contents of the box, he only confiscated contraband. The prisoner alleged that he had been given permission by another inmate to use copies of his legal papers in his own lawsuit. (Two Rivers Correctional Institution, Oregon)

U.S. Appeals Court
INTEREST
INMATE FUND

Hatfield v. Scott, 306 F.3d 223 (5th Cir. 2002). A state prison inmate brought a § 1983 action against a state's criminal justice department, alleging that failure to pay interest on his inmate trust fund account violated the Takings Clause. The district court denied summary judgment for the state and the state appealed. The appeals court reversed and remanded. The appeals court held that when interest from prisoners' trust accounts is used to pay for the administration of the fund, providing benefit to prisoners, there is no "taking." The court found that the inmate had waived any property interest he may have had in interest in the trust account, since participation in the statutorily-created trust fund was voluntary. The court noted that the inmate was fully informed that apportionment of interest was at the discretion of the state, and he could have elected to have his money deposited in an interest-bearing account as an alternative. (Texas Department of Criminal Justice, Inmate Trust Fund Department)

U.S. Appeals Court
LOSS OF PROPERTY

Hatten v. White, 275 F.3d 1208 (10th Cir. 2002). A federal prisoner brought an action against prison employees, asserting a claim under the Federal Tort Claims Act (FTCA) and *Bivens* claims, seeking declaratory judgment and damages for the alleged mishandling of his property. The district court granted the employees' motion for summary judgment in part, and dismissed the case in its entirety. The prisoner appealed and the appeals court affirmed. The appeals court held that the FTCA's waiver of sovereign immunity did not apply to the prisoner's FTCA claim and that the prisoner could not bring a *Bivens* action against federal prison employees in their official capacities. The court held that the prisoner, who was allowed to send the property he could not possess in prison to a place of his choosing, was not deprived of a property interest. (U.S. Penitentiary, Leavenworth, Kansas)

U.S. Appeals Court
DISPOSITION OF
FUNDS
INMATE FUNDS
VETERANS

Higgins v. Beyer, 293 F.3d 683 (3rd Cir. 2002). A state inmate brought a pro se § 1983 action against prison officials and employees, alleging violation of his statutory and due process rights arising from seizure of money derived from his veteran's disability benefits check to pay a court-ordered fine without a predeprivation hearing. The district court dismissed the case. The appeals court vacated and remanded, finding that a federal statute that prohibits attachment, levy or seizure of a veteran's disability benefits provides a federal right that is enforceable under § 1983. The court also found that a state law that provided for the collection of a crime victims' assessment from the inmate's account was void to the extent that it allowed prison officials to deduct funds derived from the inmate's veteran's disability benefits. The court found that allegations supported a claim for a procedural due process violation. (ATDC, Avenel, New Jersey)

U.S. Appeals Court
INMATE FUNDS

In re Alea, 286 F.3d 378 (6th Cir. 2002). A state inmate petitioned for a writ of prohibition to prevent the U.S. District Court from further collections of money from his prison account for payment of a filing fee in his dismissed civil rights action. The appeals court denied the petition, finding that the dismissal of the suit under the three-strikes provision of the Prison Litigation Reform Act (PLRA) did not obviate the requirement that he pay the district court filing fee. The court noted that under PLRA, pauper status for inmates no longer exists and all prisoners must pay the required filing fees and costs and are not entitled to a waiver. (U.S. District Court, Kentucky)

U.S. Appeals Court
DISPOSITION OF
FUNDS

Matheny v. Morrison, 307 F.3d 709 (8th Cir. 2002). Two defendants appealed a district court decision that dismissed their habeas actions in which they claimed that the federal Bureau of Prisons, through its Inmate Financial Responsibility Program (IFRP), illegally set the amount and timing of payments toward the financial obligations that were a part of their federal criminal sentences. The appeals court affirmed, finding that the Bureau of Prisons had the discretion to place the inmates in the IFRP because the sentencing courts had ordered immediate payment of court-imposed fines. (Federal Correctional Institution, Forrest City, Arkansas)

U.S. Appeals Court
DISPOSITION OF
PROPERTY

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)

U.S. Appeals Court
PROHIBITED
PROPERTY

Tarpley v. Allen County, Indiana, 312 F.3d 895 (7th Cir. 2002). A former inmate sued a county, alleging interference with his right to exercise his religion and denial of meaningful access to courts. The district court entered summary judgment for the county and the inmate appealed. The appeals court affirmed. The court held that the inmate's free exercise rights were not violated by the county's refusal to allow him to use his own Bible and requiring him to use the jail's Bible, even though his personal Bible had commentary that the jail Bible did not have. The court found the jail policy of not allowing inmates to keep personal books to be reasonably related to its interest in maintaining safe conditions and preventing disputes over lost or damaged items. The court noted that the inmate did not assert that the commentary in his personal Bible had become part of fundamental texts of his religion as a whole. (Allen County Jail, Indiana)

U.S. District Court
LOSS OF PROPERTY

Wolff v. Hood, 242 F.Supp.2d 811 (D.Or. 2002). A federal prisoner brought a pro se civil rights action against prison officials. The district court granted summary judgment for the defendants, finding that a prison official's alleged loss of the inmate's property did not support a due process claim. The property was allegedly lost during his transfer to a different unit. A correctional officer stated that all of the inmate's property was collected and inventoried upon the inmate's transfer, and the inmate had signed an inventory sheet acknowledging this. The court noted that the inmate did not show that he possessed the allegedly missing materials at the time of his transfer. (Federal Bureau of Prisons, FCI-Sheridan, Oregon)

2003

U.S. Appeals Court
DISPOSITION OF
FUNDS

Barber v. Wall, 66 Fed.Appx. 215 (1st Cir. 2003). [unpublished] A prisoner brought an action alleging that a debit from his prison account, taken to satisfy restitution orders entered against him by a prison disciplinary review board for destruction of government property, violated due process and equal protection. The district court dismissed the action and the appeals court affirmed. The appeals court held that the debit did not violate due process, where the prisoner admitted that he had received disciplinary reports giving him notice of destruction of property charges against and the estimated repair costs, and that he was afforded a disciplinary hearing as well as administrative review. (Adult Correctional Institute, Rhode Island)

U.S. Appeals Court
PROHIBITED
PROPERTY

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. (Fed'l Corr'l Inst., Cumberland, Maryland)

U.S. District Court
DESTRUCTION OF
PROPERTY

Konigsberg v. Lefevre, 267 F.Supp.2d 255 (N.D.N.Y. 2003). A state inmate brought two civil rights actions against state correctional officials and employees, alleging denial of access to the courts, and conspiracy to violate his civil rights. The district court entered summary judgment in favor of the defendants. The court held that the inmate failed to establish that his access to courts rights were denied with his general claim that his legal materials were lost, copied, or purposely destroyed by prison officials during his transfer. The court noted that the inmate failed to identify particular documents, show how the allegedly missing documents related to his appeal or a resulting new trial, or assert facts showing that his pursuit of litigation was affected by his lack of access to any particular documents. (Clinton Correctional Facility, Attica Correctional Facility, New York)

U.S. Appeals Court
INMATE FUNDS
DISPOSITION OF
FUNDS
INTEREST

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. The court held that confiscation of accrued interest from the trust accounts violated the prisoners' due process rights, because a state law provided that the prisoners were entitled to receive accrued interest and prison administrators provided no procedure by which prisoners could contest the deprivation. The court found that officials were entitled to qualified immunity in the prisoners' claim that their prison employment was conditioned upon their willingness to give up their procedural due process rights. But the court denied qualified immunity to the officials for the prisoners' claim that they unconstitutionally retaliated against the prisoners for their refusal to waive their procedural due process rights. (Nevada Department of Prisons)

2004

U.S. District Court
INMATE FUNDS

Abney v. Alameida, 334 F.Supp.2d 1221 (S.D.Cal. 2004). A state prisoner brought an action against a state corrections director alleging violations of the Fifth Amendment Takings Clause, the Equal Protection Clause, and due process. The prisoner alleged breach of judiciary duty and violations of state regulations regarding prison trust accounts, in connection with deductions taken from deposits made to the prisoner's trust accounts in order to pay court-ordered restitution. The court held that deductions taken from checks and money orders that were to be deposited into the prisoner's trust account in order to satisfy court-ordered restitution, did not violate the Takings Clause, where the restitution was duly authorized by state law. The court held that the director did not violate equal protection by allowing city and county inmates a \$300 exemption of funds held in their trust accounts from collection to satisfy restitution orders, but not affording the same exemption to state prisoners, because the difference in the length of incarceration terms and nature of convictions suggested that jail inmates would be able to satisfy restitution fines more quickly because they would be released into the workforce sooner than state prisoners. (California Department of Corrections)

U.S. Appeals Court
CONFISCATION

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
LIMITATION
STORAGE

Duplantis v. Carmona, 85 Fed.Appx. 397 (5th Cir. 2004) [unpublished]. Prisoners brought a § 1983 action, alleging that a prison administrative directive governing the amount of storage space available to prisoners violated the Due Process and Equal Protection Clauses. The district court

dismissed the complaint. The appeals court dismissed the case, finding that the administrative directive did not violate equal protection. The prisoners alleged that inmates housed in older facilities are disadvantaged when compared to prisoners in newer units. (Texas Department of Criminal Justice, Institutional Division)

U.S. Appeals Court
INTEREST
INMATE FUNDS

Givens v. Alabama Dept. of Corrections, 381 F.3d 1064 (11th Cir. 2004). A former inmate who had participated in a work release program brought a § 1983 action, alleging that a corrections policy that prohibited inmates from receiving interest on wages deposited in bank accounts constituted an unlawful taking. The district court dismissed the claims and the inmate appealed. The appeals court affirmed, finding that the policy was not an unconstitutional taking in light of the fact that no property interest existed. The court held that inmates had no common law property right in the interest that accrued on their wages that were deposited in bank accounts, and that inmates had only a limited property right in the principal under state law. (Ala. Department of Corrections)

U.S. Appeals Court
LIMITATIONS

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 Corr'l. Facility, Kansas)

U.S. Appeals Court
INMATE FUNDS

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. (Federal Bureau of Prisons)

U.S. District Court
CONFISCATION

McEachin v. Beard, 319 F.Supp.2d 510 (E.D.Pa. 2004). A state inmate filed a § 1983 action alleging his rights were violated when his personal property was confiscated. The district court granted summary judgment in favor of the defendants. The court held that prison officials' confiscation of the inmate's personal property without a prior hearing did not violate the inmate's due process rights, even if the inmate had some difficulty in having his grievance heard, where the prison grievance procedure provided the inmate with adequate and meaningful post-deprivation processes, and the inmate's difficulties were the result of his own failure to follow proper administrative procedure. (State Correctional Institution at Albion, Pennsylvania)

U.S. District Court
LIMITATIONS

Neal v. Lewis, 325 F.Supp.2d 1231 (D.Kan. 2004). A Shiite Muslim prisoner filed a pro se § 1983 alleging that prison officials interfered with his religious observance in violation of his

constitutional rights. The district court granted summary judgment in favor of the officials, finding they were entitled to qualified immunity. The court held that the policy of limiting prisoners to possession of twelve books, plus one dictionary and one thesaurus and the primary religious text for their declared religion, did not violate the prisoner's First Amendment or Equal Protection rights. The court also upheld the regulation requiring delivery of publications directly from the publisher. The court noted that both regulations served the internal security objective of controlling, managing and tracking property in the correctional facility, and that the regulations were applied to inmates irrespective of their religion. (El Dorado Correctional Facility, Kansas)

U.S. District Court
CONFISCATION

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)

2005

U.S. Appeals Court
LIMITATIONS

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. District Court
CONFISCATION

Bigbee v. U.S., 359 F.Supp.2d 806 (W.D.Wis. 2005). A federal inmate brought a *Bivens* action alleging that a correctional officer wrongfully confiscated and destroyed his personal property. The court held that the inmate stated a claim under the Federal Tort Claims Act (FTCA) but that the destruction of items before the inmate had a chance to establish ownership did not violate due process. The court found that the inmate did not have a cause of action for money damages. The court held that federal Bureau of Prisons regulations for handling items seized as contraband did not give the inmate a protected interest, where the items were seized from the prison's machine shop, rather than the inmate's cell. (Federal Correctional Institution, Oxford, Wisconsin)

U.S. Appeals Court
LEGAL MATERIAL

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
LEGAL MATERIAL
LIMITATIONS

Howard v. Snyder, 389 F.Supp.2d 589 (D.Del. 2005). A state prison inmate brought a § 1983 action against corrections officials, alleging that legal papers were missing from a box of personal effects that were seized from his cell as contraband, when the box was returned. The inmate alleged that his access to court was hindered. The district court granted summary judgment to the officials,

finding that the “two box rule” under which the materials were confiscated, served legitimate penological interests. According to the court, the regulation promoted fire safety and limited the access to contraband. The court noted that the inmate had continual access to the prison’s law library and that he could have obtained approval for an extra box. (Delaware Correctional Center)

U.S. Appeals Court
LIMITATIONS

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
LOSS OF PROPERTY
LEGAL MATERIAL

Nwaokocha v. Sadowski, 369 F.Supp.2d 362 (E.D.N.Y. 2005). A federal prisoner brought a Federal Tort Claims Act (FTCA) and *Bivens* action challenging the conditions of his confinement and alleging the loss of personal items, including legal papers. The district court held that the prisoner’s right of access to courts was not violated by the apparently negligent misplacement of some of his personal belongings and legal possessions during prison transfers, absent any evidence that the loss was malicious. (Metropolitan Detention Center, Federal Bureau of Prison, Brooklyn, New York)

U.S. Appeals Court
DESTRUCTION OF
PROPERTY
LIMITATION

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. Appeals Court
STORAGE
LIMITATIONS

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. Appeals Court
DISPOSITION OF
FUNDS

Slade v. Hampton Roads Regional Jail, 407 F.3d 243 (4th Cir. 2005). A pretrial detainee sued a jail, challenging the constitutionality of a one-dollar per day charge that was intended to partially defray the costs of incarceration. The district court dismissed the complaint and the detainee appealed. The appeals court affirmed, finding that the charge was not punishment, and therefore did not violate due process. According to the court, the state statute that authorized the charge

expressed no intent to punish on its face, was an effort to offset the cost of housing, had a rational relationship to a legitimate governmental interest, and was not excessive in relation to that purpose. The court also held that due process was not violated by the lack of a hearing before the charge was deducted from the detainee's account. (Hampton Roads Regional Jail, Virginia)

U.S. District Court
INTEREST
DISPOSITION OF
FUNDS

Young v. Wall, 359 F.Supp.2d 84 (D.R.I. 2005). A state prison inmate sued the director of a state corrections department, claiming that the practice of not crediting accrued interest to his inmate accounts funded through deduction from his wages violated his constitutional rights. The district court dismissed the case in part, and denied the director's motion to dismiss in part. The court held that a state statute that provided for wage deductions and the release of funds to the inmate upon his release did not create a property interest protected by the Takings Clause. The court found that the inmate was not entitled to interest under the rule that interest generally follows principal. But the court held that the inmate stated a procedural due process claim with regard to denial of interest in the face of an Inmate Account Policy that seemingly requires the equitable distribution of interest. The court noted that due to the rehabilitative nature of work assignments imposed on prisoners, payment for their labor is purely discretionary for the state, although it is possible for a state to create a right to be paid for labor which could create a limited protected interest in wages it chooses to pay prisoners. According to the court, the statute that provides deduction of 25% of the wages earned by the prison inmate, to be turned over to the inmate upon his release, did not confer upon the inmate full rights of possession, control and disposition of funds sufficient to support a § 1983 action. (Adult Correctional Institution, Rhode Island)

U.S. District Court
LEGAL MATERIAL

Ziemba v. Thomas, 390 F.Supp.2d 136 (D.Conn. 2005). An inmate brought a § 1983 action against state officials, alleging use of force and related civil rights violations. The district court granted summary judgment in favor of the defendants in part, and denied it in part. The court held that the alleged failure of prison officials to return his legal materials did not hinder his access to courts, as required to maintain a claim under § 1983, where there was no reliable evidence that any actual injury stemmed from the alleged violation. (Corrigan Corr'l Institution, Connecticut)

2006

U.S. District Court
LIMITATIONS

Daniels v. Crosby, 444 F.Supp.2d 1220 (N.D.Fla. 2006). An inmate brought a § 1983 suit against corrections officials, alleging that they violated his due process rights by unconstitutionally depriving him of wages, occupational training, and other benefits. The district court granted summary judgment in favor of the defendants. The court held that the inmate had no liberty or property interest in wages for his work in prison, possession of particular items of personal property, or involvement in rehabilitative programs. The court noted that the Kentucky inmate, incarcerated in Florida for a Kentucky offense pursuant to an interstate corrections compact, had no liberty or property interest, and that while Kentucky officials may have owed a legal duty to the inmate to provide such benefits, Florida corrections officials did not. The inmate had argued that Kentucky pays prisoners for work they do in prison at the rate of \$1 per day and that Florida owed him these back wages. He claimed entitlement to pay, to possess the same kind of personal property (typewriter, television, stereo receiver, ice chest, hot pot, bed linen) he was allowed to possess in Kentucky, and to enroll in a vocational trade as he was allowed to do in Kentucky. (Florida Department of Corrections)

U.S. District Court
DESTRUCTION OF
PROPERTY

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
LEGAL MATERIAL

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) 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 (4) 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
STAMPS

Johnson v. Goord, 445 F.3d 532 (2nd Cir. 2006). An inmate brought a civil rights action against prison officials, challenging a regulation governing possession of stamps. The district court entered judgment in favor of the officials and inmate appealed. The appeals court held that the inmate did not have a constitutional right to unlimited free postage for non-legal mail, and the regulation was reasonably related to legitimate penological interests, and thus did not violate the inmate's First Amendment right to send outgoing non-legal mail. The prison regulation prevented certain inmates in keeplock from receiving stamps through the mail and permitted them to receive only one free stamp per month for personal use. The court noted that stamps could be used by inmates as a form of currency, and the regulation furthered the legitimate goals of reducing thefts, disputes, and unregulated prisoner transactions. (New York State Department of Correctional Services)

U.S. District Court
CROWDING

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. (New York Department of Correctional Services)

U.S. District Court
CONFISCATION
LEGAL MATERIAL

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 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
INMATE FUNDS

Sickles v. Campbell County, Kentucky, 439 F.Supp.2d 751 (E.D.Ky. 2006). Inmates, former inmates, and relatives and friends of inmates brought a § 1983 action against counties, alleging that the methods used by the counties to collect fees imposed on prisoners for the cost of booking and incarceration violated the Due Process Clause. The district court granted summary judgment in favor of the defendants. The court held that the Kentucky statute authorizing county jailers to adopt prisoner fee and expense reimbursement policies did not require that prisoners be sentenced before fees could be imposed, and that due process did not require a pre-deprivation hearing before prison fees were assessed. According to the court, the First Amendment rights of non-prisoners who contributed funds to prisoners' accounts were not violated. The court noted that the statute authorized jails to begin to impose fees, and to deduct them from prisoners' canteen accounts, as soon as prisoners' were booked into the jail. (Campbell County and Kenton County, Kentucky)

U.S. Appeals Court
LIMITATIONS
INMATE FUNDS

Steffey v. Orman, 461 F.3d 1218 (10th Cir. 2006). A state prisoner filed a § 1983 civil rights complaint against prison officials, alleging that they deprived him of his property in violation of his constitutional due process rights when they confiscated a money order sent to him. The district court granted summary judgment in favor of the defendants and the prisoner appealed. The appeals court affirmed, finding that the prison regulation prohibiting an inmate from receiving money from family members of any other inmate was a valid restriction on the inmate's right to receive money from certain outside sources. The court found that the prisoner did not have a legitimate claim of entitlement to the \$50 money order sent to him by the mother of another inmate mother. (Oklahoma State Penitentiary)

2007

U.S. District Court
CONFISCATION

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
DISPOSITION OF
FUNDS

Samonte v. Frank, 517 F.Supp.2d 1238 (D.Hawai'i 2007). A prisoner, who had filed several civil rights actions, moved to have funds withdrawn from his prison trust account sequentially, rather than simultaneously, to satisfy court orders granting him in forma pauperis (IFP) status and directing collection and payment of filing fees. The district court denied the motion. The court held that indigent prisoners are required to pay filing fees on a per case basis, rather than per prisoner basis, and that per case payments did not burden the prisoner's constitutional right of meaningful access to the courts. The court noted that the Prison Litigation Reform Act (PLRA) filing fee provision requiring indigent prisoners to make monthly payments of 20 percent of the preceding month's income should be applied by simultaneously collecting fees for all of a prisoner's outstanding cases, as long as a minimum of \$10 remains in the prisoner's account. (Hawai'i)

U.S. District Court
LIMITATION

Sanders v. Ryan, 484 F.Supp.2d 1028 (D.Ariz. 2007). A hearing-impaired inmate brought a civil rights action against a prison official and the State of Arizona, claiming his rights were violated under the Religious Land Use and Institutionalized Persons Act (RLUIPA), the First Amendment, Arizona civil rights laws, and the Americans with Disabilities Act (ADA). The district court granted summary judgment in favor of the defendants. The court held that a prison official's refusal to give the prisoner, who listened to audiotapes of Baptist church services as part of his faith, two new tapes unless he exchanged two tapes already in his possession to be destroyed, rather than stored, did not "substantially burden" the prisoner's exercise of his religion, as required to establish a violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The inmate had alleged that such conduct violated a state statute requiring the return of authorized inmate property to the inmate upon his release. The court noted that the new tapes were not authorized, as the prisoner already had the maximum number of tapes allowed, and the prisoner failed to show that he was unable to practice his religion absent receipt of the new tapes. According to the court, the state department of corrections policy of limiting property an inmate could possess in his cell or in storage did not violate the rights of prisoners under the Religious Land Use and Institutionalized Persons Act (RLUIPA), where the policy served the "compelling governmental interest" of enhancing the safety and security of prison facilities. The court found that the policy was the "least restrictive means" available to accommodate the government's compelling interests in safety and security. The court noted that the inmate was permitted to practice his religion by engaging in personal Bible study and prayer, receiving pastoral visits from an accredited minister, and listening to religious tapes. The inmate was able to mail excess religious tapes back to the church in exchange for new ones, and the inmate did not suggest an alternative that was less restrictive but which would accommodate the State's interests of safety and security. (Arizona Department of Corrections)

U.S. Appeals Court
DISPOSITION OF
FUNDS
INMATE FUNDS

Sickles v. Campbell County, Kentucky, 501 F.3d 726 (6th Cir. 2007). Inmates, former inmates, and relatives and friends of inmates brought a § 1983 action against two counties, challenging methods used by the counties to collect fees imposed on prisoners for the cost of booking and incarceration. The district court entered summary judgment for the counties and the plaintiffs appealed. The court held that the county was not required under the Due Process Clause to grant a pre-deprivation hearing to inmates prior to withholding a portion of money from their canteen accounts to pay the costs of booking, room, and board. The court found that the relatives lacked a property interest in the money they sent to inmates and that the counties did not violate the free speech rights of relatives of inmates in withholding money. According to the court, the county inmates had a property interest protected by the Due Process Clause in money withheld from their canteen accounts to pay the costs of booking, room, and board, but the county was not required under the Due Process Clause to grant a pre-deprivation hearing to inmates prior to withholding money from their canteen accounts where the amounts withheld were small, the risk of erroneous deprivation was minor in that withholding involved elementary accounting and was non-discretionary, the potential benefits of a hearing were small, and the government's interests of sharing costs and furthering offender accountability were substantial. The court also found that the county did not violate the free speech rights of relatives of inmates in withholding a portion of money that relatives had sent to the inmates for their canteen accounts, notwithstanding that if the money had not been withheld the inmates might have spent it making telephone calls. (Campbell County and Kenton County, Kentucky)

U.S. District Court
DISPOSITION OF
FUNDS

Ward v. Stewart, 511 F.Supp.2d 981 (D.Ariz. 2007). A state inmate brought a pro se § 1983 action alleging violations of his Fifth and Fourteenth Amendment rights based on corrections officials' withholding of a portion of his wages for "gate-money." After dismissal of the inmate's claim was reversed by an appeals court, a partial summary judgment for the corrections officials was granted. A supplemental briefing was ordered as to inmate's request for injunctive relief. The district court denied the request for injunctive relief. The court found that the inmate had a constitutionally protected property interest in his wages, based on an Arizona statute creating a cognizable property interest in inmate wages for purposes of his action alleging that corrections officials violated his rights under the Takings Clause. The court concluded that corrections officials did not violate the inmate's rights under the Takings Clause by withholding a portion of his wages for "gate-money." The court found that even though the money was the inmate's private property, prison inmates forfeit all right to possess, control or dispose of private property. The court also held that state correction officials did not act arbitrarily in withholding a portion of the inmate's wages for "gate-money" even though he was serving a life sentence, and therefore he was not deprived of due process. The court noted that the withholding was intended to promote public welfare and the common good, and that it was not arbitrary since the inmate might be able to obtain release prior to the end of his life and if not, the money would be used to pay costs associated with his cremation or other expenses. (Arizona Department of Corrections)

U.S. District Court
CONFISCATION
PROHIBITED
PROPERTY

Wesolowski v. Sullivan, 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). The court found that the confiscation of materials describing how someone could conduct a political fundraising event to benefit Families Against Mandatory Minimums (FAMM) did not violate the inmate's rights under the First Amendment, considering the possibilities for abuse that would have arisen if inmates were freely allowed to engage in fundraising from fellow inmates. According to the court, the restriction and regulation of such activities by prisoners was unquestionably a legitimate penological interest, and it was uncontroverted that the inmate did not follow established procedures for obtaining authorization to engage in such activities. The court noted that even assuming the employees' actions in confiscating the materials violated the inmate's First Amendment rights, the employees were entitled to qualified immunity, as no authority had clearly established the inmate's First Amendment right to possess the materials in question at the time of events giving rise to lawsuit. (New York State Department of Correctional Services)

U.S. Appeals Court
INMATE FUNDS

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. District Court
LEGAL MATERIAL
LIMITATIONS

Atwell v. Lavan, 557 F.Supp.2d 532 (M.D.Pa. 2008). A state inmate brought a pro se § 1983 action against prison employees, probation and parole board members and medical personnel, alleging he was denied access to courts in violation of the First Amendment. The district court held that the inmate's allegation that he was denied access to court because he was not provided with free photocopies and postage failed to state a claim under the First Amendment. The court found that the allegation that the inmate was denied access to the courts because he was denied access to stored legal material failed to state a claim under the First Amendment. The court noted that the inmate was allowed access to his stored materials in exchange for a like number of items from his cell, and prison staff did not care which of the inmate's items were in his cell as long as he kept within the allowed limit of items. (State Correctional Institution at Dallas, Pennsylvania)

U.S. Appeals Court
INMATE FUNDS

Burns v. PA Dept. of Correction, 544 F.3d 279 (3rd Cir. 2008). An inmate brought a § 1983 due process claim against a state department of corrections and prison officials arising out of the prison's disciplinary proceedings. The district court granted the defendants' motion for summary judgment and the inmate appealed. The appeals court reversed and remanded. The court held that as a matter of first impression, the department of corrections' assessment of the inmate's institutional account, even absent an attempt to deduct funds from it, constituted a deprivation of a protected property interest for the purposes of procedural due process. The court found that the Department of Corrections' voluntary promise to refrain from the future seizure of funds from the inmate's account, in a letter submitted more than three years after it originally assessed that account for medical and other fees, did not render the inmate's appeal of his procedural due process claim moot. The court noted that the alleged violation was complete at the moment the inmate was deprived of a property interest without being afforded the requisite process, and, if proven, would entitle the inmate to at least an award of nominal damages. The inmate had been disciplined for assaulting another inmate and he lost his prison job, good time credits, and was assessed for medical costs for the inmate who was injured. (SCI-Graterford, Pennsylvania Department of Corrections)

U.S. District Court
CONFISCATION
LEGAL MATERIAL

Frazier v. Diguglielmo, 640 F.Supp.2d 593 (E.D.Pa. 2008). A prisoner brought an action against several prison officers and supervisors, alleging that the defendants violated his rights by interfering with his mail and seizing legal materials from his cell. 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 prisoner's bare allegation, that prison officials' seizure of a writ of coram nobis "obstructed" his right to "petition the government for redress of grievances," was insufficient to allege the infringement of an exercise of a First Amendment right of access to the courts to secure judicial relief, as required to state a claim for violation of the right of access. The court noted that the prisoner did not describe the contents of the writ or the judgment he sought to challenge, nor did the prisoner allege or even allude to any prejudice in any legal action caused by the writ's confiscation. The court found that the prisoner's allegation that prison officials seized legal documents relating to his criminal and habeas cases was insufficient to state a claim for violation of First Amendment right of access to the courts, absent an allegation that the alleged seizure caused him prejudice in a legal challenge to his conviction or to his conditions of confinement. The court held that the question of whether prison officials' confiscation of the prisoner's Uniform Commercial Code (UCC) related materials violated free speech could not be resolved on a motion to dismiss, in light of a fact issue as to whether the confiscation was an exaggerated response to a legitimate penological concern, which was based on the officials' belief that such materials would be used to file fraudulent liens. (State Correctional Institution at Graterford, Pennsylvania)

U.S. District Court DISPOSITION OF FUNDS	<i>Johnson v. Ozmint</i> , 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 state corrections department's policy of debiting prison inmates' trust accounts to cover the cost of all legal correspondence did not infringe upon the inmate's right of access to courts under the Due Process Clause, where the inmate was not denied the use of a writing instrument, paper or postage for legal mail. The court noted that the department had provided notice of its policy to debit accounts for the costs of such correspondence, the department had a compelling interest in maintaining an orderly assessment process, the inmate could contest any allegedly erroneous assessment via the prison grievance process, and the state offered an adequate post-deprivation remedy. (South Carolina Department of Corrections)
U.S. Appeals Court CONFISCATION LEGAL MATERIAL PROHIBITED PROPERTY	<i>Monroe v. Beard</i> , 536 F.3d 198 (3 rd Cir. 2008). Prisoners brought a § 1983 action against various prison employees alleging their constitutional rights were violated when legal materials were confiscated. The district court granted the defendants' motion to dismiss and their motion for summary judgment. The prisoners appealed. The appeals court affirmed. The court held that the prisoners failed to state a claim for denial of right of access to courts. The court held that the prisoners, claiming that prison officials confiscated all of their legal materials including legal briefs and reference books, failed to state a claim for denial of right of access to courts, absent specific facts demonstrating that underlying claims were non-frivolous or that underlying claims could no longer be pursued as a result of the officials' actions. The court found that a rational nexus existed between the prison's penological interest in preventing prisoners from filing fraudulent liens against public officials and a prison regulation designating legal materials related to the filing of fraudulent liens as contraband, for the purpose of determining whether the regulation violated the First Amendment. The court noted that a prisoner had filed a fraudulent lien against a state court judge, officials had recovered partially completed financing statement and forms from the prisoners under the regulation, and fraudulent liens were easy to file but burdensome to remove. According to the court, the regulation did not prevent inmates from exercising their First Amendment right to possess publications and legal materials because inmates still had available to them a wide range of legal materials and publications that did not pertain to the filing of fraudulent liens. The court also noted that the prisoners were afforded a meaningful post-deprivation remedy after prison officials confiscated legal materials related to the filing of fraudulent liens, and thus the prisoners' Due Process rights were not violated. A grievance procedure was available to prisoners, prisoners were given three opportunities to review materials and receive back non-contraband items, and prisoners had a chance to give a legitimate, non-contraband reason for possessing the materials. (State Correctional Institute at Graterford, Pennsylvania)
U.S. District Court DISPOSITION OF PROPERTY	<i>Nevada Dept of Corrections v. Cohen</i> , 581 F.Supp.2d 1085 (D.Nev. 2008). The Nevada Department of Corrections (DOC) brought an action against inmates, seeking declaratory judgment that its ban on the personal possession of typewriters by inmates was constitutional. The DOC moved for summary judgment and the district court granted the motion. The court held that the ban: (1) was reasonably related to legitimate penological interests; (2) did not infringe upon inmates' right of access to courts; (3) reasonably advanced legitimate correctional goals; and (4) was not an unconstitutional "taking" where the prison regulated property that prisoners could legitimately possess while incarcerated and offered options to dispose of the property, and prisoners were not deprived of all economically beneficial use of typewriters. The court noted that prison officials had determined that possession of typewriters aided the ability of inmates to breach safety and security due to the potential use of typewriter parts as weapons. According to the court, since inmates were not required to file typewritten documents with courts, there was no evidence of actual injury or that the ban would foreclose any meaningful opportunities for inmates to pursue claims. (Nevada Dept. of Corrections)
U.S. Appeals Court CONFISCATION DISPOSITION OF PROPERTY	<i>Parrott v. U.S.</i> , 536 F.3d 629 (7 th Cir. 2008). A federal inmate brought an action against the Bureau of Prisons (BOP) and several of its employees under the Federal Tort Claims Act (FTCA), alleging the employees negligently handled his personal property and failed to protect him from being attacked by another inmate. The inmate had been stabbed 22 times in the head and arm by another inmate and he was hospitalized for two weeks. The district court granted summary judgment for the government and the inmate appealed. The appeals court affirmed in part, vacated and remanded in part. The court held that the confiscation of the inmate's property, followed by sending such property to the inmate's sister, was a "detention" for the purposes of the exception to liability under the Federal Tort Claims Act (FTCA) for claims arising from detention of goods by a law enforcement officer. The court found that summary judgment was precluded by a genuine issue of material fact as to whether a former separation order was in effect between the inmate and another inmate who attacked him. The court noted that if a valid separation order is in effect between inmates, prison staff have no discretion in enforcing such an order, and violation of the order will not be sheltered from liability under the Federal Tort Claims Act (FTCA). (U.S. Penitentiary, Terre Haute, Indiana)
U.S. District Court CONFISCATION LEGAL MATERIAL	<i>Rollins v. Magnusson</i> , 542 F.Supp.2d 114 (D.Me. 2008). An inmate sued multiple defendants, alleging they were responsible for the confiscation of his legal briefs and research notes stored on prison-owned hard drives and back-up diskettes, in violation of his right of access to the courts. The district court held that the alleged confiscation did not impede his ability to litigate his appeal to such an extent that it impacted the outcome of the appeal, as required for an "actual injury" supporting his claim that he was denied his right of access to the courts. The court noted that his complaint was that he was having difficulty complying with deadlines because of impaired vision/medical conditions, and while he may not have had as much access to his legal materials as he wanted in the form he wanted, he was able to see his appeal through and obtain a ruling on the merits. (Maine State Prison)

U.S. Appeals Court
CONFISCATION
LEGAL MATERIAL

U.S. v. Gabaldon, 522 F.3d 1121 (10th Cir. 2008). After a federal prisoner's conviction for second-degree murder and kidnapping resulting in death were affirmed, he moved for post conviction relief. The district court dismissed the motion and the prisoner appealed. The appeals court vacated and remanded. The court held that confiscation of the prisoner's legal materials constituted extraordinary circumstances, where the prisoner exercised requisite due diligence by requesting the materials after they were seized. According to the court, confiscation of the prisoner's legal materials upon his entry into disciplinary segregation, just six weeks before the expiration of the limitations period on his post conviction relief claim, and the holding of such materials until two weeks after the limitations period expired, constituted extraordinary circumstances for the purposes of equitable tolling of the one-year limitations period on the prisoner's post conviction relief petition. (New Mexico)

2009

U.S. District Court
LEGAL MATERIAL
LIMITATIONS
PROHIBITED
PROPERTY

Cox v. Ashcroft, 603 F.Supp.2d 1261 (E.D.Cal. 2009). A prisoner brought a § 1983 action against the United States Attorney General, several federal prosecutors, and the owner and employees of a privately-owned federal facility in which the prisoner was incarcerated, alleging constitutional violations arising from his arrest, prosecution, and incarceration. The district court dismissed the action. The court held that the prisoner did not have any Fourth Amendment rights to privacy in his cell, and thus did not suffer any constitutional injury as a result of the search of his cell and the confiscation of another inmate's legal materials. The court found that the prisoner did not have any liberty or property interest in employment while in prison, and thus the prisoner did not suffer any violation of his due process right related to his termination from his prison job as a result of discipline arising from the search of his cell, precluding liability on the part of facility owner and its employees under § 1983. According to the court, the prison facility's imposition of a 30-day suspension of the prisoner's telephone privileges related to a disciplinary action arising from the search of his cell and the confiscation of another inmates' legal papers, did not constitute an unreasonable limitation on the prisoner's First Amendment rights. The court noted that prisoners have a First Amendment right to telephone access, subject to reasonable limitations. The court found that regulations at a privately-owned federal prison facility prohibiting the prisoner from having the legal papers of another inmates in his cell did not chill the prisoner's exercise of his First Amendment right to provide legal assistance to fellow inmates, thus precluding liability on the part of the prison and its employees in the prisoner's § 1983 action alleging First Amendment retaliation. The court noted that the regulations reflected a legitimate penological objective in regulating when and where such assistance was provided. (Taft Corr'l Inst., Wackenhut Corrections Corp., California)

U.S. District Court
DISPOSITION OF
PROPERTY
LEGAL MATERIAL

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 noted that an officer's failure to intervene during another officer's use of excessive force can itself constitute excessive force. The court also held that summary judgment was precluded by a genuine issue of material fact regarding whether excessive force was used against the prisoner. The court found that a corrections officer's failure to include the prisoner's legal documents in the prisoner's personal items when the prisoner was transferred to a special housing unit was unintentional and did not cause the prisoner to be prejudiced during legal proceedings, as required for the prisoner's First Amendment denial of access to courts claim against the officer. (Gouverneur Correctional Facility, Clinton Correctional Facility, New York)

U.S. District Court
CONFISCATION
LEGAL MATERIAL
SEARCHES

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 allegations in the prisoner's complaint that an MDOC employee would frequently shake down his cell looking for prohibited Uniform Commercial Code (UCC) materials, and that the employee would leave the cell in disarray, failed to state a § 1983 claim against the employee for violation of the prisoner's constitutional rights, given that the prisoner failed to even allege that any legal materials were confiscated. According to the court, an employee's rejection of the prisoner's letters to nine state senators and representatives because the prisoner did not pay for postage and because the letters did not qualify as legal mail, as they were not addressed to a court, attorney, or a party to a lawsuit, did not implicate the prisoner's constitutional rights. (Mich. Dept. of Corrections)

2010

U.S. District Court
CONFISCATION

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 found that the prisoner's allegations were factually sufficient to state a colorable § 1983 claim for a violation of his First Amendment right of access to courts, where

the prisoner alleged that he was housed in segregation for several years and was repeatedly denied materials such as books, paper, pens and envelopes, as well as assistance from a law clerk. According to the court, the prisoner's allegations that officials deprived him of incoming mail without notice and without a post-deprivation remedy were factually sufficient to state a § 1983 claim under the First and Fourteenth Amendments. The court found that the prisoner's allegations were sufficient to state a § 1983 claim of deprivation of property without due process in violation of the Fourteenth Amendment where the prisoner alleged that prison officials confiscated various items from his cell that they deemed to be contraband, but that he had purchased them at the prison or had the items given to him by employees of the prison, and that officials told him he had no right to be made aware of rules, policies or regulations. (High Desert State Prison, Nevada)

U.S. District Court
INMATE FUNDS

Bradshaw v. Lappin, 738 F.Supp.2d 1143 (D.Colo. 2010). Inmates of the Federal Bureau of Prisons (BOP) brought actions against various prison defendants, alleging that the Director of the BOP violated the inmates' rights, under the Inmate Financial Responsibility Program (IFRP), by requiring them to develop a financial plan addressing payment of their restitution obligations. The inmates moved to consolidate, and defendants moved for summary judgment. The district court consolidated the cases. The court held that allegations that prison officials improperly collected the sum of \$25 per quarter from each trust account of the two inmates, which in turn was credited against a debt that it was undisputed the inmates actually owed, did not constitute a condition of confinement amounting to a "sufficiently serious" deprivation of minimal civilized measure of life's necessities, thereby precluding the inmates' Eighth Amendment claims. The court held that the officials were entitled to qualified immunity from the inmates' Bivens claims that they were improperly placed on Inmate Financial Responsibility Program (IFRP) "refusal" status, as it was not clear how, or even if, the inmates' constitutional rights would be implicated by being improperly placed on IFRP "refusal" status, and if placement did violate some constitutional right, that right was not so "clearly established" that officials could be expected to know their conduct violated the Constitution. The court noted that participation in IFRP was voluntary and both inmates voluntarily entered into written agreements to participate in the program, thereby expressly authorizing the Bureau of Prisons (BOP) to begin deducting funds from their accounts each quarter. (Federal Bureau of Prisons)

U.S. District Court
CONFISCATION

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 noncompliant 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
DESTRUCTION OF
PROPERTY

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 held that the inmate failed to allege that she sustained an actual injury or that an Arkansas Department of Correction (ADC) official denied her the opportunity to review her mail prior to its being confiscated, as required to support a claim that the official violated the inmate's constitutional right of access to the courts and her First Amendment right to send and receive mail. The court found that summary judgment was precluded by genuine issues of material fact as to whether there was a legitimate penological interest for the alleged destruction of the prison inmate's bible, precluding summary judgment as to whether ADC employees violated the inmate's right to freedom of religion by destroying her bible. (Arkansas Department of Corrections)

U.S. District Court
CONFISCATION
SEARCHES

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
INMATE FUNDS

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, VA)

U.S. Appeals Court
INMATE FUNDS

Ward v. Ryan, 623 F.3d 807 (9th Cir. 2010). A state inmate who was serving a 197-year sentence brought a § 1983 action against the director of the Arizona Department of Corrections, alleging the Department's withholding of a portion of his prison wages for "gate money," to be paid to him upon his release from incarceration, violated his Fifth and Fourteenth Amendment rights since it was unlikely he would be released from prison prior to his death. The appeals court reversed the dismissal of the claim. The district court subsequently denied the inmate injunctive relief and granted summary judgment in favor of the director. The inmate appealed. The appeals court held that the inmate did not have a current possessory property interest in wages withheld in a dedicated discharge account, as required to establish a violation of the Takings Clause. The court noted that Arizona statutes creating a protected property interest in prison inmate wages did not give inmates full and unfettered right to their property. (Arizona Department of Corrections)

U.S. Appeals Court
LEGAL MATERIAL

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. District Court
DISPOSITION OF
FUNDS

English v. District of Columbia, 815 F.Supp.2d 254 (D.D.C. 2011). An involuntarily committed psychiatric patient brought an action against the District of Columbia, the mayor and various other officials, alleging constitutional claims pursuant to § 1983, and various violations of District of Columbia law. The defendants filed a motion to dismiss and the district court granted the motion. The court held that the process received by the patient at a public institution in regards to removal of money from his patient account was sufficient to satisfy Fifth Amendment procedural due process. The court noted that the patient received a pre-deprivation notice reasonably calculated to make him aware that he owed money and that this money would be taken from his account, the patient followed the procedures listed on the notice to challenge the invoice and availed himself of the appeals process, he received a response, and he requested and received an external review. (Saint Elizabeths, District of Columbia Department of Mental Health)

U.S. District Court
DISPOSITION OF
FUNDS

Martin v. Benson, 827 F.Supp.2d 1022 (D.Minn.2011). A civilly committed sex offender and resident of the Minnesota Sex Offender Program (MSOP) facility brought a pro se action against the chief executive officer (CEO) of MSOP, alleging the CEO violated the minimum wage provision of the Fair Labor Standards Act (FLSA) by withholding 50% of his earnings as a work-related expense to be applied toward the cost of care. The CEO moved to dismiss. The district court granted the motion. The court held that the economic reality of the civilly committed sex offender's work within the MSOP vocational work program was not the type of employment covered by FLSA. The court noted that the program was specifically designed to provide "meaningful work skills training, educational training, and development of proper work habits and extended treatment services for civilly committed sex offenders," and to the extent that the program engaged in commercial activity, it was incidental to the program's primary purpose of providing meaningful work for sex offenders. According to the court, the program had few of the indicia of traditional, free market employment, as the limits on the program prevented it from operating in a truly competitive manner, and the offender's basic needs were met almost entirely by the State. The court noted that the conclusion that the FLSA does not apply to a civilly committed sex offender should not be arrived at just because, as a committed individual, he is confined like those in prison or because his confinement is related to criminal activity, "...it is not simply an individual's status as a prisoner that determines the applicability of the FLSA, but the economic reality itself that determines the availability of the law's protections." (Minnesota Sex Offender Program)

U.S. Appeals Court
PROHIBITED
PROPERTY

Nevada Dept. of Corrections v. Greene, 648 F.3d 1014 (9th Cir. 2011). The Nevada Department of Corrections brought an action against an inmate, seeking declaratory judgment that its ban on personal possession of typewriters by inmates was constitutional. Following intervention by additional inmates, the district court granted the Department's motion for summary judgment. Several inmates appealed, and the appeals were consolidated. The appeals court affirmed. The appeals court held that: (1) the typewriter ban did not constitute First Amendment retaliation; (2) the ban did not infringe upon the inmates' First Amendment right of access to the Nevada Supreme Court; (3) the ban did not infringe upon the inmates' Fourteenth Amendment due process rights; and (4) the district court did not abuse its discretion in not affording the inmate the opportunity to conduct discovery prior to its ruling on the Department's motion for summary judgment. The court noted that the Department's ban on personal possession

of typewriters by inmates reasonably advanced a legitimate correctional goal of institutional safety, and that the ban was enacted after the murder of an inmate with a weapon fashioned from the roller pin of a typewriter. (Nevada Department of Corrections)

U.S. Appeals Court
INMATE FUNDS

Norris v. Premier Integrity Solutions, Inc., 641 F.3d 695 (6th Cir. 2011). An inmate brought a § 1983 due process claim against a state department of corrections and prison officials arising out of the prison's disciplinary proceedings. The district court granted the defendants' motion for summary judgment and the inmate appealed. The appeals court affirmed in part and reversed in part. The court held that a hearing officer's reliance entirely on the statements of a corrections officer, in determining whether videotape evidence was relevant in a prison disciplinary proceeding, deprived the inmate of his right to due process. According to the court, the inmate's right to present evidence was completely undermined by the hearing officer's failure to independently determine whether the evidence was relevant. But the court held that the hearing officer's denial of the inmate's request to call an alleged victim of the assault by the inmate as a witness in the disciplinary hearing did not deprive the inmate of his right to due process. The court noted that the hearing officer had asked the witness to testify, but the witness had refused, and the interest in protecting the witness and managing the difficult relationships within the prison setting far outweighed the inmate's right to call the alleged victim as a witness. The court found that a reasonable official at the time of the inmate's misconduct hearing would not have known that the inmate was entitled to due process with respect to an assessment against his prison account, and thus the hearing officer was entitled to qualified immunity from the inmate's § 1983 claim that the officer violated his due process rights by imposing an assessment prior to a hearing to determine the amount of money to be deducted from the inmate's prison account. (State Correctional Institute at Graterford, Pennsylvania)

U.S. Appeals Court
DISPOSITION OF
FUNDS
INMATE FUNDS

Reedy v. Werholtz, 660 F.3d 1270 (10th Cir. 2011). A group of state inmates brought an action against the Secretary of the Kansas Department of Corrections, challenging two policies which required money obtained by inmates to be saved for use upon release from prison. The Secretary filed a motion to dismiss or, in the alternative, to grant summary judgment. The district court granted the motion to dismiss and the inmates appealed. The appeals court affirmed. According to the court, compulsory savings accounts for release-eligible prisoners did not violate substantive due process because they were rationally related to a legitimate penological purpose of ensuring that inmates had funds upon release to ease their transition into free society. (Kansas Department of Corrections)

U.S. Appeals Court
INMATE FUNDS

U.S. v. Franco, 632 F.3d 880 (5th Cir. 2011). An inmate in a privately owned and operated county jail, who had paid a corrections officer to bring contraband into a county correctional facility, was convicted after a district court jury trial of aiding and abetting in the bribery of a public official. The defendant appealed. The appeals court affirmed. The court held that it was constitutional to apply the federal bribery statute to the defendant, even though he used his own money, and not federal funds, to pay the corrections officer. The officer had been paid a total of \$425 over a period of time to bring peanut butter, tuna fish, and other small food items, a cell phone, enchiladas and a box containing marijuana. (Ector County Correctional Center, Texas)

U.S. Appeals Court
INMATE FUNDS
INTEREST

Young v. Wall, 642 F.3d 49 (1st Cir. 2011). A state prisoner brought a civil rights action against the director of the Rhode Island Department of Corrections (RIDOC), alleging that the director's decision to cease paying interest on funds held in inmates' trust accounts constituted an unconstitutional taking and that the RIDOC's failure to afford the prisoner notice and opportunity to be heard before abandoning the practice of accruing interest violated his right to procedural due process. The district court granted summary judgment for the director and the prisoner appealed. The appeals court affirmed. The court held that the prisoner did not have a constitutionally protected property right, under Rhode Island law, in the interest not yet paid on his inmate trust accounts, and the prisoner did not have a due process right to notice and the opportunity to be heard before the prison abandoned the practice of accruing interest. (Rhode Island Department of Corrections)

2012

U.S. Appeals Court
DISPOSITION OF
FUNDS
INTEREST

Booker-El v. Superintendent, Indiana State Prison, 668 F.3d 896 (7th Cir. 2012). A state prisoner filed a civil rights action alleging that prison officials misappropriated proceeds from a prison recreation fund in violation of his due process rights. The district court dismissed the action and the prisoner appealed. The appeals court affirmed. The court held that the prisoner suing under § 1983 sufficiently stated that he had suffered an injury in-fact, as required for Article III standing, by prison officials' alleged misappropriation of proceeds from a prison recreation fund in violation of his due process rights. According to the court, the prisoner had a high probability of receiving benefits under a properly administered recreation fund, although the prisoner actually did not have a property interest in that fund, and that the prisoner had a colorable claim to a property interest in that fund and the merits of the case. But the court held that the prisoner did not have any legitimate expectation to any benefit derived from prison's recreation fund, and thus he did not have any protected property interest in the fund, since the governing statute required only that funds be spent for the direct benefit of prisoners if prison officials decided to utilize money from the fund and the fund established from one prison could be transferred to another prison without consulting any prisoner. (Indiana State Prison)

U.S. District Court
DISPOSITION OF
PROPERTY

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 held that lack of an irreparable harm to the inmate as a result of damage to his prayer object, a turtle pendant, precluded the issuance of a preliminary injunction, where there was no imminent danger the his sacred items would be desecrated absent injunctive relief. The court noted that the inmate's possession and use of his prayer object, a kukui nut, was a "religious exercise" for purposes of the Religious Land Use and Institutionalized Persons Act (RLUIPA): the object was used in daily prayers and chants, in dances, and other individual religious protocol and communal religious activities, it provided the inmate with spiritual comfort, and it symbolized enlightenment, growth and accomplishment. 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. Appeals Court
SOCIAL SECURITY

Fowlkes v. Thomas, 667 F.3d 270 (2nd Cir. 2012). A state prisoner, whose supplemental security income (SSI) benefits were suspended while incarcerated, brought a pro se civil rights action against Social Security Administration officials. The district court dismissed the action and the prisoner appealed. The appeals court affirmed in part and remanded in part. On remand, the district court refused to provide any relief to the prisoner and the prisoner appealed. The appeals court affirmed, finding that the Social Security Administration was barred by the "No Social Security Benefits for Prisoners Act" from tendering payment to the state prisoner while he remained incarcerated, even though the underlying obligation to pay benefits arose before the Act's enactment. According to the court, the Act was not impermissibly retroactive because it only altered the procedure and timing by which certain individuals received their retroactive social security benefit payments, but it did not affect their substantive right to those benefits. (Social Security Administration, New York)

U.S. District Court
CONFISCATION
LEGAL MATERIAL
LIMITATIONS

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
CONFISCATION
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
CONFISCATION

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 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
INMATE FUNDS

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
PROHIBITED
PROPERTY

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. (Illinois Department of Corrections)

U.S. Appeals Court
INMATE FUNDS

Poole v. Isaacs, 703 F.3d 1024 (7th Cir. 2012). A state inmate brought a § 1983 action against prison officials, alleging that a required \$2.00 copayment for dental care furnished at a correctional center violated his Eighth Amendment rights. The district court allowed the action to proceed against the center's healthcare administrator after screening the complaint, but then granted summary judgment for the administrator. The inmate appealed. The appeals court held that the imposition of a modest fee for medical services provided to inmates with adequate resources to pay the fee, standing alone, does not violate the United States Constitution. According to the court, the issue of whether the inmate should have been given the benefit of an exemption from the required copayment was state-law question that could not be pursued under § 1983. (Big Muddy River Correctional Center, Illinois)

U.S. Appeals Court
CONFISCATION
DESTRUCTION OF
PROPERTY
LEGAL MATERIAL

Surles v. Anderson, 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
RETIREMENT
DISPOSITION OF
FUNDS

U.S. v. Beulke, 892 F.Supp.2d 1176 (D.S.D. 2012). After a defendant was convicted of embezzlement, sentenced to prison, and ordered to pay restitution, the Government moved to enforce collection and to order the defendant to apply all of his pension payments while in prison to the restitution order. The district court granted the motion in part. The court held that, pursuant to the Mandatory Victims Restitution Act (MVRA), the Government could seize the defendant's interest in his 401(k) and that any interest the defendant's wife had in his 401(k) account was subject to the Government's perfected lien. The court decided to exercise its statutory discretion so as to allow garnishment of 25% of the defendant's net monthly pension, while allowing his estranged wife to continue to receive half of the pension payments during the pendency of their divorce. (South Dakota)

2013

U.S. District Court
STORAGE

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. (Maine State Prison)

U.S. Appeals Court CONFISCATION DESTRUCTION OF PROPERTY LEGAL MATERIAL LIMITATIONS SEARCHES	<p><i>Devbrow v. Gallegos</i>, 735 F.3d 584 (7th Cir. 2013). A prisoner brought a § 1983 claim against two prison officials, claiming that the officials denied him access to the courts by confiscating and then destroying his legal papers in retaliation for a prior lawsuit he filed. The district court granted the prison officials' motion for summary judgment, and denied the prisoner's motion for reconsideration. The prisoner appealed. The appeals court affirmed. The appeals court held that the prisoner failed to authenticate a purported e-mail from a prison official to a law librarian supervisor, where there was no circumstantial evidence that supported the authenticity of the e-mail, and no evidence that the prisoner or anyone else saw the official actually compose or transmit the purported e-mail. The court held that the official's removal of the prisoner's excessive legal materials from his cell, to eliminate a fire hazard and to make it easier for officials to conduct searches and inventories of the prisoner's property during prison searches, was not retaliation for the prisoner's filing of a prior lawsuit. According to the court, the prisoner's speculation regarding the officials' motive could not overcome the officials' sworn statements on the motion for summary judgment. (Westville Correctional Facility, Indiana)</p>
U.S. Appeals Court LIMITATIONS	<p><i>Earl v. Racine County Jail</i>, 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)</p>
U.S. Appeals Court LIMITATIONS TRANSFER BETWEEN PRISONERS	<p><i>Pesci v. Budz</i>, 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 <i>Turner</i>'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)</p>
U.S. District Court LEGAL MATERIAL LIMITATIONS	<p><i>Randolph v. Wetzel</i>, 987 F.Supp.2d 605 (E.D.Pa. 2013). A state inmate brought an action against public officials employed by the Commonwealth of Pennsylvania and prison medical providers, alleging, among other things, that the defendants violated the Americans with Disabilities Act (ADA) and provided inadequate medical treatment. The defendants moved for summary judgment, and the inmate cross-moved for partial summary judgment. The district court granted the defendants' motions in part and denied in part, and denied the inmate's motion. The district court held that state prison officials were not deliberately indifferent to the inmate's allegedly serious medical condition, in violation of the Eighth Amendment, in requiring the inmate to use a wheelchair to access outdoors for "yard time" or to see visitors, rather than transporting the inmate on a gurney. The court noted that the officials relied on the medical providers' judgment that the inmate was able to sit up and get into a wheelchair. The court found that the inmate's alleged restricted access to his personal effects and legal mail when he was moved between cells, and his alleged denial of access to a law library, did not result in an actual injury to inmate, thus precluding his § 1983 access to courts claim. The court noted that the inmate proceeded with all of his legal claims in addition to his complaint of denial of access to courts. (SCI Graterford, SCI Greene, Pennsylvania)</p>
2014	
U.S. District Court SEARCHES CONFISCATION	<p><i>Ballard v. Johns</i>, 17 F.Supp.3d 511 (E.D.N.C. 2014). A civil detainee being considered for certification as a sexually dangerous person brought an action against federal employees, in their official capacities and in their individual capacities under Bivens, challenging various conditions of his detention, including claims concerning due process violations and inability to attend religious services. The employees moved to dismiss or for summary judgment and the detainee moved to overrule objections to requests for document production. The district court granted the employees' motion and denied the detainee's motion. The court held that: (1) the detainee did not show that federal employees, by following Federal Bureau of Prisons (BOP) regulations and policies, violated his constitutional rights; (2) the detainee was properly subjected to restrictions and disciplinary consequences of the BOP commitment and treatment program; (3) denial of the detainee's request to attend or receive religious services while in disciplinary segregation did not unduly burden his free exercise of religion; and (4) the employees did not violate detainee's right to be free from unreasonable searches and seizures by searching his cell and seizing his property. (Federal Correctional Institution at Butner, North Carolina)</p>

- U.S. District Court
DESTRUCTION OF
PROPERTY
LEGAL MATERIAL
- 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 prison officials' alleged unauthorized intentional taking or destruction of the inmate's property did not violate the inmate's due process rights, where the state afforded an adequate post-deprivation remedy. The court noted that the officials did not violate the inmate's First Amendment right of access to courts when they allegedly confiscated a rough draft of his civil rights complaint, where the inmate did not allege that he suffered an actual injury as a result, or that officials acted deliberately or maliciously. (Upstate Correctional Facility, New York)
- U.S. District Court
DESTRUCTION OF
PROPERTY
LEGAL MATERIAL
- 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. 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
INMATE FUNDS
DISPOSITION OF
FUNDS
- Edmondson v. Fremgen*, 17 F.Supp.3d 833 (E.D.Wis. 2014). An indigent prisoner brought a § 1983 action against the clerk of the state courts of appeals, alleging that the clerk violated various of his civil rights when she froze his inmate trust accounts until filing fees had been paid in two of his state appeals. The clerk moved to dismiss, and the prisoner moved for appointment of counsel. The district court granted the motion to dismiss and denied the motion to appoint counsel. The court held that freezing the prisoner's trust accounts did not violate his right to access the courts, did not violate the prisoner's right to procedural due process, and was not an illegal seizure. . According to the court, the indigent prisoner's right to access the courts were not violated, although not having the ability to spend money in his accounts prevented him from copying legal materials, where allowing the prisoner's appeals to proceed in the first place, by having deductions for filing fees made from his inmate trust accounts, did not injure his ability to access the courts. (Wisconsin)
- U.S. Appeals Court
INMATE FUNDS
DISPOSITION OF
FUNDS
- Montanez v. Secretary Pennsylvania Dept. of Corrections*, 773 F.3d 472 (3rd Cir. 2014). Inmates brought a § 1983 action against Pennsylvania Department of Corrections (DOC) officials, alleging that the DOC's implementation of a policy that allowed automatic deduction of funds from their inmate accounts to cover court-ordered restitution, fines, and costs violated their procedural due process rights. The district court granted the officials' motion for summary judgment. The inmates appealed. The appeals court affirmed in part and reversed in part. The court held that the DOC's refusal to provide exceptions to its across-the-board 20% rate of deduction, pursuant to a DOC policy that allowed automatic deduction of funds from inmate accounts to cover court-ordered restitution, fines, and costs, did not violate due process, in light of the fact that the DOC would not make deductions when an inmate's account fell below a certain minimum. The court found that summary judgment was precluded by a genuine issue of material fact regarding the extent of the notice the inmate received with respect to his sentence and the DOC policy that permitted automatic deduction of funds from his inmate account to cover court-ordered restitution, fines, and costs. (Pennsylvania Department of Corrections)
- U.S. Appeals Court
INMATE FUNDS
- 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
LOSS OF
PROPERTY
- 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)

2015

- U.S. District Court
CONFISCATION *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, Cossack Correctional Facility, N.Y.)
- U.S. District Court
INMATE FUNDS *Harris v. Doe*, 78 F.Supp.3d 894 (N.D. Ill. 2015). In two related actions, an inmate, proceeding pro se, alleged § 1983 claims against prison officers for deprivations of his civil rights. The inmate sought to proceed in forma pauperis in these suits. The district court dismissed the suits, holding that the inmate's allegation of poverty in his applications to proceed in forma pauperis was untrue. The court noted that the inmate represented that he had not received more than \$200 in funds over the preceding 12 months from any of numerous categories listed in the application, including a catch-all category of "any other source." According to the court, his prisoner trust fund account reflected a \$3,000 deposit, the inmate quickly withdrew most of that \$3,000 by writing checks to a "friend" or "friends" who in turn later re-deposited those funds into his account over the next several months, and the inmate promptly expended these re-deposits on commissary items well before he filed his suits. (Cook County Jail, Illinois)
- U.S. District Court
SOCIAL SECURITY *Mackey v. United States*, 79 F.Supp.3d 57 (D.D.C. 2015). An inmate incarcerated in Indiana sought a court order directing the Commissioner of Social Security to pay benefits for a period prior to his incarceration. The Commissioner filed a motion to dismiss for improper venue. The inmate in turn requested transfer to another venue, rather than dismissal. The court granted the motion to dismiss the case, holding that transfer to a federal court in Indiana, where the inmate was incarcerated, was not in the interests of justice. (Federal Correctional Facility, Terre Haute, Indiana)
- U.S. District Court
SEARCHES
CONFISCATION *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. Appeals Court
INMATE FUNDS
DISPOSITION OF
FUNDS *Shinault v. Hawks*, 782 F.3d 1053 (9th Cir. 2015). A state inmate filed a § 1983 action alleging that prison officials violated his constitutional rights when they froze funds in his inmate trust account to recover the cost of his incarceration. The district court entered summary judgment in the officials' favor and the inmate appealed. The appeals court affirmed, holding that the decision to freeze and withdraw funds from the inmate's trust account did not violate the Eighth Amendment. According to the court, the inmate's interest in the funds was substantial and there was risk of an erroneous deprivation, but the officials were entitled to qualified immunity because it was not clearly established that state prison officials were required by the Due Process Clause to provide a pre-deprivation hearing before freezing funds in an inmate's trust account. The Department of Corrections transferred \$65,353 into an account in the inmate's name and the inmate did not have access to the fund. (Oregon Department of Corrections)
- U.S. Appeals Court
DISPOSITION OF
PROPERTY
STORAGE
PROHIBITED PRO-
PERTY
CONFISCATION *Sorrentino v. Godinez*, 777 F.3d 410 (7th Cir. 2015). Two inmates purchased several items from a prison's commissary, but the prison later forbade the inmates to possess those items in their cells. Their property was removed, as the new rule required. They responded by filing a proposed class action in the district court, alleging that confiscation of their property was an unconstitutional taking and a breach of contract. The district court dismissed the action. The appeals court held that the district court was correct to dismiss the action, although the dismissal should have been without prejudice. One inmate had purchased a fan and signed a "personal property contract" which obligated him to follow all Department of Corrections (DOC) rules related to use, ownership, and possession of the fan. The other inmate purchased a typewriter and a fan, and he also signed a personal property contract for his fan. When a new policy banned these items from prisoners' cell, the new policy offered several options for inmates who owned the newly prohibited types of property. Inmates with typewriters could have them destroyed, give them to visitors, ship them to someone outside the prison at no cost, store them in "offender

personal property” which is returned to inmates upon release from prison, or donate them to the prison library. Fans were simply placed in storage as “offender personal property.” (Stateville Correctional Facility, Illinois)

SECTION 36: RELEASE

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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
PAROLE-REVOCATION

Gagon v. Scarpelli, 411 U.S. 778 (1973). The plaintiff was a felony probationer who was arrested after committing a burglary. He admitted involvement in the crime but later claimed that the admission was made under duress and was false. The probation of the plaintiff, who was not represented by an attorney, was revoked without a hearing. After filing a habeas corpus petition, he was paroled. The district court concluded that revocation of probation without hearing and counsel was a denial of due process. The court of appeals affirmed.

Held:

1. Due process mandates preliminary and final revocation hearings in the case of a probationer under the same conditions as are specified in Morrissey v. Brewer, 408 U.S. 471, in the case of a parolee. Pp. 781-782.

2. The body conducting the hearings should decide in each individual case whether due process requires that an indigent probationer or parolee be represented by counsel. Though the state is not constitutionally obligated to provide counsel in all cases, it should do so where the indigent probationer or parolee may have difficulty in presenting his version of disputed facts without the examination or cross-examination of witnesses or the presentation of complicated documentary evidence. Presumptively, counsel should be provided where, after being informed of his right, the probationer or parolee requests counsel, based on a timely and colorable claim that he has not committed the alleged violation or, if the violation is a matter of public record or uncontested, there are substantial reasons in justification or mitigation that make revocation inappropriate. Pp. 783-791.

3. In every case where a request for counsel is refused, the grounds for refusal should be stated succinctly in the record. P. 791.

U.S. Supreme Court
RELEASE ON
RECOGNIZANCE

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
GOOD-TIME

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)

1976

U.S. Supreme Court
PAROLE-REVOCATION

Moody v. Daggett, 429 U.S. 78 (1976). The petitioner, a federal parolee imprisoned for federal crimes committed while on parole and clearly constituting parole violations, was held by the United States Supreme Court not to be constitutionally entitled to an immediate parole revocation hearing, where a parole violator warrant was issued and lodged with the institution of his confinement as a "detainer" but was not executed. (a) Petitioner's present confinement and consequent liberty loss do not derive from the parole violator warrant but from his convictions for the crimes committed while on parole. Execution of a parole violation warrant and custody thereunder are the operative events triggering any loss of liberty attendant upon parole revocation. Morrissey v. Brewer, 408 U.S. 471, 488.

(b) Deferral of the parole revocation decision until execution of the parole violator warrant does not deprive the petitioner of the opportunity to serve any sentence imposed for parole violation concurrently with the sentences imposed for the crimes committed while on parole, since if the Parole Commission chooses to revoke parole, it has the power to grant, retroactively, the equivalent of concurrent sentences and to provide for unconditional or conditional release upon completion of the subsequent sentences. Pp. 87-88.

(c) Issuance of the parole violator warrant without more, did not diminish the petitioner's opportunity for parole on his intervening sentences, since the same commission that will consider such parole will decide whether to revoke parole granted under the earlier conviction, and since the statutory hearing to which petitioner will be entitled upon his application for parole will give him the same opportunity to persuade the Commission that he should be released from custody as would an immediate hearing on the parole violator warrant. P. 88.

(d) As a practical matter, in cases such as this, in which the parolee has been convicted of an offense plainly constituting a parole violation, a decision to revoke parole would often be foreordained, so that given the predictive nature of the parole revocation hearing, it is appropriate that such hearing be held at the time at which prediction as to the parolee's ability to live in society without committing antisocial acts is both most relevant and most accurate- at the expiration of the parolee's intervening sentence. P. 89. Affirmed.

1979

U.S. Supreme Court
PAROLE-GRANTING

Greenholtz v. Nebraska Penal Inmates, 442 U.S. 1 (1979). Under Nebraska statutes a prison inmate becomes eligible for discretionary parole when his minimum term, less good-time credits, has been served. Hearings are conducted in two stages to determine whether to grant or deny parole: initial review hearings and final parole hearings. Initial review hearings must be held at least once a year for every inmate. At the first stage, the Board of Parole examines the inmate's preconfinement and postconfinement record, and holds an informal hearing. The Board interviews the inmate and considers any letters or statements presented in support of a claim for release. If the Board determines that the inmate is not yet a good risk for release, it denies parole, stating why release was deferred. If the Board determines that the inmate is a likely candidate for release, a final hearing is scheduled, at which the inmate may present evidence, call witnesses, and be represented by counsel. A written statement of the reasons is given if parole is denied. One section of the statutes provides that the Board "shall" order an inmate's release unless it concludes that his release should be deferred for at least one of four specified reasons. The respondent inmates, who had been denied parole, brought a class action in federal district court, which upheld their claim that the Board's procedures denied them procedural due process. The court of appeals agreed, holding that the inmates had the same kind of constitutionally protected "conditional liberty" interest as was recognized in Morrissey v. Brewer, 408 U.S. 471, also finding a statutorily defined, protectible interest in Section 83-1,114 (1), and required, *inter alia*, that a formal hearing be held for every inmate eligible for parole and that every adverse parole decision include a statement of the evidence relied upon by the Board.

The United States Supreme Court disagreed with the conclusions of the lower courts, holding:

1. A reasonable entitlement to due process is not created merely because a state provides for the possibility of parole, such possibility providing no more than a mere hope that the benefit will be obtained. Parole revocation, for which certain due process standards must be met, Morrissey v. Brewer, *supra*, entails deprivation of a liberty one has and is a decision involving initially a wholly retrospective factual question as to whether the parolee violated his parole. Parole release involves denial of a liberty desired by inmates and that decision depends on an amalgam of elements, some factual but many purely subjective evaluations by the Board. Pp. 9-11.

2. While the language and structure of the statute provides a mechanism for parole that is entitled to some constitutional protection, the Nebraska procedure provides all the process due with respect to the discretionary parole decision. Pp. 11-16.

576 F.2d 1274, reversed and remanded.

- U.S. Appeals Court
PAROLE-GRANTING Jackson v. Reese, 608 F.2d 159 (5th Cir. 1979). An inmate in Georgia has no reasonable expectation of being granted parole, therefore, due process does not apply in parole granting. The consideration of the nature and seriousness of the offense in parole granting is valid. An inmate does not have a constitutionally protected right of access to his parole files.
- U.S. District Court
PAROLE-REVOCATION Patton v. Fenton, 491 F.Supp. 156 (M.D. Pa. 1979). A conviction which is on appeal may form the basis for revocation of parole. It may also form the basis for avoiding a preliminary hearing. Where an individual has been convicted of a crime committed while on parole and his parole has been revoked on that basis, the time spent on parole need not be credited against the sentence even where the conviction is on appeal.
- U.S. Appeals Court
PAROLE-GRANTING Sharp v. Leonard, 611 F.2d 136 (6th Cir. 1979). Due process does not pertain in the parole release decision in Ohio.
- U.S. Supreme Court
PAROLE-POLICIES United States v. Addonizio, 442 U.S. 178 (1979). HeId: A federal prisoner's allegation that a postsentencing change in the policies of the United States Parole Commission has prolonged his actual imprisonment beyond the period intended by the sentencing judge will not support a collateral attack on the original sentence under 28 U.S.C. Section 2255. Pp. 184-190. (a) The claimed error that the judge was incorrect in his assumptions about the future course of parole proceedings does not meet any of the established standards of collateral attack, where there is no claim of a constitutional violation, the sentence imposed was within the statutory limits, and the proceeding was not infected with any error of fact or law of a "fundamental" character that renders the entire proceeding irregular and invalid. The change in Parole Commission policies involved here- considering the seriousness of the offense as a significant factor in determining whether a prisoner should be granted parole- affected the way in which the court's judgment and sentence would be performed but did not affect the lawfulness of the judgement itself, then or now; and there is no claim that the action taken by the sentencing judge was unconstitutional or was based on misinformation of constitutional magnitude. Davis v. United States, 417 U.S. 333, and United States v. Tucker, 404 U.S. 443, distinguished. Pp. 184-187. (b) There is no basis for enlarging the grounds for collateral attack to include claims based not on any objectively ascertainable error but on the frustration of the subjective intent of the sentencing judge. Under the present statutory scheme, the judge has no enforceable expectations with respect to the actual release of a sentenced defendant short of his statutory term. While the judge may have expectations as to when release is likely, the actual decision is not his to make, either at the time of sentencing or later if his expectations are not met. To require the Parole Commission to act in accordance with judicial expectations, and to use collateral attack as a mechanism for ensuring that these expectations are carried out, would substantially undermine the congressional decision to entrust release determinations to the Commission, not the courts, and nothing in Section 2255 supports- let alone mandates- such a frustration of congressional intent. Thus, subsequent actions taken by the Parole Commission- whether or not such actions accord with a trial judge's expectations at the time of sentencing- do not retroactively affect the validity of the final judgement itself, and do not provide a basis for collateral attack on the sentence pursuant to section 2255. Pp. 187-190. 573 F.2d 147, reversed.
- U.S. Appeals Court
PAROLE-REVOCATION United States v. Gentile, 610 F.2d 541 (8th Cir. 1979). Proof of a state criminal conviction is a sufficient evidentiary base for revocation of parole even if the conviction is on appeal.
- U.S. Appeals Court
PAROLE-GRANTING Wagner v. Gilligan, 609 F.2d 866 (6th Cir. 1979). The Ohio statutes do not create a reasonable expectation of parole upon being considered for parole. Therefore, procedural due process does not apply in the parole granting proceeding.
- 1980
- U.S. District Court
PAROLE-GRANTING Bachman v. Jeffes, 488 F.Supp. 107 (M.D. Pa. 1980). Denial of parole did not require procedural due process. Neither did it improperly frustrate the sentencing judge's intent since the intent of the judge never had been binding on the parole board. A petition for a writ of habeas corpus cannot be used to review the exercise of discretion by the paroling authority in denying parole.
- U.S. District Court
TEMPORARY
RELEASE
PAROLE-
GRANTING Batton v. State Government of North Carolina, Executive Branch, 501 F.Supp. 1173 (E.D.N.C. 1980). Where an employment plan and a residence plan are required before an individual will be paroled, and where women are concentrated in two institutions while men are spread out all over the state, it is not clear that there is parity of treatment. "Temporary parole" to attain these plans may be an adequate substitute, but the facts do not demonstrate that the granting of this is sufficient to create a parity with men in the ability to gain parole. (North Carolina Correctional Center for Women)

- U.S. Appeals Court
PAROLE-GRANTING
EQUAL PROTECTION Block v. Potter, 631 F.2d 233 (3rd Cir. 1980). While procedural due process does not apply in parole granting, substantive due process does apply and requires that the procedure actually employed be fair. Under substantive due process, the court will examine the criteria actually employed. Where the basis of the decision had no relationship to either retribution or deterrence, it violated due process. Denial of parole because the individual was white (unlike the ordinary parolee) and had received an education, did not promote any purpose of corrections or parole other than to punish the individual for his status. Therefore, it violated due process and equal protection.
- U.S. Appeals Court
PAROLE-REVOCATION Bradley v. Fairfax, 634 F.2d 1126 (8th Cir. 1980). Disclosure of grand jury testimony to the United States Parole Commission for use in a revocation proceeding was not proper since it was:
- 1) not preliminary to a judicial proceeding,
 - 2) not on the basis of particularized need, and
 - 3) not disclosure to an attorney for the government which is limited to prosecutors
- However, here the error was harmless.
- U.S. District Court
PAROLE-SEARCHES Diaz v. Ward, 506 F.Supp. 226 (S.D.N.Y. 1980). Conditions of parole that the parole officer be permitted to search the parolee and his residence does not obviate the necessity of obtaining a warrant for the search where the parolee does not consent to the search. [By implication, refusal to consent would be a basis for revocation of parole for refusal to cooperate.] The parole officer need not obtain a warrant to make a home visit to the parolee, but the parolee may restrict the nature of the visit and any search incident thereto.
- U.S. Appeals Court
PAROLE-GRANTING Granville v. United States, 613 F.2d 125 (5th Cir. 1980). Release on parole moots an attack on the denial of parole.
- U.S. District Court
PAROLE-REVOCATION Gregory v. State of New York Parole Comm'n, 496 F.Supp. 748 (M.D. Pa. 1980). The collateral effects of a parole revocation detainer do not require that the individual be given a parole revocation hearing prior to the completion of a new sentence being served in another jurisdiction.
- U.S. Appeals Court
PAROLE-REVOCATION Maggard v. Florida Parole Comm'n, 616 F.2d 890 (5th Cir. 1980), cert. denied, 449 U.S. 960, reh. denied, 450 U.S. 960. Where the plaintiff failed to plead any connection between his present incarceration and the allegedly invalid parole revocation, the action was properly dismissed as moot.
- U.S. Supreme Court
PAROLE-LIABILITY Martinez v. State of California, 100 S.Ct. 553 (1980), reh'g denied, 100 S.Ct. 1285. Martinez' 15 year old daughter was murdered by a parolee five months after he was released from prison, despite a known history as a sex offender. Martinez brought this action in a California state court under state law and 42 U.S.C. Section 1983 claiming state officials in releasing the parolee subjected his daughter to a deprivation of life without due process of law. A demurrer to the complaint was sustained, the California Court of Appeals affirmed on the basis of a statute granting parole officials absolute immunity from liability for any injury resulting from parole-release decisions. Appeal was made directly to the U.S. Supreme Court. (Affirmed.)
- HELD: "[A]t least under the particular circumstances of this parole decision...[the death] is too remote a consequence of the parole officers' action to hold them responsible without federal rights law." 100 S.Ct. 559.
- A state statute which provides that the parole board is absolutely immune from suit for its decision whether to parole a prisoner furthers a rational state purpose of rehabilitation of prisoners, therefore, the statute is valid. There was no taking of life without due process where the parolee could not be perceived as a danger to the particular individual [and the length of time between the release decision and the act was too long for the release decision to be considered the proximate cause of the death.] (State of California)
- U.S. District Court
PAROLE-GRANTING McCray v. Dietz, 517 F.Supp. 787 (D.N.J. 1980). An attack on the failure of the state parole board to conduct a hearing can be maintained as a civil rights action rather than as a petition for a writ of habeas corpus since the relief sought is a hearing, not release from custody. Exhaustion is not required in civil rights cases and abstention is not appropriate since the state statute is clear. An inmate originally sentenced as a sex offender who is transferred to the state prison as untreatable is to be considered for parole in the same manner as any other inmate. The statute creates a reasonable expectation that the inmate will receive a parole hearing upon completion of his minimum sentence. Failure to hold such a hearing violates due process. The fact that the plaintiff will probably not be granted parole is irrelevant.

- U.S. District Court
GOOD-TIME 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)
- U.S. Appeals Court
PAROLE-REVOCATION Rose v. Morris, 619 F.2d 42 (9th Cir. 1980). An inmate in federal custody who has an outstanding parole revocation detainer on a state sentence is sufficiently in state custody to challenge a probation revocation proceeding which led to the paroled sentence.
- U.S. District Court
PAROLE-CONDITIONS Tilbe v. Entitas Foundation, Inc., 499 F.Supp. 817 (D. Nev. 1980). A condition of parole requiring an individual to participate in a drug treatment program operated by a private foundation does not convert the action of that foundation into state action.
- U.S. Appeals Court
PAROLE-GRANTING Schuemann v. Colorado State Board of Adult Parole, 624 F.2d 172 (10th Cir. 1980). The claim of abuse of discretion in a state parole proceeding is reviewable by a writ of habeas corpus.
- U.S. Appeals Court
PAROLE-GRANTING Shea v. Heggie, 624 F.2d 175 (10th Cir. 1980). Where there are no state procedures available to challenge a denial of parole, such a denial may be attacked by a federal habeas petition.
- U.S. District Court
PAROLE-GRANTING Six v. United States Parole Commission, 502 F.Supp. 446 (E.D. Mich. 1980). Before a denial of parole can be attacked on habeas, it is necessary to exhaust available administrative remedies.
- U.S. Appeals Court
PAROLE-REVOCATION Spotted Bear v. McCall, 648 F.2d 546 (9th Cir. 1980). The quashing of the first parole revocation warrant does not preclude the issuance of a second warrant on the same basis where the first warrant was quashed on the basis of cases which were overruled by the decision in Moody v. Daggett and the individual was in custody at all times.
- State Court
PAROLE-SEARCH
WORK RELEASE State v. Patrick, 381 So.2d 501 (Sup. Ct. La. 1980). An individual on parole has a greater expectation of privacy than does an individual on work release. Thus a warrantless search of a parolee may not be permissible where a warrantless search of the work release inmate would. (Dicta).
- U.S. Appeals Court
PAROLE-REVOCATION United States v. Rivera, 614 F.2d 1049 (5th Cir. 1980). The burden of proof in a parole revocation proceeding is only by a preponderance, not beyond a reasonable doubt. The Court finds that the evidence demonstrates by a preponderance that the individual left the district and pretermits the question whether a violation of Mexican law constitutes a violation of the provision of the parole agreement which indicates that an individual must obey all laws.
- U.S. Appeals Court
PAROLE-GRANTING United States ex rel. Goldberg v. Warden, 622 F.2d 60 (3rd Cir. 1980), cert. denied, 449 U.S. 871. Reliance upon a presentence report, including dismissed charges in determining the parole release date under the guidelines, is valid. The use of charges dismissed with prejudice by the trial court in determining the parole release date is not invalid per se, but may be invalid if the court dismissed them as part of a plea bargain to gain a shorter guideline period of incarceration.
- U.S. District Court
PAROLE-GRANTING United States ex rel. McCalvin v. Irving, 504 F.Supp. 368 (C.D. Ill. 1980). Where an individual attacking the denial of parole seeks declaratory judgment, the action may be maintained under 28 U.S.C. Section 1983 as well as on habeas. No protected liberty interest in the granting of parole is created by the Illinois statute. Therefore, procedural due process does not apply in parole granting. There is no right to be paroled as soon as eligible. The delegation of authority to the Prisoner Review Board to determine release is valid. There is no equal protection denial where individuals with similar sentences for similar crimes are paroled, but the plaintiff is not.
- U.S. District Court
PAROLE-GUIDELINES United States ex rel. Petri v. Warden, 507 F.Supp. 5 (M.D. Pa. 1980). The parole commission's guidelines are constitutional. In determining the appropriate guideline sentence, the parole commission can take into account offenses of which the individual was not convicted. The parole commission is entitled to rely on the presentence report and if there is error, the individual should seek relief from the sentencing court under Rule 32(c) of the Federal Rules of Criminal Procedure. The commission gave proper consideration to the sentencing judge's determination to make the individual eligible for early parole. [The parole guideline time was approximately the same or longer than the sentence imposed.]

- U.S. Appeals Court
PAROLE-REVOCATION United States ex rel. Pullia v. Luther, 635 F.2d 612 (7th Cir. 1980). Where the parolee has successfully completed five years on parole under supervision of the United States Parole Commission, the statute entitles the parolee to a hearing on the question whether parole should be terminated, but does not require the parolee to be discharged from parole. Where no hearing is held, mandamus to compel the conduct of a termination hearing is appropriate rather than a petition for a writ of habeas corpus. The court discusses the question of the applicability of this statutory provision to an individual on parole prior to the adoption of the Parole Commission Act, but pretermits the issue as unnecessary.
- U.S. District Court
EX POST FACTO
PAROLE-GRANTING United States ex rel. Steigler v. Board of Parole, 501 F.Supp. 1077 (D. Del. 1980). The parole law in effect at the time of the sentence is part of the sentence and the parole eligibility established thereby cannot be changed by subsequent administrative or legislative action. To apply a stricter rule to the granting of parole than was in effect at the time of the imposition of sentence would violate the prohibition against ex post facto laws.
- U.S. Appeals Court
PAROLE-GRANTING Williams v. Rhoden, 629 F.2d 1099 (5th Cir. 1980). While an individual has no right to parole and, therefore, an arbitrary denial of parole would not be unconstitutional, a denial of parole for exercise of a federally protected right would state a claim for violation of civil rights. (Hamilton County Jail, Florida)
- U.S. District Court
FURLOUGH Wilson v. Loftus, 489 F.Supp. 996 (D. Del. 1980). Allegations that procedural due process applies in the revocation of furlough eligibility (where the individual has been receiving furlough) state a claim upon which relief can be granted. (Delaware)
- 1981
- U.S. Appeals Court
PAROLE-GRANTING Arias v. United States Parole Commission, 648 F.2d 196 (3rd Cir. 1981). A petition for a writ of habeas corpus attacking the denial of parole ought to be dismissed for failure to exhaust administrative remedies where the parole commission has re-opened the matter for further review. The Parole Commission can consider dismissed charges in determining the seriousness of the offense.
- U.S. Appeals Court
GOOD-TIME
PAROLE-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
GOOD-TIME
PAROLE-GRANTING 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.
- State Appeals Court
PAROLE-LIABILITY Berry v. State, 400 So.2d 80 (Ct. App. Fla. 1981). Neither the judge, prosecutor nor the parole commission could be held liable in damages for a murder committed by a parolee improperly released.
- U.S. District Court
PAROLE-GRANTING Bullion v. Buonaiuto, 524 F.Supp. 159 (S.D.N.Y. 1981). A delay or retardation of the parole release date based upon a valid and unassailed disciplinary hearing does not require procedural due process.
- U.S. Appeals Court
PAROLE-GRANTING
DISCRIMINATION Candelaria v. Griffin, 641 F.2d 868 (10th Cir. 1981). The New Mexico Parole granting statute does not create a reasonable expectation of the granting of parole in the individual and, therefore, procedural due process does not apply in parole granting. Thus the inmate has no right to have a psychological evaluation prior to being denied parole. Allegations that the individual was denied parole because he was Hispanic are not patently frivolous and state a claim upon which relief can be granted.
- U.S. District Court
PAROLE-REVOCATION Carmel v. Thomas, 510 F.Supp. 784 (S.D. N.Y. 1981). The court rejects the attack on revocation of parole on the basis that the plaintiff had failed to exhaust available administrative remedies. Further, the court notes that there was ample basis for the Parole Commission to revoke parole for violation of the condition that the individual not leave the district. The court also determines that the condition of parole requiring that the individual obey all laws is violated by conviction in a foreign country. New parole date properly calculated under the guidelines.

- U.S. Appeals Court
PAROLE-REVOICATION Clone v. Presley, 640 F.2d 271 (10th Cir. 1981). An individual on parole from a state sentence to a federal parole detainer is in state custody for the purpose of a habeas petition. Therefore, the petition is under 28 U.S.C. Section 2254. However, to challenge the revocation of his federal mandatory release, the individual must first exhaust his federal administrative remedies.
- U.S. Appeals Court
PAROLE-GRANTING Doyle v. Eisea, 658 F.2d 512 (7th Cir. 1981). Where time spent in custody awaiting trial after a parole violation warrant has been filed is credited against the sentence for the new offense, it need not be credited against the paroled sentence. Moody does not control the parole violation detainer filed while the individual is in custody awaiting trial. However, a three month delay did not violate due process. Similarly the ninety day time period established by statute for the conduct of revocation proceedings does not control since the disposition of the new charge is significant in determining the fact of violation of parole. The fact that by its terms, the ninety day statutory period for conduct of a revocation hearing would apply if the individual were to post bail on the new charge so that custody would be solely on account of the revocation detainer does not render the failure to apply the rule where custody is occasioned by the new charge violative of equal protection.
- U.S. Appeals Court
PAROLE-GRANTING Evans v. Dillahunty, 662 F.2d 522 (8th Cir. 1981). The federal parole statute indicates that an individual "shall" be released on parole if certain conditions are met. Therefore, it creates a protected liberty interest in the individual being considered for parole who meets those conditions. Due process requires that the individual have an opportunity to learn and contest the adverse information in the files. Dismissal of a complaint alleging that the denial of parole was based on adverse information is reversed because the trial court did not consider the information of the context of the information in reaching its decision, although the court opines that the plaintiff may lose on the merits.
- U.S. District Court
PAROLE-REVOICATION Foster v. United States Parole Comm'n, 515 F.Supp. 541 (S.D. Ohio 1981). A habeas petition attacking delay in the execution of a parole revocation warrant was not mooted by the execution of that warrant. Under Moody a delay in executing the revocation warrant for the period of an intervening sentence is valid.
- U.S. Appeals Court
PAROLE-REVOICATION Fowler v. Cross, 635 F.2d 476 (5th Cir. 1981). Local jail officials have no obligation to provide a preliminary parole revocation hearing. That obligation rests solely with the state parole board. Failure to provide a parolee with a prompt parole revocation hearing through acquiescing in a transfer from the jail to a prison violated the parolee's constitutional rights. Where the system of scheduling preliminary hearings employed by the parole board was so limited that it did not ensure the presence of the parolee at the revocation hearing and where the response of the system to a determination that the parolee was not present for the preliminary was to write a memo to the file indicating that fact and then wait for the parolee to complain of the lack of a preliminary hearing, the parole examiner and the parole commissioners were not entitled to good faith immunity.
- U.S. District Court
PAROLE-GRANTING Fox v. United States Parole Comm'n, 517 F.Supp. 855 (D. Kan. 1981). Rescission of a parole release date on the basis of an objection and additional information supplied by the United States Attorney did not violate due process. The Parole Commission may rely on unsubstantiated hearsay in determining whether release would jeopardize the public welfare. While it would be better to have such information supplied at an earlier point in time, it is not required by due process.
- U.S. Appeals Court
PAROLE-GRANTING Garcia v. Neagle, 660 F.2d 983 (4th Cir. 1981), cert. denied, 454 U.S. 1153 (1982). The question whether to grant or deny parole is committed to the unreviewable discretion of the parole commission. The denial of parole may only be reversed for an abuse of discretion. The use of parole guidelines does not violate the congressional authorization, neither does the failure to refer the parole decision to the sentence actually imposed by the court.
- U.S. District Court
PAROLE-REVOICATION Godbolt v. Commissioner, Dept. Corr. Servs., 524 F.Supp. 21 (S.D.N.Y. 1981). To the extent that the plaintiff attacks the fact or duration of confinement in his action involving the revocation of his parole and recomputation of his release date, the proper remedy was a petition for habeas corpus. However, an attack on the failure of the parole authority to give reasons for its decision to revoke parole may properly be maintained as a civil rights suit.
- U.S. Appeals Court
PAROLE-REVOICATION Harris v. Day, 649 F.2d 755 (10th Cir. 1981). The court holds that the prior ruling that parolees are entitled to appointed counsel at parole revocation hearings does not apply retroactively to an individual whose revocation occurred prior to the ruling and where the question of violation of parole was not contested. A revocation warrant need not be executed until the completion of intervening sentences. The individual cannot successfully attack the delay of the revocation hearing without demonstrating some

prejudice greater than the fact that the sentences do not run concurrently. 18 U.S.C. Section 4210(b)(2) does not require that the time successfully spent on parole or in custody on a new sentence be credited against the paroled sentence upon revocation of parole. The Parole Commission has the discretion to determine whether the remainder of the time on the paroled sentence should be served concurrently or consecutively with the new sentence.

U.S. Appeals Court
PAROLE-GRANTING
SENTENCING TO
PAROLE
EX POST FACTO

Hayward v. United States Parole Commission, 659 F.2d 857 (8th Cir. 1981), cert. denied, 102 S.Ct. 1991 (1982). Sentencing an individual to immediate parole eligibility does not require that institutional conduct be a major factor in determining whether he should be paroled, at least where the sentence is imposed after the last modification of the Parole Act clearly emphasizing the guidelines. Factors known to the court at the time of the imposition of sentence such as participation in a criminal enterprise or the sophisticated nature of the offense may constitute good cause for a release date above the guideline date. Because the law in effect at the time of the offense did not create any expectation that the individual would be paroled, the adoption of parole guidelines to constrain the board's discretion and their application to the plaintiff's parole does not constitute a violation of the prohibition against ex post facto laws.

U.S. Appeals Court
PAROLE-GRANTING

Iuteri v. Nardoza, 662 F.2d 159 (2nd Cir. 1981). Since due process does not apply in parole granting in the federal system, it does not apply in the delay of parole release. Therefore, bail pending a decision on a petition for habeas corpus attacking the delay of parole was improper since there is no substantial claim which appears that it may be resolved in favor of the petitioner.

U.S. District Court
PAROLE-REVOICATION

Jackson v. McCall, 509 F.Supp. 504 (D.D.C. 1981). Execution and then withdrawal of a parole violation warrant followed by the filing of a new warrant based on a new basis does not violate the civil rights of the parolee. No hearing on the withdrawn warrant is required where it is withdrawn even if the withdrawal is delayed. Release is not required for failure to conduct a timely revocation hearing on the first warrant where the second warrant is properly executed.

U.S. District Court
PAROLE-CONDITIONS

Jago v. Shields, 507 F.Supp. 67 (W.D. Va. 1981). A parolee has no right to be given Miranda warnings when being interrogated by a parole officer. The parolee breached the condition of parole requiring him to enroll in an alcohol abuse program where he enrolled in such a program but left after only three weeks and prior to its completion. It was proper to require the plaintiff to take antabuse, a drug to control alcohol consumption, as a condition of parole.

U.S. Supreme Court
PAROLE-GRANTING

Jago v. Van Curen, 454 U.S. 14 (1981). Case holding that due process applies in parole rescission is summarily reversed. The granting of parole at a future date does not per se create a protected liberty interest. **Held:** The due process Clause of the fourteenth amendment was not violated by the Ohio Adult Parole Authority's rescission, without a hearing, of its decision to grant the respondent early parole. The rescission, which occurred before the respondent was released, resulted from the Authority's having learned that respondent had made false statements in an interview conducted before the decision to grant parole and in his proposed parole plan. After conceding that Ohio law created no protected "liberty" interest in early parole, the court of appeals erred in concluding that a liberty interest arose from the "mutually explicit understandings" of the parties and that the rescission without a hearing thus violated due process. The "mutually explicit understandings" language of Perry v. Sindermann, 408 U.S. 593, relied on by the court of appeals, relates to the fourteenth amendment's protection of "property" interests, rather than "liberty" interests such as that asserted by respondent. Cf. Connecticut Board of Pardons v. Dumschat, 452 U.S. 458. Certiorari granted; 641 F.2d 411, reversed.

U.S. Appeals Court
PAROLE-GRANTING

Kenner v. Martin, 648 F.2d 1080 (6th Cir. 1981). Delay in executing a parole violation warrant (or even notifying the individual that the warrant was outstanding) until completion of a federal sentence did not violate due process.

U.S. Appeals Court
WORK RELEASE

Matz v. Kelsch, 638 F.2d 48 (8th Cir. 1981). An individual has no protected liberty interest in the future release on work release. Therefore, procedural due process was not required where the parole board withdrew an order granting the individual work release on the condition that 80% of the earnings of the individual be utilized for restitution, after the individual objected that the condition violated state law, when the parole board did not change the underlying parole release date.

U.S. District Court
PAROLE-GRANTING
RETALIATION

McDaniel v. Rhodes, 512 F.Supp. 117 (S.D. Ohio 1981). Allegations of retaliation for bringing suit through delay of parole and harassment while on parole state a claim upon which relief can be granted.

- U.S. District Court
PAROLE-GRANTING
PAROLE-LIABILITY Neely v. Eshelman, 507 F.Supp. 78 (E.D. Pa. 1981). Failure of the plaintiff to plead facts supporting his allegations that his parole release was maliciously delayed required dismissal of the suit. Parole board employees are entitled to good faith immunity for their granting decisions.
- U.S. Appeals Court
PAROLE-GUIDELINES
PAROLE-LIABILITY Payton v. United States, 636 F.2d 132 (5th Cir. 1981). The application of the United States Parole Commission's guidelines to determine whether to release a particular individual is not a discretionary act within the Federal Tort Claim Act's exception prohibiting liability for discretionary acts. The Parole Commission is liable for personal injuries resulting from an improper release. The Parole Commission has a mandatory duty to maintain a complete file on each inmate for use in exercising its discretion whether to release that individual.
- U.S. District Court
PAROLE-GRANTING Ringenberg v. Cox, 524 F.Supp. 112 (E.D. Va. 1981). The portion of the plaintiff's suit which attacked the lack of a parole release hearing sought release and, therefore, must be maintained as a petition for habeas corpus with exhaustion of state remedies. The portion of the suit seeking damages for delay of parole could in theory be maintained as a civil rights action and did not require exhaustion of remedies, but to permit it to be maintained prior to the habeas on denial of a parole release hearing, would effectively circumvent the requirement of exhaustion of state remedies in habeas. Therefore, this portion of the action would also be dismissed.
- U.S. District Court
PAROLE-LIABILITY
PAROLE-GRANTING Sellars v. Procnier, 641 F.2d 1295 (9th Cir. 1981), cert. denied, 454 U.S. 1101 (1982). Analogizing parole board members to judges, the court determines that parole board members enjoy absolute immunity from suits by individuals denied parole insofar as the suit attacks the decision on their parole. The court specifically does not preclude suits by individuals injured by released parolees.
- State Appeals Court
PAROLE-REVOCATION State v. Dawson, 282 S.E.2d 284 (Sup. Ct. App. W. Va. 1981). In the absence of any showing of bad faith, double jeopardy will not be applied to prohibit multiple proceedings for revocation of parole or probation based on a single incident.
- U.S. Appeals Court
PAROLE-REVOCATION Terry v. Rucker, 649 F.2d 563 (8th Cir. 1981). Conviction and incarceration on a new offense obviates the necessity of a preliminary parole revocation hearing.
- U.S. District Court
PAROLE-GUIDELINES Thomas v. Deitz, 518 F.Supp. 794 (D.N.J. 1981). An attack on the application of the new parole release guidelines to the parole of an individual convicted before the guidelines were changed seeks an earlier release and, therefore, the action ought to be maintained on habeas rather than as a civil rights suit. Because permitting the 42 U.S.C. Section 1983 claim to continue only as to damages would produce a result which would be res judicata as to the habeas question, the court would dismiss the Section 1983 action and require litigation of the habeas action first.
- U.S. Appeals Court
PAROLE-GRANTING Van Curen v. Jago, 641 F.2d 411 (6th Cir. 1981), rev'd, 454 U.S. 14 (1982). While parole consideration does not create a protected liberty interest, the granting of parole creates a reasonable expectation that the individual will be released absent misconduct. Therefore, procedural due process applies in the rescission of parole.
- U.S. Appeals Court
PAROLE-GUIDELINES
EX POST FACTO Warren v. United States Parole Commission, 659 F.2d 183 (D.C. Cir. 1981), cert. denied, 455 U.S. 950 (1982). The use of the Parole Commission's guidelines on an individual whose offense was committed prior to their adoption is not a violation of the prohibition against ex post facto laws because of the Parole Commission's discretion and because the guidelines reflected the Commission's past practices. The re-parole guidelines were promulgated prior to the plaintiff's release on parole and were therefore known to him at the time of his release on parole and therefore are not ex post facto for the same reasons that the adoption of a recidivist law after the first offense is not ex post facto. The court opines that the Commission may change its guidelines and apply them to all decisions thereafter without any ex post facto effect.
- U.S. District Court
PAROLE-GRANTING Wiggins v. Nelson, 510 F.Supp. 666 (D. Conn. 1981). The role of the federal court in reviewing a denial of parole is to ensure that rational and appropriate criteria consistent with the statute have been employed and that the decision is neither arbitrary nor capricious nor based on impermissible considerations. Treating the underlying offense and the fact that the present offense was committed while the individual was on bail awaiting trial as separate considerations is permissible.
- U.S. Appeals Court
PAROLE-GRANTING Williams v. Briscoe, 641 F.2d 274 (5th Cir. 1981), cert. denied, 454 U.S. 1056 (1982). The Texas parole statute does not create a reasonable expectation of the granting of parole. Therefore, no procedural due process is applicable in parole granting.
- U.S. Appeals Court
PAROLE-GRANTING Williams v. Missouri Bd. of Probation and Parole, 661 F.2d 697 (8th Cir. 1981), cert. denied, 455 U.S. 993 (1982). Because an individual is to be released on parole if the statutory criteria are met, the Missouri parole statute created a protected liberty

interest in the inmate being considered for parole. The court finds that since adverse information from newspapers, judges, victims, prosecutors and third persons may be contained in the parole file and may be considered and become the basis of denial of parole, the individual must have an effective method of learning of and rebutting this information. The case was remanded to the trial court to determine the appropriate remedy.

1982

State Appeals Court
LIABILITY- RELEASE
OF PRISONER
FAILURE TO
PROTECT

Iglesia v. Wells, 441 N.E.2d 1017 (Ind. App. 1982). Sheriff's department may be held liable under a negligence theory for release of an indigent man. The First Circuit Court of Appeals for Indiana held that the sheriff's department owed a man a duty to release him in a manner which would not subject him to unreasonable danger, ordering the trial court to hear the evidence and decide the case.

The case involved an indigent man who was arrested for public intoxication. After pleading guilty to the charge, he was ordered to pay costs and a fine, but having no money, spent one week in the county jail. He was released at one minute past midnight on the final day of his sentence. The man's clothing was unsuitable for the cold winter weather on the night of his release, he could not speak or understand English, he lived far from the jail and had no transportation.

Becoming disoriented, the man wandered, lost his shoes, and suffered frostbite resulting in partial amputation of his feet. (Marion County Jail, Indiana)

U.S. District Court
TEMPORARY
RELEASE

Samuals v. Department of Corrections, N.Y.C., 548 F.Supp. 253 (E.D. N.Y. 1982). Detainee does not have right to attend funeral. A Federal District Court has ruled that allowing a prisoner to be temporarily released to visit sick relatives or to attend a funeral is entirely within the discretion of the officials responsible for confinement. City officials denied a pretrial detainee permission to attend the wake of his twin children, and he filed suit. The Court noted that pretrial detainees have no greater right to free movement than do convicted criminals. (Queens House of Detention, New York)

U.S. District Court
LIABILITY- RELEASE
OF PRISONER

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)

1985

U.S. District Court
PAROLE VIOLATIONS
BAIL

Faheem-el v. Klinicar, 38 CrL 3178 (N.D. Ill., 1985). Blanket policy of denying bail for accused parole violators found unconstitutional. The U.S. District Court, Northern District, Illinois, held that state practices concerning parolees violated eighth amendment and fourteenth amendment constitutional guarantees, ordering the practice of automatically denying bail to stop.

The court found the practice arbitrary in that it treated all parolees the same, without regard to their offenses or potential for danger. Although the eighth amendment permits a state to deny bail in individual cases, it does not provide nor support a statutory scheme that removes bail as an option for an entire class of defendants. Since state policies make a distinction between probationers and parolees, the policies fail the Equal Protection Clause's rational basis test. (Department of Corrections, Illinois)

State Appeals Court
DISCRIMINATION

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)

U.S. Appeals Court
PAROLE-REVOCATION

Therriault v. Quinlan, 609 F.Supp. 733 (2nd Cir. 1985). A U.S. District Court in New York held that the U.S. Parole Commission violated due process when it denied a parolee's request to confront and cross-examine witnesses at his revocation hearing. Dr. Harry Therriault, a longtime prisoner on parole to Arkansas, was arrested in New Hampshire on a parole violation warrant. He was charged with leaving Arkansas without permission, shoplifting, and failing to report changes in residence and employment.

At his revocation hearing, Theriault admitted only the charge of leaving the state without permission. He denied the other charges and requested he be allowed to cross-examine adverse witnesses regarding the shoplifting charge. This request was denied. Following Theriault's return to prison, he filed suit claiming this denial violated his due process rights.

The federal statute establishing procedures for parole revocation hearings states that a parolee "shall be granted an opportunity ...if he requests, to confront and cross-examine adverse witnesses, unless the commission specifically finds substantial reason for not so allowing." The government later presented reasons for the refusal, but these reasons were not stated on the record. The court ordered the Parole Commission to reconsider the charge of shoplifting, allowing Theriault an opportunity to test the accuracy of the allegations. (U.S. Parole Commission, New York)

1986

U.S. Appeals Court
PAROLE GRANTING

Ammirato v. Hanberry, 797 F.2d 961 (11th Cir. 1986). A decision of the United States Parole Commission did not violate due process because the Commission used the same reason, the prisoner's multiple offenses, to elevate his offense to the Greatest I category, and to set a release date beyond what the guidelines call for in Greatest I cases. Many of the 19 separate violations to which the prisoner pled guilty fell within the range of severity just below Greatest I, and his conduct went well beyond what was necessary to place his offense in that category. Moreover, the number of offenses showed that the prisoner was involved in sophisticated and continuing criminal activity. (Georgia)

U.S. Appeals Court
PAROLE-
DUE PROCESS

Dace v. Mickelson, 797 F.2d 574 (8th Cir. 1986). A prisoner brought action against three members of the South Dakota Board of Pardons and Paroles alleging that the board deprived him of liberty without due process. The United States District Court dismissed the prisoner's complaint and the prisoner appealed. The Court of Appeals held that: (1) the parole statute did not create a liberty interest in parole, and (2) administrative regulations governing parole in South Dakota created liberty interest in parole. Reversed and remanded.

State laws governing parole can create a liberty interest protected by the fourteenth amendment. The state may create a protected liberty interest by placing substantive limitations on official discretion through its statutes, through administrative regulations, or through official policy pronouncements that are intended to guide the exercise of discretion.

The key question in determining whether the state has created a protected liberty interest, by placing substantive limitations on official discretion, is whether the statutes, regulations, or policy statements articulate substantive standards or criteria that guide the officials' exercise of discretion. An important factor that must be considered in determining whether the law contains language of a mandatory character, such as "shall" or "must," in contrast to situations where the state law provides no definitions or criteria, conferring unfettered discretion on officials, and creates no liberty interest. (State Penitentiary, South Dakota)

U.S. District Court
PAROLE GRANTING

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. District Court
PAROLE REVOCATION

Green v. McCall, 636 F.Supp. 101 (D. Conn. 1986). The United States Parole Commission's adoption of changes in written policies regarding parole rescission hearings, following the issuance of a preliminary injunction requiring the commission to afford prisoners procedural safeguards at parole rescission hearings, did not mandate the dismissal of a preliminary injunction on the grounds of mootness. Many of the commission's new policies were not implemented in practice by hearing examiners. Not all inmates had received mandated letters informing them of their procedural rights, and some did not receive letters until after the hearings had begun. (District of Connecticut)

U.S. Appeals Court
PAROLE GRANTING

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)

U.S. Appeals Court
SEX OFFENDERS

Hendking v. Smith, 781 F.2d 850 (11th Cir. 1986). Appeals court upholds classification practices which deny sex offenders participation in certain programs. A class action suit challenged prison rules which denied certain privileges to inmates with histories of violent sex offenses, alleging a violation of equal protection guarantees. The plaintiff argued that sex offenders are no different from other criminals and should be entitled to the same opportunities and privileges during incarceration. The appeals court disagreed with the plaintiff, stating "...it seems clear as a matter of general knowledge that it would not be appropriate to allow sex offenders the opportunity to leave the prison on passes permitting them to mingle with the general public..." The court found that the prison classification system was neither arbitrary nor capricious. (Alabama Prison System)

U.S. District Court
GOOD TIME

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)

U.S. District Court
PAROLE-
DUE PROCESS

Jackson v. Illinois Prisoner Review Bd., 631 F.Supp. 150 (N.D. Ill.1986). A state prisoner brought a suit against the Illinois Prisoner Review Board alleging violation of his due process rights and violation of the prohibition against ex post facto laws. Upon the board's motion to dismiss, the district court held that: (1) absent express language in the Prisoner Review Board's rule entitling a parole candidate access to all documents which the board considers in denying parole or setting a release date, the state prisoner was not required to initiate a disclosure request necessary as a precondition to the board's duty to disclose; and (2) rendition of parole decision by the entire review board pursuant to a policy implemented subsequent to the prisoner's sentencing did not violate a constitutional prohibition against ex post facto laws. (Stateville Corr., Illinois)

U.S. Appeals Court
PAROLE LIABILITY

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. 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)

State Appeals Court
PAROLE-
CONDITIONS
RELEASE SITE

Prison Law Office v. Koenig, 233 Cal. Rptr. 590 (Cal. App. 1 Dist. 1986). The prison law office brought action to enjoin implementation, on procedural grounds, of the Board of Prison Term's policy of releasing parolees to the county of commitment, and to declare it unconstitutional as a matter of substantive law. Under either substantive due process or equal protection analysis, a statute providing for the return of the parolee to the county of his or her commitment when released on parole is constitutional. The goal of equal distribution of parolees throughout a state is a legitimate, reasonable state goal, and the conclusion that to release parolees to the county of commitment will spread parolee population throughout state is reasonable. Although a parolee is entitled to basic rights entitling him or her to constitutional protection against arbitrary or oppressive official action, the parolee's rights are not necessarily tested by the same rules that apply to citizens who are possessed of full civil rights. Insofar as is necessary for the maintenance of parole guardianship, the status of a parolee is no different than that of a prisoner. (San Quentin, California)

U.S. Appeals Court
SENTENCE

Rothgeb v. United States, 789 F.2d 647 (8th Cir. 1986). A sentence of 210 years was within the limits of a statute allowing the court to impose "any term of years or life imprisonment" for second-degree murder. Moreover, another statute permitted the court to extend the eligibility date for parole beyond ten years. Accordingly, the sentence requiring 69 years before parole eligibility was authorized. (Missouri)

U.S. Appeals Court
PAROLE REVOCATION

Shouse v. Ljunggren, 792 F.2d 902 (9th Cir. 1986). A county sheriff was not required by Idaho law to provide a prisoner with notice of a claimed parole violation nor to advise the prisoner of his right to a parole revocation hearing. Idaho law places the primary responsibility for revoking probation or parole in a manner consistent with due process upon probation and parole officers. (Fremont County Jail, Idaho)

State Appeals Court
PROBATION
REVOCATION
SENTENCE
CONDITIONS

State v. Moot, 398 N.W.2d 21 (Minn. App. 1986). Appeal was taken by the probationer from an order of the district court, revoking probation and vacating a stay of execution of sentence. The court of appeals held that: (1) revocation of probation was justified when the probationer, though told on record and in writing that he must successfully complete treatment for chemical dependency and all recommended aftercare if he wished to remain on probation, admittedly took a job which interfered with his treatment schedule and thereafter refused to comply with the program and to participate in his recovery, and (2) the failure to specifically find that the need for confinement outweighed the policies favoring probation did not preclude revocation when the probationer refused to participate in treatment for chemical dependency, and the court made it clear that the presumptive sentence was commitment to prison, and that downward departure was solely to permit one last attempt to succeed at treatment. (Hennepin County Jail, Minnesota)

U.S. District Court
RETALIATION
PAROLE

Thompson v. Armontrout, 647 F.Supp. 1093 (W.D. Mo. 1986). The decision of a board of probation and parole to refuse to release the petitioner on parole after he was convicted for a third time of first-degree murder was presumably vindictive. The petitioner had remained on parole for almost three years as a productive member of society before his reconviction. Pressure from many sources caused the board to punish the petitioner more severely because he had caused the board and the state to appear weak and incompetent to the public. (Missouri Board of Probation and Parole)

U.S. District Court
PAROLE REVOCATION

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. The fact that the individual was denied parole in a separate proceeding, allegedly in violation of due process, did not pose question of law or fact common to those presented in plaintiff prisoner's civil rights action alleging due process violation resulting from his parole revocation, and thus, permissive joinder was not warranted. The prisoner did not have a constitutional or statutory right to his outside work clearance pass, and he therefore did not have any right to a hearing prior to the prison officials' revocation of clearance. (Groveland Correctional Facility, New York)

1987

U.S. District Court
LIABILITY-
RELEASE OF
PRISONER
FAILURE TO
PROTECT

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. Supreme Court
PAROLE-
CONDITIONS
PAROLE-
GRANTING
PAROLE-
GUIDELINES

Board of Pardons v. Allen, 107 S.Ct. 2415 (1987). The high court ruled that the Montana parole release statute clearly creates a liberty interest in parole release. The statute provides that a prisoner eligible for parole "shall" be released when there is a reasonable probability that no detriment will result to him or the community, and it specifies that parole shall be ordered for the best interests of society and when the State Board of Pardons believes that a prisoner is able and willing to assume the obligations of a law-abiding citizen. The Montana statute places significant limits on the Board's discretion. It also uses mandatory language to create a presumption that parole release will be granted when the designated findings are made. The state has no duty to establish a parole system or to provide for parole for all categories of convicted persons and may place conditions on a parole release. Parole is a privilege, rather than a right, only in the sense that the state has no duty to establish a parole system and may place conditions on a parole release. (Montana State Prison)

U.S. Appeals Court
FAILURE TO
PROTECT
LIABILITY-
RELEASE OF
PRISONER

Carlson v. Conklin, 813 F.2d 769 (6th Cir. 1987). The Sixth Circuit Court of Appeals ruled that placing a man convicted of armed robbery in a community corrections center ("half-way house") was no basis to find the Director of the Department of Corrections liable for the man's subsequently abducting a woman and sexually assaulting her. The court found that the crime was "too remote" from the actions of the Director to attach liability. The court's decision to dismiss the Section 1983 suit reversed the district court's ruling. The district court had allowed the claim to continue based on the following allegations: (1) the defendant authorized departmental policies in placing known dangerous prisoners in half-way houses; (2) that it was foreseeable that assaults would occur in the surrounding communities; and (3) that the defendant owed the victim a duty of care to prevent injury. The appeals court ruled that there is no duty to protect the general public from criminals, unless promises of protection are made to individual members. According to the appeals ruling, no duty was owed to the woman as a member of the public absent a special relationship. (Department of Corrections, Michigan)

U.S. District Court
DISCRIMINATION
PAROLE-
GRANTING

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
FAILURE TO
PROTECT
PAROLE-
LIABILITY

Doe v. United Social and Mental Health Services, 670 F.Supp. 1121 (D. Conn. 1987). A prisoner who had a history of psychiatric problems and alcohol and drug abuse was sentenced to seven to seventeen years in custody for the shooting of a female bank teller during a robbery. After being paroled, he was sent to a halfway house drug treatment center where he had a prohibition on traveling. Having immediately violated his parole, he stabbed a woman to death in another state. Shortly after being returned to custody, and re-paroled, he kidnapped a woman, sexually assaulted her and attempted to strangle her. Section 1983 lawsuits against members of the Parole Board, parole officers, and a number of other defendants were brought by the estate of the murdered woman and the victim of the sexual assault. Members of the Parole Board were found absolutely immune from liability. The court found the parole officers who allegedly failed to supervise the second parole properly or order the parolee's arrest at the appropriate time, were not absolutely immune. However, the officers were still not found liable, since they did not assume any "special relationship" with the woman who was sexually assaulted, even though they allegedly knew that the parolee had violated a no-drinking condition of parole shortly before the assault. (Connecticut Parole Board)

U.S. District Court
PAROLE-
REVOCATION

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
DISCRIMINATION
WORK RELEASE

Mahfouz v. Lockhart, 826 F.2d 791 (8th Cir. 1987). An Arkansas Department of Corrections regulation which prohibits any person convicted of a sex crime from participating in work/study release programs for inmates housed outside corrections facilities was upheld by a federal appeals court because it relates to a legitimate governmental purpose--preventing sex crimes. The plaintiff, an inmate serving a sentence for conviction of three counts of sexual abuse involving minors, filed suit alleging his constitutional rights were violated due to the denial of the opportunity to participate in these programs. The appeals court held that state could distinguish sex offenders from other inmates and properly exclude them from work release programs and that Arkansas statutes and regulations did not establish a protectable interest in participating in work release programs. (Arkansas Department of Corrections)

U.S. Appeals Court
CREDIT
PAROLE-
POLICIES

Ochoa v. U.S., 819 F.2d 366 (2nd Cir. 1987). A federal prisoner was incarcerated upon conviction of criminal contempt for refusing to testify before a grand jury petitioned for writ of habeas corpus. The United States District Court denied the petition, and the prisoner appealed. The Court of Appeals held that: (1) the prisoner was not entitled to credit on the criminal contempt sentence for any time, prior to his indictment on that charge, that he spent in civil contempt, and (2) the Parole Commission was entitled to rely on hearsay statements contained in the presentence investigation reports. The court found that the federal statute governing credit for time spent in custody prior to the imposition of sentence does not require that a person sentenced to prison for criminal contempt be given credit on that sentence for any time, prior to his indictment on that charge, that he spent in civil contempt. Therefore, according to a federal appeals court, the statute did not require that a contemnor's criminal sentence be shortened by the period he spent in civil contempt in connection with the same refusal to testify that led to his indictment for criminal contempt. The court found that the Parole Commission could consider hearsay statements contained in the presentence investigation reports, in calculating the prisoner's presumptive date of release, although sentencing court disclaimed reliance on contested statements, where the Commission found information sufficiently accurate for its own purposes. (New York State)

U.S. Appeals Court
PAROLE-
GRANTING
PAROLE-
GUIDELINES

Pedro v. Oregon Parole Board, 825 F.2d 1396 (9th Cir. 1987), cert. denied, 108 S.Ct. 726. An Oregon state prisoner was not denied due process by a parole board's determination of her prison term and release date. The inmate had a hearing with written advance notice of date and time, and an opportunity to be heard. Moreover, she was represented by a paralegal, she had access to all materials considered by the board, and she submitted materials for the board's consideration. Since the setting of a minimum term was not part of a criminal prosecution, the defendant was not entitled to the full panoply of rights due a defendant in a criminal proceeding. 108 S.Ct. 726 Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit Denied. (Oregon State Prison)

State Appeals Court
GOOD TIME

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)

U.S. Appeals Court
PAROLE-
GRANTING

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)

U.S. District Court
PAROLE-
CONDITIONS

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 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 DOC)

U.S. Appeals Court
PROBATION
REVOCAATION

United States v. Grant, 807 F.2d 837 (9th Cir. 1987). A defendant's probation could not be revoked for failure to make any payments on her \$20,000 fine. The defendant had been convicted of three counts of failure to file income tax returns. The payment of the \$20,000 fine was not a term or condition of probation, and the defendant had complied with all of the stated conditions of her probation. Absent a fair prior warning to the defendant that nonpayment of the fine could result in the loss of liberty, the nonpayment could not be construed as a "failure to rehabilitate." (California)

U.S. District Court
PAROLE-
POLICIES

Wright v. Lacy, 664 F.Supp. 1270 (D.Minn. 1987). A Parole Commission abused its discretion in relying upon allegedly uncounseled convictions to underlie its determination that a parolee violated a condition of his parole and that he was convicted of a "new offense" punishable by a term of imprisonment, according to a federal district court. An uncounseled conviction, valid because no imprisonment was imposed, may not be used to support a parole violation and, hence, enhance a criminal penalty. (Residential Treatment Center, Waterloo, Iowa)

1988

U.S. District Court
TEMPORARY
RELEASE

Colon v. Sullivan, 681 F. Supp. 222 (S.D.N.Y. 1988). An inmate's grandmother died while he was incarcerated. Although her name was on the visiting list, the list was not found before the funeral and the inmate was denied permission to attend. The court ruled that denying an inmate permission to attend his grandmother's funeral did not involve a denial of liberty interest protected by the Constitution and that prison officials. Further, the court found that even if the prison officials were negligent, it is not enough for civil rights liability. (Sing Sing Correctional Facility, New York)

U.S. Court of Appeals
PAROLE-
REVOCAATION
PAROLE-
LIABILITY

Farrish v. Mississippi State Parole Board, 836 F.2d 969 (5th Cir. 1988). A former director of corrections was held liable for failure to establish adequate procedures governing the use of hearsay testimony at parole revocation hearings. The plaintiff, a parolee, was subjected to a preliminary parole revocation hearing following his arrest for the sale of marijuana. He continually objected to the introduction of statements given at the hearing by a person whose statement to the police provided the sole basis for the charge against him. The statements were admitted and the plaintiff's parole was revoked even though he contended that the statements should not be considered unless he was present for confrontation and cross-examination. The federal appeals court noted that the U.S. Supreme Court held in 1972 that "on the request of a parolee, a person who has given adverse information on which parole revocation is based is to be made available for questioning" in the presence of the parolee, except when the hearing officer determines that an informant would be subject to harm if his identity was revealed. According to the court, this case presented a classic example of when the use of hearsay impermissibly violates the right to confront and cross-examine because the statements were the sole evidence against the plaintiff. The director of corrections was not entitled to absolute immunity and was liable for failing to establish adequate policies or procedures to govern the calling of witnesses in preliminary hearings. The court said the director should have known that this violated Farrish's clearly established rights. (Mississippi Department of Corrections)

U.S. Appeals Court
WORK RELEASE

Francis v. Fox, 838 F.2d 1147 (11th Cir. 1988). An inmate in the Alabama penal system did not have a protected liberty interest in participating in the work release program. Although the inmate contended that the state had created such an interest by statute, the Alabama statute was framed in discretionary terms and merely authorized work-release. Eligibility for participation in the work-release program was merely outlined by the regulations promulgated under the statute. (Alabama DOC)

U.S. Appeals Court
DISCRIMINATION
PAROLE-
GRANTING

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 Appeals Court
DISCRIMINATION
WORK RELEASE

Fuller v. Lane, 686 F.Supp. 686 (C.D.Ill. 1988). A civil rights lawsuit was filed by two former inmates against various employees of the Illinois Department of Corrections alleging that their constitutional rights had been violated because they had been denied placement in a work release program. The two plaintiffs had been serving sentences for deviate sexual assault and aggravated criminal sexual abuse. They complained that all convicted sex offenders were denied placement in prison work release programs by the defendants. According to a federal district court, systematically excluding prisoners convicted of sex crimes from participating in work release programs is permissible. There is no constitutional right to work in prison. Further, state law does not grant eligible inmates an automatic right to work release. The Illinois statute authorizes prison officials to use their judgement in selecting inmates for the program and to take into account whether the participation of a particular inmate would cause "undue risk to the public." The court noted that there is no constitutional right to enter a discretionary work release program and summary judgment was issued for the defendants. Even if it were true that sex offenders were systematically excluded, the court concluded, there was no violation of equal protection, even if they were found to be a suspect class. The court also held that, even if they were found to be a suspect class, "prison officials' understandable reluctance to allow those inmates free movement in the community without supervision passes strict judicial scrutiny." (Illinois Department of Corrections)

State Supreme Court
PAROLE-
LIABILITY
FAILURE TO
PROTECT

Grantham v. Dept. of Corrections, 522 So.2d 219 (Miss. 1988). The Supreme Court of Mississippi held that a woman attacked by a paroled prisoner can bring a lawsuit against individual members of the Parole Board for their alleged gross disregard for her safety in granting the parole. The paroled prisoner served twelve years and three months of a life sentence for murder. The court noted that the plaintiff alleged that the parolee and seventy-two other inmates were approved for parole and release on the same day and that the Parole Board members approved the parolee's petition without reviewing all the pertinent information required by state law, such as the circumstances of the prisoner's offense, his previous social history and criminal record, his conduct, employment and attitude while in the custody of the Department, and the reports of such physical and mental examinations as have been made. Claims against the Parole Board, Department of Corrections and Commissioner of Corrections were dismissed on the basis of sovereign immunity. The individual Board members, however, the court stated, were charged in the plaintiff's complaint with "reckless disregard" for her safety. It was alleged that their failure to consider pertinent information was a substantial departure from their duties. The court found these allegations sufficient to "pierce the shield of these officials' qualified immunity to suit." The court carefully noted that it intended that "not the slightest hint be perceived how this case ought ultimately be decided." (Mississippi Department of Corrections)

U.S. District Court
PAROLE-
LIABILITY
PAROLE-
GRANTING

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
PAROLE-
GRANTING
PAROLE-
DUE PROCESS

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 Appeals Court
FAILURE TO
PROTECT
PAROLE-
LIABILITY

Rayfield v. S.C. Dept. of Corrections, 374 S.E.2d 910 (S.C.App. 1988). Decedents' administrator brought a wrongful death action against the Department of Corrections and Department of Parole and Community Corrections, along with various officers and servants of departments, after a released prisoner killed the decedents hours after the prisoner's release. The court of common pleas granted summary judgment for the defendants, and the administrator appealed. The appeals court, affirming the decision, found that statutes assigning the responsibility for management and control of the Department of Corrections and the Department of Parole and Community Corrections, and providing for the general keeping of records on prisoners, created no special duty of corrections officers and parole officers to members of the public to guard against violent crimes by released prisoners. The corrections officers did not have an affirmative duty to protect the decedents from the released prisoner even though the officers may have known that the released prisoner was drug addicted and potentially violent, as any special relationship ended once the custody of the released prisoner ended. (South Carolina Department of Corrections)

U.S. Supreme Court
PAROLE-
GRANTING

U.S. Dept. of Justice v. Julian, 108 S.Ct. 1606 (1988). According to the United States Supreme Court, federal prisoners are allowed access to pre-sentence reports as a result of the freedom of information act. Federal Rule of Criminal Procedure 32 provides that when a federal defendant is given copies of his pre-sentence report it must be "returned to the probation officer immediately following the imposition of sentence [...] unless the court, in its discretion, otherwise directs." The Court held, that, under the federal Freedom of Information Act, 5 U.S.C.A. Section 552, once the report is transmitted to the Federal Bureau of Prisons and Parole Commission for determining the defendant's postsentence placement and parole, it can be obtained by the defendant. After examining Exemptions 3 and 4 under the Act, the Court concluded that the exemptions did not prevent disclosure of such reports directly to the defendant. Nonetheless, under the Parole Commission and Reorganization Act of 1976 and Federal Rule of Criminal Procedure 32(c), information in such reports pertaining to confidential sources can be withheld. It also seems clear that requests for such reports from persons other than the subject of the report can be denied. (Federal Prison, Arizona)

U.S. District Court
PAROLE-
GRANTING

Watson v. Smith, 682 F.Supp. 225 (S.D.N.Y. 1988). An inmate who was denied parole on the basis of prison discipline failed to show that the rules under which he was disciplined were void for vagueness. His confinement for long periods in a special housing unit was for violent assaults, and he did not articulate any claim that the rules against violent assaults were vague. Accordingly, the inmate was not deprived of a fair parole hearing by the parole board's reliance on the disciplinary proceedings. (Greenhaven Correctional Facility, New York)

U.S. Appeals Court
LIABILITY-
RELEASE OF
PRISONER
FAILURE TO
PROTECT

Wells v. Walker, 852 F.2d 368 (8th Cir. 1988), cert. denied, 109 S.Ct. 1121. A federal trial court had found no federal civil rights liability for prison officials who authorized the early release of an inmate because of overcrowding. After his release, he allegedly murdered a female proprietor of a store where he was taken to board a bus. This ruling was upheld by the federal appeals court that, although the circumstances gave rise to a right of the victim to be protected against an assault by the inmate, the allegation that the defendants failed to conduct an adequate background investigation and did not know of the inmate's potential for violence amounted to "a claim of ordinary negligence" at most. The court expressed no opinion on state law claims which may now be filed in state court. (Arkansas State Board of Corrections)

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U.S. Appeals Court
LIABILITY- RELEASE
OF PRISONER

Allen v. Lowder, 875 F.2d 82 (4th Cir. 1989). A defendant whose conviction for possession of stolen goods was reversed filed a civil rights action against the Secretary of the Department of Corrections, the prison warden, and the prosecutor whose acts allegedly caused him to be illegally kept in custody for 52 days following the reversal of his conviction. The U.S. District Court denied the defendants' motion for summary judgment, and they appealed. The court of appeals held that the secretary and prison warden played no role in causing the defendant's incarceration beyond the date of his lawful release and that they had qualified immunity from liability because they were completely ignorant of incidents involving the defendant and had lawfully complied with nondiscretionary state law requirements. The court also ruled that the prosecutor was not entitled to absolute immunity from liability. The prosecutor attempted to secure continued incarceration of the criminal defendant in "safekeeping" custody after reversal of the defendant's conviction and his release from the state prison to the county jail, under the theory that the defendant had previously "caused trouble" in the county jail. At best, according to the court, the prosecutor was acting in purely administrative capacity when he assisted the sheriff's office in obtaining a safekeeping order from the superior court. (Union County Jail, North Carolina)

U.S. Appeals Court
GOOD-TIME
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. District Court
RELEASE ON
BOND

Botero Gomez v. U.S., 725 F.Supp. 526 (S.D. Fla. 1989). A prison inmate 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 granted the motion, and found 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 required for patients with advanced AIDS and the prisoner, who was a resident alien and who had a son who was an American citizen, had no prior criminal record, and his medical condition left no possibility of risk of flight. (MCC-Miami, Florida)

U.S. Appeals Court
FAILURE TO
PROTECT
WORK RELEASE

Cornelius v. Town of Highland Lake, Ala., 880 F.2d 348 (11th Cir. 1989), cert. denied, 110 S.Ct. 1784. In March 1984, the Mayor of the Town of Highland Lake requested that the Alabama Department of Corrections provide the city with inmate labor for general maintenance, clearing and public works purposes. Beginning in May 1984, the St. Clair Correctional Facility provided the inmates for this community work program. According to the record, many community residents in Highland Lake opposed the use of inmate labor within the town and repeatedly voiced their concern to the town's officials. One method of opposition was the circulation of a petition in the community calling for the end to the unsupervised use of inmate labor. A town clerk who was abducted from the town hall and terrorized by prison inmates assigned to the community work squad program brought a civil rights action against the town and its officials, as well as the prison and its officials. The U.S. District Court granted a summary judgment for the defendants. On appeal, the court of appeals reversed and remanded the case finding that genuine issues of material fact, as to whether a special relationship existed between the town clerk and the defendants and whether the defendants were aware that the clerk faced a special danger from the work squad inmates, precluded a summary judgment. (St. Clair Corr. Facility, Odenville, Alabama)

State Supreme Court
FAILURE TO
PROTECT
PAROLE-
VIOLATIONS
PAROLE-
LIABILITY.

Fitzpatrick v. State, 439 N.W.2d 663 (Iowa 1989). A Washington State police officer injured by an Iowa parolee brought an action against the State of Iowa and a parole officer alleging negligence and a violation of his civil rights. The plaintiff had alleged that while the prisoner was incarcerated, he was found guilty of numerous prison rule violations, including assaulting other inmates. Further, he claimed that, "almost immediately" upon his release from custody, the inmate committed serious violations of his parole agreement which were known to his parole officer, including disorderly conduct, assault upon his wife, intoxication, and breaking a window at his wife's parents' house. He claimed both that it was negligent to parole the inmate and negligent not to notify the State of Washington authorities that the inmate had fled to that state in violation of his parole. The district court dismissed, and the police officer appealed. The State Supreme Court, affirming the decision, found that absent evidence of a special relationship, neither the State nor parole officers were liable for negligent supervision to a victim injured by a parolee. The State's allegedly negligent supervision of the parolee did not violate the parolee's victim's civil rights. (Iowa State Penitentiary)

U.S. Appeals Court
PAROLE/GRANTING
TEMPORARY
RELEASE

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. District Court
EQUAL
PROTECTION
TEMPORARY
RELEASE

Isaraphanich v. Coughlin, 716 F.Supp. 119 (S.D.N.Y. 1989). An alien inmate who was denied participation in a family reunion program and temporary release program brought a civil rights action alleging, inter alia, a violation of an equal protection clause. On the corrections officials' motion for summary judgment, the district court found that denying inmate's participation in programs on the basis of an outstanding INS detainer was rationally related to a legitimate penological interest of preventing participating inmates from escaping upon release. The family reunion program involves inmates visiting with their family members in a mobile home for 48 hours. The location of this home, near the "edge of a field" is less secure than other parts of the facility and, because of this, prison officials have an increased interest in insuring that individuals who participate in the program do not "have a special incentive to escape," such as facing possible deportation. (Fishkill Correctional Facility, New York)

U.S. Appeals Court
PAROLE-
GRANTING
PAROLE-
REVOCATION

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
RELEASE DATE
PAROLE-
DUE PROCESS
PAROLE-
GRANTING

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. Regulations governed specific instances in which inmates could be terminated from halfway house program participation, and inmates had a legitimate expectation that they would be removed only for violating those regulations. The inmate objected to the timeliness of his hearing arguing that he was entitled to meet with the reclassification committee prior to his transfer from the halfway house or, in any event, at a time earlier than three months following his removal. Contrary to these assertions, the court found that the inmate was not entitled to a hearing prior to his removal from the halfway house, nor did they feel that three months constituted an unreasonably long delay so as to violate Lanier's constitutional rights. (Massachusetts Department of Corrections)

U.S. Appeals Court
LIABILITY
RELEASE OF
PRISONER
TIMELY
RELEASE

McConney v. City of Houston, 863 F.2d 1180 (5th Cir. 1989). An arrestee for public intoxication brought a civil rights suit against the city and its chief of police. The U.S. District Court entered a judgment on the jury verdict in favor of the arrestee, and the city appealed. The appeals court, affirming in part and reversing in part, found that the city chief of police was entitled to qualified immunity from liability, but some evidence supported the finding that the city had an unconstitutional policy for detaining the warrantless arrestee for public intoxication for four hours even after determining that the arrestee was sober and had not been intoxicated. A policy requiring the continued detention of a public intoxication arrestee and denial of otherwise available bail after the determination beyond a reasonable doubt that the arrestee is in fact not intoxicated and that probable cause no longer exists raises obvious constitutional concerns, but the arrestee is not constitutionally required to be released immediately upon the ascertainment that he is clearly not intoxicated. It is permissible for the detaining authority to take a reasonable amount of time for administrative processing, the return of property, and making bail if appropriate. (Houston City Jail, Texas)

U.S. Appeals Court
GOOD-TIME
PAROLE-
GRANTING

Mayner v. Callahan, 873 F.2d 1300 (9th Cir. 1989). A first-degree murder convict who had been found ineligible for parole petitioned for federal habeas relief. The U.S. District Court denied the convict's habeas petition, and the convict appealed. The appeals court affirmed the lower court decision, finding that the statute requiring defendants convicted of first-degree murder to spend at least 20 years in continuous confinement before becoming eligible for parole did not violate double jeopardy or equal protection rights of a murder convict who escaped from prison before the 20-year period had expired, though the convict was thereby deprived of credit for jail time he had served prior to his escape. The statute served a legitimate state interest in deterring escapes by mandatory life prisoners, who might have a heightened sense of desperation. (Washington Prison)

U.S. Appeals Court
TEMPORARY
RELEASE

Merritt v. Broglin, 891 F.2d 169 (7th Cir. 1989). A correctional center inmate brought a civil rights action claiming that the superintendent's denial of the inmate's request for leave to attend his stepfather's funeral violated substantive and procedural due process rights. The U.S. District Court granted summary judgment for the superintendent, and the inmate appealed. The appeals court found that Indiana administrative code and correctional center directive regarding the temporary leave for inmates upon the death of defined relatives did not create a liberty interest that would entitle an inmate to constitutional due process protections. (Westville Correctional Center, Indiana)

U.S. Appeals Court
GOOD TIME
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)

U.S. District Court
EQUAL
PROTECTION
EX POST-FACTO
PAROLE-
CONDITIONS

Russell v. Eaves, 722 F.Supp. 558 (E.D. Mo. 1989). A Missouri state prisoner brought a Section 1983 action seeking declaratory and injunctive relief in connection with the administration of the Missouri sexual offender program. The district court dismissed the suit, finding that the prisoner did not have a protected liberty interest in parole. Requiring sex offenders to successfully complete MOSOP in order to become eligible for parole did not violate the prisoner's equal protection rights. MOSOP does not operate as an ex post facto law; and an MOSOP requirement that participants "accept responsibility" for their crimes did not violate the prisoner's fifth amendment right to be free from coerced self-incrimination. (Moberly Training Center for Men, Moberly, Missouri)

U.S. Appeals Court
FAILURE TO
RELEASE
EXPIRATION OF
SENTENCE

Sample v. Diecks, 885 F.2d 1099 (3rd Cir. 1989). A former inmate brought a civil rights action against the Commissioner of Corrections and the senior records official to recover for a violation of civil rights which occurred when he was detained after the expiration of his sentence. The U.S. District Court entered a judgment in favor of the former inmate, and the defendants appealed. The appeals court, affirming in part, reversing in part and remanding in part, found that there was a violation of the inmate's eighth amendment rights. The records supervisor had a responsibility and the authority to direct the release of inmates whose time had expired. Evidence sustained a finding that the senior records clerk exhibited a deliberate indifference to the inmate's plight; but evidence was insufficient to impose liability on the Commissioner of Corrections for a violation of due process rights of the inmate. The court stated that imprisonment beyond one's term constitutes punishment for the purposes of the eighth amendment. (State Correctional Institution, Pittsburgh, Pennsylvania)

State Supreme Court
PAROLE-
LIABILITY
FAILURE TO
PROTECT
PAROLE-
CONDITIONS

Sheerin v. State, 434 N.W.2d 633 (Iowa 1989). A wrongful death action was brought against the State for a fatal stabbing of a co-worker by a paroled prisoner. The district court granted summary judgment to the State, and the plaintiff appealed. The state supreme court, affirming the decision, found that the State's decision to parole the prisoner was a discretionary function immunized from liability by a statute, rather than an operational function for which the State could be held liable if the function were negligently undertaken. The State could not be held liable for the death of a co-worker stabbed by the paroled prisoner on the theory that the State negligently failed to adequately supervise or provide for the continuing treatment and evaluation of the prisoner following his release from prison and a halfway house. The court also found that the State did not have a duty to warn persons who would come in contact with the paroled prisoner, including the co-worker who was fatally stabbed, the employer or the general public, of the danger posed by the paroled prisoner, for purposes of imposing liability on the State for the death of the co-worker. (Iowa)

U.S. District Court
FAILURE TO
PROTECT
FURLOUGH

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. Appeals Court
PAROLE-
GRANTING
DISCRIMINATION

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
PAROLE-
REVOCATION

Thompson v. Duke, 882 F.2d 1180 (7th Cir. 1989). A parolee, who was injured while incarcerated and awaiting a parole violation hearing, brought a civil rights action against the state and county officials. While incarcerated and awaiting his parole violation hearing, the plaintiff was severely beaten by another inmate. He brought a Section 1983 action against various state defendants, alleging that their failure to schedule and conduct a timely parole violation hearing constituted a deprivation of his constitutionally protected liberty interests. He also sued various county defendants, alleging that their failure to instruct and train their subordinates to investigate independently the status of his case constituted a deliberate indifference to his constitutionally protected interests. The district court granted summary judgment in favor of all the defendants-appellees, and appeal was taken. The appeals court, affirming the lower court decision, found that the state officials were immune from liability for the failure to schedule and conduct a timely parole violation hearing, and the county jail officials had no independent duty to investigate the parolee's claims of innocence. The county jail officials only had a duty to determine facial validity of the warrant under which the alleged parole violator was held; they had no independent duty to investigate his claims of innocence or failure of the state to hold a timely parole revocation hearing, even after he was acquitted of the underlying charge on which the violation allegation was based. (Cook County Jail, Illinois)

1990

U.S. Appeals Court
CREDIT
LIABILITY-
RELEASE OF
PRISONER

Alexander v. Perrill, 916 F.2d 1392 (9th Cir. 1990). An inmate brought an action against a warden and administrative systems manager for failure to investigate a claim that his sentence was miscalculated. The district court denied the defendant's motion for summary judgment on defense of qualified immunity, and the defendant appealed. The appeals court affirmed the district court decision and found that the obligation of the warden and administrative systems manager to investigate an inmate's claim of miscalculation of a sentence did not need to be set out in decisional law in order to be a clearly established duty under the qualified immunity doctrine. Prison officials who were under a duty to investigate claims of computational errors in the calculation of prison sentences may be liable for failure to do so when a reasonable request is made. (Federal Correctional Institution, Tucson, Arizona)

U.S. District Court
RELEASE DATE
PAROLE-
GUIDELINES

Burton v. U.S. Parole Com'n, 751 F.Supp. 194 (D. Kan. 1990). An inmate filed a petition for a writ of habeas corpus, challenging the decision of the United States Parole Commission to set his parole release date beyond parole guidelines. The district court found that the Parole Commission's decision did not reflect any improper "double counting." The inmate argued that the Commission considered the same information in determining his salient factor score and in extending his incarceration beyond the guidelines. However, while the previous commitments reflected in the inmate's salient factor score are those considered as support for the decision to extend the inmate's

incarceration beyond the guidelines, the salient factor score reflects merely the occurrence and number of commitments and not the similar nature of an inmate's violations, which may be weighed by the Commission in determining whether a departure from the guidelines is appropriate. Any possibility of double-counting in this action is further obviated by the fact the Commission considered behavior in its decision to exceed the guidelines which was not used in setting the inmate's salient factor score, including the use of a firearm during the most recent offense and the petitioner's history of institutional misconduct. (United States Penitentiary, Leavenworth, Kansas)

U.S. Appeals Court
EQUAL PROTECTION
PAROLE-DENIAL
RETALIATION

Clark v. State of GA. Pardons and Paroles Bd., 915 F.2d 636 (11th Cir. 1990). An inmate brought an in forma pauperis Section 1983 action against the State Pardons and Paroles Board and individual members of that Board, seeking declaratory judgment that the defendants had violated his constitutional rights. The U.S. District Court dismissed, and the inmate appealed. The court of appeals, vacating and remanding, found that the inmate's complaint alleging that he was denied parole for pursuing litigation against prison officials on account of his brother's allegedly wrongful death, stated an equal protection claim and should not have been dismissed as frivolous. The inmate alleged that on two occasions he was told by the warden that the parole board would be informed that the inmate was an instigator of a suit and that the inmate would not get out of jail for a long time, and the inmate's similarly situated codefendant had been paroled. (Georgia Pardons and Parole Board)

U.S. District Court
FAILURE TO
PROTECT
WORK RELEASE
LIABILITY-
RELEASE OF
PRISONER

Dimas v. County of Quay, New Mexico, 730 F.Supp. 373 (D.N.M. 1990). A prisoner was placed on a work release program. Two days later, he allegedly raped a woman. The woman filed a law suit alleging that the county and its sheriff violated her rights to substantive due process and deprived her of her liberty without due process of law. The federal court granted the defendants summary judgment on the civil rights claims, finding the failure to protect a member of the public from assault by a third party is not a violation of due process in the absence of a custodial relationship with the victim. The principle of this case, the court held, applied in the circumstances of the alleged rape of the plaintiff. Although the plaintiff introduced evidence that she had previously dated the prisoner, there was no evidence that the defendants should have known of his relationship or that they could have inferred a special danger to her from that relationship. (Quay County Jail, New Mexico)

U.S. Appeals Court
GOOD-TIME

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
PAROLE-
REVOCATION
PAROLE-
DUE PROCESS

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. District Court
CREDIT
EQUAL PROTECTION
RELEASE ON
BOND

Hattermann v. U.S., 743 F.Supp. 578 (C.D. Ill. 1990). A defendant filed a motion seeking credit toward service of his sentence for time he spent on bond between his arrest and sentencing. The district court found that the defendant's sentence, plus the time allegedly spent in presentence custody, totaled less than the maximum sentence provided for the defendant's offense and, thus, the defendant lacked a standing to assert that he was entitled to credit under a statute governing credit against a sentence for time spent in custody before imposition of a sentence. In addition, it was found that the defendant was not "in custody," within the meaning of the statute governing credit against a sentence for time spent in custody before imposition of a sentence, during the time the defendant was released on bond between his arrest and sentencing. The denial of the credit did not violate equal protection, despite the contention that a class of persons on bond had to be treated identically to the class of persons on probation or parole; equating those situations

would require a finding that bond restrictions constitutionally amounted to a form of punishment, which would not have been permissible prior to conviction, but it was found that the restraints reasonably imposed for the purpose of insuring the detainee's presence at trial and reasonably related to that purpose does not rise to a level of "punishment," for the purposes of denial of liberty due process claims. (Fed. Prison, Terre Haute, Indiana)

U.S. Appeals Court
FURLOUGH
DISCRIMINATION

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. District Court
CREDIT
GOOD-TIME
EX POST FACTO

Stephens v. Muncy, 751 F.Supp. 1214 (E.D. Va. 1990), affirmed, 929 F.2d 694. A state prisoner filed a civil rights action in which he alleged constitutional violations in computation of parole eligibility. The district court found that the statute modifying Virginia's parole eligibility scheme with respect to repeat offenders was not "ex post facto" law, notwithstanding that it utilized offenses committed prior to its enactment to compute parole eligibility. The statute applied only to those convicted of a criminal offense after the statute's effective date. (Virginia State Prison)

U.S. Appeals Court
PAROLE-
GUIDELINES
PAROLE-
DUE PROCESS

Sultenfuss v. Snow, 894 F.2d 1277 (11th Cir. 1990). Prisoners sued prison authorities claiming violation of their due process rights in connection with departures from the statutory parole guideline scheme. The U.S. District Court entered a judgment for the officials, and one prisoner appealed. The appeals court, affirming in part, reversing in part and remanding, found that the suit seeking pecuniary compensation from prison officials was properly dismissed as frivolous, and the prisoners' due process claim based on alleged improper application of parole guidelines was not frivolous. The establishment of a parole guideline system by the state created an arguable property right on the part of prisoners sufficient to permit a civil rights action based on due process deprivation not subject to dismissal on frivolity grounds. (Georgia)

U.S. District Court
TEMPORARY
RELEASE
FAILURE TO
PROTECT

Swader v. Com. of Va., 743 F.Supp. 434 (E.D. Va. 1990). A mother brought a civil rights action against the state and state officials following the death of her child. On motion to dismiss, the U.S. District Court found that the existence of a special relationship giving rise to a duty on the part of the state to provide protection was adequately alleged by the complaint which asserted that the child lived with her mother on the state prison grounds where the mother was employed as a nurse, that they lived outside of the fenced-in portion of the prison where the inmates were lodged, that an inmate was improperly permitted to leave the fenced-in portion of the prison unaccompanied by a guard, and that the inmate raped and murdered the child. (Southampton Correctional Center, Virginia)

U.S. District Court
FAILURE TO
RELEASE

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
PAROLE
SENTENCE
- 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
EARLY RELEASE
EX POST FACTO
- 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
PAROLE-
GUIDELINES
PAROLE-
GRANTING
- 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)
- U.S. District Court
GOOD TIME
EQUAL PROTECTION
- 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 found that the prisoner had no due process right to continue earning one-to-one credits since he was ineligible for the program. (Vacaville State Prison, California)
- U.S. Appeals Court
EQUAL PROTECTION
GOOD TIME
- 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
GOOD TIME
EARLY RELEASE
- 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
TEMPORARY
RELEASE
LIBERTY INTEREST
- Cruz v. Sielaff, 767 F.Supp. 547 (S.D.N.Y. 1991). An inmate brought a civil rights action alleging that prison officials violated his constitutional rights by refusing to allow him to attend his uncle's funeral. The district court found that the inmate had no constitutional right to attend his uncle's funeral, as uncles were not specifically listed in a city policy statement on funeral attendance that would create liberty interest. They were only included in a category of persons whose funerals could be attended at the discretion of officials. (Rikers Island, New York)

U.S. District Court
EQUAL PROTECTION
PAROLE-GRANTING
EX POST FACTO

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 Corr. Facility, Colorado)

U.S. Appeals Court
PAROLE-
GUIDELINES
PAROLE-
POLICIES

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)

State Court
LIABILITY-RELEASE
OF PRISONER

Hereford v. Jefferson County, 586 So.2d 209 (Ala. 1991). Two men were robbed by a prisoner who, although serving a sentence of life without parole, had been mistakenly released from an Alabama jail. The men sued the county, the county sheriff, and several deputy sheriffs, alleging negligence and wantonness in releasing the prisoner. The Alabama Supreme Court upheld summary judgment for the defendants. The court found that an Alabama sheriff is an executive officer of the state, entitled to sovereign immunity under state law. It was also found that the county could not be held vicariously liable for the acts of the sheriff for which he had sovereign immunity. In addition, the acts of deputy sheriffs, the court noted, are considered the "acts of the sheriff." As a result, no liability could arise from their allegedly negligent acts. (Jefferson County, Alabama)

U.S. District Court
FAILURE TO
PROTECT
LIABILITY- RELEASE
OF PRISONER

Hill v. Franklin County, Ky., 757 F.Supp. 29 (E.D. Ky. 1991), affirmed, 948 F.2d 1289. An arrestee's widow brought a civil rights action against a county and county officials, alleging that the arrestee was improperly released from custody while he was still intoxicated. On the defendants' motion for summary judgment, the district court found that the decision to release the intoxicated arrestee was not a result of county policy, precluding the county from being held liable. The court noted that, even if the county had a custom of holding intoxicated arrestees until another person arrived to take responsibility for the arrestee or until the arrestee was no longer a danger to himself or herself, the county's deviation from the custom, on a single occasion, when it released the arrestee before his wife arrived to pick him up, and he was struck and killed by an automobile, could not form a basis for a civil rights action against the county, where the decision to release the arrestee was made by non-policy making county employees. (Franklin County Jail, Kentucky)

U.S. Appeals Court
PAROLE-POLICIES
LIBERTY INTEREST

Inmates v. Ohio State Adult Parole Authority, 929 F.2d 233 (6th Cir. 1991). Inmates who had received an "on or after date" by the Ohio Adult Parole Authority brought a Section 1983 action alleging that the rescission of "on or after dates" without prior notice and opportunity for an evidentiary hearing violated due process and sought an injunction barring the rescission pending determination of merits of the suit. The U.S. District Court denied the preliminary injunction and the inmates appealed. The court of appeals, affirming the decision, found that Ohio law did not give inmates a constitutionally protected liberty interest in being released at a time related to their "on or after dates." (Ohio State Adult Parole Authority)

U.S. District Court
EX POST FACTO

Jones v. Murray, 763 F.Supp. 842 (W.D. Va. 1991). A Virginia prisoner brought a Section 1983 action challenging the constitutionality of Virginia legislation which directs the Virginia Department of Corrections to take and store the blood of a convicted felon for subsequent DNA analysis. Prison officials moved for summary judgment. The U.S. District Court granted the motion, finding that the legislation did not violate the plaintiffs Fourth Amendment right. The court found that, to the extent that the DNA analysis reveals identification characteristics, the plaintiffs indicated no legitimate expectation of privacy; the state has a significant interest in deterring and detecting recidivist acts by convicted felons, and the search in extracting blood was minimal. The court also found that the Virginia legislation requiring convicted felons to provide blood samples for DNA testing did not violate the ex post facto clause, even though the prisoners convicted prior to the statute's effective date were required to provide the state with a blood sample prior to release from prison; the legislature did not intend to punish convicted felons for their past crimes through legislation, blood tests were not conducted so as to inflict any punishment upon prisoners, and the blood test requirement was not a condition for parole eligibility. (Virginia Department of Corrections)

U.S. Appeals Court
CREDIT
GOOD TIME

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
PAROLE-GRANTING
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. Appeals Court
PAROLE-
DUE PROCESS
PAROLE-
REVOCATION

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
FURLOUGH

Morris v. McCotter, 773 F.Supp. 969 (E.D. Tex. 1991). A state prisoner brought an action challenging the policy of the Texas Board of Criminal Justice excluding convicted murderers from being considered for furlough. The U.S. District Court found that prisoners do not have a protectible constitutional expectation of furlough, and convicted murderers could not claim violation of their equal protection rights. The Texas statute stating that a prison system "may" grant furloughs under a variety of circumstances does not provide any basis for a prisoner to have a protectible expectation of furlough. (Texas Board of Criminal Justice)

U.S. District Court
CREDIT
GOOD-TIME
EQUAL PROTECTION

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
GOOD TIME
EX POST FACTO

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
PAROLE
PAROLE-
LIABILITY

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. District Court
PAROLE-
CONDITIONS
PAROLE-
POLICIES
LIBERTY INTEREST

Patterson v. Webster, 760 F.Supp. 150 (E.D. Mo. 1991). Missouri prisoners brought a Section 1983 action against Missouri state and prison officials, challenging the creation and implementation of the Missouri sexual offenders program (MOSOP). The defendants moved to dismiss. The district court found that the application of MOSOP is not limited to those sexual offenders convicted of "sexual assaults" only. In addition, the failure to complete the program can only push back potential parole; it cannot extend an actual sentence. Furthermore, the prisoners could not argue that the program unconstitutionally interfered with parole, as prisoners did not have protected liberty interest in parole. Neither Missouri's parole statute nor parole board regulations created such an interest, and the prisoners did not allege the existence of any customs, regulations, or practices that would give them liberty interest in parole. (Missouri Department of Corrections)

U.S. Appeals Court
CREDIT

Randall v. Whelan, 938 F.2d 522 (4th Cir. 1991). A federal prison inmate sought credit against a prison sentence for time spent in a drug rehabilitation center prior to entering the federal penitentiary. The credit was denied by the U.S. District Court, and the inmate appealed. The court of appeals found that the inmate was not entitled to credit against his prison sentence, both before and after the imposition of the sentence, though the release to the center was by judicial order under restrictive conditions. The inmate was not in "custody" within the meaning of a statute governing credits, where he was not subject to the authority of the Attorney General, nor was he committed to a place of detention to await transportation to prison. (Federal Bureau of Prisons)

U.S. Appeals Court
CREDIT
BAIL

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
CREDIT
RELEASE DATE

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. Appeals Court
CREDIT
RELEASE DATE

U.S. v. Insley, 927 F.2d 185 (4th Cir. 1991). A defendant moved for credit against her sentence for the time spent on appeal bond. The U.S. District Court denied the motion, and the defendant appealed. The court of appeals found that the district court properly refused to award the defendant credit for time served while she was released on appeal bond. The conditions imposed pursuant to her appeal bond, including that she reside with her parents and leave residence only to seek employment or to travel to work or church, did not constitute "official detention" under the credit statute. (South Carolina)

U.S. District Court
CREDIT
EQUAL PROTECTION
GOOD TIME

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
GOOD TIME

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
FURLOUGH
TEMPORARY
RELEASE

Bowser v. Vose, 968 F.2d 105 (1st Cir. 1992). An inmate brought a Section 1983 action against correctional officials alleging that his civil rights were violated by his suspension from the Massachusetts furlough program and his subsequent transfer to a medium security facility. The U.S. District Court dismissed the complaint, and appeal was taken. The court of appeals, affirming the decision, found that the prison inmate's wish to continue participating in the furlough program did not rise to a level of a Fourteenth Amendment liberty interest. According to the court, prisoners have no inherent liberty interest in continuing to participate in furlough or other temporary release programs; denial of the continued furloughs simply relegates a prisoner to the conditions or degree of confinement within the sentence imposed. (Massachusetts Department of Corrections) culpable state of mind. (Woodford County Jail, Kentucky)

U.S. District Court
LIBERTY INTEREST
RELEASE DATE

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. Appeals Court
WORK RELEASE

DeTomaso v. McGinnis, 970 F.2d 211 (7th Cir. 1992). An inmate brought a federal civil rights action following denial of his application for work release. The U.S. District Court dismissed the suit and the inmate appealed. The appeals court, affirming the lower court decision, found that Illinois regulations setting out eligibility requirements for an inmate to be entitled to work release do not create a liberty or property interest in work release for an inmate who meets the requirements because prison officials have discretion to choose among the eligible inmates. Furthermore, even if Illinois officials acted arbitrarily in allowing felons with records worse than this inmate's to enjoy work release, the regulations did not violate the inmate's equal protection rights as the inmate had no liberty or property interest in work release. The inmate did not contend that race or religion played a part in the decision to deny him work release, and Illinois had a rational explanation for caution in awarding work release status, in that slots were few and potential risks were high. (Illinois Department of Corrections)

U.S. District Court
FURLOUGH
LIBERTY INTEREST
TEMPORARY
RELEASE

Farmer v. Crews, 804 F.Supp. 1516 (M.D. Fla. 1992). An inmate who was required to appear at his father's funeral escorted by a deputy, wearing institutional clothing, and with handcuffs and leg restraints, brought a Section 1983 civil rights suit against the deputy sheriff, and the deputy moved for summary judgment. The district court found that no liberty interest in allowing an inmate to attend a funeral on his own recognizance was created under the United States Constitution or federal law. Any embarrassment or emotional distress experienced by the inmate was outweighed by the government's compelling interest in maintaining security. (Collier County, Florida)

U.S. Appeals Court
PAROLE-
CONDITIONS

Felce v. Fiedler, 974 F.2d 1484 (7th Cir. 1992). A parolee brought an action against corrections officials challenging the requirement that he take antipsychotic drugs. The United States District Court granted the corrections officials' motion for summary judgment, and the parolee appealed. The appeals court, reversing and remanding, found that the parolee had a liberty interest in parole without involuntary administration of antipsychotic drugs. The procedure followed by state officials in determining that the inmate's release on parole would be conditioned on the use of antipsychotic drugs was insufficiently neutral and independent to guard against an erroneous determination that he was an appropriate subject for the antipsychotic drug during the parole period. Although the parole plan was devised with medical advice, it was not subject to an independent medical evaluation. Corrections officials were qualifiedly immune from a claim for damages, as procedural due process rights were not clearly established at the time. (Wisconsin)

U.S. District Court
PAROLE
PAROLE- DUE
PROCESS

Johnson v. Fauver, 786 F.Supp. 442 (D. N.J. 1992). A prisoner brought a suit alleging the denial of due process by the state parole board's failure to consider his application for exceptional progress in a manner required by New Jersey law. On the prisoner's motion for declaratory judgment and defendants' motion to dismiss, the U.S. District Court found that the claim was rendered moot by the board's decision to deny parole and to establish a future eligibility date. (East Jersey State Prison, New Jersey)

U.S. Appeals Court
PAROLE-
DUE PROCESS
PAROLE-
POLICIES

Phillips v. Brennan, 969 F.2d 384 (7th Cir. 1992), cert. denied, 113 S.Ct. 990. After his conviction was affirmed by the appeals court, a prisoner brought a habeas corpus petition challenging a Parole Commission determination. The district court denied relief, but the court of appeals reversed. The U.S. District Court again denied relief and the prisoner appealed. The court of appeals, affirming the decision, found that due process does not require that a prisoner be given notification and disclosure of a victim's oral testimony at a parole determination hearing. (United States Parole Commission)

U.S. Appeals Court
CREDIT
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. District Court
CREDIT

Ronchetti v. Rickards, 790 F.Supp. 117 (N.D. W.Va. 1992). A federal prisoner petitioned pro se for habeas corpus relief alleging credit should be given for presentencing time spent in a drug treatment program. The U.S. District Court found that the federal prisoner was not entitled to credit against his sentence for time spent in the drug treatment program before sentencing since he was not in "custody" or "official detention" when he was released on bond into the care of the treatment center. (Federal Correctional Institution, Morgantown, West Virginia)

U.S. Appeals Court
RELEASE DATE
TIMELY RELEASE

Scott v. Kelly, 962 F.2d 145 (2nd Cir. 1992). An inmate brought actions under Section 1983 alleging that segregation in keeplock violated his right to due process. After the cases were consolidated, the U.S. District Court granted summary judgment in favor of the defendants and the inmate appealed. The court of appeals found that the failure of a prison official to call witnesses at a disciplinary hearing as requested by the inmate, did not deny the inmate due process, where the inmate did not advise the official what the testimony of the witnesses would be, and thus the official had no reason to believe that the testimony would be relevant or that it would affect his decision. The detention of the inmate in keeplock during the weekend after his release date did not deny him due process when the inmate did not provide prison guards with a copy of the release order until Friday. The guards could not verify its authenticity over the weekend, and, given the potential for inmate fraud, it was prudent to hold the inmate in keeplock until they could do so on Monday. (New York State Department of Correctional Services Attica Facility)

U.S. Appeals Court
LIBERTY INTEREST
PAROLE
PAROLE-
GRANTING

Stewart v. Davies, 954 F.2d 515 (8th Cir. 1992). A Kansas prisoner who would have been eligible for parole under Kansas law brought an action challenging his transfer to a prison in Iowa, where he was ineligible for parole and thus denied rehabilitative programs which would be considered by the Kansas Parole Board. The U.S. District Court denied relief and the prisoner appealed. The appeals court, affirming the decision, found that the inmate had no liberty interest in eligibility for parole or rehabilitative programs. The Iowa prison officials made their determination of eligibility for rehabilitation programs based upon types of sentences received under Iowa law. These determinations were not arbitrary and capricious. In addition, his due process rights were not violated when he was transferred to Iowa. (Iowa State Penitentiary, Fort Madison, Iowa)

U.S. Appeals Court
EARLY RELEASE

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)

1993

U.S. District Court
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. District Court
GOOD-TIME CREDIT

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
CREDIT
EX POST FACTO
GOOD TIME
LIBERTY INTEREST
- Ewell v. Murray, 11 F.3d 482 (4th Cir. 1993). 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. Appeals Court
EX POST FACTO
- 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. Appeals Court
PAROLE-GRANTING
RELEASE DATE
- Gilbertson v. Texas Board of Pardons and Paroles, 993 F.2d 74 (5th Cir. 1993). A Texas prison inmate sued for injunctive relief and damages claiming that after he was advised of his tentative parole date, he was notified that he had lost that date and no reason was given for the change. The U.S. District Court dismissed the case as frivolous, and appeal was taken. The appeals court, affirming the decision, found that the inmate did not have a constitutionally protected interest in a tentative parole date, and he was not entitled to reasons for denial of parole. (Texas)
- U.S. Appeals Court
WORK RELEASE
- Jackson v. Lockhart, 7 F.3d 1391 (8th Cir. 1993). An inmate brought a Section 1983 action against the Director of the Department of Corrections for failing to grant a *Morrissey*-type hearing before revoking her work release status. The U.S. District Court denied the Director's motion for summary judgment, and the Director appealed. The appeals court found that the constitutional right of the inmate to due process protections of a *Morrissey*-type hearing due to parolees, rather than to protections due in prison disciplinary hearings, was not clearly established at the time the inmate's work release status was revoked. As a result, the Director was entitled to qualified immunity for his failure to provide such a hearing. Although there were similarities between parolees and work release participants, the department exercised significant control over work release inmates, and relevant statutes referred to work release participants as "inmates." (Arkansas Department of Correction)
- U.S. Appeals Court
DISCRIMINATION
PAROLE
RETALIATION
- Kimberlin v. White, 7 F.3d 527 (6th Cir. 1993). An inmate sought review of a parole date, the U.S. District Court upheld the decision of the parole commission and the inmate appealed. The court of appeals, affirming the decision, found that the inmate failed to prove that the parole commission vindictively increased the time the inmate would remain incarcerated on remand after appeal from an earlier decision of the parole commission, despite the contention that the parole commission increased the sentence in retaliation for the inmate's having alleged that he had sold marijuana to a vice president. The record unquestionably established that the inmate did not receive a more severe sentence on remand. (United States Parole Commission)
- U.S. Appeals Court
CREDIT
EQUAL PROTECTION
GOOD-TIME
- 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
EXPIRATION OF
SENTENCE
PAROLE-
GRANTING
RELEASE DATE
TIMELY RELEASE
- Moore v. Tartler, 986 F.2d 682 (3rd Cir. 1993). A former state prisoner brought a civil rights action against parole officials claiming violation of the Eighth Amendment due to a delay in releasing him. The U.S. District Court denied relief and the former inmate appealed. The appeals court, affirming the decision, found that evidence did not show that parole officials acted with deliberate indifference to the former inmate's rights. The inmate was not subjected to cruel and unusual punishment when he was held in prison for at least three months after the expiration of his term due to the alleged failure to investigate the parole board's misinterpretation of sentencing order. The parole board had not rejected his initial complaint outright or suspended its search, although the investigation had been slow and incompetent, and the record did not establish deliberate indifference. (State Correctional Institution, Graterford, Pennsylvania)

- U.S. District Court
DISCRIMINATION
PAROLE-GRANTING
- Patrick v. Redman, 818 F.Supp. 86 (D. Del. 1993). A state prisoner brought a civil rights action alleging racial discrimination in connection with a parole board's denial of his application for parole and rescheduling of another hearing thirty-six months later. The district court found that the prisoner, who opposed the motion for summary judgment in his civil rights action, failed to show that the parole board discriminated against him based on his race. The prisoner submitted no more than a conclusory allegation of discrimination. Unrebutted facts submitted by the parole board showed that the board was not engaged in a pattern of discriminatory conduct, and, on denial of the prisoner's application, the board cited seven legitimate reasons for denial including an institutional recommendation not to grant parole, prior failure under parole supervision, a lengthy arrest record, and the need for continued therapeutic alcohol counseling. (Delaware)
- U.S. Appeals Court
LIBERTY INTEREST
WORK RELEASE
- Severino v. Negron, 996 F.2d 1439 (2nd Cir. 1993). An imprisoned resident alien brought a civil rights action against state correctional officials, alleging that revocation of his participation in a work release program following the issuance of an immigration warrant violated due process. The U.S. District Court dismissed the complaint and the alien appealed. The appeals court, affirming the decision, found that officials were entitled to qualified immunity. While it was clear that a liberty interest existed in the work release program, the boundaries of that interest were not drawn with such clarity that officials could know precisely what was required to remove an alien from the program. (New York Department of Correctional Services)
- U.S. District Court
EQUAL PROTECTION
PAROLE-
POLICIES
- Smith v. U.S. Parole Com'n., 814 F.Supp. 246 (D.Conn. 1993). A federal prisoner sought declaratory and injunctive relief against the United States Parole Commission's two-tiered system in which prisoners with a sentence shorter than thirty years received an initial parole hearing and presumptive parole date within 120 days of incarceration, while the prisoners with longer sentences had to wait until they had served one-third of their sentence. The district court found that the distinction was rationally related to legitimate government interests, and therefore did not violate equal protection. In addition, the prisoner was not denied due process by having to wait ninety days prior to completion of his minimum term to obtain a parole hearing. Because the prisoner had no constitutional or inherent right to be released before expiration of a valid sentence, there was nothing cruel and unusual about requiring him to serve his minimum term before giving him a parole hearing. (Federal Correctional Institution, Danbury, Connecticut)
- U.S. Appeals Court
PAROLE-REVOC-
ATION
PAROLE VIOLATION
- Sneed v. Donahue, 993 F.2d 1239 (6th Cir. 1993). An inmate filed a petition for a writ of habeas corpus, alleging that automatic revocation of his parole without a hearing violated his due process rights. The U.S. District Court dismissed, and the inmate appealed. The appeals court found that a Kentucky law providing for the automatic revocation of a parolee's parole status upon the parolee's incarceration for a crime committed while on parole did not deprive the parolee of his due process guarantees under the Federal Constitution. (Kentucky Department of Corrections)
- U.S. Appeals Court
LIBERTY INTEREST
PAROLE-
DUE PROCESS
PAROLE-
GUIDELINES
- Sultenfuss v. Snow, 7 F.3d 1543 (11th Cir. 1993). Inmates brought a civil rights action alleging that the Georgia Board of Pardons and Paroles had violated their constitutional rights by departing from guideline recommendations and setting their parole release dates. The U.S. District Court dismissed the complaint and the inmates appealed. The appeals court remanded for further proceedings regarding the due process claim. The district court entered summary judgment against the inmates, and the inmates again appealed. The appeals court, reversing and remanding, found that Georgia's parole statutes create a protected liberty interest in parole, despite rules promulgated by the Georgia Board of Pardons and Paroles purporting to reserve discretion to depart from guidelines adopted under the statutes. (Georgia Board of Pardons and Paroles)
- U.S. Appeals Court
INVOLUNTARY
COMMITMENT
- U.S. v. Evanoff, 10 F.3d 559 (8th Cir. 1993). An inmate appealed an order of the U.S. District Court committing him to the custody of the Attorney General when his prison term ended, based on a finding that he suffered from a mental disease or defect which rendered him dangerous. The appeals court, affirming the decision, found that the government met its burden of establishing dangerousness by clear and convincing evidence. Evidence indicated that the inmate, throughout his incarceration, suffered from auditory hallucinations which commanded him to harm people. Because of such hallucinations he requested seclusion on at least three occasions to regain control of himself and to avoid harming others. The inmate also consistently told a psychologist that he would refuse any prescribed psychotropic drugs and would take cocaine instead of prescribed drugs. (Federal Medical Center, Rochester, Minnesota; Seagoville, Texas; United States Medical Center for Federal Prisoners, Springfield, Missouri)

U.S. Appeals Court
EX POST FACTO
PROBATION-
REVOCATION
SENTENCE

U.S. v. Paskow, 11 F.3d 873 (9th Cir. 1993). A defendant's supervised release was revoked when random drug testing revealed that he had used marijuana and cocaine. The U.S. District Court ruled that an amendment to a supervised release statute imposing a mandatory minimum penalty for violation of supervised release for possession of a controlled substance, as applied to the defendant, did not violate the ex post facto clause, and the defendant appealed. The appeals court, vacating and remanding, found that there is no difference for ex post facto purposes between parole and supervised release. The court found that the amendment to the supervised release statute, as applied to the defendant, violated the ex post facto clause. The underlying offense was committed before the amendment was adopted, but the conduct that led to the revocation of supervised release occurred afterwards. (California)

U.S. Appeals Court
GOOD-TIME

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. Appeals Court
PAROLE-
DUE PROCESS
PAROLE-
REVOCATION

Belk v. Purkett, 15 F.3d 803 (8th Cir. 1994). After a U.S. District Court upheld an offender's revocation of parole he appealed. The appeals court, reversing and remanding, found that the due process rights of the parolee were violated during the initial hearing conducted in the revocation proceeding. The parolee was not given a copy of the violation report until just before the hearing. Also, a former girlfriend whose allegations formed the basis for the revocation proceedings was not made available, nor was her father, who had allegedly intercepted the evidence which was the basis for one claim against the parolee. In addition, statements of adverse witnesses were allowed into evidence in violation of the hearsay rule. The court also found that the final hearing conducted before parole was revoked did not provide procedural safeguards required by the United States Supreme Court: The notice was unclear as to charges against the parolee; he had not been permitted to examine written statements of witnesses or evidence reports regarding actions forming the basis of the revocation; he was not given an opportunity to confront and cross-examine adverse witnesses during the hearing; and the final statement, that his parole was being revoked because he had violated laws, was not precise enough to provide a basis for organizing an appeal. (Missouri Board of Probation and Parole)

U.S. District Court
EX POST FACTO
LIBERTY INTEREST
PAROLE-
DUE PROCESS
RELEASE DATE

Canales v. Gabry, 844 F.Supp. 1167 (E.D. Mich. 1994). A state inmate brought a federal civil rights action alleging that the parole board violated his constitutional rights by extending the time between parole reviews. On the parole board chairman's motion to dismiss the district court adopting a report and recommendation of a U.S. Magistrate, found that the inmate did not have a protected liberty interest to be conditionally released before the expiration of his valid sentence. State-created parole procedures enacted after the inmate's incarceration that increased the time between parole hearings did not violate the inmate's procedural due process rights. The rules governing the parole hearing frequency were not "laws" within the meaning of the ex post facto clause. The possibility of parole was no more than a mere hope and such hope was not protected by due process. The parole board had the discretion to grant parole, and therefore the plaintiff did not have a protected liberty interest. Even to the extent that the state statute may create a "protectable expectation of parole," no more procedural due process is constitutionally required than an opportunity to be heard, and when parole is denied, to be informed of the reasons for failing to qualify for parole. (Saginaw Regional Correctional Facility, Saginaw, Michigan)

U.S. Appeals Court
EXPIRATION OF
SENTENCE

Dunne v. Keohane, 14 F.3d 335 (7th Cir. 1994). 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
RELEASE DATE

Garrity v. Fiedler, 850 F.Supp. 777 (E.D. Wis. 1994). An inmate who violated prison rules by passing a note to a visitor soliciting commission of a burglary petitioned for a writ of habeas corpus. He alleged that he was subjected to multiple punishments in violation of double jeopardy when prison disciplinary proceedings resulted in extending his mandatory release date, and when he was sentenced to three additional years in prison after he pled guilty to a solicitation charge. The district court found that, under Wisconsin law, prison disciplinary measures were not "punishment" for double jeopardy purposes, as their "primary" purpose is not punitive. (Wisconsin State Penitentiary)

U.S. District Court
CREDIT
PAROLE-
REVOCATION
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. District Court
EQUAL PROTECTION
EX POST FACTO
LIBERTY INTEREST
PAROLE-
POLICIES

Grimm v. Jackson, 845 F.Supp. 383 (W.D.Va. 1994). Inmates brought a Section 1983 action challenging a policy of the Virginia Parole Board, under which the Board could defer parole consideration for two or three years for inmates with at least ten years or a life sentence remaining to be served. On the state's motion for summary judgment, the district court found that the policy did not deprive the inmates of a constitutionally protected liberty interest. Neither Virginia parole statutes nor prior practices of the Board created a liberty interest in annual parole hearings, and the policy did not violate the ex post facto clause. The Board had statutory discretion since 1977 to defer parole review hearings for more than one year upon reasonable cause, and the fact that the Board had granted inmates the privilege of annual hearings could not supersede the statute. Finally, the policy did not violate the equal protection clause. The classification used in the deferral policy divided the inmates on the basis of the length of sentence and violence of offense and thus were not suspect criteria and did not affect any fundamental right, and the policy was rationally related to a legitimate state interest of enhancing the efficiency of the parole review process and reducing inmates' false hopes. (Virginia Parole Board)

U.S. Appeals Court
EARLY RELEASE
EQUAL PROTECTION

Keeton v. State of Okl., 32 F.3d 451 (10th Cir. 1994). A state prisoner brought a civil rights action complaining that the Oklahoma Prison Overcrowding Emergency Powers Act deprived him of equal protection. The complaint was dismissed by the U.S. District Court and the prisoner appealed. The appeals court, affirming the decision, found that the Oklahoma Prison Overcrowding Emergency Powers Act, permitting the state to release prisoners early to alleviate overcrowding but excluding certain groups of prisoners from early release, did not deny equal protection to the prisoner, who was not eligible for release. The Act was rationally related to legitimate state interests in reducing prison overcrowding while avoiding threats to society at large. (Oklahoma State Prison)

U.S. Appeals Court
PAROLE-
REVOCATION

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
CREDIT
PAROLE-
REVOCATION

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. Appeals Court
PAROLE-
LIABILITY
PAROLE-
GRANTING
- 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. District Court
WORK RELEASE
- Merit v. Lynn, 848 F.Supp. 1266 (W.D. La. 1994). An inmate sued for alleged violation of his due process rights in connection with denial of the inmate's request for parole work release. Following remand, the district court found that a Louisiana statute governing parole work release did not create any constitutionally protectible expectancy of release. (Louisiana Parole Board)
- U.S. District Court
CREDIT
RELEASE DATE
TIMELY RELEASE
- 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, pursuant to Oregon law, the inmate had protected liberty interest in his credits for time served (CTS), regardless of whether the CTS certification was received by the Parole Board before or after the date of the parole hearing. (Marion County Sheriff's Department, Oregon)
- U.S. Appeals Court
PAROLE
RETALIATION
- Shabazz v. Askins, 14 F.3d 533 (10th Cir. 1994). A prison inmate brought a civil rights suit against members of the Oklahoma Pardon and Parole Board. The U.S. District Court granted a defense motion for summary judgment, and the inmate appealed. The appeals court, affirming the decision, found that the prison inmate failed to present any evidence that members of the Board acted in a retaliatory manner against him in failing to recommend parole, after he had previously brought lawsuits against prison officials. Evidence of retaliation was the inmate's claim that the Board members failed to address him by his "Nubian, Islamic Hebrew" name and that the Board granted parole to other similarly situated inmates appearing at the same hearing. (Lexington Correctional Center, Oklahoma)
- U.S. Appeals Court
EARLY RELEASE
LIBERTY INTEREST
- Shifrin v. Fields, 39 F.3d 1112 (10th Cir. 1994). An inmate brought a civil rights action claiming that eligibility requirements of the Oklahoma Prison Overcrowding Emergency Powers Act violated his rights to equal protection, due process, and to be free from cruel and unusual punishment. The U.S. District Court entered judgment against the inmate and he appealed. The appeals court, affirming the decision, found that violent offenders and repeat offenders were not members of any suspect class, and the Act was rationally related to legitimate penological concerns. The court found that the inmate had no constitutionally protected liberty interest in shortening his sentence through emergency time credits. Requiring a repeat offender who is incarcerated for a violent offense to remain in overcrowded prison conditions without the benefit of emergency time credits was not cruel and unusual punishment. (Oklahoma State Prison)
- U.S. Appeals Court
TEMPORARY
RELEASE
- 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. Appeals Court
PROBATION/
REVOCATION
SENTENCE
- U.S. v. Anderson, 15 F.3d 278 (2nd Cir. 1994). Following a finding that the defendant had violated her supervised release, the U.S. District Court revoked her supervised release and sentenced the defendant, and she appealed. The appeals court, affirming the decision, found that the court may consider the offender's correctional and medical needs, including drug treatment or rehabilitation, in determining the length of time an offender shall be required to serve in prison following revocation of a supervised release. Furthermore, the trial judge, in revoking the supervised release and sentencing the defendant, properly departed from the sentencing range suggested by the guidelines manual policy statements. The defendant's failure to adjust to supervision, failure to fulfill her obligations under her sentence of probation, and need for "intensive substance abuse and psychological treatment in a structured environment," were cited. (Federal District Court, Connecticut)
- U.S. District Court
RELEASE ON BOND
- U.S. v. Mackie, 876 F.Supp. 1489 (E.D. La. 1994). A defendant filed a motion for appeal of a magistrate's order and the district court found that the magistrate properly revoked the defendant's bond and remanded the defendant into custody. A superseding indictment supplied probable cause to believe that the defendant committed a federal crime while on

pretrial release, and the defendant failed to rebut the presumption that no set of conditions would assure that the defendant would not pose danger to the safety of the community. (Louisiana)

U.S. District Court
EX POST FACTO
PROBATION-
REVOCATION
SENTENCE

U.S. v. McGregor, 866 F.Supp. 215 (E.D.Pa. 1994). After revocation of a defendant's probation and his resentencing to two-years imprisonment, the United States moved for reconsideration of the resentencing order. The district court found that the Sentencing Reform Act (SRA) provision for mandatory revocation of probation and resentencing applied to offenses committed before the effective date of the Act. The application of the SRA provision to the defendant did not violate the ex post facto clause where the defendant was a prospective probationer on the date of enactment of the provision, and the defendant was on notice that possession of narcotics would result in a mandatory term of reimprisonment. However, the defendant's two-year sentence imposed after revocation of his probation for possession of a controlled substance was reduced to one year, where the only count against him on which time remained carried a maximum of one-year imprisonment. (Pennsylvania)

U.S. District Court
PAROLE-
DUE PROCESS

Walker v. Nelson, 863 F.Supp. 1059 (D.Neb. 1994). Inmates sued a governor and other state officials alleging that a state parole policy for persons convicted of second-degree murder violated their civil rights. The district court found that the inmates were not deprived of due process, even though their sentences were not commuted by the Board of Pardons, where the parties stipulated that the Board considered their applications for commutation and that the Board did not have a policy or announced practice that would govern the determination of future applications for commutation of a second-degree murder sentence. The inmates did not challenge the timeliness of the Board's decision, or the making and preservation of the record from a commutation hearing. (Nebraska Department of Corrections)

U.S. Appeals Court
WORK RELEASE

Welch v. Thompson, 20 F.3d 636 (5th Cir. 1994). A former prisoner of the Louisiana Department of Public Safety and Corrections brought an action against several department officials alleging denial of due process and equal protection when he was excluded from the prison's work release program during the final six months of his term. The U.S. District Court dismissed the suit and the plaintiff appealed. The appeals court, affirming the decision, found that a Louisiana statute establishing the prison work release program does not contain mandatory language that a prisoner shall be eligible and approved for work release if certain criteria are met, and accordingly does not create a liberty interest. (Louisiana State Penitentiary)

U.S. Appeals Court
CREDIT
EX POST FACTO
GOOD-TIME
PAROLE-
VIOLATIONS

Williams v. Lee, 33 F.3d 1010 (8th Cir. 1994). After revocation of good-time credits for a parole violation was affirmed by the Supreme Court, a petitioner sought a writ of habeas corpus. The U.S. District Court found that the revocation of good-time credits was an ex post facto violation and the respondents appealed. The appeals court, affirming the decision, found that the revocation of the defendant's accumulated good-time credits upon his violation of parole, pursuant to the authority of legislation enacted after the petitioner had committed the offense that resulted in his conviction and sentence but before he had been released on parole, was an ex post facto violation. The court noted that notice that is relevant to an ex post facto determination is notice at the time criminal acts are committed, not notice at the time of parole. (South Dakota)

1995

U.S. Appeals Court
GUIDELINE
REVIEW

Browning v. Vernon, 44 F.3d 818 (9th Cir. 1995). A class of inmates brought an action against prison officials, alleging due process violations in connection with a program under which individuals were placed in correctional institutions to be evaluated for potential release on probation. The U.S. District Court denied the officials' motion for summary judgment and the officials appealed. The appeals court, affirming the decision, found that the inmates had a protected liberty interest in objective and reliable rehabilitation reports and that the liberty interest was clearly established when the prison officials allegedly denied such interest. An Idaho Supreme Court decision explicitly stated that such interest existed, and such a decision was binding. In addition, prison officials did not act reasonably in light of a preexisting law mandating due process in connection with the program, and therefore, the officials were not qualifiedly immune from the suit alleging denial of due process. The officials should have known, even though no court had found, that they violated the inmates' rights when they informed the inmates only 24 hours in advance of an evaluation rebuttal hearing, failed to give the inmates copies of recommendations regarding probation, and immediately placed inmates in solitary confinement so that they could not contact witnesses or use the law library. The lower court found that due process requires that the prison provide such inmates with staff assistance to contact witnesses and access to a telephone to contact legal counsel. An inmate does not have the due process right to personally contact witnesses. The court also found that inmates are entitled to a written notice of the right to call witnesses at the rebuttal hearing. They are also entitled to copies of staff evaluations or chronological reports, as well as full psychiatric evaluations completed on sex offenders or others. (North Idaho Correctional Institution)

U.S. District Court
CONFISCATION
DESTRUCTION OF

Caffey v. Johnson, 883 F.Supp. 128 (E.D. Tex. 1995). A prisoner, proceeding pro se, brought a Section 1983 action against a prison officer alleging that the officer wrongfully seized and either destroyed or lost the prisoner's Holy Koran, handkerchief with an Islamic prayer on it, and Islamic papers. The officer moved for summary judgment. The district court found that since the inmate did not designate himself a Muslim in accordance with a prison regulation stating that only those prisoners who designated themselves with a particular religious group may possess religious paraphernalia, the inmate's Holy Koran, handkerchief with an Islamic prayer on it, and Islamic papers were contraband and it was not unreasonable for the prison officer to seize and discard these items. The officer was entitled to qualified immunity for purposes of the inmate's Section 1983 action. (Texas Department of Criminal Justice, Institutional Division, Stiles Unit)

U.S. District Court
SEGREGATION
DUE PROCESS

Clark v. Neal, 890 F.Supp. 345 (D.Del. 1995). A state prisoner filed a § 1983 action challenging his placement in prehearing detention and removal from a pre-release program without adequate notice and a hearing. The district court held the prisoner's eight-day pre-hearing detention as a security risk did not violate his due process rights, even though his security risk was not reviewed daily. The conditions of his confinement were not more severe than that of prisoners administratively segregated, he was removed from detention before the charges were dropped, and the detention did not affect the prisoner's sentence. The court found that the prisoner had no protected liberty interest in admission to a pre-release program so that denial of readmission based on charges against the prisoner would violate due process where admission was discretionary. (Multi-Purpose Criminal Justice Facility ("Gander Hill"), Pennsylvania)

U.S. District Court
PAROLE
EQUAL PROTECTION

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 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
EX POST FACTO
WORK RELEASE

Dominique v. Weld, 880 F.Supp. 928 (D.Mass. 1995). A state inmate brought an action against prison officials alleging that his removal from a work release program deprived him of due process in violation of Section 1983 and the Massachusetts Civil Rights Act (MCRA). The district court found that the inmate did not have a constitutionally protected liberty interest in remaining in the program. The program granted the inmate some freedom, but not the broad freedoms granted to a parolee, and the program was similar to halfway house programs in which prisoners did not have constitutionally derived liberty interests. The revision of the work release program regulations, which rendered the inmate ineligible for the program, did not constitute ex post facto punishment. The revision was motivated by safety concerns, not a desire to impose further punishment on inmates, and participation in the program was a privilege which the state was entitled to revoke if it found such a measure necessary to ensure community safety. The court also found that the inmate did not have a constitutionally protected liberty interest in retaining his driver's license. The due process clause does not independently support such a liberty interest, and there was no state law or regulation which would support findings that the inmate could reasonably expect to receive and retain his driver's license. The fact that the inmate had used his license without incident for several years did not create a reasonable expectation that he would retain his license indefinitely. (MCI-Lancaster, Massachusetts)

U.S. Appeals Court
PAROLE-DUE PROCESS
PAROLE-REVOCATION
PRE-RELEASE

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
CREDIT
EQUAL PROTECTION
EX POST-FACTO
LIBERTY INTEREST

Herring v. Singletary, 879 F.Supp. 1180 (N.D. Fla. 1995). A state inmate filed a habeas corpus action challenging the forfeiture of 1,540 days of provisional credit against his sentence. The district court found that the revocation of the credits did not constitute an ex post facto violation. The denial of the credit did not affect the original penalty assigned to the crime at the time or the ultimate punishment meted out, regardless of whether the credit was applied prospectively or the credits were canceled retroactively. The court also found that the retroactive legislation, canceling the provisional administrative sentence credits, did not violate the prisoner's due process liberty interest. The legislature had a conceivable rational basis for revocation of credits as the state had a legitimate interest in seeing that prisoners served their sentences, and had a legitimate interest in creating a mechanism to relieve prison overcrowding when it reached crisis proportions but also in ceasing that mechanism when it was no longer necessary. In addition, Florida statutes retroactively canceling provisionally granted administrative credits against a sentence which had been implemented to achieve a federally mandated reduction in prison overcrowding did not violate the prisoner's equal protection rights. (Florida Department of Corrections)

U.S. District Court
PAROLE-GRANTING
PAROLE-POLICIES
FURLOUGH
EQUAL PROTECTION

Johnson v. Texas Dept. of Criminal Justice, 910 F.Supp. 1208 (W.D.Tex. 1995) reversed 110 F.3d 299. Inmates successfully challenged several parole board procedures in this class action. On remand from the court of appeals the district court held that: (1) inmates' equal protection rights were violated by the Board of Pardons and Paroles consideration--without disclosure--of protest statements; (2) inmates' due process rights were violated by the Board's consideration of writ-writing activities; and (3) out-of-state inmates were not denied equal protection by the Board's practice of considering successful completion of furlough. Under Texas statutes, certain persons--such as victims--are entitled to be notified when an inmate is being considered for parole. The court upheld the Board's practice of considering an inmate's successful furlough completion as a factor in the parole decision. The court acknowledged that this practice adversely affected inmates who were housed out-of-state, but found that this did not violate their equal protection rights. On appeal the court reversed, finding that these practices did not violate prisoners' equal protection rights. (Texas Board of Pardons and Paroles)

U.S. District Court
FURLOUGHS

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. The inmate had refused to sign a required form which the court held constituted refusal to participate in the IFRP. The court found that the inmate was correctly categorized as refusing to participate in the program where his restitution was due and payable during his incarceration. As a penalty for refusing to participate, the inmate was placed in the lowest housing status (a four-man cell), was denied the opportunity to work in Federal Prison Industries, and was denied the opportunity for a furlough. The court noted that prison officials have broad discretion in denying federal inmates the opportunity to participate in Federal Prison Industries. (Ray Brook Federal Correctional Institution, New York)

U.S. Appeals Court
EX POST FACTO
PAROLE-
GUIDELINES
PAROLE-
REVOCATION

Kellogg v. Shoemaker, 46 F.3d 503 (6th Cir. 1995). Prison inmates challenged the constitutionality of new Ohio Parole Revocation procedures. The U.S. District Court granted summary judgment for the Parole Authority after the Authority amended the regulation and found that the new policy rendered the challenges moot. The inmates appealed. The appeals court found that the challenge to the constitutionality of Ohio's new parole procedures was not moot where the Parole Authority had substituted a new procedure on the eve of the adjudication of the challenge to the old procedure. The court also found that the state Parole Authority has the power to address cases in which a parolee has been convicted of another felony while on parole by means of administrative rule, rather than an individual hearing. This includes the power to find that no mitigating circumstances would overcome the subsequent conviction of another felony committed while on parole so that an individual hearing is not necessary. However, the new state parole regulations which eliminated a parolee's right to an individual hearing where the parolee was convicted of a felony while on parole could not be applied to parolees who committed the initial crime before new regulations came into effect. (Ohio Adult Parole Authority)

U.S. District Court
EX POST FACTO
PAROLE-GRANTING
PRE-RELEASE
TEMPORARY RELEASE
WORK RELEASE

Knox v. Lanham, 895 F.Supp. 750 (D.Md. 1995). A prisoner serving a life sentence with the possibility of parole brought an action against state corrections officials and parole commissioners alleging constitutional violations and seeking injunctive, declaratory, and monetary relief. The district court held that a corrections directive that moved inmates serving life sentences to higher security, combined with the parole commission's refusal to recommend parole unless inmates were on active work release--which required lower security classification, constituted retroactive "punishment" in violation of the ex post facto clause. The court noted that an unwritten policy of the parole commission requiring inmates to be on active work release was "law" for ex post facto purposes where the state had not disavowed the policy nor

could the policy be deemed solely interpretive. The court found, however, that the removal of inmates from family leave and work release programs, their transfer from prerelease facilities, and their increased security levels did not violate equal protection. (Maryland Division of Corrections)

U.S. Appeals Court
PAROLE-
REVOCATION
SENTENCE

McGrew v. Texas Bd. of Pardons & Paroles, 47 F.3d 158 (5th Cir. 1995). An inmate brought a civil rights action against the Texas Board of Pardons and Parole challenging the extension of his sentence for violating the terms of his mandatory supervision. The U.S. District Court dismissed the action and the inmate appealed. The appeals court found that the inmate failed to state a Section 1983 cause of action against the Board of Pardons and Parole challenging the Board's policy of extending his sentence after revoking his mandatory supervision, where he remained in custody and was not alleging that the sentence imposed as a result of the revocation proceedings was invalidated by state or federal court. The inmate's Section 1983 claim for damages against the Board was barred by the Eleventh Amendment. (Texas Department of Criminal Justice)

U.S. District Court
CREDIT
PAROLE
VIOLATIONS

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
SEX OFFENDERS
EX POST FACTO

Neal v. Shimoda, 905 F.Supp. 813 (D.Hawai'i 1995). An inmate brought a § 1983 action against prison officials alleging that their labeling of him as a "sex offender" violated his constitutional rights. The inmate had been compelled to participate in a sex offender treatment program, which required the inmate to admit his guilt. The inmate had refused to admit his guilt, affecting his chances for parole and preventing him from being transferred to a minimum security facility. The district court granted summary judgment for the defendants, finding that the inmate had no constitutional liberty interest in a furlough or in freedom from being classified as a sex offender. The court ruled that the prison's policies did not create a protected liberty interest and that placement of the inmate in the prison's sex offender treatment program did not violate equal protection or the Eighth Amendment. The court also found that classifying the inmate as a sex offender, and its affect on the inmate's potential transfer to a minimum security facility and granting of a furlough, were not improper ex post facto laws. The court noted that even if an inmate was not convicted of any sex offense, the state had a legitimate interest in denying untreated sex offenders parole, furlough and minimum security classification based on their high rate of recidivism. The sex offender treatment program was not overbroad by including inmates who engaged in sexual misconduct during the course of nonsexual offenses. Denying the inmate parole or transfer to a minimum custody facility because he refused to admit guilt, which was the first step necessary for completion of the sex offender treatment program, did not violate the inmate's right against self-incrimination as the program was not a proceeding in which the answers could incriminate the inmate in future criminal proceedings. The program's requirement that the inmate not be in denial about his crime did not violate his Fifth Amendment right to be free from compelled testimony in light of the recognition that rehabilitation, including acceptance of responsibility, is an important sentencing consideration. (Halawa Correctional Facility, Hawai'i)

U.S. Appeals Court
PAROLE-
DUE PROCESS
PAROLE-
GUIDELINES

O'Kelley v. Snow, 53 F.3d 319 (11th Cir. 1995). An inmate brought a Section 1983 action alleging a violation of procedural due process in connection with denial of parole. The U.S. District Court entered judgment in favor of the inmate. Members of the Georgia State Board of Pardons and Paroles appealed. The appeals court found that the inmate had no due process liberty interest in parole and, therefore, had no right to procedural due process protections or a right to an explanation for the departure from the parole guidelines. (Georgia State Prison)

U.S. District Court
EQUAL PROTECTION
PAROLE-
GUIDELINES
RELEASE DATE

Parisie v. Morris, 873 F.Supp. 1560 (N.D.Ga. 1995). A state inmate brought a Section 1983 action against members of a state parole board claiming that members departed from parole decision guidelines in setting his tentative release date, which violated his due process and equal protection rights. On motions to dismiss the district court found that the alleged failure by the members of the parole board to set the inmate's release date in accordance with parole decision guidelines did not violate due process. Inmates have no legitimate expectation of, and no liberty interest in, receiving parole. However, the inmate did state an equal protection claim against the director of the parole board despite the contention that state law did not empower the director to make parole decisions. The inmate alleged that he wrote to the director after discovering that the board had incorrectly calculated his parole success likelihood factor to let him know of the error. The inmate received a letter in response in which the director contended to write on behalf of the board and explained the board's reasoning as his own. It was also found that the inmate did not have to exhaust administrative

judicial immunity from the suit for damages under Section 1983 and the board members performed a quasi-judicial function in considering the inmate for parole, the board members were not entitled to qualified immunity in connection with the claim that they considered the inmate's ethnicity in setting his release date. (Ware Correctional Institution, Waycross, Georgia)

U.S. Appeals Court
LIBERTY INTEREST
PAROLE-
DUE PROCESS

Price v. Barry, 53 F.3d 369 (D.C. Cir. 1995). An inmate brought an action under Section 1983 claiming that the District of Columbia Board of Parole violated his due process rights by failing to parole him in a timely manner. The U.S. District Court entered a judgment against the inmate and he appealed. The appeals court, affirming the decision, found that the District of Columbia Code does not create a liberty interest in parole that is protected by the due process clause of the Fourteenth Amendment. The Code provides no substantive limitations on the board's discretionary authority to grant parole and thus created no expectancy of release. (Lorton Correctional Complex, District of Columbia)

U.S. Appeals Court
PAROLE-
GRANTING

Schafer v. Moore, 46 F.3d 43 (8th Cir. 1995). An inmate at a state prison brought a civil rights action against prison officials, alleging he was wrongfully denied parole under a state sexual offender program. The U.S. District Court dismissed the action and the inmate appealed. The appeals court found that the inmate, who claimed he was wrongfully denied parole under the state sexual offender program when a statute governing the program was amended, did not have a claim for damages under the federal civil rights statute unless he first successfully challenged the legality of his continued confinement through appropriate state or federal remedies. The court noted that the amendment to the Missouri statute governing the sexual offender program, requiring prisoners to successfully complete the program to be entitled to parole was not a bill of attainder. The statute applied only to persons who had already been convicted of sex offenses. (Missouri State Prison)

U.S. Appeals Court
PROBATION/
REVOCATION

U.S. v. Flynn, 49 F.3d 11 (1st Cir. 1995). A probation officer petitioned for revocation of probation which had been imposed as part of a sentence, following guilty pleas to one count of conspiracy to commit mail fraud and two counts of mail fraud. The U.S. District Court revoked the probation and imposed a sentence. The probationer appealed, asserting that his probation had expired before the initiation of the revocation proceedings. The appeals court, affirming the decision, found that the sentencing order imposing the probation term consecutive to the sentence on another count delayed commencement of the probation until completion of the entire previous sentence, including the period of parole. (New Hampshire)

U.S. Appeals Court
PROBATION/
REVOCATION
SUPERVISED
RELEASE

U.S. v. Hancox, 49 F.3d 223 (6th Cir. 1995). A motion of the United States for revocation of supervised release was denied by the U.S. District Court and the United States appealed. The appeals court found that the revocation of the defendant's supervised release and imposition of a prison sentence of one third of her supervised release term was mandatory when the defendant admitted consuming controlled substances during her supervised release in violation of that release. (Kentucky)

U.S. Appeals Court
PAROLE-
VIOLATIONS

U.S. v. McCormick, 54 F.3d 214 (5th Cir. 1995). The U.S. District Court revoked a defendant's supervised release and sentenced the defendant to two additional years in prison and the defendant appealed. The appeals court affirmed, noting that maintaining employment was one of the conditions of the defendant's supervised release and the defendant was fired for failing to come to work. Evidence supported the district court's revocation of the defendant's supervised release and sentencing of the defendant to two additional years in prison on the finding that the defendant failed to comply with the terms of his supervised release by failing to maintain lawful employment, and possessing a controlled substance. Proof of the defendant's work failure was undisputed. In addition, a laboratory urinalysis report indicated the presence of amphetamine and methamphetamine, and an affidavit of a laboratory's expert refuted the defendant's contention that the positive urinalysis result was due to medications the defendant had taken. (Texas)

U.S. Appeals Court
EXPIRATION OF
SENTENCE
SENTENCE
SUPERVISED
RELEASE

U.S. v. Morales, 45 F.3d 693 (2nd Cir. 1995). A summons and order to show cause why a defendant's supervised release should not be revoked were issued. The U.S. District Court denied the defendant's motion to dismiss, extended the supervised release period by 22 months, and added conditions. The defendant appealed. The appeals court, affirming the decision, found that the district court had jurisdiction to extend and modify the terms of the defendant's supervised release after the date when the supervised release was scheduled to expire. The petition for revocation, extension, or modification of supervised release, the summons, and the order to show cause were all filed during the original term of supervised release. In addition, the rule of lenity did not preclude the district court from exercising jurisdiction to modify and extend the supervised release after the term would otherwise have expired, even though the statute did not expressly grant such authorization. (Connecticut)

U.S. Appeals Court
PROBATION/
REVOCATION
SUPERVISED
RELEASE

U.S. v. Pratt, 52 F.3d 671 (7th Cir. 1995). A defendant appealed the judgment of the U.S. District Court revoking his supervised release. The appeals court, affirming the decision, found that the defense counsel's failure to call adverse witnesses at a hearing to revoke the supervised release was not ineffective assistance. The court found that hearsay testimony was reliable, the counsel's decision may have been tactical, and calling adverse witnesses would not have affected the outcome of the hearing given the relaxed standard of proof. In addition, there was no due process violation in the admission of a postal inspector's hearsay testimony in the hearing to revoke the defendant's supervised release. The inspector's testimony was corroborated by police reports, written statements from victims, surveillance photographs and photographs of blank checks. (Wisconsin)

U.S. Appeals Court
SUPERVISED RELEASE
SENTENCE
EX POST FACTO

U.S. v. Reese, 71 F.3d 582 (6th Cir. 1995). An offender who served a sentence for conspiring to distribute cocaine and subsequently had his supervised release revoked and had a new sentence term imposed appealed, alleging an ex post facto violation. The appeals court affirmed the new sentence, ruling that the application of a sentencing statute which was enacted after the offender's initial sentence was imposed was not an ex post facto violation. The offender had served his initial term of imprisonment and began his supervised release period and then tested positive thirteen separate times for use of a controlled substance. The new sentencing statute set forth a mandatory minimum sentence--one-third of the term of supervised release--for revocation of supervised release based on possession of a controlled substance. The court noted that the inherent difference between probation and supervised release is that when probation is revoked for a violation, rules set forth in the statute limit the term of resentencing to the term allowable under the original offense; however, violation of supervised release may result in cumulative punishment that exceeds the original sentence. (U.S. District Court for the Northern District of Ohio)

U.S. Appeals Court
PROBATION/
REVOCATION

U.S. v. Taylor, 47 F.3d 508 (2nd Cir. 1995). Action was brought to revoke a defendant's probation. The U.S. District Court revoked the probation and the defendant appealed. The appeals court, affirming the decision, found that the defendant's term of federal probation did not begin until he was released from the state's supervised home release program. He was still on probation when he tested positive for drug use, and his probation was properly revoked for such use. (Supervised Home Release Program, Connecticut State Department of Correction)

U.S. District Court
WORK RELEASE
EX POST FACTO

Vargas v. Pataki, 899 F.Supp. 96 (N.D.N.Y. 1995). An inmate brought a § 1983 action against state officials alleging that a law prohibiting inmates convicted of homicide from participating in a work release program violated his right to equal protection. The district court held that the law was rationally related to the goal of minimizing the risk to public safety from such programs and the inmate was not denied equal protection by the law's application. The court held that the law was not an ex post facto law since participation in the program was a privilege rather than a right and the law's purpose was not to increase punishment for a crime but to regulate participation in the program. The inmate had alleged that amendments to the law governing the Prisoner Work Release Program which were applied retroactively to him violated his rights. (Bare Hill Correctional Facility, New York)

1996

U.S. District Court
GOOD TIME
PAROLE-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. District Court
ALTERNATIVE TO
CONFINEMENT

Clapper v. Wisconsin Dept. of Corrections, 946 F.Supp. 672 (E.D.Wis. 1996). Inmates brought a § 1983 action against a state department of corrections and various officials challenging their exclusion from a program that provides an alternative to ordinary imprisonment. The district court dismissed the complaint, finding that the Wisconsin statute does not mandate that all felony prisoners without life sentences be eligible to participate in the Division of Intensive Sanctions (DIS) program. The court found that the statute did not prohibit the department of corrections from excluding persons convicted of assaultive or drug-related felonies from the program, so as to create a federally protected liberty interest. The court noted that corrections officials could reasonably consider potential risks to community safety as well as the finite limitations on program resources in forming their policy. (Ohskosh Correctional Institution, Wisconsin)

U.S. Appeals Court
FAILURE TO PROTECT
TEMPORARY RELEASE

Davis v. Fulton County, Ark., 90 F.3d 1346 (8th Cir. 1996). A victim of rape and assault by a prisoner who had escaped from a county detention center brought an action alleging claims under § 1983 against county staff and officials. The district court dismissed the claims and the appeals court affirmed. The court found that the victim failed to establish that the danger to

her resulting from the prisoner leaving the detention center was any greater than that faced by the general public in the area, as required to maintain a § 1983 claim. The court also found that the victim failed to allege that the duty jailer acted intentionally, or was not performing official county functions in failing to prevent the prisoner from escaping. (Fulton County Detention Center, Arkansas)

U.S. District Court
PAROLE-GRANTING

Garrett v. Angelone, 940 F.Supp. 933 (W.D.Va. 1996). A state prisoner brought a pro se action against prison officials asserting § 1983 claims and violation of the Americans with Disabilities Act (ADA). The district court found that prison officials were entitled to qualified immunity from monetary damages on the inmate's ADA claims because of uncertainty about the applicability of ADA to state prisons. The court also found that the prisoner's allegations were insufficient to support a claim under ADA. The court also found that changes in the prisoner's custody status, security status, and earning rates for good conduct time did not violate due process. The court noted that an inmate's security level, custody status and opportunity to earn good conduct time are subject to change at any time during incarceration based on the behavior of the inmate and discretion of prison officials. The court also noted that an inmate's parole eligibility date and mandatory parole release date are estimates only, subject to change based on changes in an inmate's other classifications. According to the court, an inmate has no constitutional right to be paroled at all before the expiration of his valid criminal sentence--let alone on a specific date. (Virginia Department of Corrections)

U.S. District Court
GOOD TIME
RELEASE DATE
TIMELY RELEASE

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. The court found that the prisoner's allegation that the prison's policy of failing to separate gang members from non-gang members failed to state an Eighth Amendment claim absent evidence that the policy actually caused the prisoner's injury, or that the policy constituted deliberate indifference to an inmate's health or safety. The court also found that the sheriff was not liable in his official capacity for the prisoner's beating, despite the prisoner's allegation that the county prison had a policy of allowing a single guard to supervise two prison wings even when threats of gang and nongang violence were made. (Cook County Department of Corrections, Illinois)

U.S. Appeals Court
EARLY RELEASE
CREDIT
SENTENCE
CONDITIONS

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. Appeals Court
PAROLE-GRANTING

Kerr v. Farrey, 95 F.3d 472 (7th Cir. 1996). An inmate brought a § 1983 action against corrections officials alleging that requiring him to attend religious-based narcotics rehabilitation meetings violated his constitutional rights. The district court granted summary judgment to the defendants but the appeals court reversed and remanded. The appeals court found that requiring the inmate to attend meetings upon pain of being rated a higher security risk and suffering adverse effects for parole eligibility violated the establishment clause, but that the defendants were entitled to qualified immunity. The court held that under the establish clause the inmate could not be forced to attend meetings of an organization for narcotics rehabilitation whose program referred to "God, as we understood Him." (Oakhill Correctional Institution, Wisconsin)

U.S. District Court
DISCRIMINATION
EQUAL PROTECTION
EARLY RELEASE

Marshall v. Reno, 915 F.Supp. 426 (D.D.C. 1996). A former federal prisoner who was a Canadian citizen sued federal officials alleging violation of his rights due to the officials' failure to transfer or deport him to his home country and denial of access to release programs which were available to United States citizens. The district court dismissed the case, finding that the prisoner did not have a protected liberty interest in obtaining deportation or transfer, nor did he have a right to be incarcerated at a particular prison or under a certain security classification. Although there was a treaty between the United States and Canada that allowed the transfer of the prisoner, the court noted that this was a discretionary matter which afforded

the prisoner no right to a transfer. The Federal Bureau of Prisons program statement that limited access of aliens to community confinement facilities and minimum security facilities did not, according to the court, violate the equal protection clause. (Federal Bureau of Prisons)

U.S. District Court
PAROLE-GRANTING
WORK RELEASE

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 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 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
GATE MONEY
PAROLE

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. Appeals Court
SEX OFFENDERS

Riddle v. Mondragon, 83 F.3d 1197 (10th Cir. 1996). Twenty-one inmates who had been convicted of sex offenses filed separate civil rights claims against state prison officials, judges, legislators and other state officials. The district court consolidated the actions and granted the defendants' motion to dismiss. The inmates appealed the dismissal of certain claims relating to denial of medical treatment, failure to protect, and equal protection. The appeals court affirmed the lower court decision. The court found that the inmate's allegations that they were denied necessary specialized treatment did not show the requisite unnecessary and wanton infliction of pain by prison officials. The inmates had alleged that they suffered from a sex addiction mental disorder and that they were driven by deviant, sexually compulsive drives; these drives allegedly eroded their self-esteem to the point of apathy, reinforcing their fear and feelings of differentness. The inmates alleged that the weekly group counseling sessions they received were inadequate and that they should have been provided with specific treatment such as that provided to substance abusers. The court noted that the mere fact that the plaintiffs were convicted of sexual offenses did not mean that they have psychological disorders or that they are in need of psychiatric treatment. The inmates alleged that prison officials failed to include sex offenders within prison policies concerning minimum custody status, work release, community corrections, and purposeful classification in medium custody. They challenged their classification as violent offenders which made them ineligible for various pre- and post-sentencing programs. The court ruled that these allegations, if proven, would fail to establish that the different treatment afforded to sex offenders was irrational or arbitrary, and that sex offenders did not constitute a suspect class for equal protection purposes. (Southern New Mexico Correctional Facility)

U.S. District Court
SENTENCING
CONDITIONS
TIMELY RELEASE

Ross v. Thompson, 927 F.Supp. 956 (N.D.W.Va. 1996). An inmate filed a petition for a writ of habeas corpus when he refused to sign an installment schedule agreement for unpaid fines and was therefore not released from confinement. The district court held that the inmate was not being held merely upon an unfounded internal Bureau of Prisons policy which would have warranted habeas corpus relief, but that the policy and procedure were securely grounded in--and authorized by--a statutory mandate that no prisoner be on supervision unless the prisoner had agreed to adhere to an installment schedule to pay for any fine imposed. (Federal Correctional Institution, Morgantwon, West Virginia)

U.S. District Court
EARLY RELEASE

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
PAROLE
RELEASE DATE
EX POST FACTO
- Amen-Ra v. Department of Defense, 961 F.Supp. 256 (D.Kan. 1997). Inmates confined at the U.S. Disciplinary Barracks brought a civil rights action against the Department of Defense (DOD) seeking release from confinement and injunctive relief. The district court held that the inmates lacked standing to challenge the conditions of confinement in a special housing unit and death row housing. The court found that the inmates were not entitled to new parole and clemency consideration based on an earlier court decision. According to the court, the adoption by DOD of a salient factor scoring analysis in setting release dates for inmates did not violate the ex post facto clause because while changing the method to be followed in setting release dates, it did not mandate a particular result that would necessarily lengthen an inmate's confinement. The court found that the inmates failed to establish denial of access to courts based on a broad complaint that they had difficulty obtaining access to a law library because the library's hours of operation conflicted with educational and recreational programs, where the inmates made no showing that they had been unable to pursue a claim because of the inability to obtain library materials. (United States Disciplinary Barracks, Fort Leavenworth, Kansas)
- U.S. District Court
EARLY RELEASE
- Camper v. Benov, 966 F.Supp. 951 (C.D.Cal. 1997). A prisoner challenged the federal Bureau of Prison'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
SENTENCE
EARLY RELEASE
- 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 Correctional Institute, Sheridan, Oregon)
- U.S. District Court
EARLY RELEASE
- Davis v. Beeler, 966 F.Supp. 483 (E.D.Ky. 1997). A federal prisoner filed a pro se petitions 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. Appeals Court
PAROLE-GRANTING
RELEASE DATE
- Delancy v. Crabtree, 131 F.3d 780 (9th Cir. 1997). A federal prisoner filed a petition for a writ of habeas corpus alleging that he was wrongfully denied a sentence reduction by the Federal Bureau of Prisons and the Parole Commission. The sentence reduction was provided for under the Violent Crime Control and Law Enforcement Act of 1994 for completion of a drug abuse program, but the prisoner's primary offense occurred before the effective date of the Sentence Reform Act of 1984. The district court found that the prisoner was not eligible for the sentence reduction. (Federal Bureau of Prisons, Federal Parole Commission)
- U.S. District Court
TEMPORARY RELEASE
- Greaves v. State of N.Y., 958 F.Supp. 142 (S.D.N.Y. 1997). An inmate brought a § 1983 action against corrections officers and others alleging that he was wrongly found guilty of disciplinary charges, removed from temporary release, and placed in solitary confinement in violation of his constitutional rights. The district court found that the inmate's due process rights were not violated by his detention for two days pending a disciplinary hearing, nor by his detention in solitary confinement. (Fishkill Correctional Facility, Temporary Release Program, New York)
- U.S. Appeals Court
PAROLE
- In re Smith, 114 F.3d 1247 (D.C.Cir. 1997). An inmate sought a writ of prohibition against the U.S. Department of Justice and the U.S. Parole Commission prior to his release from prison, seeking to correct his parole files and seeking compensatory and punitive damages under the Privacy Act of 1974. The appeals court held that the fee requirements of the Prison Litigation Reform Act (PLRA) applied to the petition, and that the term "civil action" as used in PLRA includes a petition for writ of prohibition which contains underlying claims which are civil in nature. The court found that the inmate was obligated to fulfill applicable PLRA requirements and to pay amounts due under the statute, notwithstanding his subsequent release. According to the court, if a litigant is a prisoner on the day he files a civil action, the Prison Litigation Reform Act applies. (United States Parole Commission)

U.S. Appeals Court
SEX OFFENDERS

Johnson v. Baker, 108 F.3d 10 (2nd Cir. 1997). A state prison inmate brought a § 1983 action against prison officials challenging a prison policy that required the inmate to admit to sex offenses of which he had been convicted as a prerequisite to participation in the prison's sex offender program. Admission to the sex offender program was itself required for admission to a program that permits inmates to spend extended periods of time with their spouses and family. The district court dismissed the case and the inmate appealed. The appeals court affirmed, holding that the policy in question did not violate the inmate's right to equal protection or his right against self-incrimination. The court found that the prison officials did not violate the prisoner's Fifth Amendment right against self-incrimination, as long as the adverse consequence was imposed for failure to answer a relevant inquiry and not for refusal to give up a constitutional right; however, the state may not seek a court order compelling answers to its questions about an alleged offense, require a waiver of immunity, or insist that answers be used in a criminal proceeding. The court noted that the inmate's unwillingness to admit to criminal sexual activity rendered him unlikely to benefit from the rehabilitative process. (Auburn Correctional Facility, New York)

U.S. Appeals Court
SUPERVISED
RELEASE

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
DISCRIMINATION

McMorrow v. Little, 109 F.3d 432 (8th Cir. 1997). An inmate sued prison officials because they withheld parole, work release and less restrictive confinement from him because he refused to admit to his crime. The district court denied the officials' motions to dismiss on the grounds of qualified immunity and they appealed. The appeals court reversed and remanded, finding that the officials were entitled to qualified immunity even if the inmate's right was violated, because no court with jurisdiction over the state had held that their conduct was a violation at the time of the conduct, and other courts had ruled on the issue with mixed results. According to the court, prison officials may constitutionally deny benefits to a prisoner who, by invoking his privilege against self-incrimination, refuses to make statements necessary for his rehabilitation, as long as their denial is based on the prisoner's refusal to participate in his rehabilitation and not on his invocation of his privilege. (North Dakota State Penitentiary)

U.S. Appeals Court
SEX OFFENDER

Neal v. Shimoda, 131 F.3d 818 (9th Cir. 1997). Two state prisoners brought separate § 1983 actions against prison officials and administrators of a state's sex offender treatment program. They claimed that by labelling them as sex offenders and compelling them to admit guilt violated their constitutional rights. The district court granted summary judgment for the defendants and the prisoners' appeals were consolidated. The appeals court held that the sex offender treatment program did not violate the Ex Post Facto Clause because denying a prisoner's eligibility for parole so that he could participate in treatment was not punishment. But the appeals court found that labelling a prisoner who was not convicted of a sex offense as a "sex offender" without a hearing, and requiring the successful completion of a treatment program as a precondition for parole eligibility, created a liberty interest protected by due process. The appeals court held that a prisoner is entitled to an advance statement of the reasons for the classification and to a hearing at which he can present a defense. According to the court, a prisoner convicted of a sex offense received all process to which he was due when he was notified that he was classified as a sex offender due to his conviction. The court found that a prisoner whose labelling as a sex offender violated due process was entitled to injunctive relief. The appeals court affirmed in part, reversed and remanded in part with instructions. The appeals court instructed the district court to issue an injunction ordering the Hawaii Parole Authority to remove "sex offender" from one of the prisoner's classification unless and until he is provided with a hearing that provides him with the procedural protections contained in Wolff. (Hawaii Sex Offender Treatment Program)

U.S. Appeals Court
FURLOUGHS
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)

U.S. District Court
RELEASE DATE

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. Appeals Court
EARLY RELEASE

Roussos v. Menifee, 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)

U.S. Appeals Court
EARLY RELEASE

Sesler v. Pitzer, 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)

U.S. District Court
PAROLE-REVOCATION

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)

U.S. Appeals Court
PAROLE-SEARCHES

U.S. v. Cantley, 130 F.3d 1371 (10th Cir. 1997). A defendant who was a parolee appealed his conviction in federal court. The appeals court held that the prerequisites to a warrantless search of a parolee's residence pursuant to Oklahoma's probation and parole manual complied with the reasonableness requirement of the Fourth Amendment. The court noted that the prerequisites included reasonable grounds to believe that the parolee was keeping contraband on the property, that failure to search could result in an immediate threat to the public, employees and offenders, and that the search was not the result of a request for assistance from law enforcement officers who were unable to obtain a search warrant. (Oklahoma)

U.S. District Court
PAROLE-SEARCHES

U.S. v. Carnes, 987 F.Supp. 551 (E.D.Mich. 1997). A parolee charged with possession of a firearm moved to suppress evidence. The district court held that officers had authority to conduct a warrantless search of the residence occupied by a parolee. According to the court, under Michigan law, warrantless administrative/regulatory searches in a parole or probation context need only be based on reasonable suspicion supported by articulable facts. The court found that the officer had reasonable grounds to believe that the parolee had violated his parole by residing at the residence, by failing to report to his parole officer, and by illegally entering his girlfriend's house and assaulting her. (Troy Police Department, Michigan)

U.S. District Court
HOME DETENTION

U.S. v. Morales-Morales, 985 F.Supp. 229 (D.Puerto Rico 1997). A prisoner moved to serve the remainder of his sentence in home confinement and the district court denied the motion, requiring the prisoner to exhaust his administrative remedies within the Federal Bureau of Prisons (BOP). The court held that under a statute that requires BOP to assure that a prisoner spends the last 10 percent of his or her term under conditions that afford the prisoner a reasonable opportunity to prepare for reentry into the community, prisoners do not have a right to seek a particular form or place of prerelease custody. (Federal Bureau of Prisons, Puerto Rico)

U.S. District Court
PAROLE VIOLATION

U.S. v. Phillips, 977 F.Supp. 1418 (D.Colo. 1997). A defendant who was on parole moved to suppress evidence seized from his home. The district court held that the warrantless search of the defendant's residence based on a tip that the defendant was in possession of handguns and illegal drugs was valid because it was based on reasonable grounds to believe that a parole violation had occurred. The court recognized exceptions to warrant requirements in situations where special needs, such as the needs of a state parole system, make a warrant and probable cause requirement impractical. According to the court, the twin aims of rehabilitating parolees and protecting the public justify limiting a parolee's Fourth Amendment rights and expectations of privacy. The court noted that parolees do not enjoy the absolute liberty to which every citizen is entitled. (Colorado)

U.S. Appeals Court
PROBATION-
REVOCATION

U.S. v. Woods, 127 F.3d 990 (11th Cir. 1997). After pleading guilty to violating his terms of probation by committing a robbery and having his probation revoked, the defendant moved to dismiss his robbery indictment on double jeopardy grounds. The district court denied the defendant's motion. The appeals court affirmed, finding that the conviction for robbery did not violate double jeopardy even though the robbery provided the basis for revoking the defendant's probation for an unrelated offense. The court noted that revocation of probation was part of the defendant's original sentence and constituted punishment for the crime underlying that sentence. (Alabama)

1998

U.S. Appeals Court
PAROLE-GRANTING

Alamo v. Clay, 137 F.3d 1366 (D.C.Cir. 1998). A church brought an action challenging the Parole Commission's decision to deny parole to its pastor. The district court dismissed the action and the appeals court affirmed. The appeals court held that even if the continued absence of the church's pastor after the Commission denied him parole was a separate injury, the church did not satisfy the requirements necessary to challenge the Commission's decision. The pastor had been sentenced to six years in prison for filing a false income tax return and failing to file. (United States Parole Commission)

U.S. District Court
WORK RELEASE
LIBERTY INTEREST

Asquith v. Volunteers of America, 1 F.Supp.2d 405 (D.N.J. 1998). A state prisoner sued corrections officials and operators of a halfway house claiming violation of his due process rights as the result of his termination from a work release program. The district court granted summary judgment in favor of the defendants, finding that the prisoner did not have a protected liberty interest in remaining in a work release program. The court noted that termination from the work release program did not alter the duration of confinement, but only affected the conditions of confinement. According to the court, the prisoner did not lose "core values of unqualified liberty" when he was terminated from a work release program that, although outside prison walls, placed strict limitations and heavily qualified privileges on participants. The court also held that the prisoner did not have a federal civil rights claim arising from the alleged failure to return his personal property upon his termination from the program, absent the lack of an adequate postdeprivation remedy. (New Jersey Department of Corrections and Volunteers of America)

U.S. Appeals Court
PAROLE-POLICIES
EX POST FACTO

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 Board of Parole)

U.S. District Court
PAROLE-CONDITIONS
RELEASE SITE

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. District Court
PAROLE-REVOCATION
PAROLE-DUE
PROCESS

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
FAILURE TO
PROTECT

Collignon v. Milwaukee County, 163 F.3d 982 (7th Cir. 1998). An arrestee's parents and estate sued county and village officials after the arrestee, who had a mental illness and some criminal history, committed suicide after he was released on bail. The district court granted judgment on pleadings for the village and granted summary judgment for the county defendants. The appeals court affirmed, finding that the treatment of the arrestee by a county psychiatrist while he was in pretrial detention did not violate substantive due process. The court also found that neither the police officers' failure to commence emergency detention proceedings, nor their return of the arrestee to his parents, amounted to a substantive due process violation. The court held that due process was not violated by the alleged refusal of a police officer to provide the arrestee with access to medical personnel capable of assessing the arrestee's condition. The appeals court held that the treatment of the arrestee by a county psychiatrist did not violate the arrestee's substantive due process rights because the psychiatrist exercised professional judgment in the face of the known serious medical needs of the arrestee. The psychiatrist, who was principally responsible for deciding the course of the arrestee's treatment at the jail, prescribed a nontherapeutic dosage of an antipsychotic drug with the intention of forming a "therapeutic alliance" with the arrestee, planning to slowly increase the dosage so that the arrestee could gradually overcome his aversion to side effects. The arrestee was able to lead a productive life while on his prescribed medication to treat his schizophrenia, but he stopped taking his medication and was arrested for damaging property and placed in a county jail for 17 days. He was released on bail to his parents, and shortly thereafter was temporarily detained by village police officers, who also released him to his parents. The next day he committed suicide. (Shorewood Police Department and Milwaukee County, Wisconsin)

U.S. District Court
EXPIRATION OF
SENTENCE
SUPERVISED
RELEASE

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
PAROLE-REVOCA-
TION
PAROLE-DUE
PROCESS

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. Appeals Court
CREDIT
HOME DETENTION

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
FAILURE TO PRO-
TECT
RELEASE OF
PRISONER
RELEASE SITE

Davis v. Brady, 143 F.3d 1021 (6th Cir. 1998). An arrestee brought a § 1983 action against police officers who allegedly left him in an inebriated condition on a dark, unfamiliar highway where he was subsequently hit by an automobile. The district court denied summary judgment for the officers and the appeals court affirmed and remanded. The appeals court held that the officers had a duty to not place the arrestee in danger once he had been in custody, and that the arrestee's right not to be abandoned by police was clearly established at the time of this incident. According to the court, once the police officers took the affirmative act of restraining the

arrestee's freedom to act on his own behalf by taking him into custody, the officers imposed on themselves the duty to ensure that they were not placing the arrestee in danger, and that duty existed even after the arrestee was released from custody. The arrestee had been arrested for intoxication and disorderly conduct and was taken to a police station and subsequently transferred to a county jail, but the jail was full. The desk sergeant instructed the officers to release the arrestee "at the county jail if he was not so drunk that he would be a hazard to himself." The officers then drove the arrestee to a road just outside the city limits and released him in an area with a 55-mile-per-hour speed limit with few street lights and no sidewalks. The officers alleged that the arrestee requested this release site but the arrestee denied this. About seven minutes after he was released by the officers, the arrestee was struck by a car, sustaining serious permanent injuries, resulting in the amputation of one of his legs. (Flint Police Department, Michigan)

U.S. District Court
TIMELY RELEASE
RELEASE DATE

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. Appeals Court
PAROLE-HEARING
PAROLE-INTER-
PRETER

Franklin v. District of Columbia, 163 F.3d 625 (D.C.Cir. 1998). Spanish-speaking prisoners incarcerated in eight District of Columbia correctional facilities brought a class action under § 1983 alleging that the District violated their First, Fifth and Eighth Amendment rights as well as federal and local statutes by failing to provide qualified interpreters when they appeared at parole and disciplinary hearings and when they sought medical care. The district court found that the District violated the Fifth and Eighth Amendments and entered an injunction. The appeals court vacated in part and reversed in part. The appeals court held that the prisoners lacked standing to assert due process challenges regarding parole hearings for misdemeanants because they did not name any members of the class who went before the parole board as misdemeanants and did not understand the proceedings because of lack of proficiency in English. Upon learning that the authority for parole of felons had been transferred to the United States Parole Commission since the district court had ruled, the appeals court stated that "why neither of the parties, and why especially the District of Columbia never alerted us to this statute is beyond comprehension." The appeals court found that failure to provide interpreters at all disciplinary hearings, adjustment board hearings, housing determinations, and classification decisions did not violate due process. The appeals court also found that the District's failure to provide interpreters for prisoners during medical consultations was not cruel and unusual punishment. (District of Columbia)

U.S. District Court
PAROLE-REVOCA-
TION
PAROLE-CONDITIONS
PAROLE-POLICIES
TIMELY RELEASE

Friedland v. Fauver, 6 F.Supp.2d 292 (D.N.J. 1998). A parolee brought a § 1983 action against state parole officials alleging violation of his rights in connection with his arrests and separate parole proceedings that resulted in revocation of parole. Parole officials had found that the parolee failed to obtain permission to move and failed to make restitution. The district court held that the parolee's claims were cognizable under § 1983 even though he was currently confined. According to the court, the business manager of the institution at which the parolee was currently confined was required to forward payments from the parolee's account to the clerk of the court to be applied to his filing fee.

The court found that the parolee stated a § 1983 claim against the chairperson of the parole board for allegedly failing to schedule a timely hearing. The parolee alleged that the preliminary hearing decision was not reviewed in a timely fashion and the final revocation hearing was not conducted within 60 days of the parolee's arrest for alleged parole violation, resulting in his incarceration for over three and one-half months. The court held that a parole hearing officer was entitled to absolute immunity with respect to the parolee's claims that he denied the parolee the right to confront adverse witnesses, and imposed special parole conditions with probable cause. But the court did not grant summary judgment on the parolee's claims that he was given insufficient notice of his preliminary hearing, and whether he had sufficient time to prepare his case.

The court did not grant summary judgment on qualified immunity grounds for parole officers concerning allegations that they arrested the parolee without probable cause; the court found that fact questions about whether parole officials had excused the parolee from making restitution payments because of his disability, and had approved the parolee's use of a townhouse until his completion of intensive supervision. (New Jersey Department of Corrections)

U.S. District Court
PRE-RELEASE

Gleave v. Graham, 4 F.Supp.2d 163 (W.D.N.Y. 1998). A former inmate at a private halfway house brought a pro se action alleging violation of his due process rights in connection with assessment of fees to offset the costs of his confinement. The district court

held that the inmate was obligated to pay the subsistence fees, even though he was sentenced to the house and claimed that the obligation extended only to those going there voluntarily. The court found that the halfway house could base the amount the inmate was required to pay as subsistence in part upon his monthly veterans benefits. The court noted that the inmate was offered the opportunity of paying the charges or being transferred to a prison, after he initially refused to make the payments. (Buffalo Halfway House, Inc., New York, and Federal Bureau of Prisons)

U.S. Appeals Court
PAROLE-LIABILITY

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 immuno-deficiency 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
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-REVO-
CATION
PAROLE-POLICIES

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
PAROLE-DUE
PROCESS

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. Appeals Court
RELEASE DATE
PAROLE-POLICIES

James v. U.S. Parole Com'n, 159 F.3d 1200 (9th Cir. 1998). A prisoner who was convicted of a drug offense in a Mexican court, but was transferred to the United States under a prisoner exchange treaty appealed the decision of the United States Parole Commission which calculated his release date. The appeals court affirmed the Commission's calculation, finding that the prisoner was not entitled to a sentence reduction for acceptance of responsibility in view of the prisoner's "stonewalling" behavior, including affirmative denials of her guilt. The court also held that the Commission's alleged failure to follow its internal guidelines did not result in a denial of due process. The court noted that the guideline was not intended to have the force of law, but was instead used only as an interpretive, procedural rule to guide Commission practice. The guideline required the hearing examiner to warn the prisoner that if the prisoner continued to contest the conduct which was necessarily the basis of the foreign conviction, she would not qualify for the acceptance of responsibility adjustment. (United States Parole Commission)

U.S. District Court
PROBATION/REVO-
CATION

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. District Court
PAROLE-GRANTING

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. District Court
PAROLE-CONDITIONS

Moreno v. State of California, 25 F.Supp.2d 1060 (N.D.Cal. 1998). A parolee challenged the constitutionality of his parole conditions in a § 1983 action. The parolee challenged three conditions: one that prohibited him from having any contact with minors; a condition that prohibited from working in the family catering or property management business; and a condition prohibiting him from driving his family's business or personal vans. The district court held that the allegations were not cognizable under § 1983. (California Department of Corrections)

U.S. District Court
LIABILITY-RELEASE
OF PRISONER

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
PAROLE
EX POST FACTO

Oglesby v. Ray, 8 F.Supp.2d 1379 (N.D.Ga. 1998). A prisoner who was serving consecutive life sentences for murder and armed robbery brought a § 1983 action against members of a state board of pardons and paroles challenging their retroactive application of the board's policy of reducing the frequency of parole reconsiderations for prisoners serving life sentences. The district court granted summary judgment in favor of the defendants, finding that retroactive application of the policy did not violate the ex post facto clause. The court noted that the policy applied only to a narrow class of prisoners for whom the possibility of parole was remote and the policy did not affect the prisoner's initial parole review. The new policy provided for reconsideration of parole for life sentence cases up to eight years from the date of last denial, when the board determines that it is unreasonable to expect that parole would be granted in the intervening years. (Georgia State Board of Pardons and Paroles)

U.S. Appeals Court
EARLY RELEASE
SENTENCE

Orr v. Hawk, 156 F.3d 651 (6th Cir. 1998). A federal prisoner convicted of possession of a firearm by a previously convicted felon, and various drug charges, petitioned for a writ of habeas corpus seeking a reduction in his sentenced based on his completion of a drug treatment program. The district court dismissed the petition. The appeals court reversed and remanded, finding that an amendment to the Bureau of Prisons (BOP) regulation governing sentence reductions was applicable, even though it was not enacted until after the prisoner sought a reduction. The court found that the regulation was entitled to no greater deference than the BOP's internal interpretive rules, and that the felon-in-possession offense was a "nonviolent offense." (Federal Prison Camp, Millington, Tennessee)

U.S. Appeals Court
GOOD TIME
PAROLE-
REVOCATION

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-REVOCATION

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
PAROLE-GRANTING

Robinson v. California Bd. of Prison Terms, 997 F.Supp. 1303 (C.D.Cal. 1998). An inmate filed a civil rights action against various correctional officials and agencies after he was denied parole. The district court dismissed the complaint, finding that a civil rights claim challenging the denial of parole was not actionable under § 1983. The court also found that the Eleventh Amendment barred the action against state agencies and officials. (California Board of Prison Terms)

U.S. District Court
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. District Court
TEMPORARY
RELEASE
WORK RELEASE

Roucchio v. Coughlin, 29 F.Supp.2d 72 (E.D.N.Y. 1998). A former inmate brought a § 1983 suit to recover damages from several state officials, alleging he was deprived of his right to procedural due process through the State's revocation of his right to participate in a temporary work release program (TWRP) without giving him an opportunity to be heard until approximately six months later. The district court granted summary judgment in favor of the defendants, finding that the inmate failed to show actual, compensable injuries from the acts of the temporary release committee. The court also found that the defendants were entitled to qualified immunity because the issue of whether the inmate's liberty interest in remaining in the program was sufficient to give rise to a pre-removal hearing was unclear. The former inmate had sought \$600,000 in compensatory damages and \$500,000 in punitive damages from each of the six defendants. (Queensboro Correctional Facility, New York)

U.S. Appeals Court
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. Appeals Court
EARLY RELEASE
EQUAL PROTECTION

Rublee v. Fleming, 160 F.3d 213 (5th Cir. 1998). An inmate filed a petition challenging the execution of his sentence following completion of a residential drug treatment program and denial of early release. The district court dismissed the petition and the appeals court affirmed. The appeals court held that a prison regulation that makes an inmate ineligible for early release if the inmate is not eligible to participate in community-based treatment was a permissible exercise of the Bureau of Prison's discretion. The court found that the regulation did not violate the due process clause or equal protection. (Federal Bureau of Prisons)

U.S. Appeals Court
PAROLE REVOCATION

Scotto v. Almenas, 143 F.3d 105 (2nd Cir. 1998). A parolee brought a § 1983 action against state parole officers. The district court dismissed the action. The appeals court affirmed in part and reversed in part. The appeals court held that the parole officer who recommended that a warrant be issued for the parolee was not entitled to absolute immunity, where he allegedly fabricated a parole violation and arrested the parolee knowing he lacked probable cause to do so. But the appeals court held that the parole division supervisor who signed the arrest warrant upon the parole officer's recommendation was entitled to absolute immunity because his actions were prosecutorial in nature. (New York State Division of Parole)

U.S. Supreme Court
PAROLE-REVOCATION

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
PAROLE VIOLATIONS

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. District Court
INVOLUNTARY
COMMITMENT

U.S. v. Chairse, 18 F.Supp.2d 1021 (D.Minn. 1998). The government petitioned to have a prisoner, who was about to be released after serving a prison term, committed on the basis that he suffered from a mental disease or defect that would create a risk of danger if he was released. The district court denied the petition finding that although the government had shown that the prisoner suffered from the mental disease of bipolar disorder, it failed to show that release would create a substantial risk of bodily injury to others or damage to the property of others. According the court, the prisoner, who had contracted HIV and frequently displayed hypersexuality, did not have a history of specific targets, his condition could be stabilized with medication, and no showing was made that conditions of supervised release could not protect the prisoner or society. (U.S. District Court, Minnesota)

U.S. Appeals Court
PAROLE-SEARCHES

U.S. v. Jones, 152 F.3d 680 (7th Cir. 1998). A defendant appealed his conviction in district court. The appeals court affirmed, finding that a warrantless search of a parolee's residence on "reasonable grounds" that occurred while the parolee was in state custody did not violate the Fourth Amendment. The parole officer who sought approval for the search while the inmate was in custody knew that the parolee was suspected of selling drugs from a vehicle, reportedly possessed a firearm with which he had threatened his former girlfriend, and was arrested in a car in which crack cocaine had been found. (Wisconsin Department of Corrections)

U.S. District Court
ELECTRONIC
MONITORING

U.S. v. Malloy, 11 F.Supp.2d 583 (D.N.J. 1998). A defendant charged with violating the Arms Export Control Act moved to modify his bail conditions. The district court granted his motion, finding that the defendant was entitled to have his bail conditions modified from 24-hour house arrest with electronic monitoring to the use of a satellite tracking system. The court found that the satellite tracking system provided a sufficient level of control over the defendant's whereabouts to assure that the defendant would appear at trial. (U.S. District Court, New Jersey)

U.S. District Court
SUPERVISED
RELEASE

U.S. v. Sanchez, 30 F.Supp.2d 595 (E.D.N.Y. 1998). A defendant was charged with violation of his conditions of supervised released, citing a violation that had occurred four years earlier. The defendant asked the court to dismiss the summons because it violated his due process rights. The district court denied the defendant's motion, finding that a four-year delay between the violation of conditions and the summons did not violate due process. The court noted that revocation of supervised release entails the loss of liberty worthy of some due process protection. (Department of Probation, District of New Jersey)

U.S. District Court
PAROLE-SEARCHES

U.S. v. Villanueva, 32 F.Supp.2d 635 (S.D.N.Y. 1998). A defendant moved to suppress cellular telephones seized from his automobile and recordings of intercepted cellular phone conversations involving him. The district court denied the motion, finding that a parole officer was entitled to search the defendant's automobile as incident to a lawful arrest and the parole officer had probable cause to believe that the phones were evidence of a crime. The court noted that the defendant was not in his car at the time of his arrest, and that the parole officer left the formal arrest of the defendant to U.S. marshals. (United States Probation Office, Eastern District of New York)

U.S. Appeals Court
PAROLE-HEARING

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-GRANTING
SEX OFFENDERS

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
PAROLE-REVOCA-
TION
PAROLE-SEARCHES
EQUAL PROTEC-
TION
- Zupan v. Brown, 5 F.Supp.2d 792 (N.D.Cal. 1998). A parolee brought a § 1983 action challenging his search and arrest. The district court denied summary judgment for the defendants finding that it was precluded by fact questions about whether the officials had reasonable suspicion that the parolee was in violation of parole. The court held that the favorable-termination requirement of Heck did not bar the parolee's § 1983 action against parole officials given that the plaintiff was no longer in custody. The court found that the parolee could not bring a habeas corpus petition challenging his parole revocation that resulted in a term that was too short to permit even expeditious litigation. The court also held that initiating parole revocation proceedings based on the parolee's failure to pay restitution did not violate equal protection. (California)
- 1999
- U.S. Appeals Court
LIBERTY INTEREST
WORK RELEASE
- Asquith v. Department of Corrections, 186 F.3d 407 (3rd Cir. 1999). A state prisoner brought a civil rights suit against state correctional officials and a contractor who operated a prerelease center, claiming that his due process rights were violated by his termination from a work release program. The district court dismissed the case as frivolous but the appeals court reversed and remanded. On remand the district court granted summary judgment for the defendants and the prisoner appealed. The appeals court held that the prisoner did not have a protected liberty interest in remaining in the work release program, either under the due process clause or under state law. The court found that the conditions imposed on the prisoner's conduct at the halfway house, where he lived under a work release program, amounted to institutional confinement and thus his removal from the halfway house did not trigger the protections of due process. The prisoner had returned to the house smelling of alcohol and had failed a breathalyzer test, and was immediately removed from the halfway house and returned to prison. (Volunteers of America, under contract to the New Jersey Department of Corrections)
- U.S. District Court
PAROLE-REVOCA-
TION
- Banks v. Person, 49 F.Supp.2d 119 (E.D.N.Y. 1999). A parolee who was detained for questioning by police brought a § 1983 action against parole officers alleging excessive use of force. The district court granted summary judgment for the defendants finding that the Eleventh Amendment barred a suit against the state division of parole, that parole officers who took no part in a scuffle could not be held liable, and that the force used by parole officers to restrain the parolee was objectively reasonable. According to the court, the parole officers' use of force to restrain the parolee who was acting in a dangerous and violent manner was reasonable, noting that the scuffle only lasted for a few minutes and resulted in no injury to the parolee. (New York State Division of Parole)
- U.S. Appeals Court
PAROLE-GRANTING
- Bono v. Benov, 197 F.3d 409 (9th Cir. 1999). An inmate convicted of the first degree murder and robbery of two Border Patrol agents sought habeas corpus relief arguing that the United States Parole Commission acted with presumed vindictiveness in extending his presumptive parole date by twelve years. The district court granted the petition and the appeals court affirmed, overturning the decision of the commission. (United States Parole Commission)
- U.S. District Court
PAROLE
- Closs v. Weber, 87 F.Supp.2d 921 (D.S.D. 1999). A prisoner challenged the revocation of his parole with a habeas corpus petition. The district court granted the petition, finding that the prisoner's due process rights were violated when his parole was revoked for exercising his right to refuse psychotropic medication that had been ordered administered by the parole agent. The court found the state's procedure for forced administration of psychotropic medication to parolees was constitutionally inadequate because of its heavy emphasis on the judgment of individual parole agents. The court noted that the state's procedure provided no safeguard against the imposition of a medication plan that was not justified medically and that the plan did not provide for an evaluation by a neutral decisionmaker. (South Dakota State Penitentiary)
- U.S. Appeals Court
SEX OFFENDERS
- Del Carmen Molina v. I.N.S., 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)
- U.S. District Court
ELECTRONIC
MONITORING
- Estate of Brown v. Barian, 43 F.Supp.2d 1008 (E.D.Wis. 1999). The parents of a shooting victim brought a § 1983 action against state corrections officials arising from their failure to apprehend an inmate who had violated the terms of his electronic monitoring custody 158 times before the shooting incident that claimed the life of their son. The district court dismissed the case, finding that the allegations did not support a § 1983 substantive due process claim because corrections officials did not owe the victim a constitutional duty to protect him from the inmate's random shooting spree. The inmate was serving the remainder of a two year sentence following his release from prison under a program called the Division of Intensive Sanctions (DIS). Under DIS the inmate was required to remain within 30 yards of his electronically monitored telephone at his residence, but in a seven

month period prior to the shooting the inmate had violated this requirement 158 times and had then disconnected his phone service. In spite of these violations, the corrections department did not authorize an apprehension order to arrest the inmate and return him to prison, even though a corrections agent and case supervisor had both requested issuance of the order. (Wisconsin Department of Corrections, Division of Community Corrections)

U.S. District Court
RELEASE DATE

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
SEX OFFENDERS

Glauner v. Miller, 184 F.3d 1053 (9th Cir. 1999). A state prisoner brought a § 1983 action challenging the constitutionality of a Nevada statute that requires a panel to certify that certain sexual offenders are not a menace to the health, safety or morals of others, prior to parole eligibility. The district court dismissed the action and the appeals court affirmed, finding that the statute did not violate the prisoner's right to equal protection and the statute was not void for vagueness. The court noted that heightened recidivism concerns for sexual offenders provided a rational basis for requiring more scrutiny in parole matters than other classes of criminals. (Nevada)

U.S. District Court
PAROLE-LIABILITY
LIABILITY-RELEASE
OF PRISONER

Gonzalez v. Angelilli, 40 F.Supp.2d 615 (E.D.Pa. 1999). A civil rights action was brought against state parole and prison authorities by the relatives of a police officer killed by a former prison inmate and the owner of a trailer to which the former inmate moved upon release. The district court dismissed the case finding that as a general rule, the state has no affirmative obligation to protect its citizens from the violent acts of private individuals. The court held that the plaintiffs failed to state a § 1983 claim under a state-created danger theory where they failed to allege that it was foreseeable that the paroled offender would direct his violence at police officers in general, or that police would destroy trailer park property while looking for evidence. The court also found that the plaintiffs failed to state a § 1983 claim based on a failure to train theory where they did not identify what policies or procedures were defective, how they were defective or whether a training program was involved. (Pennsylvania Board of Probation and Parole, Pennsylvania Department of Corrections)

U.S. Appeals Court
PAROLE-GRANTING
PAROLE-GUIDELINES

Grune v. Rodriguez, 176 F.3d 27 (2nd Cir. 1999). A prisoner who claimed he was denied parole because of his alcoholism sued parole officers and the chair of the state parole division on various constitutional and statutory theories. The district court denied qualified immunity for the defendants and they appealed. The appeals court reversed in part and remanded, holding that the burden was on the prisoner to adduce facts that a court might deem sufficient to support a finding that the officers acted with more than mere negligence. The appeals court held that the officers did not violate the prisoner's rights under the Rehabilitation Act by failing to take action after the parole board denied parole, allegedly on the basis of the prisoner's alcoholism. The appeals court remanded the case for further proceedings on other elements of the initial case. (Mid-State Correctional Facility, New York)

U.S. District Court
CREDIT

Harris v. City of New York, 44 F.Supp.2d 510 (S.D.N.Y. 1999). A paroled state prison inmate sued city and state officials alleging that they failed to properly credit time served, resulting in an unconstitutional delay in his eligibility for parole. The district court dismissed the case, holding that the inmate was not entitled to credit for time served awaiting sentencing on a previous, unrelated charge. (New York Department of Correctional Services, New York City Department of Corrections)

U.S. Appeals Court
RELEASE DATE
PAROLE-REVOC-
ATION

Hawkins v. Freeman, 166 F.3d 267 (4th Cir. 1999). A parolee who had been released from confinement for two years was rearrested when corrections officials discovered he had been released in error. The parolee petitioned for habeas corpus relief alleging violation of his due process rights. The district court granted summary judgment for the State but the appeals court reversed and remanded with instructions. The appeals court held that the parolee's interest in his continued liberty had "crystallized" during his two years of successful parole, requiring strict scrutiny of the State's intentional infringement of that interest, and that the State's violation did not pass such scrutiny. The court noted that the parolee's interest in continued liberty during good behavior was protected by a substantive due process right to finality of his sentence. (Pender Correctional Institute, North Carolina)

- U.S. Appeals Court
PAROLE-REVOCATION Hawkins v. Freeman, 195 F.3d 732 (4th Cir. 1999). A parolee was denied habeas relief by the district court and appealed. The appeals court reversed and remanded but on rehearing en banc the appeals court affirmed. The appeals court held that the act of a state parole commission in revoking an erroneously granted parole did not shock the conscience and thus did not constitute a substantive due process violation when viewed as an executive act. Although the parolee had not engaged in any criminal conduct in the nearly two years he had been released, the court characterized the erroneous release as simple negligence. (North Carolina Parole Commission and Pender Correctional Institute, North Carolina)
- U.S. District Court
RELEASE DATE
EARLY RELEASE Henderson v. Simms, 54 F.Supp.2d 499 (D.Md. 1999). Released prisoners filed a civil rights action against prison officials alleging that their due process rights were violated when they were reincarcerated. The district court dismissed the case, finding that the prison officials had acted "reasonably, but mistakenly" in making a good faith effort to put into effect what turned out to be a legally erroneous interpretation of a Maryland law concerning "diminution credits." The court held that the rights of the released prisoners to continued liberty and/or to procedural due process under the unique circumstances of this case were not so clearly established at the time that a reasonable official should have known of them or that their conduct violated them. (Maryland Department of Public Safety and Correctional Services)
- U.S. District Court
ALIEN
CONDITIONAL
RELEASE Hermanowski v. Farquharson, 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 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. (Dist. Office, Immig. and Naturalization Service, Rhode Island)
- U.S. District Court
PAROLE-GRANTING Hill v. Goord, 63 F.Supp.2d 254 (E.D.N.Y. 1999). An inmate sued various state and county officers and agencies under § 1983 alleging that they failed to amend an incorrect statement in a pre-sentence report that was contained in his prison records, resulting in the wrongful denial of his request to be released on parole supervision. The district court dismissed the action, finding that under the "Heck rule," a prisoner must establish that his conviction or sentenced has been overturned or invalidated by an administrative board, a state court or a federal habeas proceeding as a prerequisite to maintaining a § 1983 action. (New York Department of Correctional Services, County of Suffolk, New York)
- U.S. District Court
PAROLE-POLICIES 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. Appeals Court
WORK RELEASE
TEMPORARY RELEASE
LIBERTY INTEREST Kim v. Hurston, 182 F.3d 113 (2nd Cir. 1999). An inmate sued correctional personnel alleging that her removal from a work release program without notice deprived her of due process. The district court granted judgment as a matter of law in favor of the defendants. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the inmate had a protected liberty interest in her continued participation in the work release program and was entitled to a hearing and to know the reason for her removal from the program, prior to her formal removal. The appeals court held that the chairperson of a temporary release committee was not entitled to qualified immunity, but that the inmate was entitled to only nominal damages because she was aware of the reason for her removal from the program. (Parkside Correctional Facility, New York)
- U.S. Appeals Court
SEX OFFENDER Kirby v. Siegelman, 195 F.3d 1285 (11th Cir. 1999). In separate cases, state prisoners challenged the application of a sex offender community notification statute to them in § 1983 actions. The cases were dismissed by the district court and were consolidated on appeal. The appeals court affirmed in part, reversed in part and remanded in part. The appeals court held that one prisoner, who had not been convicted of a sex crime, was entitled to due process before being classified as a sex offender because of the stigmatizing effect of being classified as a sex offender. The prisoner was classified based on prior sex-related charges rather than a conviction. (Alabama's Community Notification Statute)
- U.S. District Court
PAROLE- DUE
PROCESS
PAROLE- GRANTING 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. District Court
PAROLE-DUE PROC.
PAROLE-HEARINGS
LIBERTY INTEREST
- Lynch v. Hubbard, 47 F.Supp.2d 125 (D.Mass. 1999). State prisoners filed a § 1983 action alleging that a state law governing parole was unconstitutionally vague and denied them due process. The district court dismissed the case finding that the parole statute did not create a protected liberty interest under the Due Process Clause of the Fourteenth Amendment. The law allowed crime victims and their families to speak at parole hearings but did not permit offenders' families and friends to be heard. The court noted that there is no constitutional right of a convicted person to be conditionally released before the expiration of a valid sentence. (Massachusetts State Parole Board)
- U.S. Appeals Court
PAROLE-REVOCATION
- 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. Appeals Court
REVOCATION
- 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 Correctional Facility, New York)
- U.S. Appeals Court
PAROLE REVOCATION
EQUAL PROTECTION
- 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. Appeals Court
SEX OFFENDERS
- Paul P. v. Verniero, 170 F.3d 396 (3rd Cir. 1999). A class action suit was brought challenging a New Jersey statute that established a system of registration and community notification for certain sex offenders. Summary judgment was granted for the defendants by the district court. The appeals court affirmed the decision, finding that the law did not violate the offenders' privacy rights or require disclosures that may place a strain on offenders' family relations. The court held that the government's interest in preventing sex offenses outweighed the offenders' privacy interests. The court noted that while the law might place a strain on offenders' familial relationships it did not restrict offenders' freedom of action with respect to their families. (New Jersey)
- U.S. District Court
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
LIBERTY INTEREST
WORK RELEASE
- Quartararo v. Catterson, 73 F.Supp.2d 270 (E.D.N.Y. 1999). A prisoner brought a § 1983 action against corrections and parole officials challenging his removal from a work release program. The district court granted summary judgment in favor of the prisoner, ruling that failure to provide the prisoner with 24 hours' notice of the hearing concerning his removal violated due process. The court also held that a letter justifying the removal of the prisoner from the program solely on the basis of a parole hold did not comport with the due process requirement for a statement of the reasons. According to the court, an inmate in New York State has a protected liberty interest in continuing in a work release program, triggering minimum procedural due process requirements for termination that include notice and reasons. (Temporary Work Release Program, State of New York)
- U.S. District Court
PAROLE-DUE PROC.
- Ragins v. Gilmore, 48 F.Supp.2d 566 (E.D.Va. 1999). A prisoner brought a civil rights action against a state parole board and other defendants. The district court dismissed the action, finding that the appointment of crime victims, law enforcement officials, and crime prevention personnel to the parole board did not violate the prisoner's due process rights. (Virginia Parole Board)
- U.S. District Court
PAROLE
- Randolph v. State, 74 F.Supp.2d 537 (D.Md. 1999). A state prisoner brought a § 1983 action alleging violation of his Eighth and Fourteenth Amendment rights. The district court granted summary judgment for the defendants, finding that the prisoner failed to establish that prison

officials and medical staff were deliberately indifferent to his serious medical needs after he was attacked by another prisoner. The prisoner alleged that he had been placed on parole three months prior to the end of his sentence so that the state would avoid additional medical expenses. The court found that prison officials were not liable for an attack by a fellow prisoner with a baseball bat. The court noted that the attacked prisoner had no prior conflicts with the fellow prisoner, did not belong to a group of prisoners who were particularly vulnerable to assaults, and that there was no evidence that the risk of attack was pervasive. (Maryland Correctional Institution-Hagerstown)

U.S. District Court
TEMPORARY RELEASE
FURLOUGHS

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. Appeals Court
JUVENILES
PROBATION/PAROLE

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 Courts
PAROLE-SEARCHES

U.S. v. Payne, 181 F.3d 781 (6th Cir. 1999). After a parolee was convicted of possession of marijuana and being a felon in receipt of firearms, the parolee challenged a Kentucky policy that authorized a parole officer to conduct a warrantless search of his person and property upon reasonable suspicion. The appeals court held that the policy satisfied the requirements of the Fourth Amendment but that evidence obtained by a parole officer in violation of the Fourth Amendment must be suppressed in a subsequent criminal proceeding. The appeals court found that the parole officer lacked reasonable suspicion to search the parolee's truck and the property of his estranged wife. The parolee had been placed under the maximum level of parole supervision, which meant he was required to have two office visits and one home visit with his parole officer each month. The parolee had also signed a statement acknowledging that he was "subject to a search and seizure if my Probation and Parole Officer [has] reasonable suspicion to believe that I may have illegal contraband on my property or person." (Kentucky)

U.S. District Court
PAROLE-REVOCATION

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. Appeals Court
FAILURE TO PROTECT
MEDICATION

Wakefield v. Thompson, 177 F.3d 1160 (9th Cir. 1999). An inmate brought a § 1983 action against a prison officer alleging violation of his rights when the officer refused to provide him with his prescription psychotropic medication upon his release. The federal district court dismissed the case and the inmate appealed. The appeals court reversed and remanded, finding that the officer's alleged refusal to provide the inmate with his prescribed medication supported a claim of deliberate indifference to the inmate's serious medical needs. The appeals court held that the state must provide an outgoing prisoner who is receiving--and who continues to require-- medication with a supply sufficient to ensure that he has that medication available during a period of time reasonably necessary to permit him to consult a doctor and obtain a new supply. The court termed the state's failure to provide medication sufficient to cover this transitional period as an abdication of its responsibility to provide medical care to those, who by reason of their incarceration, are unable to provide for their own medical needs. (San Quentin Prison, California)

U.S. District Court
WORK RELEASE

Weller v. Grant County Sheriff, 75 F.Supp.2d 927 (N.D. Ind. 1999). A state prisoner filed a § 1983 action challenging his removal from a temporary work release program. The district court granted summary judgment for the defendants, finding that the prisoner did not have a liberty interest in remaining in the work release program. The prisoner had been sentenced to the state corrections department but was allowed, at a sheriff's discretion, to serve his time in a work release program at a county jail. The court held that the inmate did not have a due process right to be heard prior to his removal from the program, to the extent that the removal did not have an impact on his length of incarceration. The prisoner had signed a contract agreeing to abide by all rules when he entered the program. He was terminated from the program after his third violation of the rules. (Grant County Jail, Indiana)

- U.S. Appeals Court
PAROLE REVOCATION
PAROLE-DUE PROC. 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
PAROLE-REVOCATION
PAROLE-DUE PROCESS
EQUAL PROTECTION 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
ALTERNATIVES TO
CONFINEMENT Yeskey v. Pennsylvania, 76 F.Supp.2d 572 (M.D.Pa. 1999). A prisoner sued a state and prison officials alleging that their denial of his admission to a boot camp program, allegedly due to his high blood pressure, violated the Americans with Disabilities Act (ADA). The case was eventually considered by the United States Supreme Court which ruled that ADA applied to state prisons. The case was remanded to the district court which held that the individual defendants in the case could not be held liable for discrimination in furnishing public services. The district court also held that the prisoner failed to show that he was "disabled" as required to support an ADA claim. The court found that intense exercise, which was part of the boot camp program, was not a "major life activity" which was required to be accommodated under ADA. (Penn. Motivational Boot Camp Act)
- U.S. District Court
RELEASE DATE
TIMELY RELEASE 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)
- U.S. Appeals Court
PAROLE-REVOCATION Zitto v. Crabtree, 185 F.3d 930 (9th Cir. 1999). Following revocation of his parole, a parolee's habeas corpus petition was denied by the district court. The appeals court affirmed, holding that the parolee's due process rights were not violated even though he did not receive a written notice that a certain conviction would be used as a basis for forfeiting his street time. The court noted that the parolee had been given oral notice by an examiner and was allowed an opportunity for a continuance for the express purpose of allowing the parolee to hire a lawyer or otherwise prepare for a defense. (United States Parole Commission)
- 2000
- U.S. District Court
RELEASE DATE 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. District Court
WORK RELEASE Aupperlee v. Coughlin, 97 F.Supp.2d 336 (E.D.N.Y. 2000). An inmate brought a § 1983 action alleging violation of his due process rights based on prison officials' refusal to reinstate him into a temporary work release program. The district court held that the inmate stated a claim against three former officials in connection with his removal from the program and that the officials were not entitled to qualified immunity. The inmate alleged that the former officials failed to remedy the violation of the inmate's rights after learning of it, and were grossly negligent in supervising the staff who caused the violation. The inmate challenged his removal from the program, citing

violation of the state's policies that required a "participation review." (Queensboro Correctional Facility, New York)

U.S. Appeals Court
EARLY RELEASE

Bowen v. Hood, 202 F.3d 1211 (9th Cir. 2000). Dozens of federal prisoners brought separate actions for habeas corpus relief challenging the decision of the federal Bureau of Prisons that prisoners whose crime of conviction involved possession, carrying or use of a firearm were ineligible for early release based on the successful completion of a drug treatment program. The district court ruled in favor of the prisoners and the Bureau appealed. The appeals court affirmed in part and reversed in part. The appeals court held that the Bureau validly exercised its discretion in barring armed felons from eligibility but that the Bureau could not retroactively apply such a restriction to prisoners who had already been provided with a determination of eligibility. (Federal Correctional Institution, Sheridan, Oregon)

U.S. District Court
FURLOUGHS

Butler v. Snyder, 106 F.Supp.2d 589 (D.Del. 2000). A state prisoner brought a § 1983 action against correctional authorities in two states alleging violation of his constitutional rights by denying him a furlough to attend a pre-burial ceremony for his 13-year-old daughter. The district court held that the denial did not violate the prisoner's free exercise rights, as the privilege of attending religious events was one of many rights forfeited when the prisoner was sentenced to incarceration. The court noted that the record supported negligence, at most, by the officials who failed to authorize the furlough. (Delaware Correctional Center and Greensville Correctional Center, Virginia)

U.S. Appeals Court
DUE PROCESS
CONDITIONAL
RELEASE

Doe v. Simon, 221 F.3d 137 (2nd Cir. 2000). After he was conditionally released, a convicted sex offender brought constitutional claims against state parole officials for failing to release him on his conditional release date. The federal district court granted summary judgment to the officials. The appeals court affirmed, finding that the offender's due process rights were not violated when his conditional release was delayed due to his failure to secure an approved residence. The court noted that the offender had been put on notice two months before his release date that he was required to propose possible residences to which he could be released, and was told that his release might be delayed if an approved residence could not be found. (New York Board of Parole)

U.S. Appeals Court
WORK RELEASE
RETALIATION

Friedl v. City of New York, 210 F.3d 79 (2nd Cir. 2000). A work release participant brought an action against state officials who revoked his participation in the program. The district court dismissed the complaint and the participant appealed. The appeals court vacated and remanded. The appeals court held that the participant stated a valid claim for denial of procedural due process and for retaliation. Officials had revoked his participation after he applied for public assistance benefits. The court found that the participant had a statutory and constitutional right to apply for benefits and to petition the government and the participant explicitly alleged that officials revoked his work release in retaliation for his protected conduct. (Queensboro Correctional Facility, New York)

U.S. Appeals Court
PAROLE GRANTING
DUE PROCESS

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. District Court
GRADUATED RELEASE

Gambino v. Gerlinski, 96 F.Supp.2d 456 (M.D.Pa. 2000). A prisoner petitioned for a writ of habeas corpus claiming that he had a right to spend a reasonable period of time in a halfway house or in home confinement before his sentence expired. The district court denied the petition, finding that a state statute that called for such transitional arrangements merely expressed a non-binding guideline and did not create a liberty interest. (Low Security Correctional Institution, Allenwood, Pennsylvania)

U.S. Supreme Court
PAROLE-POLICIES
EX POST FACTO

Garner v. Jones, 120 S.Ct. 1362 (2000). An inmate challenged the constitutionality of the scheduling of his parole hearings. The district court dismissed the case as frivolous but the appeals court reversed in part and remanded. On remand, the district court granted summary judgment against the inmate. The appeals court reversed and remanded and the United States Supreme Court granted certiorari. The Supreme Court reversed and remanded the appeals court decision. The Supreme Court ruled that the retroactive application of an amended state rule which changed the frequency of required parole reconsideration hearings for inmates serving life sentences from every three years to every eight years did not necessarily violate the Ex Post Facto Clause because a significant risk of prolonging the prisoner's incarceration was not inherent in the framework of the rule. The Court noted that under Georgia law a prisoner could only challenge denial of parole in state court if there is a showing of a "gross abuse of discretion" in determining if a prisoner should receive an early release. (State Board of Pardons and Paroles of Georgia)

U.S. District Court
WORK RELEASE

Hallett v. New York State Dept. of Correct. Serv., 109 F.Supp.2d 190 (S.D.N.Y. 2000). A former inmate brought an action against state correctional officials alleging he was denied access to special programs while incarcerated due to his status as an HIV-positive amputee, in violation of the Americans with Disabilities Act (ADA), the Rehabilitation Act and state laws. The district court dismissed the case in part. The court found that the Eleventh Amendment did not provide immunity for officials for alleged violations of ADA and the Rehabilitation Act. The court found that the inmate's allegations that he was denied entrance into a shock incarceration program and work release programs due to his disability supported claims for alleged violations of ADA and the Rehabilitation Act. The court held that the former inmate stated a § 1983 claim by alleging that officials failed to provide him with an adequate wheelchair for five months, despite receiving notification that the inmate was in pain and the inmate's grievances concerning confiscation of his personal wheelchair, along with allegations that the inmate suffered severe back pain and a cut to his ear as the result of the officials' actions. The inmate successfully alleged the personal involvement of a prison superintendent and director. (Elmira Correctional Facility and Green Haven Correctional Center, New York)

U.S. Appeals Court
RELEASE DATE

Henderson v. Simms, 223 F.3d 267 (4th Cir. 2000). Released inmates, who had been arrested and reincarcerated after state officials determined that they had been prematurely released, filed a § 1983 action. The district court dismissed the case and the appeals court affirmed. The appeals court held that the arrests of the inmates did not violate their Fourth Amendment rights against unreasonable seizures nor their due process rights. The court found that the officials were entitled to qualified immunity. The released inmates had been treated as escapees once officials determined that they had been prematurely released. (Maryland Department of Public Safety and Correctional Services)

U.S. Appeals Court
PAROLE-
REVOCATION

Hutchings v. U.S. Parole Com'n, 201 F.3d 1006 (8th Cir. 2000). A prisoner petitioned for habeas corpus relief challenging the revocation of his parole for failure to pay restitution. The district court denied the petition and the appeals court affirmed. The prisoner had been paroled three times and each time his parole was revoked by the U.S. Parole Commission for failure to pay his court-ordered restitution. (United States Parole Commission)

U.S. Appeals Court
EARLY RELEASE

King v. Morrison, 231 F.3d 1094 (8th Cir. 2000). A federal inmate petitioned for habeas corpus relief challenging the federal Bureau of Prisons (BOP) determination that he was ineligible for a sentence reduction based on his completion of a drug abuse treatment program. The district court denied relief and the inmate appealed. The appeals court remanded with direction, finding that the application of a BOP program statement that treated conviction for being a felon in possession of a firearm as a "crime of violence" could not render the inmate ineligible for early release. (Federal Correctional Institution, Forrest City, Arkansas)

U.S. District Court
MEDICAL CARE

Lugo v. Senkowski, 114 F.Supp.2d 111 (N.D.N.Y. 2000). A paroled state prisoner brought a § 1983 action against prison officials alleging deliberate indifference to his serious medical needs. The district court denied the defendants' motion to dismiss, finding that the state had a duty to provide medical services for the parolee, who was receiving continuing treatment at the time of his release, for a period of time reasonably necessary for him to obtain treatment on his own behalf. The court found that the parolee's claim that officials failed to follow a physician's instructions that follow-up surgery be performed, and in fact prevented him from traveling to his treating physician for surgery, was sufficient to state an Eighth Amendment claim. The court denied qualified immunity for the officials. (Clinton Correctional Facility, New York)

U.S. Appeals Court
PAROLE- HEARING
PAROLE-
REVOCATION
PAROLE- DUE
PROCESS

McCall v. Pataki, 232 F.3d 321 (2nd Cir. 2000). A state prisoner brought a pro se § 1983 action against state officials alleging that he was denied his constitutional rights during parole hearings. The district court dismissed the action and the appeals court affirmed. The appeals court held that the prisoner was not entitled to warnings on the right against self-incrimination or to the assistance of counsel in a parole hearing. The court noted that even though the prisoner was convicted by a jury and did not plead guilty to his crime of conviction, he could not be prosecuted again for the same crime and had no right to refuse to answer with respect to that crime. (New York Board of Parole)

U.S. Appeals Court
EX POST FACTO
PAROLE

Metheny v. Hammonds, 216 F.3d 1307 (11th Cir. 2000). Four Georgia state prisoners who were convicted as recidivists brought a § 1983 action challenging the retroactive application of a recidivist statute by the Georgia Board of Pardons and Paroles. The district court granted summary judgment in favor of the prisoners. The appeals court vacated and remanded, finding that retroactive application of the statute did not violate the Ex Post Facto Clause or the due process clause. The statute required the Board to consider recidivists convicted of a fourth felony to be ineligible for parole. (Georgia Board of Pardons and Paroles)

U.S. District Court
PAROLE- POLICIES
EX POST FACTO

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
PAROLE REVIEW
DUE PROCESS

Pahk v. Hawaii, 109 F.Supp.2d 1262 (D.Hawai'i 2000). A parolee brought state court and § 1983 actions against a state and individual parole board officials alleging he had been discharged from parole without notice and that when the discharge was rescinded he also did not receive notice. The parolee alleged that the paroling authority discharged him from parole and then continued to treat him as if he were still on parole. The district court held that the officials' alleged actions violated well-established due process rights and that the officials did not enjoy quasi-judicial immunity against § 1983 claims. (Hawaii Paroling Authority)

U.S. District Court
WORK RELEASE
DUE PROCESS

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. The court found that prior to removal of a New York prisoner from temporary work release a prisoner must be given the following: written notice of the alleged violation; statement of the actual reason for which removal is being considered; a report or summary of the evidence against him/her; an opportunity to be heard and to present evidence; advance notice of a temporary release committee hearing; the right to confront and cross examine adverse witnesses; a committee composed of neutral decision-makers; and a post-hearing written account of the actual reason for removal. (Queensboro Correctional Facility, New York)

U.S. Appeals Court
PAROLE
EX POST FACTO

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. Appeals Court
TIMELY RELEASE

Scully 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)

U.S. District Court
CONDITIONAL
RELEASE

U.S. v. Agnello, 101 F.Supp.2d 108 (E.D.N.Y. 2000). The government sought the review of a Magistrate Judge's order permitting a defendant to be released upon satisfaction of certain conditions and the defendant sought review of a release condition that a security guard be posted outside of his home 24 hours a day to monitor and search visitors. The district court revoked the release order, finding that no conditions of release contemplated by the Bail Reform Act would reasonably assure the safety of others persons and the community. (United States District Court, Eastern District, New York)

U.S. Appeals Court
EX POST FACTO
SUPERVISED
RELEASE

U.S. v. Bermudez-Plaza, 221 F.3d 231 (1st Cir. 2000). A district court revoked the original term of supervised release for a defendant after a probation officer notified the court of the defendant's alleged violations of supervised release conditions. The court ordered the defendant to serve nine months of imprisonment and another year of supervised release. The defendant appealed and the appeals court affirmed, finding that the imposition of a prison term and a new term of supervised release did not violate the Ex Post Facto Clause. (U.S. District Court, District of Puerto Rico)

U.S. Appeals Court
PAROLE-SEARCHES
SUPERVISED
RELEASE

U.S. v. Hebert, 201 F.3d 1103 (9th Cir. 2000). An offender appealed after the district court revoked an offender's supervised release based on methamphetamine found in a warrantless "parole search" of the offender's apartment. The appeals court affirmed, finding that the exclusionary rule would not be applied in a federal supervised release revocation hearing, even in the officers conducting the search lacked reasonable suspicion that the offender was involved in criminal activity. (United States District Court, Southern District of California)

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)

U.S. Appeals Court
EARLY RELEASE

Ward v. Booker, 202 F.3d 1249 (10th Cir. 2000). Former federal inmates brought habeas actions challenging a nationwide federal Bureau of Prisons rule which initially denied them a sentencing reduction available to certain inmates who successfully completed a drug treatment program. The inmates had their sentences enhanced for possession of a firearm. The district court granted relief and the Bureau appealed. The appeals court affirmed, finding that the BOP regulation which categorically denies eligibility for sentence reductions was invalid. The court also found that the case was not moot on the ground that the prisoners had been released to halfway houses to finish the custodial portion of their sentences. (Leavenworth Federal Prison Camp in Leavenworth, Kansas)

U.S. Appeals Court
PAROLE-
REVOCATION
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)

2001

U.S. District Court
PAROLE- REVOCATION

Alexander v. Johnson, 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
PAROLE- POLICIES
DISCRIMINATION

Armstrong v. Davis, 275 F.3d 849 (9th Cir. 2001). Disabled prisoners and parolees brought a class action against a governor, corrections secretary, and board of prison terms, alleging that policies and practices for parole and parole revocation proceedings violated the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The district court found that the defendants engaged in discrimination and entered a system-wide injunction requiring modification of policies and practices. The defendants appealed and the appeals court affirmed in part, vacated in part, and remanded in part. The appeals court held that the department's use of notification forms that were inadequate for prisoners and parolees who were visually impaired, deaf, illiterate, learning disabled, or retarded, and the reliance on untrained employees to determine which prisoners and parolees were disabled and what accommodations were reasonable, violated the plaintiffs' constitutional rights. The appeals court held that a system-wide injunction against the board of prison terms was warranted because the board failed to provide effective communications during notification, hearings and appeals, failed to select facilities accessible to mobility-impaired persons, and failed to provide reasonable accommodations. The court noted that the board failed to offer any justification for its failures at trial. (California Youth and Adult Corrections Authority, California Department of Corrections, California Board of Prison Terms)

U.S. Appeals Court
PAROLE- DUE
PROCESS
EX POST FACTO

Barna v. Travis, 239 F.3d 169 (2nd Cir. 2001). State prisoners sued the chairperson of a state parole division and others, alleging violations of the ex post facto clause and due process clause in the denial of their parole applications. The district court dismissed the action and the appeals court affirmed. The appeals court held that New York prisoners had no liberty interest in parole under the state's parole scheme, and that parole procedures adopted after the prisoners were incarcerated did not violate the ex post facto clause because the procedures did not create mandatory rules for release, but were promulgated simply to guide the parole board in the exercise of its discretion. (New York State Division of Parole)

U.S. District Court
PAROLE-CONDITION

Bausch v. Sumiec, 139 F.Supp.2d 1029 (E.D.Wis. 2001). A parolee brought a § 1983 action alleging that mandatory attendance in a drug treatment program with religious components violated the Establishment Clause. The district court denied summary judgment for the defendants, finding that it was precluded by fact questions. (Wisconsin Department of Corrections)

U.S. Appeals Court
PAROLE-CONDITIONS
PAROLE-REVOCATION
GOOD TIME

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)

<p>U.S. District Court PAROLE-GRANTING PAROLE- DUE PROCESS EX POST FACTO</p>	<p><u>Crump v. Kansas</u>, 143 F.Supp.2d 1256 (D.Kan. 2001). An inmate who was denied parole filed a § 1983 action against a state claiming that procedures used at his parole hearing violated his due process rights, and that a state law that permitted the parole board to defer an inmate's next parole hearing for ten years violated the Ex Post Facto Clause of the Constitution. The district court granted summary judgment in favor of the defendants. The court held that the inmate had no liberty interest in parole, and therefore could not establish a violation of the Due Process Clause. The court also found that the state's parole hearing deferral law did not violate the inmate's equal protection rights or the Ex Post Facto Clause. (Kansas Parole Board)</p>
<p>U.S. Appeals Court RELEASE DATE DUE PROCESS</p>	<p><u>Diaz v. Kinkela</u>, 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)</p>
<p>U.S. District Court TIMELY RELEASE</p>	<p><u>Johnson v. Herman</u>, 132 F.Supp.2d 1130 (N.D.Ind. 2001). A detainee who was incarcerated beyond his release date brought a § 1983 action against jail authorities, alleging violation of his substantive due process rights. The district court denied summary judgment for the defendants, finding that a jailer's record notations that a judge had ordered the detainee to remain in jail and later had ordered the detainee released, were admissible as non-hearsay evidence that the jailer did not act with deliberate indifference in retaining custody. The court held that summary judgment was precluded by an issue of material fact as to whether the jail's "Inmate Request Form" policy, which was used to correct defects in its "will call" policy for holding detainees following their appearances in court, was being implemented in a manner suggesting deliberate indifference to the right of detainees to be timely released. The court noted that the jailers were not entitled to qualified immunity because the right of a detainee not to be held without a court order was clearly established at the time of the incident. (Allen County Jail, Indiana)</p>
<p>U.S. District Court TIMELY RELEASE</p>	<p><u>Jones v. Lopez</u>, 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)</p>
<p>U.S. District Court SEX OFFENDER</p>	<p><u>Jones v. Puckett</u>, 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 Inst., Wisc.)</p>
<p>U.S. Appeals Court PAROLE- DUE PROCESS EQUAL PROTECTION</p>	<p><u>Jones v. Ray</u>, 279 F.3d 944 (11th Cir. 2001). An inmate who had been denied parole brought a § 1983 action against a state parole board. The district court dismissed the case and the inmate appealed. The appeals court affirmed, finding that the inmate's conclusory allegation that the parole board relied on false information contained in his parole file was insufficient to state a claim for a due process violation. The appeals court also found that application of an amended parole rule, that required reconsideration of parole only once every eight years, did not violate the ex post facto clause when applied to an inmate who was already confined at the time the amendment was adopted. (Georgia Board of Pardons and Paroles)</p>
<p>U.S. District Court PAROLE-REVOCATION PAROLE- POLICIES</p>	<p><u>Long v. Gaines</u>, 167 F.Supp.2d 75 (D.D.C. 2001). A class of approximately 400 District of Columbia parolees brought a class action challenging the United States Parole Commission's regulations governing parole revocation procedures. The parolees moved for class certification and summary judgment and the district court granted the motions. The court held that the regulations governing the determination of probable cause were facially unconstitutional and regulations governing final parole revocation violated due process. (U.S. Parole Commission)</p>
<p>U.S. Supreme Court EARLY RELEASE</p>	<p><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</p>

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-REVOCATION
PAROLE-DUE
PROCESS

Maddox v. Elzie, 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. District Court
PAROLE-
REVOCATION

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. District Court
PAROLE-DUE PROCESS

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. District Court
MEDICATION

Ramsey v. Schauble, 141 F.Supp.2d 584 (W.D.N.C. 2001). A former detainee whose finger tip was severed after a sheriff's deputy allegedly shut a cell window on it, brought a pro se complaint against the deputy and the sheriff. The district court held that the detainee stated a cognizable civil rights complaint against the sheriff, and the detainee pled a cause of action under a state law that provided that a keeper of a jail must pay treble damages if he/she does any wrong or injury to a detainee, and is guilty of a Class 1 misdemeanor. The court found that jail officials ignored the detainee's cries for help after he was injured by the deputy and displayed deliberate indifference to his need for quick medical attention to preserve the possibility of reattaching the finger. The detainee was released from custody several hours after he was returned from the hospital, but officials refused to give the detainee pain medication prescribed by the hospital, requiring him to return to the jail periodically over the next several days to receive each pill individually. (Watauga County Law Enforcement Center, North Carolina)

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-REVOCATION
PAROLE-DUE PROCESS

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. Appeals Court
RELEASE DATE
LIABILITY- RELEASE
OF PRISONER
TIMELY RELEASE

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. Appeals Court
CREDIT
DUE PROCESS

Thompson v. Cockrell, 263 F.3d 423 (5th Cir. 2001). A state inmate was prematurely paroled due to a state's clerical error and his parole was later revoked for misconduct. The inmate petitioned for federal habeas relief asserting that he was owed credit against his sentence for time spent under mandatory supervision, and seeking to have his good time credits that had accrued prior to early release reinstated. The district court denied the petition and the inmate appealed. The appeals court reversed and remanded. The appeals court held that the inmate had a liberty interest, created from state law, in receiving credit against his sentence for the period spent on mandatory supervision. The court found that the fact that the inmate had been prematurely paroled did not, by itself, entitle the inmate to restoration of good time credits as a matter of constitutional due process. (Texas Department of Criminal Justice, Institutional Division)

U.S. District Court
PROBATION-
REVOCATION

U.S. v. Jefferson, 175 F.Supp.2d 1123 (N.D.Ind. 2001). The government petitioned to revoke the supervised release of a defendant who had failed several drug urinalysis tests and who admitted smoking marijuana almost continually. The government granted the petition, finding that while the supervised release condition prohibiting the releasee's use of drugs substantially burdened the Rastafarian defendant's exercise of a sincerely held religious belief within the meaning of the Religious Freedom Restoration Act (RFRA), the condition was the least restrictive means of accomplishing the government's compelling interest in uniform enforcement of drug laws. The parties had stipulated to the fact that Rastafarianism emphasizes the use of marijuana in ceremonies designed to bring the believer closer to the divinity and to enhance unity among believers. (Allen County Work Release Facility, Indiana)

U.S. Appeals Court
SUPERVISED
RELEASE

U.S. v. Loy, 237 F.3d 251 (3rd Cir. 2001). An offender challenged the conditions of his supervised release prior to his release from a 36-month term of imprisonment. The district court entered an order amending the sentence and reimposing other conditions of release and the defendant appealed. The appeals court affirmed in part, vacated in part, and remanded. The appeals court held that the condition of supervised release that prohibited the defendant from possessing "all forms of pornography, including legal adult pornography" was unconstitutionally vague, but that a condition that prohibited the defendant from having unsupervised contact with minors was supported by evidence. (United State District Court for the Western District of Pennsylvania)

U.S. District Court
PAROLE- CONDITIONS

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
RELEASE DATE
CREDIT

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
ALIEN

Doan v. I.N.S., 311 F.3d 1160 (9th Cir. 2002). A removable alien sought an injunction prohibiting the Immigration and Naturalization Service (INS) from imposing a bond upon him as a condition of his release, upon expiration of a six-month detention period once removal was no longer reasonably foreseeable. The district court denied the injunction and the alien appealed. The appeals court affirmed, finding that the INS could impose a bond, notwithstanding that the statute authorizing the terms of supervision did not expressly authorize a bond. (Southern District of California)

U.S. District Court
RELEASE PLANNING
BAIL

Foster v. Fulton County, 223 F.Supp.2d 1301 (N.D.Ga. 2002). Inmates at a county jail, who had tested positive for human immunodeficiency virus (HIV), brought an action complaining of their conditions of confinement and inadequate medical care. The parties entered into a settlement agreement. Two years later the district court responded to a report that described ten areas in which the county had failed to comply with the terms of the settlement by ordering remedies. The county moved to stay the corrective actions that were ordered and the district court denied the

motion. The court affirmed its requirement that the county develop a unified system for providing counsel within 72 hours of arrest to persons arrested on state law misdemeanor charges. The court also ordered the county to develop a meaningful discharge planning process for physically and mentally ill inmate. (Fulton County Jail, Georgia)

U.S. District Court
PAROLE

House v. Nelson, 210 F.Supp.2d 993 (N.D.Ill. 2002). A parolee sued a state corrections investigator and a parole officer. The district court dismissed the action, finding that the investigator was entitled to qualified immunity because it was not clearly established, at the time of the alleged incident, that he could not constitutionally require a parolee to take a lie detector test. (Illinois)

U.S. Appeals Court
WORK RELEASE

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. Appeals Court
PAROLE- DUE
PROCESS

Madley v. U.S. Parole Com'n., 278 F.3d 1306 (D.C. Cir. 2002). A District of Columbia prisoner filed a petition for habeas corpus complaining of denial of reparole. The district court dismissed the petition and the prisoner appealed. The appeals court dismissed the appeal, finding that prisoner failed to show that he was deprived of a constitutional right, even though the Parole Commission apparently failed to follow its own regulations and procedures. The prisoner had been denied reparole based on evidence of new criminal conduct. (United States Parole Commission)

U.S. District Court
TIMELY RELEASE

McCurry v. Moore, 242 F.Supp.2d 1167 (N.D.Fla. 2002). A former state inmate brought a pro se § 1983 action against prison officials, individually and in their official capacity, alleging that he was held in prison beyond the expiration of his sentence. The inmate sought nominal, compensatory and punitive damages. The district court held that prison officials could not be held liable for failure to train or adequately supervise a classification officer who denied the former inmate's informal grievance. But the court found that fact issues precluded summary judgment on the claim that the classification officer violated the former inmate's right to timely release from prison. The court also found that other prison officials were not entitled to qualified immunity. (Florida Department of Corrections)

U.S. Appeals Court
PAROLE-GRANTING

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. District Court
SEX OFFENDERS
RELEASE NOTIFI-
CATION

Montalvo v. Snyder, 207 F.Supp.2d 581 (E.D.Ky. 2002). A prisoner sued the federal Bureau of Prisons claiming that he was wrongfully classified as a sexual offender and subjected to a statutory requirement that authorities be notified prior to his release. The district court entered judgment for the Bureau, finding that it was appropriate to classify the prisoner based on his state conviction for criminal sexual abuse. The court also held that the statute requiring the Bureau to notify authorities when a sex offender was about to be released did not violate the Double Jeopardy Clause, because Congress intended the statute to be remedial by serving law enforcement and protecting the public, rather than punitive. (Federal Correctional Institution, Manchester, Kentucky)

U.S. Appeals Court
BAIL

Payton v. County of Kane, 308 F.3d 673 (7th Cir. 2002). Arrestees brought an action against two county jails that charged a bond fee, above and beyond the set bail amount, as a condition of their release. The district court dismissed the action and the arrestees appealed. The appeals court reversed and remanded. The appeals court held that the arrestees sufficiently satisfied their standing requirement by alleging violation of their Eighth and Fourteenth Amendment rights. The court noted that the arrestees suffered monetary injury when they were required to make the extra payments, and that these injuries could be traced to the policy of each jail. A 1999 Illinois law allowed a bond fee to be added to the required bond and set the fee at \$1. The law empowered county boards to increase the statutory fee by ordinance if the increase is justified by an acceptable cost study that demonstrates that the \$1 fee is not sufficient to cover the costs of providing the service. Nineteen of Illinois's 102 counties charged a bail fee at the time of the appeal. The plaintiff arrestees were charged \$11 on one jail and \$15 in another. (Kane County Jail and DuPage County Jail, Illinois)

U.S. District Court
PAROLE- LIABILITY

Petrone v. Pike County Probation Dept., 240 F.Supp.2d 317 (M.D.Pa. 2002). The administrators of the estate of a woman who was killed by her husband, brought a § 1983 action against a county probation office and county probation officers. The administrators alleged that the defendants violated the woman's due process rights by failing to inform her of her husband's long history of

violent behavior toward women. The district court held that the administrators pleaded sufficient facts to state a claim against the county probation office and probation officers through the state-created danger exception, in their § 1983 action under the Fourteenth Amendment, by alleging that the defendants knew that the parolee had violent propensities towards women and that he was romantically involved with a woman whom he later murdered. (Pike County Probation Department, Pennsylvania)

U.S. Appeals Court
EARLY RELEASE

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. Appeals Court
PAROLE- GRANTING
EQUAL PROTECTION

Thompson v. Davis, 282 F.3d 780 (9th Cir. 2002). State prisoners with substance abuse histories brought an action seeking prospective and injunctive relief against state parole officials, alleging that the officials followed an unwritten policy of automatically denying parole to prisoners with substance abuse histories, in violation of the Americans with Disabilities Act (ADA). The district court dismissed the action and the prisoners appealed. The appeals court reversed, finding that the prisoners' complaint adequately alleged that they were disabled and were qualified for the public benefit they sought (consideration for parole), and that they were denied the benefit of a public program or activity, as required to establish an ADA claim. The appeals court held that parole proceedings, as a matter of first impression, were an "activity of a public entity" that fell within the reach of the ADA. The court noted that drug addiction that substantially limits one or more major life activity is a recognized "disability" under the ADA. (Calif. Board of Prison Terms)

U.S. Appeals Court
EQUAL PROTECTION
PAROLE- GRANTING
PLRA-Prison Litigation
Reform Act

Thompson v. Davis, 295 F.3d 890 (9th Cir. 2002). A state prisoner who had a history of substance abuse brought an action for prospective injunctive relief against state parole officials, alleging that the parole authority followed an unwritten policy of automatically denying parole to prisoners with substance abuse histories, in violation of the American with Disabilities Act (ADA). The district court dismissed the action; the appeals court reversed and remanded. On remand the district court dismissed the action and the prisoner appealed. The appeals court reversed and remanded, finding that a parole board may not categorically exclude a class of disabled people from consideration for parole because of their disabilities, under the provisions of ADA. The court found that while the term "qualified individual with a disability" under ADA does not include an individual who is currently engaging in the illegal use of drugs, the ADA does protect individuals who have successfully completed, or are participating in, a supervised drug rehabilitation program and are no longer using illegal drugs. (California Youth and Corrections Agency, Calif. Board of Prison Terms)

U.S. Appeals Court
PAROLE-SEARCHES

U.S. v. Tucker, 305 F.3d 1193 (10th Cir. 2002). A defendant convicted of possession of child pornography appealed his conviction, challenging a warrantless parole search. The district court held that the parole search was supported by reasonable suspicion and that seizure of the defendant's computer was justified under the plain-view doctrine. The court noted that probable cause is not required for a parole search that is conducted under a valid parole agreement and that the defendant had agreed to allow searches of his residence, diminishing his expectation of privacy. (Utah Department of Corrections)

U.S. District Court
PAROLE- REVOCATION
PAROLE- DUE
PROCESS

Valdivia v. Davis, 206 F.Supp.2d 1068 (E.D.Cal. 2002). Parolees filed a class action lawsuit challenging a state's parole revocation procedures, and alleging violation of their due process rights. The district court held that the state's unitary parole revocation hearing system violated the parolees' procedural due process rights. According to the court, the hearing system, which permitted detention of parolees upon a parole officer's issuance of a parole hold without a preliminary hearing to determine probable cause, violated the parolees' rights even though the state permitted a comprehensive hearing prior to making a final revocation decision. The court noted that the average delay in holding the final revocation hearing was between thirty-one and forty-five days. (California Board of Prison Terms)

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)

U.S. District Court
TIMELY RELEASE

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. Appeals Court
TEMPORARY RELEASE
WORK RELEASE
DUE PROCESS

Anderson v. Recore, 317 F.3d 194 (2nd Cir. 2003). A prison inmate brought a civil rights suit against prison officials who revoked his full-time work release status and incarcerated him without a hearing, seeking damages for 15 months he spent in prison after the revocation. The district court dismissed the action and the inmate appealed. The appeals court affirmed in part, and vacated and remanded in part. The appeals court held that the inmate's right to a hearing prior to revocation of his temporary release was clearly established at the time of the revocation and prison officials were not protected by qualified immunity. (Lincoln Correctional Facility, Temporary Release/Work Release Program, New York)

U.S. District Court
PAROLE-HEARING

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- HEARING
EQUAL PROTECTION

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. Appeals Court
TIMELY RELEASE

Brass v. County of Los Angeles, 328 F.3d 1192 (9th Cir. 2003). An arrestee brought an action against a deputy and county, alleging that the county violated his constitutional rights by failing to timely release him from jail. The district court granted summary judgment for the defendants and the arrestee appealed. The appeals court affirmed. The appeals court held that a 39-hour delay in releasing the detainee was not unreasonable and did not violate his constitutional rights. The court found that the arrestee did not have a constitutional right to have his release papers processed in any particular order, or ahead of other prisoners whose papers the sheriff's department received the same day as his. According to the court, the order in which the department handled prisoner releases was an administrative matter primarily within the department's discretion. The court held that the county's policy of not starting to process the day's releases until it received all information relating to prisoners scheduled for release, including wants and holds, was justified and reasonable in light of its responsibilities. (Los Angeles County Sheriff's Department, California)

U.S. District Court
PAROLE-REVOCATION

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. Appeals Court
PAROLE-POLICIES
EXPOST FACTO
GOOD-TIME

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
EX POST FACTO
PAROLE GRANTING

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
PAROLE- DUE
PROCESS

Sonntag v. Papparozi, 256 F.Supp.2d 320 (D.N.J. 2003). State prison inmates brought § 1983 action against members of a state parole board, alleging that temporary state parole board members' participation in the board's decisions violated state law and the inmates' Eighth and Fourteenth Amendment rights. The district court dismissed the case. The court held that participation in state parole board decisions by board members who were appointed by the Governor, without Senate confirmation, did not violate the due process rights of inmates. According to the court, the hearings in which the temporary board members participated did not infringe on the inmates' protected liberty interests. (New Jersey State Parole Board)

U.S. District Court
TEMPORARY RELEASE
MEDICAL CARE

U.S. v. Carneglia, 238 F.Supp.2d 502 (E.D.N.Y. 2003). An inmate asked the district court to order prison officials to allow him to receive dental implant treatment from his personal dentist, outside the correctional facility in which he was confined. The district court denied the inmate's application, finding that it lacked jurisdiction to direct such medical treatment. The court noted that, in any event, it would not direct such treatment because the inmate was not a good candidate for "furlough" based on his conviction and previous record. According to the court, dentures that would be provided by the facility, constituted sufficient dental treatment. The requested treatment would have required the inmate to visit his dentist 4 to 6 times over a period of 6 weeks. (Federal Correctional Institution, Fort Dix, New York)

U.S. District Court
PAROLE- REVOCATION

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. Appeals Court
PAROLE- CONDITIONS

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- DUE
PROCESS
PAROLE- HEARING

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. District Court
ALTERNATIVES TO
CONFINEMENT
TIMELY RELEASE

Barham v. Ramsey, 338 F.Supp.2d 48 (D.D.C. 2004). Persons who were arrested during a demonstration at the World Bank in Washington, D.C., brought a § 1983 action alleging that their arrests and detentions violated their constitutional rights. The district court dismissed the action, in part. The court held that failure to provide the arrestees with citation release, or a post and trial release option, did not constitute a deprivation of due process or equal protection, even though the arrestees were detained for a lengthy period. According to the court, the unavailability of citation release was due to unintended technological failures, and there was no evidence that the arrestees were treated differently than other groups of arrestees regarding the availability of a post and trial release option. The court noted that there were incompatibility problems with the cameras used to photograph arrestees and computer software. (Metropolitan Police Department, Washington, D.C.)

U.S. District Court
SEX OFFENDER

Beebe v. Heil, 333 F.Supp.2d 1011 (D.Colo. 2004). A prison inmate sued a state, claiming that his due process rights were violated when he was expelled, without notice or explanation, from a sex

offender treatment program that he was required to complete in order to be eligible for parole. The district court denied judgment on the pleadings for the state. The court held that the inmate had a cognizable property interest in being retained in the programs and had stated a claim that his procedural and substantive due process rights were violated. (Colorado Department of Corrections)

U.S. Appeals Court
TIMELY RELEASE

Berry v. Baca, 379 F.3d 764 (9th Cir. 2004). In three separate actions, arrestees who had been detained in a county jail for periods ranging from 26 to 29 hours after courts had authorized their release following resolution of their charges, brought § 1983 claims against a county sheriff in his official capacity. The district court consolidated the cases and dismissed them. The appeals court reversed and remanded, finding that summary judgment was precluded by fact issues as to whether the application of county policies which resulted in the detentions was unreasonable under the circumstances and thus amounted to a policy of deliberate indifference to the arrestees' constitutional rights. The court found that as a matter of law, a county's system of administrative processing of jail inmates could not be immune from allegations that, in practice, it amounts to deliberate indifference. (Los Angeles County Sheriff's Department)

U.S. District Court
BAIL

Bunyon v. Burke County, 306 F.Supp.2d 1240 (S.D.Ga. 2004). A detainee brought a § 1983 action stemming from his arrest and the alleged refusal of jail authorities to release him on bail. The court denied summary judgment for the defendants on the issue of whether the sheriff's department failed to bring the detainee before a judicial officer within 72 hours after his arrest. The court held that the sheriff's department contravened state statutes and violated the detainee's procedural due process rights by refusing to release the detainee, despite his proffer of sufficient funds to post the amount of bail that had been set. (Burke County Jail, Georgia)

U.S. Appeals Court
PAROLE- REVOCATION
PAROLE- DUE
PROCESS
PAROLE- CONDITIONS
SEX OFFENDER

Coleman v. Dretke, 395 F.3d 216 (5th Cir. 2004). A state prisoner who had been indicted for aggravated sexual assault of a child and indecency with a child, but had been convicted of only misdemeanor assault, challenged the revocation of his parole for his failure to enroll or participate in therapy. The prisoner alleged that the state violated his right to due process by imposing, without advance notice or a hearing, sex offender registration and therapy as conditions of his release. The district court denied his pro se habeas petition and the prisoner appealed. The appeals court reversed and remanded, finding that the state was required to provide procedural due process before imposing sex offender registration and therapy as conditions of release of a prisoner who had never been convicted of a sex crime. The appeals court found that the state's actions were not arbitrary and did not shock the conscience and therefore did not violate the prisoner's substantive due process rights. (Texas Department of Criminal Justice, Institutional Division)

U.S. Appeals Court
TIMELY RELEASE

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
PAROLE- VIOLATION
PAROLE- DUE
PROCESS

French v. Adams County Detention Center, 379 F.3d 1158 (10th Cir. 2004). An inmate brought a pro se civil rights action against county officials, alleging that he was denied an attorney and court appearance while held in jail for 73 days for an alleged parole violation. The district court dismissed the action and the inmate appealed. The appeals court held that the inmate's allegations were sufficient to state a claim under § 1983. (Adams Co. Detention Center, Colorado)

U.S. District Court
RELEASE DATE
TIMELY RELEASE

Green v. Baca, 306 F.Supp.2d 903 (C.D.Cal. 2004). An arrestee sued a county sheriff, seeking damages for his alleged over-detention. The district court denied summary judgment for the sheriff, in part. The court held that fact issues as to the reasonableness of a twelve and one-half hour delay, between receipt of an order authorizing release of the arrestee and the execution of the order, precluded summary judgment. The court found that Fourteenth Amendment due process standards, rather than the Fourth Amendment search and seizure principles, governed the question of whether the constitutional rights of the arrestee were violated when, following a legal arrest for a parole violation, he was detained for several days after a hearing that ended with a determination that he had not violated parole. (Los Angeles County Jail, California)

U.S. Appeals Court
PAROLE- DUE
PROCESS
PAROLE- GRANTING
EX POST FACTO

Mickens-Thomas v. Vaughn, 355 F.3d 294 (3rd Cir. 2004). After remand from the appeals court, a district court denied a prisoner's petition for habeas corpus relief and the prisoner appealed. The appeals court vacated and remanded. The appeals court held that a parole board's use of known but hitherto uncounted historical factors in denying the prisoner's parole application, after the prisoner brought legal actions challenging the board, created a sufficient appearance of vindictiveness to justify voiding any consideration of those newly-added factors. The court found that unconditional habeas corpus relief was the appropriate remedy for the parole board's willful

failure to comply with the court's mandate not to consider factors found to be in violation of ex post facto prohibitions. (Pennsylvania Board of Pardons)

U.S. Appeals Court
PAROLE- SEARCHES

Moore v. Vega, 371 F.3d 110 (2nd Cir. 2004). A homeowner brought a § 1983 action against state parole officers, alleging that the officers violated her Fourth Amendment right to be free from unreasonable searches when they entered her home without a warrant to search for an absconded parolee who they had been informed was residing there. The district court denied the officers' motion for summary judgment based on qualified immunity and they appealed. The appeals court vacated and remanded with instructions. The appeals court held that the officers' warrantless entry into the homeowner's residence was unreasonable and violated the homeowner's rights, but the officers were entitled to qualified immunity because they were entitled under the "special needs" doctrine and state parole rules and regulations to search the home of a parolee without probable cause or a warrant. (Division of Parole, State of New York)

U.S. District Court
RELEASE DATE
CREDIT

Royal v. Durison, 319 F.Supp.2d 534 (E.D.Pa. 2004). A state inmate filed a § 1983 action alleging he was detained in excess of the statutorily prescribed maximum for the crimes for which he was convicted, and that prison officials failed to consider his request for adjustment of his pre-commitment time. The district court granted summary judgment in favor of the defendants, finding that the director of classification for a city prison system was not deliberately indifferent to the inmate's claim, that the clerk responsible for keeping records used to determine pre-commitment time had no authority to calculate the inmate's sentence, and officials had meaningfully and expeditiously considered the inmate's claim. The court noted that the director investigated the circumstances around the inmate's multiple arrests after he was notified of a possible miscalculation, and notified the inmate in two separate correspondences that he was unable to change the period of the sentence by crediting time served. (Philadelphia Prison System, Pennsylvania)

U.S. District Court
PAROLE- DENIAL
EX POST FACTO
SEX OFFENDERS

Shaffer v. Meyers, 338 F.Supp.2d 562 (M.D.Pa. 2004). A prisoner filed a pro se habeas corpus petition, alleging that a change in state parole procedures violated the ex post facto clause. The district court denied his petition, finding that the application of parole guidelines did not increase the prisoner's punishment, and his term of incarceration was not increased by any action of the state parole board. The prisoner had refused to participate in a sex offender treatment program and was denied parole on three occasions. The prisoner challenged the parole board's changes in its procedures, which placed an emphasis on participation in programs. The court held that participation in programs was rationally related to legitimate penological objectives, noting that program participation was just one factor considered by the board. (State Correctional Institution at Rockview, Pennsylvania)

U.S. District Court
PAROLE- DUE
PROCESS

Taylor v. Sebelius, 350 F.Supp.2d 888 (D.Kan. 2004). A state prison inmate brought a civil rights action against state officials, alleging that a state regulation imposing a \$25 monthly supervision fee on parolees was unlawful and violated his rights under the ex post facto clause and the Fifth, Eighth and Fourteenth Amendments. The district court granted summary judgment in favor of the officials. The court held that the deduction of parole supervision fees from the inmate's account was not cruel and unusual punishment and the regulation did not violate the ex post facto clause. The inmate claimed that he was unable to purchase basic hygiene items for a short time because of the fees. The court found that the state legislature did not intend the fee to be punitive and the fee was not so extreme as to constitute punishment. According to the court, collection of the fee was reasonably related to legitimate penological interests. The court held that due process did not entitle the prison inmate to a hearing before the money was taken from his inmate account. (Winfield Correctional Facility, Kansas)

U.S. District Court
SUPERVISED RELEASE

U.S. v. Wolvin, 339 F.Supp.2d 1062 (W.D.Wis. 2004). A district court judge revoked a defendant's supervised release. The court held that the defendant's refusal to address his addiction to alcohol warranted revocation of his supervised release. The court placed him in a residential drug treatment program. The court noted that the defendant's special conditions of supervised release required him to abstain from alcohol use and to participate in a program of alcohol and drug counseling and testing, but the defendant continued to use alcohol consistently. (Eastern District of Wisconsin)

U.S. District Court
PAROLE- DUE
PROCESS

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. District Court
PAROLE- SEARCHES

Wilson v. City of Fountain Valley, 372 F.Supp.2d 1178 (C.D.Cal. 2004). A parolee brought an action under § 1983 alleging that a state parole agent and police officers violated his constitutional rights by searching his residence. The district court granted summary judgment in

favor of the defendants in part. The court held that the parole agent and officers had a reasonable suspicion that the parolee, who was a registered sex offender, was engaged in criminal activity based on a female's complaint that he was stalking her, which was consistent with the parolee's prior pattern of conduct. (City of Fountain Valley, California)

2005

U.S. District Court
TIMELY RELEASE

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. Appeals Court
PAROLE- GRANTING
LIBERTY INTEREST

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
RELEASE ON RECOG-
NIZANCE
TIMELY RELEASE

Bryant v. City of New York, 404 F.3d 128 (2nd Cir. 2005). Detainees who had been arrested for disorderly conduct brought a § 1983 action alleging a substantive due process violation as the result of overlong detention. The district court granted summary judgment for the defendants and the detainees appealed. The appeals court affirmed. The court held that the police officers' decision to detain the arrestees overnight rather than issuing desk appearance tickets (DATs) which were authorized under state law, was not objectively unreasonable. The court noted that DATs were discretionary rather than required, and the length of detention was well within the range of flexibility allowed to states. According to the court, the detainees were members of a difficult-to-control crowd that demanded substantial police manpower, and the additional paperwork required for DATs would have drawn officers off of the streets. The detainees had been part of a demonstration protesting antigay violence. (New York City Police Department)

U.S. Appeals Court
TIMELY RELEASE
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- REVOCATION
PAROLE- DUE
PROCESS

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
PROBATION/REVOCA-
TION
TIMELY RELEASE

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. Appeals Court
TIMELY RELEASE
PRETRIAL RELEASE

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. Appeals Court
PAROLE- REVOCATION

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. Appeals Court
PAROLE- DUE
PROCESS

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
PAROLE- CONDITIONS

Jacobs v. Ramirez, 400 F.3d 105 (2nd Cir. 2005). A parolee brought a pro se § 1983 action against parole officers, alleging that he had been paroled to an unsafe residence and effectively compelled to remain there. The district court dismissed the action and the parolee appealed. The appeals court affirmed in part and reversed and remanded in part. The court held that the state retained a minimal duty to the parolee after his release, to the extent that it continues to impose limitations on the parolee. According to the court, the state was potentially liable for compelling the parolee to live in unsafe housing by being paroled to such housing, and then denied the opportunity to relocate and denied assistance in obtaining employment. (N.y. State Div. of Parole)

U.S. District Court
PAROLE- CONDITIONS

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
EARLY RELEASE

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. District Court
TIMELY RELEASE

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
PRE-RELEASE

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. District Court
TIMELY RELEASE

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 denied qualified immunity to the two sheriffs who were defendants, on claims that they continued detention beyond scheduled release dates, noting that the detainees claimed they were over-detained for durations ranging from one to ten days, with an average over-detention period of 3.9 days. According to the court, the detainees stated a claim against the county under § 1983 with their allegations that the county defendants had actual knowledge that the challenged practices at the county jail were unconstitutional. (Fulton County Jail, Georgia)

U.S. District Court
PAROLE- DUE
PROCESS
PAROLE- GRANTING
LIBERTY INTEREST

Robinson v. Fahey, 366 F.Supp.2d 368 (E.D.Va. 2005). A state inmate brought a § 1983 action against members of a state parole board, challenging their decision to deny him discretionary parole. The district court dismissed the action. The court held that the inmate's liberty interest in parole, if it exists at all, is so insignificant that he has no due process right to contest the validity of a reason given for denial of parole. The court found that the inmate has a due process right, at most, to be given a reason for denial of parole, and does not have a due process right to judicial review of the validity of the reason. (Virginia Parole Board)

U.S. Appeals Court
CONDITIONAL
RELEASE
PRETRIAL RELEASE

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)

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
PAROLE-DUE PROCESS
PAROLE HEARING

Settles v. U.S. Parole Com’n., 429 F.3d 1098 (D.C.Cir. 2005). A District of Columbia inmate incarcerated under contract at a facility in another state brought a § 1983 action against the United States Parole Commission, alleging that denial of representation at his parole hearing violated the Equal Protection Clause. The district court dismissed the case and the inmate appealed. The appeals court affirmed in part and entered judgment for the Commission. The court held that the Commission did not act arbitrarily and capriciously in promulgating a rule that resulted in the inmate’s lack of representation at a parole hearing. The regulation effectively denied the inmate representation while it permitted prisoners who were housed at federal facilities to be represented. (United States Parole Commission, Corrections Corporation of America, Youngstown, Ohio)

U.S. District Court
BAIL
TIMELY RELEASE

Sizer v. County of Hennepin, 393 F.Supp.2d 796 (D.Minn. 2005). An arrestee sued a county and county officials asserting a state claim for false imprisonment and violations of state and federal constitutional rights. The arrestee complained that his 10½ hour detention pending release on bail was unreasonable. The court granted summary judgment in favor of the defendants. The court held that the 10½ hour detention was objectively reasonable and not unconstitutional. The court found that the arrestee failed to prove a continuing, widespread, persistent custom or practice of unconstitutional over-detentions, despite an alleged sign posted in a waiting area that alerted inmates that they could expect delays of up to eight hours in processing their releases. The county responded that the arrestee’s processing was delayed by problems with its security count, which halted out-processing of detainees for two hours. (Hennepin County Adult Detention Center, Minnesota)

U.S. District Court
PAROLE-REVOCATION

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
PRETRIAL RELEASE
VICTIM

U.S. v. Marcello, 370 F.Supp.2d 745 (N.D.Ill. 2005). In a pretrial detention hearing, the government asked the court for permission to have the son of the murder victim offer an oral statement opposing the release of the defendants. The district court denied the request, finding that the statute that allows crime victims to be “reasonably heard at any public proceeding in the district court involving release, plea, sentencing or any parole hearing” did not mandate oral presentation of a victim statement. The court noted that a written statement could be considered, but that the statement was not material to the “decision at hand.” (U.S. District Court, Northern District of Illinois)

U.S. District Court
PRE-RELEASE

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
CONDITIONAL
RELEASE
PRETRIAL RELEASE

U.S. v. Scott, 424 F.3d 888 (9th Cir. 2005). A defendant who was indicted for unlawfully possessing an unregistered shotgun moved to suppress the shotgun and his statements concerning it. The district court granted the motion and the government appealed. The appeals court affirmed. The court held that warrantless searches, including drug testing, imposed as a condition of pretrial release, required a showing of probable cause despite the defendant’s pre-release consent. According to the court, the unconstitutional conditions doctrine limits the government’s ability to exact waivers of rights as a condition of benefits, even when those benefits are fully discretionary. The court noted that pat-downs and similar minor intrusions need only be supported by reasonable suspicion. According to the court, searches were not necessary to ensure that the defendant appeared at trial. Among the defendant’s conditions of release was his consent to “random” drug testing “any time of the day or night by any peace officer without a warrant.”

and to having his home searched for drugs “by any peace officer any time day or night without a warrant.” (U.S. District Court, Nevada)

U.S. Appeals Court
PAROLE- SEARCHES

U.S. v. Trujillo, 404 F.3d 1238 (10th Cir. 2005). A parolee whose home was searched sought to suppress evidence from the search, which resulted in his conviction of being a felon in possession of a firearm and ammunition. His motion was denied and he appealed. The appeals court affirmed, finding that the parolee’s parole agreement was still in effect after he had been placed under arrest, so the warrantless search of his residence did not violate the Fourth Amendment’s prohibition against unreasonable searches. (West Valley City Police Department, Utah)

2006

U.S. District Court
PAROLE- REVOCATION
PAROLE- DUE
PROCESS

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
TIMELY RELEASE

Bynum v. District of Columbia, 412 F.Supp.2d 73 (D.D.C. 2006). Persons who had been, were, or would be incarcerated by the District of Columbia Department of Corrections brought a § 1983 class action challenging the Department’s policy of conducting suspicionless strip searches of inmates who were declared releasable after their court appearances, and challenging alleged over-detentions. The district court preliminarily approved a proposed settlement. Following a final approval hearing, the district court held that final approval was warranted and that the allocation of a sum for distribution to all class members who submitted claims was a fair method of distribution. The court held that the distribution fund of \$12 million was very favorable, especially in view of the low number of opt-outs and objectors. The court found that there was no collusion between the parties or their counsel and that the settlement comported with the rule governing class actions and with due process requirements. The court found that the attorney fee award of 33% of the settlement fund, or \$4 million, was reasonable, noting that counsel had engaged in protracted efforts over four years to obtain the outstanding settlement in both monetary and injunctive terms, the case was complex and involved novel issues, the case carried a serious risk of lack of success, and the settlement met with a high level of class satisfaction. The court defined the “Over-Detention Injunctive Relief Class” as: (a) Each person who has been, is or will be incarcerated in any District of Columbia Department of Corrections facility beginning in the three years preceding the filing of the action on or about May 16, 2002 up to and until the date this case is terminated; and (b) who was not released, or, in the future will not be released by midnight on the date on which the person is entitled to be released by court order or the date on which the basis for his or her detention has otherwise expired. (District of Columbia Department of Corrections)

U.S. Appeals Court
PAROLE- CONDITIONS

Farrell v. Burke, 449 F.3d 470 (2nd Cir. 2006). A former state parolee brought a § 1983 action against parole officers, alleging that they violated his constitutional rights under the due process clause of the Fourteenth Amendment by imposing and enforcing a special condition of parole that prohibited his possession of “pornographic material.” The district court granted the defendants’ motion for summary judgment, and the parolee appealed. The appeals court affirmed, and held that: (1) parole officers who enforced the special condition by arresting the parolee were “personally involved” in any violation of his constitutional rights, even though neither of them had imposed the special condition; (2) the book found in the parolee’s apartment, which contained sexually explicit pictures and lurid descriptions of sex between men and boys, fell within any reasonable definition of “pornography,” and so the parolee had adequate notice that it was prohibited under the first prong of the as-applied vagueness challenge; (3) the special condition provided adequate standards for the parole officers to determine whether the book in question was prohibited, under the second prong of the as-applied vagueness challenge; (4) this case presented no threat of chilling constitutionally-protected conduct that might have supported a facial challenge to the vagueness of the special condition; and (5) under the circumstances, the court could not say that the special condition’s overbreadth was both real and substantial in relation to its plainly legitimate sweep. (New York)

U.S. District Court
PAROLE- DUE
PROCESS

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 Correctional Institution, Houtzdale, Pennsylvania)

U.S. District Court
SEX OFFENDERS
PRE-RELEASE

Fox v. Lappin, 409 F.Supp.2d 79 (D.Mass. 2006). A federal prisoner brought suit against the Director of the Federal Bureau of Prisons and a warden, seeking declaratory judgment that his classification as a sex offender based on a 1981 state sexual assault conviction was improper. The prisoner also challenged the Bureau's failure to consider him for community center placement based on his failure to participate in a sex offender program. The district court held that a federal prisoner cannot be designated as a sex offender based on a state sex offense for purposes of the federal statute requiring that notice be given to state and local authorities of an inmate's release if the inmate has been designated as a sex offender, and that designated sex offender register in the state in which he will reside, because the Attorney General's authority under the statute is limited to designating federal offenses as sex offenses. The court found that as a matter of inmate classification, a prisoner's classification as a sex offender on basis of state sexual assault conviction was not an abuse of discretion. The court held that the BOP policy that categorically excludes inmates with sex offender safety factors from placement in community corrections centers is a permissible interpretation of the rule and that the BOP did not abuse its discretion in denying an inmate designated as a sex offender placement in a community corrections center based on his failure to participate in a mandatory sex offender program. The court noted that the federal statute governing pre-release custody of a federal prisoner does not create a liberty interest in the prisoner's transfer to the less restrictive environment of community center placement, as the statute does not mandate community center placement nor any placement in a less restrictive environment, it merely insures placement under pre-release conditions except where no such placement is practicable. (Federal Medical Center, Devens, Massachusetts)

U.S. Appeals Court
EX POST FACTO
PAROLE- GRANTING
SEX OFFENDER

Grennier v. Frank, 453 F.3d 442 (7th Cir. 2006). A state prisoner brought § 1983 action alleging a violation of the due process and ex post facto clauses, in connection with the denial of his parole application based on his classification as a sex offender. The district court granted summary judgment in favor of the defendants and the prisoner appealed. The appeals court affirmed and held that: (1) the prisoner did not have a due process liberty or property interest in release on parole or in a parole hearing; and (2) parole officials' failure to grant a parole, based upon their increased concern with public safety, did not violate the ex post facto clause. The court noted that although the Wisconsin statute provided for the opportunity for parole after 20 years in prison, release was wholly discretionary. According to the court, officials did not violate the ex post facto clause, where the officials applied the same parole laws that were in force when the prisoner committed his crime. The court noted that parole officials who become more concerned with public safety, and who act on that concern by insisting that prisoners complete sex-offender treatment programs before release on parole, do not violate the ex post facto clause or the due process clause. (Wisconsin)

U.S. District Court
PAROLE- DUE
PROCESS
EX POST FACTO

Michael v. Ghee, 411 F.Supp.2d 813 (N.D. Ohio 2006). Ohio "old law" inmates serving indeterminate sentences brought a § 1983 action, alleging that the state's parole system was unconstitutional. The state moved to dismiss and for summary judgment. The district court granted summary judgment for the state. The court held that the inmates had no valid procedural due process claim and that the state had rational reasons, satisfying equal protection, for requiring "old law" inmates to continue to serve their indeterminate sentences, subject to parole board determinations, after the law was changed to provide for exact sentences and the elimination of parole. According to the court, the parole guidelines promulgated in 1998 had a rational basis and the parole guidelines were not laws, subject to the ex post facto clause. The court noted that state law makes parole discretionary, and therefore inmates do not have a due process liberty interest in parole under state law. Since the inmates did not have a liberty interest in parole itself, they could not have a liberty interest in parole consideration or other aspects of parole procedures, and thus had no procedural due process claim. The court found that the state had several rational reasons, satisfying equal protection, for requiring so-called "old law" inmates to continue to serve their indeterminate sentences. The reasons included the desire to avoid retroactive legislation and alteration of sentences, to give "old law" inmates an incentive to obey prison regulations, and to acknowledge the seriousness of the convicted offenses. (Ohio Adult Parole Authority and Chillicothe Correctional Institution)

U.S. District Court
CONDITIONAL
RELEASE
ALIEN

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
PAROLE- DUE
PROCESS
EQUAL PROTECTION
EX POST FACTO
PARDON

Pennsylvania Prison Society v. Rendell, 419 F.Supp.2d 651 (M.D.Pa. 2006). An advocacy group brought an action in state court challenging the legality of proposed changes to the state constitution with regard to pardoning powers and the state Board of Pardons. Following approval of the changes by the electorate, the defendants removed the action to federal court. After state-law claims were remanded and the defendants prevailed on appeal before the state supreme court, the group filed an amended complaint, alleging that the constitutional amendments violated the Due Process Clause, the Ex Post Facto Clause, the Equal Protection Clause, the Eighth Amendment, and the Guarantee Clause. The parties cross-moved for summary judgment. The district court held that including a crime victim on a state pardon board, even when the recommendation for a pardon or commutation must be unanimous before it may be considered by the governor, does not violate due process. The court found that the retroactive application of the amendments providing for the inclusion of a crime victim on the Board of Pardons did not violate the Ex Post Facto Clause, but the court held that the retroactive application of the amendments requiring a unanimous vote for the Board of Pardons to recommend a commutation violated the Ex Post Facto Clause. The ballot question that proposed the amendments read: *Shall the Pennsylvania Constitution be amended to require a unanimous recommendation of the Board of Pardons before the Governor can pardon or commute the death sentence of an individual sentenced in a criminal case to death or life imprisonment, to require only a majority vote of the Senate to approve the Governor's appointments to the Board, and to substitute a crime victim for an attorney and a corrections expert for a penologist as Board members?* (Pennsylvania Board of Pardons)

U.S. Appeals Court
ELECTRONIC
MONITORING
EX POST FACTO

Rivera-Feliciano v. Acevedo-Vila, 438 F.3d 50 (1st Cir. 2006). A class of prisoners convicted of murder, who had been released pursuant to an electronic surveillance program (ESP), filed a complaint under § 1983 seeking a preliminary injunction that would prevent their reincarceration pursuant to a regulation which became effective after their releases. The district court granted the preliminary injunction and the officials appealed. The appeals court held that a stay of proceedings while parallel state proceedings presenting the same legal issues ran their course was appropriate, remanding with instructions. (Puerto Rico Administration of Corrections)

U.S. Appeals Court
PAROLE- SEARCHES

U.S. v. Massey, 461 F.3d 177 (2d Cir. 2006). A parolee was convicted in the district court of unlawful possession of a firearm, and the parolee appealed. The appeals court affirmed, holding that the search of the apartment where the parolee was living, during a home visit, was reasonable. The court noted that the parolee agreed to home visits as a condition of parole, the parolee was living in his mother's apartment, the officer designated the bedroom assigned to parolee as the room she wished to visit and immediately upon entering the apartment the officer requested to see the bedroom and proceeded directly to it, and the bedroom was the only room the officer visited during the home visit until after she discovered weapons. (New York)

U.S. Appeals Court
PAROLE VIOLATIONS

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
PAROLE- VIOLATION
ELECTRONIC
MONITORING

Yahweh v. U.S. Parole Com'n, 428 F.Supp.2d 1293 (S.D.Fla. 2006). A parolee brought an action against the United States Parole Commission (USPC), seeking declaratory judgment or other relief from his placement on the Home Detention Electronic Monitoring Program upon the USPC's determination that he violated his parole by submitting incomplete and untruthful information to his probation officer. USPC objected to a magistrate judge's report and recommendation that the parolee's motion for a preliminary injunction should be granted. The district court held that the USPC was within its discretion in placing the parolee on the program

for violating his parole, and that a preliminary injunction was not warranted. (United States Parole Commission)

2007

U.S. District Court
TIMELY RELEASE

Avalos v. Baca, 517 F.Supp.2d 1156 (C.D.Cal. 2007). A county jail detainee brought an action against a county sheriff and under-sheriff, alleging claims arising out of his over-detention and involuntary waiver of an over-detention claim. The defendants moved for summary judgment and the district court granted the motion. The court held that the defendants did not maintain an unconstitutional policy, practice, or custom of over-detention and that the sheriff and under-sheriff were not individually liable for the detainee's over-detention under § 1983. According to the court, evidence demonstrated that only 0.4 percent of persons released by the department during the relevant time period were over-detained, the department had taken steps to reduce the number of over-detentions in recent years, and the total number of over-detentions by the department had dramatically decreased over time. The court noted that the detainee had no freestanding constitutional right to be free of a coercive waiver of rights and that the detainee failed to establish that the county sheriff and others conspired to violate his constitutional rights. A member of the department's risk management team had approached the detainee and offered him \$500 if he would release all claims. (Los Angeles County Sheriff's Department, California)

U.S. District Court
DUE PROCESS
LIBERTY INTEREST
TIMELY RELEASE

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 the detainee sufficiently alleged that the Director of District of Columbia Department of Corrections (DOC) was directly involved in violations of the detainee's constitutional rights, as required to state a claim under § 1983 against a government official in his individual capacity. The detainee alleged that the Director refused to transfer the detainee from the jail to a correctional treatment facility and failed to train DOC employees under his supervision in such a way as to prevent the detainee's over-detention (detention beyond proper release date). The court found that the Director of District of Columbia Department of Corrections (DOC) could not be liable in his individual capacity, under the theory of respondeat superior, to the jail detainee for allegedly unconstitutional actions or omissions of his subordinates. The appeals court found that the detainee's allegation that policies or practices of the District of Columbia Department of Corrections (DOC) pertaining to training, supervision and discipline of employees responsible for the detainees' release from DOC custody resulted in his untimely release from jail, in violation of his constitutional rights, stated a claim for municipal liability under § 1983. 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 the timely release of inmates from DOC custody, and that the Director's deliberate failure to do so caused the 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
SEARCHES

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 bullpens 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
RELEASE

Bullock v. Sheahan, 519 F.Supp.2d 763 (N.D.Ill. 2007). Male jail inmates brought a class action against a county and county sheriff alleging violations of the Fourth and Fourteenth Amendments based on an alleged policy and/or practice under which male inmates were subjected to strip searches upon returning to a county department of corrections for out-processing after having been ordered released. The sheriff and county moved to strike certain portions of the inmates' motion for summary judgment. The district court granted the motion in part and denied in part. The court held that the sheriff and county had notice of the male jail inmates' claims challenging the policy and practice, despite allegations that the claims regarding the inmates having to strip in a large non-private group setting came as a surprise to the county and the sheriff because they were never addressed by inmates during fact or expert discovery. The court found that factual allegations contained in the complaint satisfied the notice pleading standards with respect to all claims, and that the county and sheriff did not provide specific evidence of any misrepresentations or sandbagging other than an affidavit stating that discovery did not focus on the privacy issue. (Cook County Department of Corrections, Illinois)

- U.S. District Court
FAILURE TO PROTECT
Dickens v. District of Columbia, 502 F.Supp.2d 90 (D.D.C. 2007). A decedent's sister brought a wrongful death action against a railroad and the District of Columbia after the decedent was struck and killed by a train shortly after his release from prison. The defendants moved to dismiss the complaint. The district court granted the railroad's motion and denied the District's motion. The decedent's sister alleged that her brother was severely mentally ill and was released from the D.C. Jail without adequate preparation and without informing his relatives, which led to his death. (District of Columbia)
- U.S. District Court
SEX OFFENDERS
Doe v. Schwarzenegger, 476 F.Supp.2d 1178 (E.D.Cal. 2007). Registered sex offenders brought an action challenging the constitutionality of California's Sexual Predator Punishment and Control Act (SPPCA), which imposed residency restrictions and global positioning system (GPS) monitoring requirements on registered sex offenders. The offenders moved for a preliminary injunction to enjoin enforcement of the SPPCA's residency and GPS monitoring provisions. The district court denied the motion. The court held that SPPCA did not apply retroactively to offenders who were convicted, paroled, or otherwise released from incarceration prior to the effective date of the statute. The court noted that the SPPCA was a voter initiative that was silent on the issue of retroactivity, and extrinsic sources did not show that voters intended for it to apply retroactively. (California Sexual Predator Punishment and Control Act)
- U.S. District Court
RELEASE ON RECOGNIZANCE
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
EX POST FACTO
PAROLE-DENIAL
RETALIATION
Edwards v. Pa. Bd. of Prob. & Parole, 523 F.Supp.2d 462 (E.D.Pa. 2007). A prisoner filed a § 1983 suit, seeking injunctive and declaratory relief against a Board of Probation and Parole, claiming violations of the Ex Post Facto Clause and Eighth Amendment, and asserting that his parole was denied in retaliation for exercising his constitutional rights. The district court granted summary judgment in favor of the board. The court noted that the Ex Post Facto Clause applies to a statute or policy change that alters the definition of criminal conduct or increases the penalty by which a crime is punishable. Under Pennsylvania law, although parole is an alteration of the terms of confinement, a parolee continues to serve his unexpired sentence until its conclusion. According to the court, under Pennsylvania law, a "parole" is not an act of clemency but a penological measure for the disciplinary treatment of prisoners who seem capable of rehabilitation outside of prison walls; parole does not set aside or affect the sentence, and the convict remains in the legal custody of the state and under the control of its agents, subject at any time for breach of condition to be returned to the penal institution. The court held that denial of the prisoner's re-parole by Board of Probation and Parole, after his conviction as a parole violator, was not re-imposition of the prisoner's unexpired life sentence, in violation of the Ex Post Facto Clause, but rather, under Pennsylvania law, the prisoner's sentence was not set aside by his parole. According to the court, the prisoner remained in the legal custody of the warden until expiration of his sentence, and the prisoner had no protected liberty interest beyond that of any other prisoner eligible to be considered for parole while serving out the remainder of a maximum sentence. The court held that changes to the Pennsylvania Parole Act did not create a significant risk of increasing the prisoner's punishment in violation of the Ex Post Facto Clause, based on the Board of Probation and Parole's denial of the prisoner's re-parole due to factors of prior parole failures and lack of remorse, since the relative weight of such factors in the parole calculus of amendments to the Parole Act did not change, and the prisoner produced no evidence that the change in the Parole Act had any effect on the Board's decision. (Pennsylvania Board of Probation and Parole)
- U.S. District Court
TIMELY RELEASE
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
GRADUATED
RELEASE
MEDICAL CARE
Giddings v. Joseph Coleman Center, 473 F.Supp.2d 617 (E.D.Pa. 2007). A parolee brought a civil rights action against a parole officer and warrant officers who transported him back to prison from a halfway house, alleging that they were deliberately indifferent to his serious physical and mental health needs in violation of the Eighth and Fourteenth Amendments. The defendants moved for summary judgment on the ground of qualified immunity. The district court granted the motion. The court held that the parole officer was entitled to qualified immunity from the Eighth Amendment claim that she was deliberately indifferent to the parolee's need for medical treatment for a self-inflicted cut on his arm, noting that the cut was not serious because the parolee did not experience significant blood loss or infection, and the officer was not indifferent to the cut as evidenced by her offer to take the parolee to the

hospital the next day. The court ruled that the officer was entitled to qualified immunity from the claim that she was deliberately indifferent to parolee's mental health needs, where evidence did not show that the parolee's mental health needs were serious on the day he cut himself, as there was no indication of a genuine suicide attempt, and the officer was not indifferent to those needs as she sent the parolee to the mental health unit of the halfway house. (Joseph Coleman Center, Pennsylvania)

U.S. District Court
DISCRIMINATION
HOME DETENTION
WORK RELEASE

Goldhaber v. Higgins, 576 F.Supp.2d 694 (W.D.Pa. 2007). An attorney brought an action against state officials, county officials and a prison board, alleging civil rights violations in connection with his incarceration. The district court granted the defendants' motion for dismissal in part and denied in part. The court held that the attorney adequately alleged that officials retaliated against him for filing a motion for house arrest or work release, as required to state a claim under the Petition Clause. According to the court, the attorney's application to the court made it clear that a prior judicial order had afforded him work release subject to the rules and regulations of the facility where he was housed, and that he was requesting release to house arrest to facilitate work release. The court found that the attorney asserted that he had been subjected to arbitrary and irrational terms of confinement, as required to state an equal protection claim. The court noted that the attorney's complaint alleged conduct on the part of the defendants indicating the presence of discrimination against the attorney for the specific purpose of preventing him from participating in a work release program. (Bedford County Prison Board, Pennsylvania)

U.S. District Court
TEMPORARY
RELEASE
DUE PROCESS

Gutierrez v. Joy, 502 F.Supp.2d 352 (S.D.N.Y. 2007). A pro se prisoner brought a § 1983 action against the state and various state corrections officials in their official and individual capacities, alleging that the officials violated his due process rights when he was removed from a temporary release program. 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 state corrections officials followed required procedures governing state temporary release program hearings, specifically whether a prisoner participating in the program received notice of the reasons for a Temporary Release Committee hearing and an opportunity to reply to the charges against him before he was transferred to another location and removed from the temporary release program. According to the court, the proceeding that was held in the prisoner's absence to determine his status in the temporary release program, without an opportunity for him to speak on his own behalf, did not fulfill the requirements of fairness and due process, and resulted in prejudice toward the inmate, notwithstanding the fact that the prisoner was under investigation. The court noted that even if the facts of the case were undisputed and made it clear that the prisoner violated the regulations of the program, the Temporary Release Committee retained discretion to recommend that he not be removed from the program. According to the court, the short letter provided by corrections officials to the prisoner could not cure any deprivation of due process resulting from his absence from a hearing regarding his program status, as the letter did not afford the prisoner the ability to dispute the claims against him pertaining to his alleged violation of program rules. (Fulton Correctional Facility, New York)

U.S. Appeals Court
PAROLE –
CONDITIONS
PAROLE –
REVOCATION

Inouye v. Kemna, 504 F.3d 705 (9th Cir. 2007). A parolee brought a § 1983 action in state court against his parole officer, alleging that the officer violated his First Amendment rights by requiring him to attend a drug treatment program that required participation in meetings that were rooted in a regard for a higher power. The case was removed to federal court. The district court granted summary judgment in favor of the parole officer, and parolee appealed. The appeals court reversed and remanded, finding that the parole officer violated the Establishment Clause, and that pertinent Establishment Clause law was clearly established at the time of officer's violation. The parole officer had recommended the revocation of the parolee's parole because he refused to participate. (Hawaii)

U.S. Appeals Court
GRADUATED
RELEASE
PLRA- Prison Litigation
Reform Act

Jackson v. Johnson, 475 F.3d 261 (5th Cir. 2007). An individual who had been released from prison on mandatory supervision and who resided in a privately operated halfway house, apparently as a condition of his mandatory supervision, brought an action under § 1983 and § 1985, asserting that his access to the courts had been diminished in violation of the First and Fourteenth Amendments. The district court dismissed his suit, denied his motion for reconsideration, and, following his appeal, denied his request for leave to proceed in forma pauperis (IFP) on appeal. The court of appeals held that the individual was a "prisoner" within the meaning of the Prison Litigation Reform Act's (PLRA) three strikes provision and, thus, could not proceed IFP on appeal. The appeals court denied the motion to proceed in forma pauperis and dismissed the appeal. The court noted that, to the extent that the halfway house resident argued that the state could not detain him in the halfway house because his residence there was voluntary and not a condition of his release, the proper vehicle for his challenge was a habeas petition rather than a § 1983 action. According to the court, PLRA's three-strikes provision does not bar prisoners from proceeding in forma pauperis (IFP) in a habeas action, even if the prisoner has accumulated three strikes. According to the court, although the supervisee had been released from confinement in prison, his release was not to the general public, but was to a facility where he was locked up 16 to 24 hours a day and from which he could leave only for very limited purposes. The court noted that even if the supervisee's time at the halfway house was for primarily non-punitive purposes, that is, to reintegrate him into society, his confinement resulted from his criminal violation, as he remained under the supervision of the Pardons and Paroles Division. (Pardons and Paroles Division of the Texas Department of Criminal Justice, Fort Worth, Texas)

U.S. District Court
EARLY RELEASE
LIBERTY INTEREST

Kotz v. Lappin, 515 F.Supp.2d 143 (D.D.C. 2007). A federal prisoner moved for injunctive relief ordering the Bureau of Prisons (BOP) and BOP director to reverse its refusal for the second time to allow the prisoner to participate in a Residential Drug Abuse Program (RDAP) and receive a sentence reduction. The district court denied the motion. The court held that the RDAP statute did not grant prisoner a liberty interest in the possibility of early release. The court found that the BOP program statement restricting early release for participation in RDAP to one time was an interpretive rule not subject to the Administrative Procedure Act (APA). (Federal Correctional Institute, Cumberland, Maryland)

U.S. District Court DUE PROCESS PAROLE- REVOCATION	<p><i>L.H. v. Schwarzenegger</i>, 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)</p>
U.S. Appeals Court PAROLE EX POST FACTO DUE PROCESS EQUAL PROTECTION	<p><i>Michael v. Ghee</i>, 498 F.3d 372 (6th Cir. 2007). Inmates in Ohio correctional facilities who were sentenced prior to Ohio's enactment of a revised sentencing system on July 1, 1996, brought an action in state court claiming that lack of retroactivity of the new sentencing scheme and the implementation of the 1998 parole guidelines violated the Ex Post Facto, Due Process, and Equal Protection Clauses of the Constitution, as well as various provisions of state law. After the case was removed to federal district court, the court granted the state defendants' motion for dismissal and for summary judgment. The inmates appealed. The appeals court affirmed. The court held that the state's decision not to apply the new sentencing law retroactively and to adopt new parole guidelines had a rational basis, and the retroactive application of the 1998 Ohio parole guidelines did not violate the Ex Post Facto Clause.(Ohio Adult Parole Authority)</p>
U.S. District Court RELEASE DATE TIMELY RELEASE	<p><i>Peterson v. Tomaselli</i>, 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 Correctional Institution, Ray Brook, New Jersey)</p>
U.S. District Court TIMELY RELEASE	<p><i>Portis v. City of Chicago</i>, 510 F.Supp.2d 461 (N.D.Ill. 2007). Arrestees brought a class action challenging the unconstitutional practice of delaying the release of persons arrested for ordinance violations that were punishable by only a fine. After their class was certified, the arrestees moved for summary judgment. The district court denied the motion. The court held that summary judgment was precluded by a genuine issue of material fact as to when the steps necessary to process persons arrested for fine-only ordinance violations were completed. (City of Chicago, Illinois)</p>
U.S. District Court EARLY RELEASE	<p><i>Roberts v. Mahoning County</i>, 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)</p>
U.S. District Court PAROLE-LIABILITY	<p><i>Smith v. U.S.</i>, 518 F.Supp.2d 139 (D.D.C. 2007). The mother of a child who was murdered by a parolee brought an action under the Federal Tort Claims Act (FTCA) against the United States. The district court granted the defendants' motion for dismissal. The court held that an FTCA claim did not accrue until the mother knew or should have known that the parolee was the person who killed her daughter, and that his presence in the community was connected to the government in some way. The court found that the mother failed to make a necessary showing to delay the accrual of her claim, the mother was not entitled to deviation from the objective standard for determining whether she established that she could not have discovered her injury and its cause with the exercise of due diligence. According to the court, even if extreme circumstances could justify a deviation from the objective standard for whether an FTCA plaintiff established that she could not have discovered her injury and its cause with the exercise of due diligence, the mother's affidavit and declaration of her psychiatrist demonstrated that she had suffered tremendously since the death of her daughter, but it did not establish sufficiently extreme mental disability. (District of Columbia)</p>
U.S. District Court CREDIT PAROLE- REVOCATION	<p><i>Thompson v. District of Columbia Dept. of Corrections</i>, 511 F.Supp.2d 111 (D.D.C. 2007). A federal prisoner filed a petition for a writ of habeas corpus alleging that his custody, based on a parole violator warrant issued by the United States Parole Commission, unlawfully extended his sentence beyond the expiration date. The district court denied the petition. The court held that the prisoner's custody did not unlawfully extend his sentence beyond the expiration date. According to the court, the Commission did not usurp a judicial function in violation of the separation of powers when it rescinded the prisoner's street-time credit upon each of his parole revocations. The court noted that the number of days he spent on parole was properly rescinded for each of his revocations, and therefore the days not longer counted towards the service of his prison term. (District of Columbia Department of Corrections)</p>

- U.S. Appeals Court
PAROLE- CONDITIONS
SUPERVISED RELEASE
- U.S. v. Betts*, 511 F.3d 872 (9th Cir. 2007). A defendant appealed the sentence imposed by the district court for conspiracy, challenging various conditions of supervised release. The appeals court vacated the sentence and remanded the case. The court held that the conditions of supervised release improperly delegated to a probation officer the decision as to how much of any windfall received by defendant would be applied to his restitution obligation. The court also found that the condition of supervised release prohibiting the defendant from drinking alcohol was improper, where there was nothing in the record to suggest that the judge thought there was any past abuse of alcohol or any relationship between alcohol and the defendant's crime. (United States District Court for the Central District of California)
- U.S. District Court
SEX OFFENDERS
CIVIL COMMITMENT
- U.S. v. Carta*, 503 F.Supp.2d 405 (D.Mass. 2007). The government sought an order against federal inmates whose sentences had expired, finding that they were sexually dangerous and committing them to the custody of the Attorney General. The inmates moved to dismiss, arguing that the commitment regime was facially unconstitutional. The district court dismissed the motions, finding that the statute was a valid exercise of legislative power, did not violate the Equal Protection Clause, was civil rather than criminal in nature, and did not violate the Due Process Clause. (Federal Bureau of Prisons)
- U.S. Appeals Court
SUPERVISED RELEASE
- U.S. v. Kriesel*, 508 F.3d 941 (9th Cir. 2007). The government petitioned to revoke supervised release of a felon who refused to submit a DNA sample. In response, the convicted felon challenged the constitutionality of the Justice for All Act, which expanded coverage of the DNA Act to require DNA samples from all convicted felons on supervised release. The felon also challenged the regulation issued pursuant to the Justice for All Act. The district court upheld the constitutionality of the Justice for All Act and the validity of the regulation. The felon appealed. The appeals court affirmed. The court held that requiring a convicted felon on supervised release to provide a DNA sample, even through drawing of blood, did not constitute an illegal search. The court found that the government's significant interests in identifying supervised releasees, preventing recidivism, and solving past crimes outweighed the diminished privacy interests of the convicted felon. (United States District Court for the Western District of Washington)
- U.S. District Court
RELEASE DATE
CREDIT
- 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
CONDITIONAL
RELEASE
PAROLE- CONDITIONS
PRE-RELEASE
RELEASE DATE
- Alexander v. U.S. Parole Com'n.*, 514 F.3d 1083 (10th Cir. 2008). A federal prison inmate sentenced under the Federal Youth Corrections Act (YCA) petitioned for a writ of habeas corpus after the Parole Commission denied parole. The district court ordered the Commission to proceed with development of an appropriate pre-release program and the Commission appealed. The appeals court affirmed in part and reversed and remanded in part. The court held that the district court's order was the functional equivalent of a conditional release order and thus was final and reviewable. The court found that the Commission could not determine jeopardy to public welfare from the inmate's release without considering potential conditions of release, but that the district court lacked the authority to order the Commission to set a pre-release date and begin the process toward parole. (FCI Sheridan, Colorado)
- U.S. Appeals Court
EARLY RELEASE
- Arrington v. Daniels*, 516 F.3d 1106 (9th Cir. 2008). Prisoners filed numerous petitions for a writ of habeas corpus, asserting that a regulation implemented by the federal Bureau of Prisons (BOP) violated the Administrative Procedure Act (APA) by categorically excluding prisoners convicted of offenses involving possession, carrying, or use of firearms from early release for the successful completion of a residential substance abuse program. The district court denied the petitions and the prisoners appealed. The appeals court reversed and remanded. The court held that the regulation was invalid under the Administrative Procedure Act (APA), since the BOP failed to articulate a rationale for the regulation so as to provide a means for reviewing the reasonableness of the agency's categorical exclusion of a class of nonviolent offenders from eligibility for early release. The court noted that the BOP's general desire for uniformity in the application of the regulation did not explain why the exclusion rule was promulgated, as the uniformity could have been accomplished in any number of ways. (Sheridan Correctional Institution, Federal Bureau of Prisons, Oregon)
- U.S. District Court
PAROLE-
REVOCAATION
- 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 TIMELY RELEASE	<i>Bullock v. Sheahan</i> , 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 held that summary judgment was precluded by a genuine issue of material fact as to whether delays of eight and eight-and-a-half hours in releasing inmates from CCDC after they received court-ordered discharges were reasonable. (Cook County Department of Corrections, Illinois)
U.S. District Court LIBERTY INTEREST PAROLE-DENIAL PAROLE-DUE PROCESS	<i>Carlin v. Wong</i> , 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. District Court RELEASE DATE TIMELY RELEASE	<i>Davis v. Dallas County, Tex.</i> , 541 F.Supp.2d 844 (N.D.Tex. 2008). Inmates filed a state court action alleging that a new computer system designed and installed by a county and contractors prevented county officials from receiving relevant inmate information, causing them to be retained beyond their correct release dates. The case was removed to federal court. The district court denied the contractor's motion to dismiss. The court held that the contractor had a duty of care to the inmates to ensure that they were not incarcerated beyond their proper term. The court found that fact issues remained as to whether the county's negligent reliance on a new computer system was the concurrent, rather than the superseding, cause of the inmates' detention. (Dallas County, Jail, Texas)
U.S. Appeals Court HOME DETENTION LIBERTY INTEREST WORK RELEASE	<i>Domka v. Portage County, Wis.</i> , 523 F.3d 776 (7 th Cir. 2008). A former county jail inmate brought a § 1983 action against a county, alleging that revocation of his work-release and home-detention privileges, granted through a plea bargain in his prosecution for his third offense of driving under the influence (DUI), had constituted deprivation of due process. The district court granted summary judgment for the county, and the inmate appealed. The appeals court affirmed. The court held that the plea agreement did not give rise to protected liberty interests in home detention and work-release, and that the inmate had knowingly and intelligently waived any due process rights he may have had in the home-detention program by signing an agreement as to the program's terms. The agreement unambiguously stated that the inmate could, and would, be removed from the program without notice if, among other reasons, he tested positive for alcohol use. According to the court, the waiver was knowing and intelligent, regardless of the prisoner's reliance on an allegedly false oral promise that any positive test would be verified by a personally administered retest, since the written agreement conditioned removal on a positive initial test only, not on the prisoner's actually consuming alcohol. The court noted that the inmate received what he bargained for, the opportunity to serve a portion of his time under home detention with work release. (Portage County's Home Detention Program, Wisconsin)
U.S. Appeals Court PAROLE-POLICIES RELEASE DATE	<i>Furnari v. U.S. Parole Com'n</i> , 531 F.3d 241 (3 rd 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 PAROLE-CONDITIONS PAROLE- REVOCATION	<i>Garner v. Caulfield</i> , 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 PAROLE-CONDITIONS PAROLE-POLICIES	<i>Hall v. Eichenlaub</i> , 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
PAROLE
TIMELY RELEASE
- Johnson v. U.S.*, 590 F.Supp.2d 101 (D.D.C. 2008). A former inmate brought a civil rights action against the federal Bureau of Prisons and others, alleging violations of his constitutional rights. The district court granted the defendants' motion to dismiss. The court held that absent a showing that the former inmate's conviction or sentence had been invalidated, or that his parole violator term had been invalidated, the former inmate could not recover damages on his civil rights claims for time spent in custody beyond the date on which he should have been released on parole. The court held that the former inmate's denial of placement on parole in a community corrections program due to an insufficient number of beds did not equate to an "atypical and significant hardship" worthy of due process protection. (Federal Bureau of Prisons)
- U.S. District Court
DUE PROCESS
PAROLE-DENIAL
- 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. (Corr'l Training Facility, Soledad, California)
- U.S. District Court
DUE PROCESS
EQUAL PROTECTION
LIBERTY INTEREST
PAROLE
SEX OFFENDER
- Patrick v. Raemisch*, 550 F.Supp.2d 859 (W.D.Wis. 2008). A state prisoner brought a civil rights action under § 1983 against prison officials and employees, alleging the defendants violated his Eighth Amendment, equal protection, and due process rights by impeding his access to discretionary and mandatory parole and to a sex offender treatment program. The district court dismissed the case. The court held that the prisoner's claim challenging the legality of his ongoing incarceration was not cognizable under § 1983. According to the court, the prisoner did not have protected liberty interest in treatment programs or discretionary parole that would support his due process claim. The court found that the prisoner's right to equal protection was not violated. (Racine Correctional Institution, Wisconsin)
- U.S. District Court
PAROLE-CONDITIONS
PAROLE VIOLATIONS
SEARCHES
- Portentoso 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. Appeals Court
TIMELY RELEASE
- 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. Appeals Court
GRADUATED
RELEASE
RELEASE SITE
- 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 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. Appeals Court
FAILURE TO PROTECT
WORK RELEASE
- Sandage v. Board of Com'rs of Vanderburgh County*, 548 F.3d 595 (7th Cir. 2008). The family of murder victims brought a civil rights action under § 1983 against county officials, alleging that a county sheriff's department's failure to act on the victims' complaint deprived the victims of their lives without due process of law, in violation of the Fourteenth Amendment. The victims had complained that they were being harassed by a murderer who was a county jail inmate and they asked county officials to revoke the inmate's work-release privilege and re-imprison him. The inmate ultimately murdered the victims while he was on work release. The inmate had been serving a four-year sentence for robbery. The district court dismissed the complaint, and the plaintiffs appealed. The appeals court affirmed, finding that the sheriff's department's failure to act on the victims' complaint did not deprive the victims of due process. The court noted that the county officials had no duty to protect the victims against private violence, and the officials' failure to revoke the inmate's work release did not create the danger that the inmate posed to the victims. (Vanderburgh County Jail, Indiana)

U.S. District Court EX POST FACTO PAROLE-POLICIES	<p><i>Sellmon v. Reilly</i>, 551 F.Supp.2d 66 (D.D.C. 2008). District of Columbia inmates, each of whom committed his crime and was sentenced prior to the date when the United States Parole Commission (USPC) took over responsibility from the District of Columbia Parole Board for conducting parole hearings for D.C. Code offenders, brought a § 1983 action against the USPC chairman and its commissioners. The inmates alleged that USPC retroactively applied its own parole guidelines and practices in violation of the Ex Post Facto Clause of the Constitution. The district court held that the inmates established a prima facie case of an ex post facto violation resulting from the retroactive application of the USPC parole regime, rather than the D.C. parole regime, to their parole applications. But the court held that only those inmates who demonstrated that the practical effect of the new policies was to substantially increase the risk that they each would serve lengthier terms of incarceration were entitled to relief on their ex post facto claims. (District of Columbia)</p>
U.S. District Court TIMELY RELEASE	<p><i>Sheppard v. U.S.</i>, 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)</p>
U.S. Appeals Court EX POST FACTO LIBERTY INTEREST COMMUTATION	<p><i>Snodgrass v. Robinson</i>, 512 F.3d 999 (8th Cir. 2008). A state prisoner brought a suit against the Iowa Board of Parole, the Board's members and the governor of Iowa alleging that her constitutional rights were violated by applying laws and regulations governing commutation requests, even though the laws were passed after her conviction. The district court granted a motion to dismiss and the prisoner appealed. The appeals court affirmed. The court held that the retroactive application of an amendment to the Iowa commutation provisions did not violate the Ex Post Facto Clause and that the state prisoner had no liberty interest in commutations. The court noted that the retroactive application of the amendment to Iowa Code did not raise a significant risk that the state prisoner would be denied a commutation she otherwise would have received from the governor given the unpredictability of the wholly discretionary grant of a governor's commutation. The court noted that the new provisions limited a Class A felon serving a life sentence to commutation applications no more frequently than once every ten years rather than previous standards which provided for regular review. (Iowa Board of Parole)</p>
U.S. District Court RELEASE DATE	<p><i>Strother v. Nardolillo</i>, 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)</p>
U.S. Appeals Court SUPERVISED RELEASE	<p><i>U.S. v. Goddard</i>, 537 F.3d 1087 (9th Cir. 2008). A defendant was convicted in district court of possession of child pornography. The defendant appealed. The appeals court affirmed in part and remanded in part. The court found that several special conditions of supervised release were not an abuse of discretion. The conditions included requiring monitoring of the defendant's computer, conditions regarding the defendant's use of computers while at work, conditions related to the defendant's work environment, a condition requiring prior approval of his residence, and a condition requiring the defendant to obtain prior approval before using a post office box. (U. S. District Court for the Central District of California)</p>
U.S. Appeals Court MEDICATION SUPERVISED RELEASE	<p><i>U.S. v. Holman</i>, 532 F.3d 284 (4th Cir. 2008). After a defendant was released from prison and began serving his term of supervised release for drug and weapons offenses, the district court imposed as a special condition of supervised release a requirement that the defendant take all prescribed medication, including intramuscular injections of an antipsychotic drug. Upon the second revocation of the defendant's supervised release, the district court sentenced him to 12 months imprisonment to be followed by 37 months of supervised release with the same conditions previously imposed, and the defendant appealed. The appeals court held that the requirement of intramuscular injections of antipsychotic medications did not violate the defendant's right to due process. According to the court, the requirement significantly furthered and was clearly necessary to further the government's interests in protecting the defendant and the public. The court noted that the defendant had several episodes of violent behavior in prison, and threatened prison employees and threatened to commit suicide, all during periods when he refused to take his medication. (Virginia)</p>
U.S. Appeals Court PRE-RELEASE SUPERVISED RELEASE WORK RELEASE	<p><i>U.S. v. Miller</i>, 547 F.3d 1207 (9th Cir. 2008). A federal supervisee who had been transferred to a county work-release program at the midpoint of his federal prison term, pursuant to a "pre-release custody" statute, moved to dismiss the government's petition to revoke his supervised release. The supervisee contended that his period of supervised release had expired prior to the revocation petition. The district court denied the supervisee's motion, and he appealed. The appeals court affirmed, finding that transfer to the work-release program did not mark the beginning of the supervised release period, given the continuing Bureau of Prisons (BOP) control. The court noted that the period of work-release was "imprisonment" within the meaning of the statute, and thus the period of supervised release commenced only upon the inmate's release from work-release. (Bannock County Jail Work Release Program, Montana)</p>

- U.S. District Court
PAROLE-POLICIES
PAROLE-
REVOCATION
- Valdivia v. Schwarzenegger*, 548 F.Supp.2d 852 (E.D.Cal. 2008). Parolees filed a class action alleging that a state's parole revocation procedures were unconstitutional. Following partial summary judgment, the parolees moved to enforce a paragraph of a permanent injunction pertaining to the use of hearsay evidence in revocation proceedings. The court held that the use of hearsay evidence would be limited by parolees' confrontation rights in a manner set forth under the controlling law. The court would be required to weigh parolees' interest in their confrontation rights against the importance of hearsay evidence to the court's ultimate finding and the nature of facts to be proven by such evidence. (California)
- U.S. District Court
DUE PROCESS
LIBERTY INTEREST
PAROLE-DENIAL
- Wilborn v. Walsh*, 584 F.Supp.2d 384 (D.Mass. 2008). A state inmate filed a § 1983 action against state parole board members alleging that he was denied parole because of his sexual orientation. The members moved to dismiss. The district court granted the motion in part and denied in part. According to the court, the issue of whether the state parole board denied the homosexual prisoner parole because of his sexual orientation involved fact questions that could not be resolved on a motion to dismiss the prisoner's due process claims against parole board members. The court noted that even though a prisoner has no right to a valuable government benefit and even though the government may deny him benefit for any number of reasons, it may not deny the benefit to the prisoner on the basis that infringes his constitutionally protected interests. (Bay State Correctional Center, Massachusetts Parole Board)
- U.S. Appeals Court
DUE PROCESS
PAROLE-
REVOCATION
- Wilkins v. Timmerman-Cooper*, 512 F.3d 768 (6th Cir. 2008). An offender convicted in state court of rape filed a habeas petition challenging his parole revocation. The district court dismissed the petition and the offender appealed. The appeals court affirmed. The court held that the state court's determination that the use of videoconferencing technology for witness testimony at the parole revocation hearing did not violate the offender's right to confront witnesses and did not violate due process. The court found that the determination-- that the use of videoconferencing was sufficiently similar to live testimony to permit the parolee to observe and confront witnesses-- was not an unreasonable determination of the facts. The court noted that relevant Supreme Court decisions recognized that parolees had fewer rights in parole revocation hearings than in criminal trials and provided that conventional substitutes for live testimony were permitted at revocation hearings. The court noted that videoconferencing provided the parolee with the ability to observe and respond to the testimony of an accuser. The court commented that a videotape of the parole revocation hearing demonstrated that the parolee and counsel observed, heard and questioned in real time the witnesses who testified via videoconferencing. (Ohio Department of Rehabilitation and Correction, Southern Ohio Correctional Facility)
- U.S. Appeals Court
RELEASE DATE
- Wilson v. Johnson*, 535 F.3d 262 (4th 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)
- 2009**
- U.S. District Court
RELEASE DATE
RELEASE ON BOND
TIMELY RELEASE
- 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. (District of Columbia Jail)
- U.S. District Court
DUE PROCESS
EARLY RELEASE
EQUAL PROTECTION
- Bowdry v. Ochalla*, 605 F.Supp.2d 1009 (N.D.Ill. 2009). A former state prison inmate brought a § 1983 action against attorneys employed by a county public defender's office, alleging that the attorneys' respective failure to notice and correct a mittimus error had resulted in the inmate's incarceration for an extra three months, asserting violations of due process, equal protection, and the Eighth Amendment's prohibition against cruel and unusual punishment. The district court dismissed the action. The court held that the attorneys had not acted under the color of state law in failing to correct the mittimus error, where the review of mittimus fell within the scope of a lawyer's traditional functions, contrary to the defendant's contention that it was "essentially administrative." (Cook County Public Defenders, Illinois)
- U.S. District Court
DUE PROCESS
EQUAL PROTECTION
- Bullock v. Dart*, 599 F.Supp.2d 947 (N.D.Ill. 2009). Inmates filed a § 1983 action challenging the constitutionality a county's policies of performing blanket strip searches on male, but not female, inmates returning to county jail from court hearings at which charges against them were dismissed, and of providing privacy screens for female discharges but not male discharges. After entry of summary judgment in the inmates' favor, the defendants moved for reconsideration. The district court granted the motion in part. The court held that male inmates were similarly situated to female potential discharges. The court found that fact issues remained as to whether the county's policies were justified, and whether security considerations prevented the county from segregating inmates against whom charges had been dismissed before they returned to their divisions. The defendants asserted that the much greater number of male inmates in county custody and the differences in the nature and frequency of dangerous incidents in each population justified the policy. The court held that the county's policy and practice of segregating female possible discharges from the remainder of female court returns, such that female actual returns could elect to avoid strip searches, but not segregating male possible discharges in a similar manner, was not gender-neutral on its face, for the purposes of the Equal Protection Clause. (Cook County Department of Corrections, Illinois)

- U.S. Appeals Court
DELAY
RELEASE ON BOND
- Campbell v. Johnson*, 586 F.3d 835 (11th Cir. 2009). An inmate whom a jail allegedly refused release on bail after a court approved a property bond, sued a sheriff under § 1983, claiming violation of his constitutional rights. The sheriff moved for summary judgment. The district court granted the motion in the sheriff's favor on the constitutional claims and against him in his official and individual capacities. The inmate appealed. The appeals court reversed and remanded. The appeals court held that summary judgment was precluded by a genuine issue of material fact as to whether the sheriff personally participated in the inmate's alleged false imprisonment. The court noted that the parties disputed whether the sheriff directed the jail not to accept property in satisfaction of the inmate's bail bond, and whether the sheriff knew that property had been judicially approved prior to the date he sent a brief memorandum advising a corrections officer at the jail to accept a property bond. The appeals court held that the district court decision sidestepped the issue of whether the sheriff had the authority in the first instance to modify the conditions of the prisoner's bail, and there was little evidentiary basis for the conclusion that an in-county property requirement was not excessive. (Walton County Jail, Florida)
- U.S. Appeals Court
DUE PROCESS
EARLY RELEASE
GOOD-TIME
SEX OFFENDERS
- 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 Dept. of Corrections)
- U.S. District Court
PAROLE-CONDITIONS
DUE PROCESS
LIBERTY INTEREST
RETALIATION
- Cusamano v. Alexander*, 691 F.Supp.2d 312 (N.D.N.Y. 2009). A parolee brought a civil rights action for alleged violations of his constitutional rights against, among others, the chairman of the New York State Parole Division, parole officers, the New York State Department of Correctional Services (DOCS), commissioner of DOCS, and the New York State Division of Parole (DOP). These defendants moved to dismiss for failure to state a claim, and the parolee cross-moved for summary judgment. The court held that the parolee does not have a due process-protected liberty interest in being free from special conditions of parole and the parolee failed to state claim for violation of his Fourth, Fifth Sixth and Eighth Amendment rights. The court held that the parolee adequately alleged the adverse action element of his First Amendment retaliation claim against the chairman of New York State Parole Division, which was based upon the chairman's purported conduct in requiring the parolee's enrollment in a drug treatment program in response to the parolee's speech, via letters, challenging his special conditions of confinement. The court also found that the parolee sufficiently alleged the personal involvement of the chairman where the parolee alleged that his parole officer identified the chairman as the individual responsible for ordering the parolee's enrollment in a drug treatment program. (New York State Division of Parole, Bare Hill Correctional Facility, New York)
- U.S. Appeals Court
EX POST FACTO
GOOD-TIME
TIMELY RELEASE
- 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. Appeals Court
TIMELY RELEASE
- 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. District Court
LIBERTY INTEREST
PAROLE- DUE
PROCESS
PAROLE-
REVOCATION
- Gordon v. Alexander*, 592 F.Supp.2d 644 (S.D.N.Y. 2009). State inmates brought an action against the New York State Division of Parole and its chairman, asserting various violations arising out of the Division's failure to resolve administrative appeals within 120 days, its failure to advise parole appellants of the right to institute judicial proceedings, and its failure to give proper consideration to statutory and regulatory factors. The district court granted the defendants motion to dismiss. The court held that the parole system did not vest inmates with a liberty interest, and the failure of the state to inform the inmates of their right to judicial review did not violate due process. According to the court, the New York parole scheme is not one that creates in any prisoner a legitimate expectancy of release and accordingly, prisoners have no liberty interest in parole, and the protections of the Due Process Clause are inapplicable. (New York State Division of Parole)
- U.S. Appeals Court
DELAY
PRETRIAL RELEASE
- 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 remedated 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
ADA-Americans with
Disabilities Act
MEDICAL CARE
PAROLE-GRANTING

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. (Sterling Correctional Facility, Independence House, Colorado)

U.S. District Court
PAROLE- DUE
PROCESS
PAROLE- VIOLATION

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. District Court
ELECTRONIC
MONITORING
ADA- Americans with
Disabilities Act
EQUAL PROTECTION

Phipps v. Sheriff of Cook County, 681 F.Supp.2d 899 (N.D.Ill. 2009). Paralegic 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. According to the court, the county and county sheriff failed to establish that they were not recipients of federal funds, as would render them beyond the reach of the Rehabilitation Act's requirements. 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. The court found no evidence that the detainees were excluded from electronic monitoring or drug rehabilitation programs by the county department of corrections, as would support their Americans with Disabilities Act (ADA) claim. (Cook County Department of Corrections, Illinois)

U.S. District Court
MEDICAL CARE
WORK RELEASE

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 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 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
EX POST FACTO
PAROLE-GUIDELINES
SENTENCE TO
PAROLE

Smith v. Reilly, 604 F.Supp.2d 124 (D.D.C. 2009). An inmate brought a § 1983 suit against members of the United States Parole Commission (USPC), asserting an ex post facto challenge to the application of the USPC's parole guidelines. The district court granted the summary judgment for the defendants. The court held that the Ex Post Facto Clause barred application of the new parole guidelines, which increased the risk that the inmate would serve a longer period of incarceration. According to the court, the new USPC guidelines, but not the old ones, prevented a candidate who, like the inmate, had committed a crime of violence resulting in death, from even being found suitable for parole when he first became eligible after serving a minimum sentence. The new guidelines also translated disciplinary infractions directly into additional months of incarceration, and considered all disciplinary infractions were considered. (District of Columbia Board of Parole)

U.S. Appeals Court
DUE PROCESS
LIBERTY INTEREST
SENTENCE

Straley v. Utah Bd. of Pardons, 582 F.3d 1208 (10th 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-GUIDELINES
PAROLE-POLICIES
VIDEO
COMMUNICATION

Terrell v. U.S., 564 F.3d 442 (6th 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. Appeals Court
PAROLE-
REVOCATION
SUPERVISED RELEASE

U.S. v. Anderson, 583 F.3d 504 (7th Cir. 2009). The Government separately petitioned to revoke the supervised release of three defendants. The district court entered revocation orders and imposed new terms of imprisonment with recommendations to the Bureau of Prisons (BOP) that each defendant be placed in a halfway house during the last six months of his sentence. The defendants appealed, and the cases were consolidated for appeal. The appeals court remanded. The appeals court held that the district court had the authority to impose halfway-house confinement as a condition of supervised release. According to the court, the district courts had the authority to impose halfway-house confinement as a condition of supervised release under the catch-all provision of the supervised release statute which conferred broad discretion on district courts to fashion appropriate conditions of supervised release that complied with the broad goals of sentencing, notwithstanding the exclusion of halfway-house confinement from the statutory list of permissible conditions of supervised release. (Illinois)

U.S. Appeals Court
SENTENCE
CONDITIONS
SUPERVISED RELEASE

U.S. v. Bender, 566 F.3d 748 (8th Cir. 2009). Following revocation of supervised release, the district court imposed an 18-month sentence and special conditions on a 10-year supervised release term. The defendant appealed. The appeals court reversed and remanded. The appeals court held that: (1) the district court did not abuse its discretion by imposing a special condition of supervised release banning the defendant's use of computers and internet access; (2) the district court did not abuse its discretion by imposing a special condition requiring the defendant to submit to "lifestyle restrictions" imposed by a therapist; (3) the district court did not provide sufficient individualized findings to support the imposition of a special condition banning sexually stimulating materials; (4) as a matter of first impression, the district court abused its discretion by imposing a special condition banning the defendant from entering any library; and (5) a special condition barring the defendant from frequenting places where minors were known to frequent without prior approval and then only in the presence of a responsible adult, imposed a greater deprivation of liberty than was reasonably necessary. (Missouri)

U.S. District Court
BAIL
CONDITIONAL
RELEASE
DUE PROCESS

U.S. v. Cossey, 637 F.Supp.2d 881 (D.Mont. 2009). After prerelease conditions mandated by the Adam Walsh Child Protection and Safety Act (AWA) amendments to the Bail Reform Act were imposed on a defendant indicted on charges of receiving and possessing child pornography, the defendant moved for a declaration that the AWA amendments were unconstitutional. The district court denied the motion. The court held that the AWA amendments did not violate the Excessive Bail Clause, the Due Process Clause, or separation of powers principles as applied to the defendant. The amendments mandated that certain prerelease conditions be imposed on persons accused of receiving child pornography. The court noted the conditions were not imposed on the defendant as a blanket prescription without making an individualized determination, and the conditions imposed did not unduly restrict the defendant's movement or interfere with his ability to work. (Montana)

U.S. Appeals Court
PROBATION/
REVOCATION
SENTENCE
SUPERVISED RELEASE

U.S. v. Perez, 565 F.3d 344 (7th Cir. 2009). Following violation of his conditions of supervised release, the district court imposed sentence. The defendant appealed. The appeals court vacated and remanded. The court held that the district court judge lacked jurisdiction to reopen the revocation of supervised release proceedings to make a substantive change to the sentence, and remand was required since the sentence was unclear as to whether the judge intended to impose a sentence of 12 months imprisonment regardless of the sentence imposed by another judge, or whether the judge intended the defendant to stay in jail for a total of 36 months in light of the other judge's sentence. (United States Attorney, Chicago, Illinois)

U.S. Appeals Court
PAROLE- SEARCHES

U.S. v. Warren, 566 F.3d 1211 (10th Cir. 2009). Following a warrantless search of his residence, a parolee was convicted of being a felon in possession of a firearm and possessing with intent to distribute cocaine base. The parolee appealed. The appeals court affirmed. The appeals court held that a police officer's warrantless search of the parolee's residence was justified under the special-needs exception to the warrant and probable cause requirements, as well as under Colorado law, where the officer searched the residence at the direction of a parole officer. The parolee had signed a written agreement which required him to allow the parole officer to search his person, residence, any premises under his control, or his vehicle. (Colorado)

U.S. District Court
MEDICAL
WORK RELEASE

Vuncannon v. U.S., 650 F.Supp.2d 577 (N.D.Miss. 2009). A parolee brought an action against a county and others, alleging claims under § 1983 arising out of injuries he sustained in an accident while operating a forklift as part of a work release project. The court held that summary judgment for the county on the hospital's claim was precluded by a genuine issues of material fact as to (1) whether the parolee was a county prisoner, indigent, and unable to pay; (2) whether the parolee was in need of hospitalization for the entire length of time; and (3) whether the hospital's charges were reasonable and customary. (Shelby County Health Care Corporation, Tennessee, and Tippah County, Mississippi)

U.S. Appeals Court
TIMELY RELEASE

Wasserman v. Rodacker, 557 F.3d 635 (D.C. Cir. 2009). An arrestee brought an action against the government and a police officer, alleging tort and constitutional claims based on his arrest for violating a leash law and assaulting a police officer. The government substituted itself as a defendant and moved to dismiss. The district court dismissed the tort claims and granted summary judgment on the constitutional claims. The arrestee appealed. The appeals court affirmed. The court held that the government properly substituted itself as a party defendant and that the force used in the arrest was reasonable. The court found that the arrestee's detention was not unreasonable, in violation of Fourth Amendment, despite having been premised on an assault charge that was later dropped by the government, where the length of detention was less than 48 hours, and the arrestee failed to allege that the delay of a probable cause hearing was a result of ill will or some other malicious purpose. (District of Columbia, Metropolitan Police Department Central Cell Block)

U.S. District Court FAILURE TO PROTECT TIMELY RELEASE	<p><i>Wilson v. Taylor</i>, 597 F.Supp.2d 451 (D.Del. 2009). The mother of a deceased prisoner, who died in his solitary cell as a result of asphyxia due to hanging after an apparent attempt to feign suicide, brought a § 1983 action against Delaware Corrections officials. The district court denied the defendants' motion for summary judgment. The court held that fact issues precluded summary judgment on the mother's § 1983 claim, custom or policies claim, deliberate indifference claim, qualified immunity grounds, wrongful death claim, and claim for punitive damages. The court found genuine issues of material fact as to: (1) whether the prisoner's detention was valid at the time of his death; (2) whether Delaware Corrections officials failed to train and or maintain customs, policies, practices, or procedures, relating to the prisoner's repeated release inquiry; (3) whether Delaware Corrections officials' ignored the prisoner's risk of hurting himself to get the attention of guards as to his repeated release inquiries; and (4) whether Delaware Corrections officials' conduct in ignoring the prisoner's repeated release inquiries was a proximate cause of the prisoner's ultimate death. The court also found that fact issues existed as to whether Delaware Corrections officials acted outrageously and with reckless indifference to the rights of others, precluding summary judgment on the mother's § 1983 claim for punitive damages. (Delaware Correctional Center)</p>
U.S. District Court TIMELY RELEASE	<p><i>Wormley v. U.S.</i>, 601 F.Supp.2d 27 (D.D.C. 2009). A detainee brought an action against private correctional entities, the District of Columbia, the federal government and officials, stemming from an alleged five-month jail over-detention. The court held that the conduct of federal officials in allegedly causing the five-month jail over-detention did not violate a clearly established federal right of which a reasonable officer would have known, for the purposes of the officials' qualified immunity defense to the detainee's Fifth Amendment claim, since the officials did not participate in the actual over-detention. The court found that the private correctional vendor sued by the detainee, stemming from an alleged five-month jail over-detention, was acting "under color of state law," for purposes of the detainee's § 1983 claims, since the vendor was performing a traditional government function by administering the District of Columbia Correctional Treatment Facility. (Washington Halfway Homes, Fairview Halfway House, Correctional Treatment Facility, Corrections Corporation of America, District of Columbia)</p>
2010	
U.S. Appeals Court DELAY TIMELY RELEASE	<p><i>Avalos v. Baca</i>, 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)</p>
U.S. District Court CIVIL COMMITMENT DUE PROCESS	<p><i>Bailey v. Pataki</i>, 722 F.Supp.2d 443 (S.D.N.Y. 2010). State prisoners brought a § 1983 action against the former governor and governor's staff, alleging violations of the Fourth and Fourteenth Amendments. The district court denied the defendants' motion for summary judgment. The court held that summary judgment was precluded by a genuine issue of material fact as to whether civil confinements of prison inmates comported with Fourteenth Amendment procedural due process. The court also found a genuine issue of material fact as to whether state inmates' right to a pre-deprivation hearing prior to a civil commitment at the end of their prison sentences was clearly established. (New York Department of Correctional Services)</p>
U.S. Appeals Court BAIL DUE PROCESS LIBERTY INTEREST	<p><i>Dodds v. Richardson</i>, 614 F.3d 1185 (10th Cir. 2010). An arrestee filed a § 1983 action against a former county sheriff, in his individual capacity, for alleged violation of his Fourteenth Amendment due process rights by depriving the arrestee of his protected liberty interest in posting bail. The district court denied summary judgment for the sheriff as to qualified immunity and the sheriff appealed. The appeals court affirmed. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the arrestee's due process rights were violated by deprivation of his protected liberty interest in posting preset bail during his detention in the county jail. The court also found a genuine issue of material fact as to whether the county sheriff caused the deprivation of the arrestee's due process rights by the sheriff's personal involvement in maintaining policies at the county jail that prohibited the arrestee from posting preset bail during his detention. (Logan County Jail, Oklahoma)</p>
U.S. Appeals Court ELECTRONIC MONITORING EX POST FACTO LIBERTY INTEREST 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</p>

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. 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)

U.S. Appeals Court
PRETRIAL RELEASE
CONDITIONAL
RELEASE

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
DUE PROCESS
LIBERTY INTEREST
PAROLE-DENIAL
PAROLE-POLICIES

Hart v. Curry, 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)

U.S. District Court
GOOD-TIME
RELEASE DATE
DELAY

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. District Court
FAILURE TO PROTECT
MEDICAL CARE

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
PAROLE- CONDITIONS
PAROLE- HEARING
PAROLE- POLICIES
SEX OFFENDERS
DUE PROCESS

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
EXPIRATION OF
SENTENCE
TIMELY RELEASE

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. Appeals Court
PARDON
EX POST FACTO

PA Prison Soc. v. Cortes, 622 F.3d 215 (3rd Cir. 2010). State prisoners, several non-profit advocacy and prisoner rights groups, and several state voters and qualified taxpayers brought an action challenging an amendment to the Pennsylvania constitution changing the composition of the Board of Pardons and the voting requirements for obtaining a pardon or commutation of sentence. The district court granted in part, and denied in part, the parties' cross-motions for summary judgment, and they appealed. The appeals court remanded. On remand, the district court ruled that one of the groups had standing to challenge the constitutionality of the amendment and reinstated its prior summary judgment ruling, and appeal was again taken. The appeals court reversed and remanded. The appeals court held that the prisoner advocacy group had organization standing to challenge the constitutionality of the amendment, but the amendment did not violate the ex post facto clause. The court noted that allegations that the changes in the law have produced some ambiguous sort of disadvantage, or affected a prisoner's opportunity to take advantage of provisions for early release, are not sufficient grounds for bringing an ex post facto claim. According to the court, there is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence. (Pennsylvania Board of Pardons)

U.S. District Court
FAILURE TO PROTECT
MEDICAL CARE

Paine v. Johnson, 689 F.Supp.2d 1027 (N.D.Ill. 2010) *affirmed* 678 500. 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
DELAY
TIMELY RELEASE

Portis v. City of Chicago, Ill., 613 F.3d 702 (7th Cir. 2010). Arrestees brought a class action against a city, alleging that the city had a practice of unconstitutionally delaying the release of persons arrested for non-jailable ordinance violations that were punishable by a fine only. The arrestees alleged that release was delayed for more than two hours after all the administrative steps necessary to determine their eligibility for release was completed. The district court granted the arrestees' motion for summary judgment and the city appealed. The appeals court reversed and remanded. The appeals court held that the district court, in finding the city's delay in releasing arrestees for non-jailable offenses unreasonable, erred in prescribing a two-hour limit between the city's completion of all the administrative steps necessary to identify the arrestees correctly and to determine their eligibility for release. Instead, according to the court, the arrestees bore the burden of proof and persuasion on the contention that any particular detention was excessive, and the court was required to examine not only the length of a given detention but also the reasons why the release was deferred. (City of Chicago, Illinois)

- U.S. District Court
BAIL
TIMELY RELEASE
- Schneyder v. Smith*, 709 F.Supp.2d 368 (E.D.Pa. 2010). A detainee who was being held as a material witness whose testimony was vital to a homicide prosecution brought a civil rights action against the prosecutor who had secured the material witness warrant for her arrest, alleging the prosecutor failed to notify the judge that the case had been continued for nearly four months. The detainee sought her release. The district court granted the prosecutor's motion to dismiss in part and the detainee appealed. The appeals court reversed and remanded. On remand, the district court denied the prosecutor's motion for summary judgment. The court held that the detainee had a clearly established constitutional right to be free from detention without probable cause and that a triable issue existed regarding whether a reasonable prosecutor would have been aware of her duty to inform the judge of the status of any detained material witness. The detainee had sought bail, but at the bail hearing, the judge articulated his dislike for "setting bail on people who are not accused of a crime." In open court, he told the plaintiff, "[i]f the case breaks down, let me know early and I'll let you out." (Philadelphia, Pennsylvania)
- U.S. District Court
PAROLE-DENIAL
- Sieu Phong Ngo v. Curry*, 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)
- U.S. District Court
SEX OFFENDER
SUPERVISED RELEASE
- U.S. v. Broncheau*, 759 F.Supp.2d 694 (E.D.N.C. 2010). Former federal prisoners who had been certified as sexually dangerous persons moved to dismiss the government's petitions for their commitment. The district court granted the motion and the government moved to stay the order. The district court denied the motion. The court held that a motion to determine mental competency was the proper way for the government to seek commitment, and the public interest was served by having a federal inmate transition from incarceration with a period of supervised release. (Adam Walsh Child Protection and Safety Act of 2006, Federal Bureau of Prisons)
- U.S. Appeals Court
SEX OFFENDER
- 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
ADA-Americans with
Disabilities Act
FAILURE TO PROTECT
- 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
PAROLE-
REVOCATION
DUE PROCESS
- Valdivia v. Schwarzenegger*, 599 F.3d 984 (9th Cir. 2010). Parolees brought a class action alleging a state's parole revocation procedures violated their due process rights. After entering a permanent injunction for the parolees, the district court entered an order granting the parolees' motion to enforce a paragraph of the injunction concerning the use of hearsay evidence, and subsequently entered an order granting their motion to enforce the injunction notwithstanding passage of an allegedly conflicting voter proposition. An appeal was taken. The appeals court held that the district court did not abuse its discretion in determining that the use of hearsay evidence was subject to balancing, but the district court abused its discretion in denying the state's motion to modify the injunction to conform with the voter proposition. (California)

U.S. District Court
DELAY
TIMELY RELEASE
PRETRIAL RELEASE

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
TIMELY RELEASE
RELEASE DATE
SENTENCE

Alston v. Read, 663 F.3d 1094 (9th Cir. 2011). A former state prisoner brought a § 1983 action against corrections officials, alleging that he was over-detained in violation of his due process rights and the Eighth Amendment. The district court denied the officials' motion for summary judgment on the basis of qualified immunity and the officials appealed. The appeals court reversed and remanded. The court held that the officials did not have a clearly established duty to seek out court records in response to the prisoner's unsupported assertion that he was being over-detained, and thus, the officials were entitled to qualified immunity. The court noted that the officials relied on state law and the prisoner's institutional file in calculating the prisoner's sentence, the prisoner offered no documentation to put officials on notice that his sentence had been miscalculated, and no caselaw established that the officials were required to examine any other records. (Offender Management Office of Hawaii's Department of Public Safety)

U.S. District Court
CREDIT
DUE PROCESS
GOOD-TIME

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
ALCOHOL/DRUGS
PARTICIPATION
RELEASE

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. District Court
DELAY
DUE PROCESS
TIMELY RELEASE

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
SEX OFFENDERS
DUE PROCESS
EQUAL PROTECTION
LIBERTY INTEREST

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. Appeals Court
LIABILITY-RELEASE
OF PRISONER
FAILURE TO PROTECT
MEDICAL CARE

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
ALIEN
BAIL

Diouf v. Napolitano, 634 F.3d 1081 (9th 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. Appeals Court
DUE PROCESS
EX POST FACTO
PAROLE- HEARING

Gilman v. Schwarzenegger, 638 F.3d 1101(9th Cir. 2011). California state prisoners serving life imprisonment sentences with the possibility of parole filed a class action under § 1983, alleging that a provision of California's Victims' Bill of Rights Act of 2008, which reduced the availability and frequency of parole hearings for prisoners initially found not suitable for parole, violated the Ex Post Facto Clause and prisoners' substantive due process rights. The prisoners moved for a preliminary injunction to bar enforcement of the Act, and the state moved to dismiss. The district court granted preliminary injunctive relief in part, and the State appealed. The appeals court reversed. The appeals court held that, even assuming that the Act threatened to create the risk of prolonged incarceration for those convicted prior to its enactment, the prisoners' ability to apply for expedited hearings remedied any possible Ex Post Facto violation and warranted denial of the inmates' request for a preliminary injunction. (California)

U.S. District Court
TIMELY RELEASE

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
WORK RELEASE

Maxwell v. South Bend Work Release Center, 787 F.Supp.2d 819 (N.D.Ind. 2011.) An inmate who worked for a metal products production facility pursuant to a work release program brought an action against the employer alleging discrimination under the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The employer moved for summary judgment. The district court granted the motion. The court held that the metal products production facility which employed prisoners in a work-release center was not a public entity within the meaning of Title II of the ADA, where the facility was a private for-profit corporation, and merely contracting with a public entity for the provision of some service did not make the facility an instrumentality of the state. The court noted that the production facility was not a program or activity receiving federal assistance, as required to support the prisoner's claim under the Rehabilitation Act, where the facility was a private employer, and even if the facility participated in a joint venture with the state's department of corrections, it did not actually receive federal financial assistance. (Indiana Department of Corrections, South Bend Work Release Center, Indiana)

U.S. District Court
ELECTRONIC
MONITORING
HOME DETENTION
LIBERTY INTEREST

McBride v. Cahoon, 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. Appeals Court
EQUAL PROTECTION
PAROLE- VIOLATIONS
VICTIM

McCauley v. City of Chicago, 671 F.3d 611 (7th Cir. 2011). The administrator of a decedent's estate brought a state court action against the City of Chicago and several of its officials, and the Illinois Department of Corrections (IDOC) and its director, alleging an equal protection violation arising from a shooting incident. The action was removed to federal court. The district court dismissed the action for failure to state a claim. After the district court denied the administrator's request for leave to conduct limited discovery in the hope of finding a basis for a personal-capacity equal-protection claim against the IDOC director, the administrator appealed. The appeals court affirmed. The court found that the administrator failed to state a Monell claim against the City of Chicago for violation of the right to equal protection of the decedent, who was killed by her ex-boyfriend while he was in violation of parole. According to the court, the complaint contained only generalized legal allegations that the City failed to have specific policies in effect to protect victims of domestic violence from harm inflicted by those who violated parole or court orders of protection by committing acts of domestic violence. The court noted that the complaint did not contain factual allegations required to support plausibility of the claims, as the allegations were entirely consistent with lawful conduct, a lawful allocation of limited police resources. (Cook County, Illinois)

U.S. District Court
PAROLE-DENIAL

Neff v. Bryant, 772 F.Supp.2d 1318 (D.Nev. 2011). A prisoner brought a § 1983 action against a warden, caseworker and correctional officers, alleging violations of the First, Eighth and Fourteenth Amendments. After dismissal of the prisoner's claims, the prisoner filed an amended complaint. The court held that the prisoner's allegations that he was denied parole due to his security classification were insufficient to state a § 1983 claim for denial of Fourteenth Amendment due process. The court found that the prisoner's allegations that legal materials mailed to him were intercepted and withheld, and that as a result he lost a motion related to a civil claim, were insufficient to state a § 1983 claim for denial of access to the courts in violation of the First Amendment, absent allegations as to the nature of the motion, or that the result of the failed motion was the loss of a non-frivolous direct criminal appeal, habeas corpus petition, or § 1983 claim. (Ely State Prison, Nevada)

U.S. Appeals Court
TIMELY RELEASE
DUE PROCESS

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 BAIL TIMELY RELEASE	<p><i>Rivas v. Martin</i>, 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)</p>
U.S. District Court EX POST FACTO EARLY RELEASE	<p><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 “notice 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)</p>
U.S. Appeals Court TIMELY RELEASE CIVIL COMMITMENT	<p><i>Schneyder v. Smith</i>, 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)</p>
U.S. Appeals Court LIBERTY INTEREST SENTENCE DUE PROCESS	<p><i>Stein v. Ryan</i>, 662 F.3d 1114 (9th Cir. 2011). A former prisoner brought an action in state court against the state and prison officials, alleging claims for negligence and violations of his civil rights, and seeking damages for the time he spent in prison pursuant to an illegal sentence. Following removal to the federal court, the district court dismissed the complaint. The former prisoner appealed. The appeals court affirmed, holding that the officials had no duty to discover that an Arizona court imposed an illegal sentence, they did not violate the former prisoner’s right to due process, and the officials were not deliberately indifferent to the prisoner’s liberty interest, as would violate his Eighth Amendment rights. (Arizona Department of Corrections)</p>
U.S. District Court RELEASE DATE	<p><i>Swiggett v. Batcho</i>, 826 F.Supp.2d 722 (E.D.Pa. 2011). A former prisoner filed a § 1983 action against a parole officer, in his individual capacity, alleging that the prisoner’s incarceration beyond his maximum date for release violated his Eighth amendment right to be free from cruel and unusual punishment. The officer moved for summary judgment. The district court granted the motion, finding that the prisoner was mistakenly released over nine months earlier than his maximum date for release. (Pennsylvania Board of Probation and Parole)</p>
U.S. District Court ALIEN BAIL DUE PROCESS TIMELY RELEASE	<p><i>Tkochenko v. Sabol</i>, 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)</p>
U.S. District Court MEDICATION SUPERVISED RELEASE	<p><i>U.S. v. Barnard</i>, 770 F.Supp.2d 366 (D.Me. 2011). A federal supervisee, who under the terms of his federal supervised release could not unlawfully possess or use a controlled substance, moved to be allowed to use medicinal marijuana. The district court held that the supervisee was not an appropriate candidate for using medicinal marijuana while under supervision, even though the supervisee obtained a registry card authorizing him to participate in Maine’s medicinal use of marijuana program. The court noted that at the time the terms of supervised release were imposed, neither federal nor Maine law permitted physicians to prescribe marijuana. According to the court, the supervisee had demonstrated a determination to flout substance abuse laws during the period of his release, by testing positive for marijuana 23 times before the medicinal use program went into effect, continuing his use of marijuana despite stern admonitions from both his probation officer and the court that further use would not be tolerated, continuing his use after stating that he had and would cease, and admitting to using marijuana for “gratuitous reasons.” (Maine)</p>

U.S. Appeals Court CIVIL COMMITMENT SEX OFFENDERS SUPERVISED RELEASE	<p><i>U.S. v. Broncheau</i>, 645 F.3d 676 (4th Cir. 2011). Former federal prisoners, who had been certified, pursuant to the Adam Walsh Child Protection and Safety Act, as sexually dangerous persons and were being detained pending hearings on the government's petitions for their commitment, moved to dismiss those petitions. The district court granted the motions and denied the government's motion for a stay. The government appealed. The appeals court vacated and remanded. The appeals court held that the district court improperly ordered the government to release from the Bureau of Prisons (BOP) custody prisoners who had upcoming terms of supervised release, and whom the government had certified as sexually dangerous under the civil commitment provisions of the Adam Walsh Child Protection and Safety Act, and that the district court further improperly required the government to first seek a commitment order under a competency statute before seeking civil commitment under the Adam Walsh Act. The court noted that although the prisoners' sentences included terms of supervised release, they fell within the class of persons in the custody of the BOP subject to certification as being sexually dangerous, and the competency statute did not provide for a commitment on the basis of the prisoners' sexual dangerousness. (Federal Bureau of Prisons, Adam Walsh Child Protection and Safety Act of 2006)</p>
U.S. District Court EARLY RELEASE ELECTRONIC MONITORING	<p><i>U.S. v. Cook County, Illinois</i>, 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)</p>
U.S. District Court EARLY RELEASE COMPASSIONATE RELEASE	<p><i>U.S. v. Dresbach</i>, 806 F.Supp.2d 1039 (E.D.Mich. 2011.) A defendant moved for reduction in his sentence. The district court held that the federal Bureau of Prisons (BOP) properly exercised its discretion in considering the medical condition of the defendant's wife and daughter in denying his request for compassionate release. According to the court, the BOP had noted that the sentencing court was aware of the developing medical conditions of the prisoner's wife and daughter at the time of sentencing, and that the prisoner was presumably eligible for home confinement in eight months and release six months thereafter. According to the court, the BOP has the authority to consider reasons other than a defendant's own medical condition in determining whether compassionate release is warranted. (Federal Bureau of Prisons, Michigan)</p>
U.S. Appeals Court SUPERVISED RELEASE	<p><i>U.S. v. Mike</i>, 632 F.3d 686 (10th Cir. 2011). A defendant, who was sentenced for assault resulting in serious bodily injury, appealed a district court order that overruled his objections to special conditions of supervised release based on his prior sex offense. The appeals court affirmed in part, reversed in part, and remanded. The court held that the condition calling for monitoring of the defendant's computer usage did not constitute an abuse of discretion, but the condition was impermissibly vague. The court also found that a condition prohibiting the defendant from engaging in an occupation with access to children was improper, where the court failed to make findings required by the Sentencing Guidelines that an occupational restriction was the minimum restriction necessary. (U.S. Dist. Court, New Mexico)</p>
2012	
U.S. District Court PAROLE-GUIDELINES SUPERVISED RELEASE	<p><i>Bentley v. Dennison</i>, 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)</p>
U.S. Appeals Court EX POST FACTO LIBERTY INTEREST PAROLE- GUIDELINES PAROLE- POLICIES DUE PROCESS	<p><i>Burnette v. Fahey</i>, 687 F.3d 171 (4th Cir. 2012). State prisoners filed an action against members of the Virginia Parole Board in their official capacities, contending that the Board had adopted policies and procedures with respect to parole-eligible inmates imprisoned for violent offenses that violated the Due Process and Ex Post Facto Clauses. The district court dismissed the action and denied a motion to amend. The plaintiffs appealed. The appeals court affirmed. The appeals court held that Virginia had created a limited due process liberty interest in being considered for parole at a specified time, and in being furnished with a written explanation for denial of parole, through passage of its parole statute. But the court held that the prisoners' complaint supported an inference, at most, that the parole board was exercising its discretion, but that in doing so the board was taking a stricter view towards violent</p>

offenders than it had in past, which did not implicate the Ex Post Facto Clause. According to the court, the mere fact that the parole board had implemented procedural changes during the same multi-year period that the rate of release decreased did not produce a plausible inference of a causal connection to an alleged Ex Post Facto Clause violation due to a significant risk of extended punishment. (Virginia Parole Board)

U.S. District Court
SEX OFFENDERS
FAILURE TO PROTECT

Carmichael v. City of Cleveland, 881 F.Supp.2d 833 (N.D. Ohio 2012). The estate of a murder victim brought an action against police officers, cities, and other defendants under § 1981, § 1983, and state law. The defendants moved for dismissal and judgment on the pleadings. The district court granted the motions. The court held that the wrongful death claims brought by the estate of the murder victim against the County Board of Commissioners, alleging actions or inactions of the County through its officials and employees, with respect to the monitoring of the murderer as a registered sex offender, were based on the County's provision or non-provision of police services or protection, and/or enforcement of the law, and therefore they fell within the general grant of immunity in the Ohio Political Subdivision Tort Liability Act for political subdivisions engaged in governmental functions. The court found that the wrongful death claims brought by the estate against the Ohio Department of Rehabilitation and Corrections (ODRC) were barred by the Eleventh Amendment, since the ODRC had not consented to suit in the district court. The court noted that as a state agency, ODRC is not a "person" that can be held liable for money damages under § 1983. (Ohio Department of Rehabilitation and Corrections, Cuyahoga County Board of Commissioners, Ohio)

U.S. District Court
DUE PROCESS
EARLY RELEASE
PAROLE-CONDITIONS
SEX OFFENDERS

Catanzaro v. Harry, 848 F.Supp.2d 780 (W.D. Mich. 2012). A state prisoner, proceeding pro se, brought a § 1983 action against a state department of corrections, department officials, a warden, parole board members, and numerous prison and department employees, alleging violation of his due process rights, violation of the Fourth Amendment, denial of adequate medical care, his right to free exercise of religion, equal protection, access to courts, and retaliation. The district court held that: (1) the prisoner had no protected interest in early release on parole; (2) the requirement that the prisoner complete a sex-offender treatment program as condition for parole did not violate the Due Process Clause as the condition for parole did not exceed the sentence imposed on the prisoner; (3) the prisoner's conditions at sex-offender treatment facility did not implicate the prisoner's right to procedural due process, notwithstanding the fact that the prisoner did not have access to recreational facilities or a law library, the prisoner could not work, the prisoner had to arrange for his own health care, and the prisoner did not have the opportunity to attend religious services; (4) the transfer of the prisoner to facility for sex-offender treatment program did not violate his right to substantive due process; and (5) the prisoner stated a claim for violation of Free Exercise Clause. According to the court, the prisoner's complaint, alleging that a parole agent prevented him from bringing his own legal papers with him during his transfer from a sex-offender treatment facility to a prison, and that as a result, the prisoner was unable to notify the court of his address change and a lost opportunity to object to dismissal of two retaliation claims, failed to state a claim for violation of prisoner's right of access to the courts. (Cooper Street Correctional Facility, Residential Sex Offender Program (RSOP) at the Kalamazoo, and Probation Enhancement Program in Muskegon, Michigan)

U.S. District Court
EX POST FACTO
PAROLE- HEARING
PAROLE- POLICIES
DUE PROCESS

Daniel v. Fulwood, 893 F.Supp.2d 42 (D.D.C. 2012). Federal inmates convicted of violating District of Columbia laws filed suit against the Commissioners of United States Parole Commission, alleging that retroactive application of parole regulations to prisoners convicted prior to the issuance of those regulations violated the ex post facto clause, and that they were deprived of fair parole review hearings, in violation of the due process clause. The inmates moved for reconsideration. The district court denied the motion. The court held that the inmates failed to make a plausible showing of non-speculative evidence that retroactive application of the parole guidelines violated the Ex Post Facto Clause, where the prior regulations involved so much discretion that the court could not compare how the Parole Commission might have evaluated a parole under those regulations with how the Commission did evaluate parole under the modern guidelines. (U.S. Parole Commission)

U.S. District Court
DUE PROCESS
EQUAL PROTECTION
PAROLE-POLICIES

De Luna v. Hidalgo County, Tex., 853 F.Supp.2d 623 (S.D. Tex. 2012). Two students, on behalf of themselves and a purported class, brought a § 1983 action against state magistrates and a county, alleging violation of federal due process and equal protection rights based on their placement in jail for unpaid fines or costs related to violations of the Texas Education Code. The parties filed cross-motions for summary judgment and the students also moved for class certification. The district court held that: (1) the students lacked standing to seek equitable and declaratory relief from magistrates' practice of incarcerating individuals without an indigency determination; (2) the county's policy of jailing individuals charged with fine-only misdemeanor offenses who had failed to directly inform the arraigning magistrate of their indigency violated due process; and (3) the students did not waive their right to an affirmative indigency determination by waiving their right to counsel at arraignment. The court held that summary judgment was precluded on the § 1983 claim by a genuine issue of material fact existed as to whether one of the students placed in jail for unpaid fines or costs related to violations of Texas Education Code knew that she could tell a state magistrate that she could not pay the fines on her outstanding charges and obtain either a payment plan or community service. (Hidalgo County Jail, Texas)

U.S. District Court
EQUAL PROTECTION
SEX OFFENDERS

Doe v. Caldwell, 913 F.Supp.2d 262 (E.D. La. 2012). Offenders convicted of violating Louisiana's Crime Against Nature by Solicitation statute filed a class action against state officials, challenging the enforcement of Louisiana's sex offender registry law. State officials moved to dismiss, and the offenders moved for class certification and for summary judgment. The district court denied the defendants' motion to dismiss. The court held that allegations that a provision of the sex offender registry law requiring individuals convicted of violating Louisiana's Crime Against Nature by Solicitation statute to register as sex offenders, but not requiring individuals convicted under the Louisiana Prostitution statute to register as sex offenders, was without any rational basis, and stated a § 1983 equal protection claim. (Louisiana Crime Against Nature by Solicitation Statute)

U.S. District Court EQUAL PROTECTION PAROLE-CONDITIONS SEX OFFENDERS	<p><i>Doe v. Jindal</i>, 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)</p>
U.S. District Court EX POST FACTO SEX OFFENDERS	<p><i>Doe v. Nebraska</i>, 898 F.Supp.2d 1086 (D.Neb. 2012). Sex offenders who were required to register under the Nebraska Sex Offender Registration Act and the offenders' family members brought an action against a state alleging that portions of the Act violated the First Amendment, the Due Process Clause, the Ex Post Facto Clause, and the Fourth Amendment. The district court held that: (1) the statute criminalizing registrants' use of social networking web sites, instant messaging, and chat room services accessible by minors was not narrowly tailored; (2) the statute criminalizing registrants' use of web sites was overbroad; (3) the statute requiring registrants' disclosure of domain names and blog sites used was not narrowly tailored; (4) the statute criminalizing registrants' use of web sites was vague under the Due Process Clause; and, (5) the statutes violated the Ex Post Facto Clause. The court noted that a statute is "narrowly tailored" to regulate content-neutral speech under the First Amendment, if it targets and eliminates no more than the exact source of the evil it seeks to remedy. The district court opened its opinion with the following: "Earlier I paraphrased Justice Oliver Wendell Holmes and observed that if the people of Nebraska wanted to go to hell, it was my job to help them get there. By that, I meant that it is not my prerogative to second-guess Nebraska's policy judgments so long as those judgments are within constitutional parameters. Accordingly, I upheld many portions of Nebraska's new sex offender registration laws even though it was my firm personal view that those laws were both wrongheaded and counterproductive. However, I had serious constitutional concerns about three sections of Nebraska's new law.... I have decided that the remaining portions of Nebraska's sex offender registry laws are unconstitutional." (Nebraska)</p>
U.S. District Court EX POST FACTO SEX OFFENDERS DUE PROCESS EQUAL PROTECTION	<p><i>Doe v. Raemisch</i>, 895 F.Supp.2d 897 (E.D.Wis. 2012). Two offenders, one from Connecticut and one from Florida, who were subject to Wisconsin's sex offender registration and notification statutes, sued the Wisconsin Department of Corrections (DOC), its Secretary, and the Director of the DOC's Sex Offender Program, alleging that application and enforcement of registration requirements violated their constitutional and statutory rights. The parties cross-moved for summary judgment. The district court granted the motions in part and denied in part. The court held that: (1) the registration requirement was not punitive; but, (2) a provision authorizing the imposition of a \$100 annual fee violated the Ex Post Facto Clause; (3) the statutes did not violate the offenders' constitutional equal protection rights; (4) the statutes did not violate the offenders' equal protection or substantive due process rights by denying them an individualized, risk-determination-based judicial system; (5) the registration law did not constitute an unconstitutional legislative impairment of the offenders' plea agreements; (6) the offenders had no First Amendment cause of action regarding requirements to provide e-mail addresses and websites they maintained; and (7) the defendant officials were entitled to qualified immunity. The court noted that, except for an annual fee requirement, Wisconsin's sex offender registration law was reasonable in light of its non-punitive objective, and thus did not violate the Ex Post Facto Clause, and the fact that the registration law might deter sex offenders from violating the law did not establish that the registration requirement itself was punitive, and the fact that offenders had to travel to specified law enforcement facilities to have their photographs taken and to be fingerprinted was not sufficiently severe to transform an otherwise non-punitive measure into a punitive one. (Wisconsin Department of Corrections)</p>
U.S. District Court PAROLE- CONDITIONS PAROLE- GUIDELINES SEX OFFENDERS DUE PROCESS EQUAL PROTECTION	<p><i>Edmond v. Clements</i>, 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)</p>
U.S. Appeals Court DELAY BAIL DUE PROCESS LIBERTY INTEREST RELEASE ON BOND RELEASE ON RECOGNIZANCE	<p><i>Fields v. Henry County, Tenn.</i>, 701 F.3d 180 (6th Cir. 2012). An arrestee filed a civil rights action alleging that a county had violated his Eighth Amendment right to be free from excessive bail and his Fourteenth Amendment right to procedural due process. The district court granted summary judgment for the county and the arrestee appealed. The appeals court affirmed. The appeals court held that setting the arrestee's bail at the same amount as other defendants facing domestic-assault charges through the county's use of a bond schedule without particularized examination of his situation did not violate the arrestee's Eighth Amendment right to be free from excessive bail. The court noted that the mere use of a bond schedule does not itself pose a constitutional problem under the Eighth Amendment's prohibition of excessive bail, since a schedule is aimed at assuring the presence of a defendant, and the bond schedule represents an assessment of what bail amount would ensure the appearance of the average defendant</p>

facing such a charge. The court found that a liberty interest protected by due process had not been implicated by the county's policy of automatically detaining domestic-assault defendants for 12 hours without bail. The court noted that a Tennessee statute providing that a person could not "be committed to prison" until he had a hearing before a magistrate did not create a liberty interest, and release on personal recognizance under Tennessee law lacked explicitly mandatory language needed to create a liberty interest. (Henry County Sherriff's Office and Henry County Jail, Tennessee)

U.S. Appeals Court
TIMELY RELEASE

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
DELAY
DUE PROCESS
EQUAL PROTECTION
LIBERTY INTEREST
TIMELY RELEASE

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
TIMELY RELEASE

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. District Court
ALIEN
BAIL
CONDITIONAL
RELEASE

Leslie v. Holder, 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)

<p>U.S. Appeals Court CONDITIONAL RELEASE PAROLE-GUIDELINES SUPERVISED RELEASE</p>	<p><i>Marlowe v. Fabian</i>, 676 F.3d 743 (8th 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)</p>
<p>U.S. Appeals Court DUE PROCESS FAILURE TO PROTECT LIABILITY-RELEASE OF PRISONER MEDICAL CARE</p>	<p><i>Paine v. Cason</i>, 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)</p>
<p>U.S. District Court PAROLE- DENIAL PLRA- Prison Litigation Reform Act</p>	<p><i>Rahim v. Holden</i>, 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)</p>
<p>U.S. District Court GOOD- TIME TIMELY RELEASE</p>	<p><i>Rogers v. District of Columbia</i>, 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)</p>
<p>U.S. Appeals Court PAROLE-CONDITIONS SEX OFFENDER</p>	<p><i>Roman v. DiGuglielmo</i>, 675 F.3d 204 (3rd 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)</p>
<p>U.S. District Court DUE PROCESS SUPERVISED RELEASE</p>	<p><i>Ruffins v. Department of Correctional Services</i>, 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</p>

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
PAROLE-
REVOCATION

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. Appeals Court
GOOD- TIME
TIMELY RELEASE

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 prison officials failed to promptly afford them PJT (parole jail time) credits for the time served in local custody on sentences ordered to run concurrently with undischarged parole revocation sentences. (New York State and New York City prison systems)

U.S. Appeals Court
PAROLE-CONDITIONS
SENTENCE
CONDITIONS
SEX OFFENDERS

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)

U.S. Appeals Court
PAROLE-GUIDELINES
SUPERVISED RELEASE

U.S. v. Taylor, 679 F.3d 1005 (8th Cir. 2012). Following release from prison, the district court sentenced a defendant to 24 months in prison after he admitted to violating two conditions of supervised release. The defendant appealed. The appeals court vacated and remanded, finding that consideration of the defendant's eligibility to participate in a rehabilitation program for sentencing purposes was plain error. The district court had considered the defendant's eligibility to participate in a 500-hour drug program available from the Bureau of Prisons when sentencing the defendant to 24 months for violation of supervised release. The appeals court held that this affected the defendant's rights in a manner that seriously affected fairness, integrity, or public reputation of judicial proceedings, and thus amounted to plain error. The court noted that the advisory guideline range was 6 to 12 months, and the district court may have imposed a lesser sentence if it had not focused on a particular drug treatment program within a federal institution. The defendant had failed to report to a residential facility where he was to spend 120 days and admitted to consuming alcohol. (Nebraska)

U.S. District Court
DELAY
RELEASE DATE

Ward v. Brown, 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)

U.S. District Court
MEDICAL CARE
TIMELY RELEASE

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 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)

U.S. District Court
INVOLUNTARY
COMMITMENT
TIMELY RELEASE

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 OFFENDERS

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 dis-incentivize 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. District Court
RELEASE DATE
SEX OFFENDERS
DELAY
TIMELY RELEASE

Armato v. Grounds, 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)

U.S. Appeals Court
ADA- Americans with
Disabilities Act
EQUAL PROTECTION
PAROLE-CONDITIONS

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
DELAY
TIMELY RELEASE

Barnes v. District of Columbia, 924 F.Supp.2d 74 (D.D.C. 2013). Inmates at local jails brought a class action, under § 1983, against the District of Columbia, alleging that their over-detentions violated their Fourth, Fifth, and Eighth Amendment rights. Following certification of the classes, the parties filed pretrial motions to exclude or limit certain evidence from being introduced at the liability trial. The district court granted the motions in part and denied in part. The court held that: (1) records of inmate over-detentions constituted admissible hearsay evidence; (2) evidence of a settlement in a related class action was admissible under the "other purposes" exception of the rule governing admission of settlement evidence; (3) an expert's testimony regarding the total number of over-detentions occurring during particular periods was admissible; and (4) evidence regarding strip searches performed on inmates was not admissible. The District of Columbia attacked the methodology of the expert, but the court noted that the expert had years of experience reviewing inmate jackets and other data to determine whether an inmate was over-detained, had personally reviewed hundreds of inmate jackets, and had educated himself on the system of collecting inmate data. (District of Columbia Department of Corrections)

- U.S. Appeals Court
EX POST FACTO
PAROLE-GRANTING
PAROLE-GUIDELINES
- 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. District Court
MEDICATION
- Bustetter v. Armor Correctional Health Services, Inc.*, 919 F.Supp.2d 1282 (M.D.Fla. 2013). A former inmate brought an action against a sheriff's department, the sheriff, a medical services contractor, a doctor, a nurse, and a pharmacy, alleging medical malpractice, negligence, and violations of § 1983. The inmate alleged that the medical services contractor had a policy of not telling an inmate what medications he was being given, that the contractor had another policy of providing no medications if an inmate refused to take any of his medications, that measurement of his blood sugar levels and administration of his insulin to treat his diabetes was limited to twice a day, that he was given excess levels of statins, and that he was not informed, upon his release, of what medication he was given or of its side-effects. The defendants moved to dismiss. The district court granted the motions in part and denied in part. The court held that the inmate's allegations were sufficient to state Eighth Amendment claims against the contractor, nurse, and doctor. When he was taken into custody at the jail for a non-violent traffic offense, the inmate informed the medical staff of his medical conditions and current medications. The inmate's medical conditions included Type I diabetes, for which he was insulin dependent and taking two types of insulin three to five times per day, a prior heart attack, and blindness in one eye. (Sarasota County Jail, Florida)
- U.S. Appeals Court
LIBERTY INTEREST
PROBATION/
REVOICATION
- 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. District Court
ALIEN
BAIL
DUE PROCESS
TIMELY RELEASE
- Gordon v. Johnson*, 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)
- U.S. Appeals Court
CONDITIONAL
RELEASE
PAROLE-POLICIES
PAROLE-
REVOICATION
- Hazle v. Crofoot*, 727 F.3d 983 (9th Cir. 2013). A parolee, who was an atheist, brought an action against various state officials and a state contractor, seeking damages and injunctive relief for the deprivation of his First Amendment rights, after his parole was revoked following his refusal to participate in a residential drug treatment program that required him to acknowledge a higher power, as a condition of his parole. The contractor, Westcare, was a private regional substance abuse coordination agency, and made the arrangements for the parolee's placement in the program. After the parolee was granted partial summary judgment by the district court, a jury awarded the parolee zero damages. The district court denied the parolee's motion for a new trial, and the parolee appealed. The appeals court reversed and remanded. The court held that the parolee was entitled to an award of compensatory damages for each day that he spent in prison as a result of the violation of his First Amendment rights by various state officials. The appeals court held that summary judgment was precluded by a genuine issue of material fact as to whether the contractor's conduct was the proximate cause of the parolee's unconstitutional imprisonment, when it contracted only with drug treatment facilities offering solely religious based programs or services, and counseled and arranged for the parolee to attend a religion-based facility as part of his state-imposed parole program, despite having been informed that the parolee was an atheist and that he objected to such religious programming.
- The court held that the parolee's claim under California law for an injunction preventing both a state contractor and various state officials from expending state funds in an unconstitutional manner that required parolees to participate in religious treatment programs in order to be eligible for parole, failed to provide parolees with secular or non-religious treatment alternatives, and revoked the parole of those who protested or resisted participation in religion-based treatment programs, was not rendered moot after the state issued a directive stating that parole agents could not require a parolee to attend any religious based program if the parolee refused to participate for religious reasons, where the state directive had not been implemented in any meaningful fashion. (California Department of Corrections and Rehabilitations, Board of Parole Hearings, Westcare, and Empire Recovery Center, California)
- U.S. District Court
DUE PROCESS
EX POST FACTO
SEX OFFENDERS
- John Does 1-4 v. Snyder*, 932 F.Supp.2d 803 (E.D.Mich. 2013). Sex offenders filed suit challenging the constitutionality of the Michigan Sex Offender Registry Act (SORA). The state defendants moved to dismiss the complaint. The district court granted the motion in part and denied in part. The court held that: (1) SORA did not violate the Ex Post Facto Clause; (2) SORA's quarterly reporting requirement did not offend due process or substantially burden registrants' rights to interstate or intrastate travel; (3) SORA did not implicate registrants' due process right to engage in common occupations of life; (4) the registrants satisfactorily alleged that SORA's loitering prohibition, which did not contain any exemption for parental activities, could be proven to infringe upon their

fundamental due process right to direct and participate in their children's education and upbringing; (5) a jury question was presented as to whether retroactively extending the registration period of sex offenders from twenty-five years to life was justified by a legitimate legislative purpose; and (6) jury questions were presented as to whether provisions of SORA requiring sex offenders to report information about their online accounts and activities violated their First Amendment rights. (Michigan Sex Offender Registry Act)

U.S. District Court
TIMELY RELEASE

Page v. Mancuso, 999 F.Supp.2d 269 (D.D.C. 2013). A pretrial detainee brought an action in the Superior Court for the District of Columbia, against the District of Columbia and a police officer, alleging unlawful arrest in violation of the Fourth Amendment, and deliberate indifference to the arrestee's over-detention and strip search. The detainee also alleged that the District maintained a custom and practice of strip searches in violation of the Fourth and Fifth Amendments. The defendants removed the action to federal court and filed a partial motion to dismiss. The district court granted the motion. The court held that the detainee's complaint failed to allege that the District of Columbia was deliberately indifferent to Fourth and Fifth Amendment violations jail officials inflicted upon the detainee when they subjected him to "over-detention" and strip searches, as required to state a claim against District for Fourth and Fifth Amendment violations under the theory of municipal liability. (D.C. Jail)

U.S. District Court
ADA- Americans with
Disabilities Act
BAIL
DISCRIMINATION
DUE PROCESS
EQUAL PROTECTION
TIMELY RELEASE

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. Appeals Court
ALIEN
BAIL
DUE PROCESS
RELEASE ON BOND

Rodriguez v. Robbins, 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 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. Appeals Court
DELAY
CREDIT
DUE PROCESS
RELEASE DATE
REVIEW

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. Appeals Court
FURLOUGH
TEMPORARY
RELEASE
MEDICAL CARE

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
SEX OFFENDERS
SUPERVISED RELEASE

U.S. v. Crowder, 738 F.3d 1103 (9th Cir. 2013). The United States District Court for the District of Montana revoked an offender's supervised release, imposed for failure to register under the Sex Offender Registration and Notification Act (SORNA), and sentenced the offender to two terms of 14 months' imprisonment to run concurrently, and to a lifetime term of supervised release. The defendant appealed. The appeals court affirmed, finding that reduction of a renewed lifetime term of supervised release by the length of time spent in prison for the violation was not warranted. (Montana)

2014

U.S. District Court
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 Eighth 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. District Court
TIMELY RELEASE
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)

<p>U.S. District Court TIMELY RELEASE</p>	<p><i>Hill v. Hoisington</i>, 28 F.Supp.3d 725 (E.D.Mich. 2014). A detainee filed an action alleging that a deputy sheriff used excessive force and committed battery against him while he was in custody, after he was acquitted of criminal charges against him. After a jury verdict in the detainee's favor, the detainee moved for entry of judgment on the jury verdict, for costs, and for judgment as matter of law. The district court denied the motion as moot, where the award of exemplary damages was justifiable and the detention of the detainee after he was acquitted was unlawful, where the jury found that the deputy's conduct was malicious, or so willful and wanton as to demonstrate reckless disregard of the detainee's rights. The court noted that the proper post-acquittal procedure requires immediate release of a detainee following acquittal, allowing for any possible out-processing to occur without continued or required detention. (Oakland County Jail, Michigan)</p>
<p>U.S. District Court HOME DETENTION</p>	<p><i>Liska v. Dart</i>, 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)</p>
<p>U.S. Appeals Court EX POST FACTO SEX OFFENDERS</p>	<p><i>Mueller v. Raemisch</i>, 740 F.3d 1128 (7th Cir. 2014). Two convicted sex offenders brought an action challenging Wisconsin's statutory scheme of sex offender registration, notification, and monitoring, alleging violation of the prohibition against states enacting ex post facto laws. The district court ruled that the act's \$100 annual registration fee was unconstitutional, but upheld other provisions of the act. The parties appealed. The appeals court affirmed in part, modified in part, and reversed in part. The appeals court held that: (1) the sex offenders had standing to challenge the registration requirement, even though they did not intend to ever return to the state; (2) the sex offenders did not have standing to challenge provisions of a monitoring requirement relating to working with and photographing minors because the offenders no longer resided in the state; (3) the sex offenders did not have standing to challenge Wisconsin's prohibition against a sex offender changing his name, where neither offender had expressed the intent to change his name; (4) the sex offenders had standing to challenge monitoring of the act's requirements of continual updating of information supplied to the sex offender registry; (5) the monitoring act's requirements that sex offenders continually update information supplied to the sex offender registry were not punitive and therefore did not trigger the constitutional prohibition of ex post facto laws; (6) the \$100 annual registration fee was not punitive; and (7) allowing the sex offenders to litigate pseudonymously was not warranted where the sex offenders' convictions were matters of public record and both sex offenders were currently registered in Wisconsin, making their names and other information freely available. The court noted that the annual fee was intended to compensate the state for the expenses of maintaining the sex offender registry, and since the offenders were responsible for the expense, there was nothing "punitive" about making them pay for it. (Wisconsin)</p>
<p>U.S. Appeals Court LIBERTY INTEREST EXPIRATION OF SENTENCE GRADUATED RE- LEASE RELEASE SITE PAROLE</p>	<p><i>Powell v. Weiss</i>, 757 F.3d 338 (3rd Cir. 2014). A state inmate brought a § 1983 action against Pennsylvania Department of Corrections employees and officials, alleging the defendants deprived him of liberty without due process of law when it revoked its decision to release him to a community correctional center. The district court granted the defendants' motion to dismiss for failure to state a claim. The inmate appealed. The appeals court affirmed. The court held that: (1) the inmate did not have a protected independent due process liberty interest in the expectation of release to a community correctional center; (2) the inmate did not have a state-created liberty interest in the expectation of release to a community correctional center; and (3) the inmate failed to state a claim that he was deprived of a protected liberty interest when he was supervised on parole seven months past his maximum sentence date. (Pennsylvania)</p>
<p>U.S. Appeals Court PAROLE RESIDENCY ELECTRONIC MONI- TORING DISCRIMINATION</p>	<p><i>Thornton v. Brown</i>, 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)</p>

U.S. Appeals Court
CIVIL COMMITMENT
SEX OFFENDERS

U.S. v. Antone, 742 F.3d 151 (4th Cir. 2014). The government filed a certification attesting that an inmate was a sexually dangerous person under the Adam Walsh Child Protection and Safety Act, and seeking the inmate's civil commitment. The district court committed the inmate to civil custody. The inmate appealed. The appeals court reversed. The court held that the government failed to establish by clear and convincing evidence that the sex offender, who suffered from an antisocial personality disorder and polysubstance abuse, would have serious difficulty in refraining from sexually violent conduct or child molestation if released. The court noted that the offender did not test positive for any substances or engage in any sexual misconduct or hostility toward women during his extended incarceration, the offender had no disciplinary infractions, the offender completed his GED as well as other professional programs, and readily sought out the prison's mental health resources, and the offender expressed remorse for his past acts. (Federal Bureau of Prisons, FCI–Butner, North Carolina)

2015

U.S. Appeals Court
SENTENCE CON-
DITIONS

Childress v. Walker, 787 F.3d 433 (7th Cir. 2015). A state prisoner brought an action under § 1983 alleging that administrators and individuals affiliated with a correctional center violated his rights under the Eighth Amendment and the Due Process Clause. The district court dismissed the action and the prisoner appealed. The appeals court reversed and remanded. The court held that the prisoner stated a claim for relief under the Eighth Amendment with allegations that the prison administrator knew that conditions of his mandatory release included a ban on computer-related material, but nevertheless instituted, condoned, or willfully turned a blind eye to the practice that placed computer-related material among his possessions. The court also found that the district court had to determine, upon the prisoner's motion for appointment of counsel, whether the prisoner, from the confines of his present institutional situation, could adequately investigate and articulate, in accordance with established practices of § 1983 liability, familiarity of each defendant with the practices of the educational program that placed computer-related material among his possessions, even though the conditions of his mandatory release included a ban on computer-related material. (Big Muddy River Correctional Center, Illinois)

U.S. District Court
DELAY
RELEASE DATE
TIMELY RELEASE

Downey v. Sheahan, 136 F.Supp.3d 472 (W.D.N.Y. 2015). A former prisoner sued state corrections officials under § 1983, alleging that they caused him to serve a sentence of incarceration for five days longer than he should have. The officials moved to dismiss and the district court granted the motion. The court held that the officials' alleged actions did not subject the prisoner to cruel and unusual punishment or violate his due process rights. The court ruled that the officials were entitled to qualified immunity, where the officials did not violate any clearly established statutory or constitutional rights of which a reasonable person would have known. The court noted that the prisoner had been sentenced to "only" three years, nine months, and fifteen days. (Five Points Corr. Facility, New York)

U.S. District Court
DUE PROCESS
PRETRIAL RELEASE

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. Appeals Court
PAROLE-VIOLATIONS
PAROLE-REVOCA-
TION
LIBERTY INTEREST

Fantone v. Latini, 780 F.3d 184 (3rd Cir. 2015). A state parole violator filed a § 1983 action alleging that prison officials caused him to be confined in a prison restrictive housing unit (RHU) in retaliation for exercising his constitutional rights, which, in turn, led the state parole board to rescind his parole. The district court dismissed the complaint and the violator appealed. The appeals court affirmed in part and reversed. The court held that the violator did not have a constitutionally protected liberty interest in being paroled before his actual release, and thus prison officials did not violate the violator's due process rights when they caused him to be confined in a prison restrictive housing unit (RHU), even though the violator was later cleared of misconduct. But the appeals court found that the violator's allegations that a prison officer retaliated against him because he refused to provide a written confession to a disciplinary charge and because he filed a grievance against the officer for threatening him during his interrogation, were sufficient to state a plausible claim against the officer for retaliation for exercising his Fifth Amendment right against self-incrimination, even though the officer's threats all came before the violator filed his grievance, where the disciplinary charge alleged criminal conduct. (Pennsylvania Board of Probation and Parole, State Correctional Institution–Pittsburgh)

U.S. District Court JUVENILE PAROLE EQUAL PROTECTION	<i>Hayden v. Keller</i> , 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 SEX OFFENDER CIVIL COMMITMENT	<i>Karsjens v. Jesson</i> , 109 F.Supp.3d 1139 (D. Minn. 2015). Patients civilly committed to the Minnesota Sex Offender Program (MSOP) brought an action against various officials and employees of the MSOP pursuant to § 1983, asserting Fourteenth Amendment due process clause challenges to the Minnesota statute governing civil commitment and treatment of sex offenders. The district court granted the patients' motion for class certification and granted in part and denied in part the officials' motion to dismiss. After a bench trial, the court held that: (1) the patients had standing to bring a class action; (2) the statute was unconstitutional on its face; and (3) the statute was unconstitutional as applied. According to the court, each patient was harmed by not knowing whether he continued to meet the criteria for commitment through regular risk assessments, each patient was harmed by the program's structural problems that resulted in delays, patients were deprived of their right to liberty, and a favorable decision would likely redress their injuries. The court noted that no patient had been released from MSOP in over 20 years and MSOP failed to initiate the petitioning process when it was aware that individual patients were likely to meet statutory discharge criteria. (Minnesota Sex Offender Program)
U.S. District Court PAROLE	<i>Knighten v. United States Parole Commission</i> , 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. (United States Disciplinary Barracks, Fort Leavenworth, Kansas)
U.S. District Court SUPERVISED RELEASE	<i>Malloy v. Gray</i> , 79 F.Supp.3d 53 (D.D.C. 2015). A District of Columbia felony offender brought a <i>Bivens</i> action in the District of Columbia Superior Court against the District of Columbia's mayor, the District's contractor for operation of a correctional mental health treatment facility, and the United States Parole Commission (USPC). The offender sought damages for an Eighth Amendment violation based on allegations that the offender was detained beyond the USPC-imposed term of imprisonment following revocation of his supervised release. The case was moved to federal court and the defendants filed motions for dismissal or summary judgment. The district court granted the motions, finding that the mayor and the contractor lacked statutory authority to participate in the proceedings for revocation of supervised release, and a 12-month term of imprisonment, upon revocation of supervised release, was within the authority of the USPC. (District of Columbia, Corrections Corporation of America, Correctional Treatment Facility)
U.S. District Court PRE-RELEASE	<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 <i>Bivens</i> 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 EX POST FACTO SEX OFFENDER	<i>McGuire v. Strange</i> , 83 F.Supp.3d 1231 (M.D.Ala. 2015). A sex offender registrant, who had previously been convicted of sexual assault in Colorado, brought an action against an Alabama city, county, and state officials, challenging the Alabama Sex Offender Registration and Community Notification Act (ASORCNA), which required a citizen to register as a homeless sex offender in-person at both the city police department and the county sheriff's department every week. After the defendants' motion to dismiss was granted in part and denied in part, leaving only the registrant's claim that ASORCNA violated the Ex Post Facto Clause, a bench trial was held. The district court held that the in-person registration requirement and the travel-permit requirement were so punitive in effect as to negate the Alabama legislature's stated nonpunitive intent, in violation of the Ex Post Facto Clause. (City of Montgomery and Montgomery County, Alabama)

U.S. District Court
PAROLE- REVOCATION
PAROLE- DUE PROCESS
RETALIATION
LIBERTY INTEREST

Moore v. Peters, 92 F.Supp.3d 109 (W.D.N.Y. 2015). A former parolee attending drug treatment program brought a § 1983 action against correction officers for violation of his due process rights and retaliation. The Parolee moved for partial summary judgment and the officers cross-moved for judgment on the pleadings. The district court granted the defendants' motion in part and denied in part, and denied the plaintiff's motion. The court held that the parolee assigned to a drug treatment program engaged in a protected activity, for purposes of a § 1983 First Amendment retaliation claim, when he filed a statement accusing a correction officer of assaulting another participant in the program. But the court held that the parolee did not have liberty interest protected by procedural due process in remaining at drug treatment facility, and thus he did not have right to procedural due process procedures in connection with his removal from facility. According to the court, the fact that parolee's removal from the drug treatment program resulted in a 10-month prison assessment did not implicate his procedural due process rights in connection with his removal from program, where the parolee was called before the program's evaluation review committee (ERC) for "poor program progress" and misbehavior, not for violation of his parole. The court held that the inmate's allegations that the correction officer who presided over his disciplinary hearing denied his request for employee assistant, and that the inmate was detained in an isolation cell and transferred prior to the hearing, rendering him unable to conduct his own investigation of the disciplinary charges, stated a § 1983 procedural due process claim. (Willard Drug Treatment Campus, Five Points Correctional Facility, New York)

U.S. District Court
TIMELY RELEASE

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
EARLY RELEASE

Sassman v. Brown, 99 F.Supp.3d 1223 (E.D. Cal. 2015). A male prisoner filed a civil rights action against the Governor of California and the Secretary of the California Department of Corrections and Rehabilitation (CDCR), alleging that the exclusion of male prisoners from California's Alternative Custody Program (ACP), under which female prisoners were allowed to apply for release from prison to serve the last 24 months of their sentence in the community, violated the Equal Protection Clause. The male prisoner moved for summary judgment. The district court granted the motion. The court held that California's ACP violated the Equal Protection Clause of the Fourteenth Amendment, and the provision excluding male prisoners from applying to the ACP would be stricken to expand the ACP to male prisoners. (California Department of Corrections and Rehabilitation)

U.S. Appeals Court
PRE-RELEASE

U.S. v. Goad, 788 F.3d 873 (8th Cir. 2015). After a federal district court denied a motion to dismiss an indictment, the defendant conditionally pled guilty to escape from custody. The defendant appealed. The appeals court affirmed, finding that the defendant was in "custody" at a residential reentry center, such that his unauthorized departure from the center constituted an escape from custody. The court noted that a person may be in custody for the purposes of a statute prohibiting escape from custody, even though the physical restraints upon him are minimal and even though the custody may be deemed constructive, rather than actual. (Gerald R. Hinzman Residential Reentry Center, Iowa)

2016

U.S. Appeals Court
ELECTRONIC MONITORING
SEX OFFENDERS

Belleau v. Wall, 811 F.3d 929 (7th Cir. 2016). A citizen, who had previously been convicted of second degree sexual assault of a child but was no longer under any form of court-ordered supervision, brought an action against Wisconsin state officials, alleging that a Wisconsin statute, requiring certain persons who had been convicted of serious child sex offenses to wear global positioning system (GPS) tracking devices for the rest of their lives, violated his rights under the Ex Post Facto Clause and the Fourth Amendment. The district court entered summary judgment in the citizen's favor. The appeals court reversed the decision. The court held that the statute did not violate the Fourth Amendment, where the loss of privacy from the requirement to wear the device-- that the Department of Corrections used device to map the wearer's whereabouts so that police would be alerted to the need to conduct an investigation if the wearer was present at a place where a sex crime was committed-- was very slight compared to the societal gain of deterring future offenses by making persons who were likely to commit offenses aware that they were being monitored. According to the court, the statute did not impose punishment, and thus did not violate the Ex Post Facto Clause. (Wisconsin Department of Corrections)

SECTION 37: RELIGION

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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.

1940

- U.S. Supreme Court
REGULATION
- Cantwell v. Connecticut, 310 U.S. 296 (1940). Regarding the regulation of religion, "It is...clear that a state may by general and nondiscriminatory legislation regulate the time, the place, and the manner of soliciting upon its streets, and of holding meetings thereon; and may in other respects safeguard the peace, good order, and comfort of the community, without unconstitutionally invading the liberties protected by the fourteenth amendment." 310 U.S. at 305. (New Haven, Connecticut)

1964

- U.S. District Court
JEWELRY/
ORNAMENTS
- Banks v. Havener, 234 F.Supp. 27 (E.D. Vir. 1964). An inmate is allowed to wear a religious medal even though jewelry has been banned from prisoners in other cases for security reasons. (Youth Center, Lorton, Virginia)
- U.S. District Court
JEWELRY/
ORNAMENTS
- Coleman v. District of Columbia Commissioners, 234 F.Supp. 408 (E.D. Vir. 1964). Restrictions on wearing of metal ornaments which might be used as weapons is justified. (Lorton Reformatory, Virginia)

1966

- U.S. District Court
PLACE TO WORSHIP
SERVICES
- Long v. Katzenbach, 258 F.Supp. 89 (M.D. Penn. 1966). Organized religions must be provided a place for services. However, the administration may allocate the largest areas to groups with the largest membership. (U.S. Peniten., Lewisburg, Pennsylvania)

1967

- U.S. Appeals Court
DIETS
- 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)
- U.S. District Court
SERVICES
- Lee v. Crouse, 284 F.Supp. 541 (D. Kan. 1967), aff'd, 396 F.2d 952 (10th Cir. 1968). The size of groups at religious services may be restricted. (State Penitentiary, Kansas)

1968

- U.S. District Court
SERVICES
- Konigsberg v. Ciccone, 285 F.Supp. 585 (W.D. Mo. 1968), aff'd, 417 F.2d 161 (8th Cir. 1969), cert. denied, 397 U.S. 963 (1969). The right to attend religious services can be prohibited in such cases only when it can be shown that institutional security is threatened. (Medical Center For Federal Prisoners, Springfield, Missouri)
- U.S. Appeals Court
PUBLICATIONS
- 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. Appeals Court
DIETS
- 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)
- U.S. Appeals Court
SERVICES
- Sharp v. Siegler, 408 F.2d 966 (8th Cir. 1969). Segregated prisoners may be refused the opportunity to attend regular Sunday religious services. (Nebraska Penal Complex)

- U.S. Appeals Court
SERVICES Walker v. Blackwell, 411 F.2d 23 (5th Cir. 1969). Services must be permitted equally for all religions, although the time and frequency may be controlled. Security ~~DIETS~~ justifies justified refusal of Muslims' request to have a meal after sunset. (Atlanta Federal Penitentiary, Georgia)
- 1970
- U.S. Appeals Court
SERVICES Gittlemacker v. Prasse, 428 F.2d 1 (3rd Cir. 1970). There is no right to services of a Jewish rabbi where a small percentage of population was Jewish. (State Correctional Institution, Dallas, Pennsylvania)
- U.S. District Court
PUBLICATIONS
SERVICES
COSTS Northern v. Nelson, 315 F.Supp. 687 (N.D. Calif. 1970), aff'd, 448 F.2d 1266 (9th Cir. 1971). Unless a clear and present danger exists, religious literature is permitted. A prison must supply at its expense Muslim ministers where it pays for Catholic, Jewish and Protestant ministers. (San Quentin State Prison, California)
- 1971
- U.S. District Court
JEWELRY/
ORNAMENTS Seale v. Mason, 326 F.Supp. 1375 (D. Conn. 1971). Where a prison regulation limited the jewelry women prisoners might wear to a wristwatch, earrings, a ring and a necklace with a religious medal on it, the court held no infringement of any constitutional right existed. (Montville Correctional Center, Connecticut)
- 1972
- U.S. District Court
SERVICES Collins v. Schoonfield, 344 F.Supp. 257 (D. Md. 1972). The right to hold religious services must be extended to all religious groups. (Baltimore City Jail, Maryland)
- U.S. Supreme Court
PLACE TO WORSHIP
SERVICES Cruz v. Beto, 405 U.S. 319 (1972). Claiming a cause of action under 42 U.S.C. Section 1983, Cruz, an alleged Buddhist, incarcerated in a Texas prison, complained that he was not allowed to use the prison chapel, that he was prohibited from corresponding with his religious advisor, and that he was placed in solitary confinement for sharing his religious materials with other inmates. The U.S. District Court dismissed the complaint on the grounds that it was in an area that should be left "to the sound discretion of prison administration." The Fifth Circuit Court of Appeals affirmed, and the U.S. Supreme Court granted certiorari.
HELD: "[A] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." 405 U.S. at 322 Citing Conley v. Gibson, 355 U.S. at 45-46. (Texas Department of Corrections, Ellis Unit)
- U.S. Appeals Court
SERVICES LaReau v. MacDougall, 473 F.2d 974 (2nd Cir. 1972), cert denied, 414 U.S. 878. Prisoners with a history of disruptive activity may be denied attendance at religious services. (Connecticut Correctional Institute, Somers, Connecticut)
- U.S. District Court
PLACE TO WORSHIP Taylor v. Sterrett, 344 F.Supp. 411 (N.D. Tex. 1972), reh'g denied, 420 U.S. 983 (1974). Court orders county officials to include quarters for chapel services in permanent plan for new facilities. (Dallas County Jail, Texas)
- U.S. District Court
RECOGNIZED
RELIGIONS Therriault v. Carlson, 339 F.Supp. 375 (N.D. Ga. 1972), cert. denied, 434 U.S. 871 (1977), reh'g denied, 434 U.S. 943 (1977). Prisons must recognize Church of the New Song as a religion. (Atlanta Federal Penitentiary, Georgia)
- 1973
- U.S. Appeals Court
DIETS 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 Penitentiary, Georgia)
- U.S. Appeals Court
SERVICES
VISITS Fallis v. United States, 476 F.2d 619 (5th Cir. 1973). Security and visiting rules are sufficient grounds for refusing to allow Mormon "Family Home Evening" contact visits. (Atlanta Federal Penitentiary, Georgia)
- U.S. District Court
VISITS Inmates of Suffolk Co. Jail v. Eisenstadt, 360 F.Supp. 676 (D. Mass. 1973), aff'd, 494 F.2d 1196 (1st Cir. 1974). Detainees must be able to have private, individual, consultations with outside clergy. (Suffolk County Jail, Massachusetts)
- U.S. District Court
SERVICES Pinkston v. Bensinger, 359 F.Supp. 95 (N.D. Ill. 1973). Prisoners justifiably isolated may be denied the right to attend religious services. (State Penitentiary, Joliet Branch, Illinois)

- U.S. District Court
RECOGNIZED
RELIGIONS
- Remmers v. Brewer, 361 F.Supp. 537 (N.D. Ia. 1973), aff'd, 494 F.2d 1277 (8th Cir. 1974) cert. denied, 419 U.S. 1012 (1973). Members of the Church of the New Song are allowed free exercise. (Iowa State Penitentiary, Fort Madison, Iowa)
- U.S. District Court
APPEARANCE
- Rinehart v. Brewer, 360 F.Supp. 105 (S.D. Ia. 1973), aff'd, 491 F.2d 705 (8th Cir. 1974). When beliefs concerning appearance and hair style or length conflict with jail or prison regulations, religious belief must yield. (Iowa State Penitentiary)
- U.S. Appeals Court
DIETS
- Ross v. Blackledge, 477 F.2d 616 (4th Cir. 1973). A modest degree of official deference to Black Muslim dietary beliefs is required. When the non-pork diet was alleged to be nutritionally inadequate the burden was shifted to the prison to show why it could not prepare a pork free diet. (State Prison, North Carolina)
- 1974
- U.S. District Court
RECOGNIZED
RELIGIONS
ARTICLES
- Kennedy v. Meacham, 382 F.Supp. 996 (D. Wy. 1974). Satanists are given religious status, but are not allowed to keep Baphomets, bells, candles, pointing sticks, gongs, incense or black robes in their cells. (Wyoming State Penitentiary)
- U.S. District Court
SERVICES
- Wilson v. Beame, 380 F.Supp. 1232 (E.D. N.Y. 1974). Inmates in administrative segregation are entitled to group religious services under the less drastic alternatives test. Inmates in administrative segregation are entitled to substantially the same rights and privileges as the general population. (House of Detention For Men, Brooklyn, New York)
- 1975
- U.S. District Court
SERVICES
PLACE TO WORSHIP
- Giampetruzzi v. Malcolm, 406 F.Supp. 836 (S.D. N.Y. 1975). Inmates in administrative segregation must be allowed to hold religious services at least once weekly, in an area other than the unfurnished narrow corridor within a few feet of the commodes of the inmates' cells, and at a time when the services do not have to compete with noise from the radio and television. Exclusion of inmates in administrative segregation from worship with all other members of their faith is not abridgement of their fundamental first amendment rights. (New York City House of Detention for Men)
- U.S. Appeals Court
HAIR
- Teterud v. Burns, 522 F.2d 357 (8th Cir. 1975). The right of a Native American prisoner to refuse a haircut on the grounds of his adherence to his Native American religion is affirmed. (Iowa State Penitentiary)
- U.S. District Court
RECOGNIZED
RELIGIONS
- Therriault v. Silber, 391 F.Supp. 578 (W.D. Tex. 1975), cert. denied, 434 U.S. 871 (1977). Church of the New Song is ruled by the district court to not be a religion. (Federal Penitentiary, La Tuna, Texas)
- 1976
- U.S. District Court
DIETS
- Barnes v. Government of the Virgin Islands, 415 F.Supp. 1218 (D. V.I. 1976). Authorities must make reasonable efforts to accommodate dietary restriction of religious groups. (Golden Grove Adult Correctional Facility, Virgin Islands)
- U.S. District Court
OPPORTUNITY TO
PRACTICE
- Mitchell v. Untreiner, 421 F.Supp. 886 (N.D. Fla. 1976). Absence of reasonable opportunity to practice religion denies first amendment rights. (Escambia County Jail, Pensacola, Florida)
- U.S. District Court
BEARDS
- Monroe v. Bombard, 422 F.Supp. 211 (S.D. N.Y. 1976). A "no beard" rule violated the religious freedom of Sunni Muslims in New York because their religion advised them to wear beards. (Green Haven Correctional Facility, New York)
- U.S. Appeals Court
CORRESPONDENCE
- Taylor v. Sterrett, 532 F.2d 462 (5th Cir. 1976), reh'g denied, 420 U.S. 983 (1974). A prisoner's freedom of religion under the first amendment affords protection to correspondence of a religious nature. (Dallas County Jail, Texas)
- 1977
- U.S. District Court
SERVICES
COUNSELING
DIET
- Ahrens v. Thomas, 434 F.Supp. 873 (W.D. Mo. 1977), aff'd, 570 F.2d 288. There shall be an opportunity within the jail to attend religious services and to receive religious counseling. 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). (Platte County Jail, Missouri)

- U.S. District Court
VISITS
SERVICES
PUBLICATIONS
- Goldsby v. Carnes, 429 F.Supp. 370 (W.D. Mo. 1977). Access to a qualified representative of any established religion shall not be refused to any inmate during scheduled professional visits. If any inmate should object to a visit of any religious representative, his attitude shall be fully respected. So far as practicable, every inmate shall be allowed to satisfy the needs of his religious life by attending the services provided in the institution and having in his possession the books of religious observance and instruction of his denomination or beliefs. While in punitive segregation he will be permitted to see his religious advisor and have in his possession his books of religious instruction. (Jackson County Jail, Kansas City, Missouri)
- 1979
- U.S. District Court
RECOGNITION OF
RELIGIONS
- Loney v. Scurr, 474 F.Supp. 1186 (S.D. Iowa 1979). Court finds that the "Church of the New Song" is a bona fide religion and its adherents must be given opportunity to worship with no more restrictions than any other religion. (Iowa State Penitentiary)
- U.S. District Court
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
VOLUNTEERS
FORCED EXPOSURE
- Campbell v. Cauthron, 623 F.2d 503 (8th Cir. 1980). There is no constitutional problem with permitting religious volunteers to visit the jail. However, inmates may not be forced to listen to preaching. Forcing inmates to be exposed to religious activities violates their first amendment rights regardless of the benefits to inmates. (Sebastian County Jail, Arkansas)
- U.S. District Court
DIETS
WORK
- Chapman v. Pickett, 491 F.Supp. 967 (C.D. Ill. 1980). Reversed. In determining whether the first amendment freedom of religion has been violated by prison regulations or operations, according to the federal district court a two part test is to be applied: 1) the plaintiff must first show that a legitimate religious practice is being unduly limited by prison regulations; and 2) the government then has a burden of showing a compelling state interest in security, administration, or discipline justifying the restriction, and that the restriction represents the least drastic means of achieving the legitimate institutional goals. Refusal of a Muslim to handle pork which is violative of a serious religious belief is proper. To be a serious religious belief, the belief need not be a mandatory tenet of the faith. Here the government has shown no legitimate interest in having the individual handle pork. On appeal, the circuit court of appeals disagreed, reversing the lower court ruling. (Federal Penitentiary, Leavenworth, Kansas)
- U.S. District Court
PLACE TO WORSHIP
- Leon v. Harris, 489 F.Supp. 221 (S.D. N.Y. 1980). Denial of the right to visit the chapel to an inmate in the institution while in transit between two other institutions, without any additional reason, states a claim upon which relief could be granted. (Green Haven Correctional Facility, New York)
- U.S. District Court
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)
- U.S. Appeals Court
HATS
SERVICES
- 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)

1981

U.S. District Court
PLACE TO WORSHIP
SERVICES

Glasshofer v. Thornburgh, 514 F.Supp. 1242 (E.D. Penn. 1981), *aff'd*, 688 F.2d 821 (3rd Cir. 1982). The fact that the room set aside for Jewish religious services must be shared with other religious denominations is rational in light of the limited space available in the institution and the size of the Jewish population in the institution. Locking the room and giving the keys to the institutional chaplains is a reasonable manner of securing the premises. Therefore, posting of a twenty-four hours a day guard is not required. The fact that there is a facility set aside for Christian worship and another for Muslim worship does not indicate that Jews are being denied equal protection since each facility must be shared with multiple denominations and must leave in place fixtures which are antithetical to the beliefs of some of the organizations using the rooms. Detention of the Jewish chaplains at the gate on two occasions was in accordance with a reasonable security procedure which was applied neutrally to all religious and non-religious visitors. Therefore, it did not violate the first amendment. Requiring passes to permit inmates to attend services and requiring all services to break for the regular institutional counts were rational security procedures. (State Correctional Institute, Graterford, Pennsylvania)

U.S. District Court
RECOGNITION OF
RELIGIONS

Green v. White, 525 F.Supp. 81 (E.D. Mo. 1981), *cert. denied*, 103 S.Ct. 2464 (1982). A former prisoner failed to prove that prison officials did not act in good faith in connection with the prisoner's religion. It was clear that prison officials believed at the time, and at the time of the trial, that the prisoner's religion was a sham and bogus religion concocted by the prisoner for the sole purpose of extracting from prisoner officials privileges not available to the general prison population. Until such time as the prisoner obtained judicial approval of his "religion," it would have been irresponsible to grant the request of the prisoner for special privileges. Furthermore, the action was dismissed due to the frivolous and malicious nature of the litigation. (Missouri Training Center for Men)

1982

U.S. District Court
BEARD

Furgan v. Ga. State Bd. of Offender Rehabilitation, 554 F.Supp. 873 (N.D. Ga. 1982). A beard cannot be grown because it prevents identification of inmate upon escape. An inmate filed suit against the prison alleging that he was a Sunni Muslim and that his growing a beard was a practice of his Islamic faith. The federal district court held that the regulation's justification outweighed the inmate's sincere reasons for retaining a beard. The regulation was justified for the reason of permitting ease of identification upon escape. The rationale was that an escaped prisoner wearing a beard could more easily modify his appearance than could a clean shaven inmate with short hair. (Diagnostic and Classification Center, Georgia)

U.S. Appeals Court
MAIL

Mosby v. Mabry, 697 F.2d 213 (8th Cir. 1982). Opening religious mail not in the presence of the inmate is upheld. The court of appeals upheld the institutional practice of opening religious mail out of the presence of the inmate, finding it did not violate first amendment rights. (Arkansas Department of Correction)

U.S. Appeals Court
PLACE TO WORSHIP
CLOTHING

Rogers v. Scurr, 676 F.2d 1211 (8th Cir. 1982). Court finds that Muslim inmates' rights are not violated. Several muslim inmates of the Iowa State Penitentiary filed suit alleging that their religious freedom had been curtailed because they were denied entrance to the prayer chapel for a short time and later refused to leave a restricted area where they had started praying. They also challenged prison regulations allowing prayer caps and robes to be worn only in the chapel. The lower court found no constitutional violation, but ordered changes in prison regulations in regard to religious practices. The court of appeals for the 8th Circuit, agreeing that no violations had occurred, also vacated all orders of the lower court, stating that the lower court had erred in ordering the changes where no constitutional violations had been found and noted that prison administrators should be accorded liberal discretions in running the prison. The appeals court found that all regulations were reasonably related to safety and security needs of the prison and that was evident from the record that prison administrators had exercised good faith in trying to accommodate the needs of the Muslim inmates' religious beliefs. (Iowa State Penitentiary)

1983

State Appeals Court
PLACE TO WORSHIP

Abdullah v. Smith, 465 N.Y.S.2d 81 (App. 1983). Moslem inmates may stay in cells during recreation period to pray. The court ordered prison authorities to stop punishing Moslem inmates for praying in the recreation yard or to allow them to return to their cells. The court stated that permitting prisoners access to their cells during recreation periods did not impede the maintenance of order or discipline nor did it unreasonably limit the superintendent's authority. (Attica Correctional Facility, New York)

U.S. Appeals Court
ARTICLES

Childs v. Duckworth, 705 F.2d 915 (7th Cir. 1983). Denial of religious articles to practice satanic beliefs is proper. The Fifth Judicial Circuit Court of Appeals has ruled that denial of an inmate's request to practice his alleged Satanic religion was justified in the interest of prison security. Prison officials had found that the inmate was insincere in his professed belief since he never provided the information required to start an organization, never obtained a sponsor, and was secretive about his group's rituals. Without such information, the practice of the so-called religion presented a potential threat to institutional security since prison authorities had no way of knowing what would occur at the Satanic services. Prison officials properly denied the prisoner a podium from which to propagate his individual beliefs, candles and incense which were a fire hazard, and a crystal ball which could be used to physically harm someone. In addition, prison officials and the district court decided Satanism was not a religion, but rather a "nebulous, philosophic concept." (Indiana State Prison)

U.S. District Court
RECOGNITION OF
RELIGIONS

Jacques v. Hilton, 569 F.Supp. 730 (D. N.J. 1983), aff'd, 738 F.2d 422 (3rd Cir. 1984). Inmate is not allowed to practice a religion found to be a "sham." Prison inmates brought a civil rights action alleging that prison officials denied them the right to practice their religion freely. The plaintiffs had obtained mail order certificates ordaining them as ministers, a practice that had been attempted by citizens to avoid or reduce taxes. The inmates' religion loosely consisted of paying homage to the spirit of life according to their own individual dictates. The district court held that the beliefs professed by the inmates did not rise to the level of a religion entitled to constitutional protection because the doctrines of the church (1) did not address the questions of human morality or the purpose of life; (2) lacked the comprehensiveness, cohesiveness and commonality of beliefs characteristic of accepted religions; and (3) lacked the defining structural characteristics of a traditional religion. (Trenton State Prison, New Jersey)

U.S. District Court
ADMISSION
PROCEDURES

Karriem v. Barry, 32 Crim. L. Rptr. 2429 (D. D.C. 1983). Procedures for admitting a minister to an institution are upheld. The district court upheld institutional procedures which require a minister who desires to work in the institution to execute a form: disclosing his superior, if any; agreeing to obey any orders from his superior; agreeing to keep his superiors informed of his activities; and agreeing to refrain from any political activities, finding that the procedures do not violate either the free exercise or establishment clauses of the first amendment. (District of Columbia Jail)

U.S. District Court
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 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)

State Appeals Court
SEARCH BY FEMALE

Rivera v. Smith, 462 N.Y.S.2d 352 (App. 1983), aff'd, 472 S.2d 210 (1985). Muslim inmate may refuse frisk search by female guards. An appellate court in New York has ruled that generally inmates may refuse for religious reasons to submit to frisk searches by female guards, finding no reason why male guards could not be used to conduct routine searches. The court ruled that an officer of either sex must be allowed to conduct the search when contraband is suspected or in other emergency circumstances. (Attica Correctional Facility, New York)

1985

U.S. District Court
RECOGNIZED
RELIGION
ARTICLES

Dettmer v. Landon, 617 F.Supp. 592 (D.C. Va. 1985). Since an inmate's practicing of a religion that was popular in northern Europe in the tenth and eleventh century was found to be a legitimate religion, prison officials were ordered to provide him with ceremonial materials. Against their objections, officials were ordered to supply the inmate with: 1) Sulfur, sea salt or uniodized salt; 2) Quartz clock with alarm; 3) Candles; 4) Incense; 5) A white robe without a hood.

The prison has general custody of the items to be made available to the inmate at designated times. A robe without a hood was ordered because of the officials' assertion that the hood could promote an escape attempt. Prisoners who practiced more conventional religions such as Catholicism and Hinduism were allowed access to candles, incense and robes. The plaintiff's religion, referred to as the Church of Wicca (more commonly called witchcraft) is practiced by an estimated 10,000 to 50,000 people in the United States. (Powhatan Correctional Center, State Farm, Virginia)

U.S. Appeals Court
BEARDS

Hill v. Blackwell, 774 F.2d 338 (8th Cir. 1985). A Missouri prison regulation which prohibited prisoners from growing beards was upheld by the court of appeals. A muslim prisoner contended that the rule interfered with his right to exercise his religious beliefs. The court believed the sincerity of the plaintiff, but found the regulation to be a reasonable response to security needs in a high-security by minimizing the prisoner's ability to alter his appearance rapidly and significantly. The lower court had struck down the regulation. (Missouri State Penitentiary)

U.S. District Court
COUNSELING

Spratt v. County of Kent, 621 F.Supp. 594 (D.C. Mich. 1985). A Michigan sheriff had the right to inform a social worker not to mix religious counseling with psychological counseling. The plaintiff claimed he was a "Pentecostal Christian," and an evangelist spreading the Gospel. When the counselor continued to quote from the Bible and encourage spiritual participation, the sheriff suspended and ultimately fired him. The court upheld the discharge finding no religious discrimination or violations in equal protection. (Kent County, Michigan)

1986

U.S. District Court
MEDICAL CARE

Ballard v. Woodard, 641 F.Supp. 432 (W.D.N.C. 1986). Prison officials were not liable to a prisoner under Section 1983 for physically forcing him, over his religious objections, to submit to a test for tuberculosis by injection. Any violation of the prisoner's first amendment rights to practice his Muslim religion was overridden by the state's paramount interest in maintaining the health of its prison population, even though the testing was not prompted by the discovery of an active case of tuberculosis within the prison. (Huntersville, North Carolina)

U.S. Appeals Court
SOAP

Beyah v. Coughlin, 789 F.2d 986 (2nd Cir. 1986). Flaws in both the form and substance of prison officials' presentation with respect to soap manufactured by the state should have prevented entry of summary judgment against inmates. The inmates alleged that the refusal of officials to allow them to use soap containing no pork products violated their constitutional rights. The only affidavit submitted by prison officials as to the content of the soaps was that of their attorney. The attorney did not suggest that he had personal knowledge of any of the facts asserted therein. (Attica Correctional Facility, New York)

U.S. Appeals Court
DIETS

Chapman v. Pickett, 801 F.2d 912 (7th Cir. 1986). A prison warden was personally liable to a prisoner whose eighth amendment rights were violated when he was kept in segregation for nine months as a result of his refusal on religious grounds to clean pork off food trays. The warden admitted to knowing of the prisoner's confinement and did nothing about it, even after he received a letter from his supervisor. He was in the best position to know that a constitutional deprivation had occurred and had the authority to remedy the situation but did nothing. The United States District Court for the Central District of Illinois awarded the inmate \$7,000 against prison officials, and the officials appealed. The court of appeals held that: (1) the award of \$7,000 was not an abuse of discretion; (2) the court could properly deny punitive damages on the grounds that defendants acted in good faith; and (3) the warden, associate warden, and members of adjustment committee were all properly held liable. (Federal Penitentiary, Illinois)

U.S. District Court
OPPORTUNITY TO
PRACTICE

Dominguez v. Figel, 626 F.Supp. 368 (N.D. Ind. 1986). Federal court finds inmate filed frivolous and inaccurate suit, imposing a \$1,500 penalty and requiring inmate to pay \$2,500 attorney's fees for the defendants. A jail inmate brought a civil rights action alleging violations of freedom of religion and cruel and unusual punishment in a five-day lockdown period which allegedly prevented him from exercising and violated his freedom of religion. The federal district court held that: (1) confinement in his cell for one Sunday was constitutionally justified, even if it had prevented the inmate from exercising religion; (2) confinement in jail for five days did not prevent the inmate from exercising; and (3) the inmate was required to pay reasonable attorney fees and costs, as well as other Rule 11 sanctions for bringing a frivolous action.

The federal judge ordered the inmate to pay a \$1,500 penalty for filing a frivolous lawsuit against jail officials. The prisoner was also ordered to pay for the jail officials' attorney's fee. The court awarded \$2,500 in attorney's fees for having to defend the meritless allegations. The inmate, not his attorney, was responsible for payment, ruled the court, because the attorney was merely appointed after the inmate filed the pro se action knowing it was groundless.

The inmate was given religious counseling and exercised inside his cell when he claimed a denial of these privileges. He at first denied that he had been given a shower during his five-day lockdown for suspected drug trafficking but later admitted receiving one. His attorney was operating with information supplied by him.

Even if the inmate had been denied a religious ceremony for one Sunday and out-of-cell exercise, there would have been no violation, ruled the court. Ultimately, the inmate admitted that he preferred to exercise inside his cell. His initial confinement was found by the court to have been justified to protect the informant and to control the flow of drugs at the jail. (Allen County Jail, Indiana)

U.S. District Court
BEARD

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
ARTICLES

Indian Inmates of NE Penitentiary v. Grammer, 649 F.Supp. 1374 (D. Neb. 1986). Native American inmates in a state penal system filed a motion to show cause why the warden should not be punished for contempt. The district court held that: (1) a prior consent decree did not require prison officials to permit the use of peyote in correctional facilities during Native American Church services, and thus, the warden did not violate a consent decree and was not in contempt of court; and (2) the first amendment did not require that Native American inmates be given access to peyote for Native American Church services.

A consent decree, which required that prison officials allow Native American inmates access to Indian medicine men and spiritual leaders and provide facilities for spiritual and religious services, including but not limited to Native American Church services, did not require prison officials to permit the use of peyote within correctional facilities during services. Thus, the warden did not violate a consent decree and was not in contempt of court when he failed to allow the use of peyote during services.

Prison administrators should be accorded wide-ranging deference in adoption and execution of policies and practices that, in their judgment, are needed to preserve internal order and discipline and to maintain institutional security. (State Penitentiary, Nebraska)

U.S. District Court
PUBLICATIONS

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
OPPORTUNITY

Little v. Norris, 787 F.2d 1241 (8th Cir. 1986). An inmate of a maximum security unit brought civil rights complaints challenging the constitutionality of prison policies which restricted his mail privileges, his right to attend group religious services and his right

to receive legal assistance from another inmate. The United States District Court entered summary judgment dismissing the complaints, and the inmate appealed. The court of appeals held that: (1) the prison policy denying the inmate a right to receive or send personal correspondence during thirty days in punitive isolation did not violate the inmate's constitutional rights; (2) suspension of the inmate's right to attend group religious services did not violate the inmate's first amendment right to freedom of religion; and (3) forbidding the inmate in administrative segregation or punitive housing to receive assistance from another inmate in preparation of a legal draft did not violate the inmate's constitutional rights.

The inmate's exercise of freedom of religion may be restricted by reasonable requirements of prison security. Once prison officials produce evidence that the restriction placed on an inmate's religious freedom was in response to a security concern, the burden is on the inmate to show by substantial evidence that the prison officials' response was exaggerated. (Tucker Maximum Security Unit, Arkansas Department of Corrections)

U.S. District Court
OPPORTUNITY TO
WORSHIP
AIDS

Powell v. Department of Corrections, State of Okl., 647 F.Supp. 968 (N.D. Okl. 1986). A state prisoner who had tested positive for the AIDS virus brought a Section 1983 action against the Oklahoma Department of Corrections alleging violation of his constitutional rights in his segregation from the general prison population. The prisoner also sought writ of mandamus raising similar issues. The district court held that: (1) conditions of the prisoner's confinement were not violative of his constitutional rights; (2) the prisoner was not denied his right to worship; (3) the prisoner was not denied equal protection of law; and (4) the prisoner was not denied his constitutional right of access to courts.

A prisoner does not have a federal constitutional right to be placed in the general prison population. The conditions of a prisoner's confinement after he tested positive for the AIDS virus, in which the prisoner was segregated from the general prison population but provided limited access to all prison programs and services and allowed to exercise, were not violative of the prisoner's constitutional rights.

The prisoner was not denied his right to worship by being prohibited from attending group worship services where prohibition was intended for the health of the prisoners and to protect the prisoner from threatened harm, and where the prisoner had regular access to the prison chaplain. (Department of Corrections, Oklahoma)

U.S. District Court
REGULATION- NAME

Rahman v. Stephenson, 626 F.Supp. 886 (W.D. Tenn. 1986). Prison officials not required to recognize prisoner's informal name and acted properly in removing his name from daily sick call roster. Prison officials acted properly when they refused to allow a prisoner who had informally changed his name for religion reasons to register for sick call using only his newly-adopted name. As a result, the prisoner missed one sick call. The Federal Court noted that if prisoners refuse to accept identification cards provided by the prison, they violate important prison rules.

The same district court recently ruled that prison officials were not required to recognize names which inmates informally adopted for religious reasons, unless prisoners used established legal channels. When such legal proceedings are followed, officials need only give limited recognition of it. There is no requirement to change internal record keeping. The court ruled that the inmate's constitutional rights were not violated when he missed sick call or by the refusal of prison officials to recognize his newly-adopted name. (Lake County Regional Prison, Tennessee)

U.S. Appeals Court
BEARD

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
SERVICES

Tisdale v. Dobbs, 807 F.2d 734 (8th Cir. 1986). A Muslim inmate brought action against the Arkansas Department of Correction alleging the department denied him and other Muslim inmates the right to free exercise of their religion by refusing to allow them to conduct religious services except under leadership of approved free world sponsor and by providing them with an inadequate sack lunch following daily Ramadan

fast. The district court entered summary judgment against the inmate, and the inmate appealed. The Court of Appeals held that: (1) the regulation requiring approved free world sponsor for religious services was reasonable response to legitimate security considerations, and (2) the complaint regarding provision of sack lunches did not rise to constitutional significance. (Arkansas Department of Correction)

U.S. Appeals Court
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
HAIR
RECOGNIZED
RELIGIONS

Abdool-Rashaad v. Seiter, 690 F.Supp. 598 (S.D. Ohio 1987). A prison inmate brought a suit requesting that prison officials be enjoined from cutting the inmate's hair or otherwise enforcing grooming regulations, requesting that the prison be ordered to recognize the religion created by the inmate, and moved for summary judgment and an evidentiary hearing. The district court granted a motion to dismiss, and found that to grant the inmate's request to order the prison to recognize the "Universalism" religion allegedly established by the inmate would violate the establishment clause of the first amendment, and the inmate's inability to obtain outside verification of the religious basis for his request for exemption from prison rules regarding the cutting of hair or for his religious beliefs precluded the inmate from being entitled to exemption from grooming requirements under either the first amendment or government regulations. (Ohio State Reformatory)

U.S. Appeals Court
OPPORTUNITY TO
PRACTICE
ARTICLES

Allen v. Toombs, 827 F.2d 563 (9th Cir. 1987). On appeal, the lower court decision that upheld prison regulations was affirmed. Prison inmates of a Native American religion failed to establish that a state prison policy prohibiting inmate spiritual leaders from conducting a "Pipe Ceremony" for prisoners in segregation when no outside "Pipe Bearer" was available refused inmates access to ceremony in violation of their First Amendment rights. Inmates had presented no evidence that any inmate in segregation had been denied access to the ceremony because of the policy. According to the court, the use of an axe, red hot stones and a pitchfork was reason enough for prison officials to deny segregated inmates from attending a Native American "Sweat Lodge" ritual. The Court found that the "Sweat Lodge" Ceremony posed a high security risk for the prison community if inmates from segregation were allowed to attend. In addition, the Court found that there was no evidence that inmates from the segregation unit had been denied attendance of the "Pipe Ceremony." The prison can require that the "Pipe Bearer" be an outside person rather than an inmate. (Oregon State Penitentiary)

U.S. Appeals Court
HATS
REGULATIONS

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
REGULATIONS

Felix v. Rolan, 833 F.2d 517 (5th Cir. 1987). Religious freedom is not violated when it is required that a prisoner sign both a committed name and legal Muslim name when entering the library. The inmate plaintiff argued that he had his legal name changed for religious reasons and that use of the prior name was offensive to him. He also complained that he was denied the supplies he needed to file this and other lawsuits by the library supervisor. The appeals court found the complaint about lack of supplies unwarranted when evidence showed that the inmate had requested 100 sheets of paper a week, but was only granted 75. The court also found, since it aided in the identification of prisoners, that the required use of the inmates' committed name was a reasonable regulation adopted in the interests of order, security and administrative efficiency. (Ellis Unit of the Texas Department of Corrections)

U.S. Appeals Court
SERVICES
OPPORTUNITY TO
PRACTICE
REGULATIONS

Hadi v. Horn, 830 F.2d 779 (7th Cir. 1987). Muslim inmates' free exercise rights under the first amendment were not violated when prison officials cancelled Muslim religious services due to the fact that a Muslim chaplain was unable to be present. The inmates claimed that, when a Muslim chaplain was unable to attend, a Muslim inmate should be permitted to conduct services under the supervision of a non-Muslim chaplain. Prison officials felt that conflicts might arise because inmates lacked the requisite religious expertise to resolve issues that arose during religious meetings and they also indicated that security could be jeopardized by granting inmates positions of authority as religious leaders over other inmates. The officials also expressed concern that services led by inmates might be used for gang meetings and for dissemination of views interfering with order in the prison. (Pontiac Correctional Center)

U.S. Appeals Court
ARTICLES
REGULATIONS

Higgins v. Burroughs, 834 F.2d 76 (3rd Cir. 1987). The United States Supreme Court recently vacated an order of the U.S. Court of Appeals for the Third Circuit. Higgins v. Burroughs, 816 F.2d 119 (3rd Cir.), vacated, 108 S.Ct. 54 (1987). The lower court had ruled that a state prison regulation prohibiting the wearing of rosary beads into a visiting area violated inmates' First Amendment religious freedom and was not a valid security measure. In light of O'Lone v. Estate of Shabazz, 107 S.Ct. 2400 (1987), in which the court said that prison regulations which are alleged to impinge upon constitutional rights are valid if "it is reasonably related to legitimate penological interests," the Supreme Court asked that the decision be reconsidered. On remand, the Third Circuit expressed its view that this standard should create "no difference in result," but remanded the case to the trial court for further proceedings. (Graterford State Correctional Institute, Pennsylvania)

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. Appeals Court
OPPORTUNITY TO
PRACTICE

Lane v. Griffin, 834 F.2d 403 (4th Cir. 1987). A federal appeals court ruled that a restriction on inmates' constitutional rights that is reasonably related to legitimate penological interest is valid, whether imposed by a prison regulation or by a policy decision made by a prison official and that the lower court had improperly informed the jury that the prison regulation had to be no broader than necessary rather than reasonably related to a legitimate security interest. A state prisoner brought a civil rights action against the prison superintendent, alleging that a prison restriction imposed by the superintendent violated the prisoner's First Amendment right of freedom of religion. The trial court was directed to consider, on remand, whether the superintendent was entitled to qualified immunity for his action. This is based on whether the law governing the scope of the inmate's right to participate in religious services, at the time of his request, was sufficiently clear so that the superintendent could have known whether his conduct violated the inmate's constitutional rights. (McCain Correctional Center, McCain, North Carolina)

U.S. Appeals Court
BEARDS
HAIR LENGTH

Martinelli v. Dugger, 817 F.2d 1499 (11th Cir. 1987), cert. denied, 108 S.Ct. 714. According to a federal appeals court, a prisoner who professed a belief in the Greek Orthodox religion was not entitled to an exemption from the prison shaving and hair length rules because the regulations were rationally related to substantial governmental interests and the restriction was no greater than necessary to protect the governmental interest involved. The court noted that proof of the connection between allegedly protected practices and religious beliefs is a properly considered element of the plaintiff's proof that

he or she is sincere in asserting that beliefs are protected by the free exercise clause. There is no separate requirement that the claim be "deeply-rooted" in religious beliefs. The court found that the periodic rephotographing of inmates who grow long hair and beards did not present a less restrictive alternative, for free exercise clause purposes, to the prison's hair length and no-beard regulations. 108 S.Ct. 714 (1988). Cert. denied. (Dade Correctional Institution)

U.S. Appeals Court
SINCERITY
DIETS

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
OPPORTUNITY TO
PRACTICE
REGULATION

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
NAME
REGULATIONS

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 was 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
MAIL
PUBLICATIONS

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 were then told 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. District Court
SINCERITY
HAIR LENGTH
BEARDS

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)

U.S. District Court
BEARDS
DIETS

Ross v. Coughlin, 669 F.Supp. 1235 (S.D.N.Y. 1987). An orthodox Jewish inmate stated a claim against New York prison officials for violating his First Amendment right to freely exercise his religion by forcing him to cut his facial hair, according to a federal district court. The beard trimming regulation being challenged was not reasonably related to governmental interests in identifying and controlling contraband, inmate

identification, or prison security. However, the court found that the inmate did not have a claim in connection with his being forced to shave his hair and beard for an initial identification photograph. The court did find that the 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)

U.S. District Court
REGULATIONS
ARTICLES

Sample v. Borg, 675 F.Supp. 574 (E.D.Cal. 1987). Vacated 870 F.2d 563. A state prison policy did not sufficiently accommodate the First Amendment religious rights of a Native American inmate. The district court ordered that the policy be modified to permit the inmate, in maximum security, to participate in a pipe ceremony to be celebrated at his cell door. The inmate would also be permitted to possess tobacco ties, subject to reasonable regulations, and to wear a headband. The prohibition against American Indian inmate's participation in a pipe ceremony by passage of pipe through food port in door when visited by medicine man in security housing unit violated free exercise clause. The regulation was not reasonably related to legitimate penological interests. The inmate could use another homemade weapon or bare hands to attack cellmate. Silent prayer and fasting, which could be done without state's permission, did not support reasonableness of regulation. The prison already allowed visits by clergy. The inmate's proposal to permit pipe ceremony at door was alternative to total ban and would have de minimis impact on prison personnel, other inmates, and prison budget.

A total ban on American Indian inmate's possession of tobacco ties violated free exercise rights. The burden on prison personnel to inspect ties could be made de minimis by limiting number of ties. Limiting tensile strength of string minimized danger of tie being used as weapon. Requiring tie to be kept in inmate's cell minimized potential for conflict between staff and ripple effect as to other prisoners. During the appeal of this case the Special Housing Unit was deactivated and all prisoners were reassigned to other units. Therefore, the appeals court vacated the lower court decision and instructed the lower court to dismiss the case as moot. (Security Housing Unit, California State Prison, Sacramento County)

U.S. Court of Appeals
ARTICLES
REGULATIONS

Standing Deer v. Carlson, 831 F.2d 1525 (9th Cir. 1987). Native American prison inmates brought action for injunctive and declaratory relief, alleging that a prison regulation which banned the wearing of headgear, including religious headbands, in the dining hall unconstitutionally burdened their ability to practice their religion. The federal appeals court held that the ban was logically connected to legitimate penological interests. There had been complaints about dirty clothing and headgear in the dining hall, with prisoners threatening to "take matters into their own hands," and inspection of headgear for cleanliness would create opportunities for confrontation. Prison regulations banning the wearing of headgear in the dining hall did not violate the American Indian Religious Freedom Act where the warden was aware that Native American inmates attached religious significance to their headbands, but found that limited intrusion on inmates' religious practices was warranted to maintain security, safety, and order in the institution. (United States Penitentiary, Lompoc, California)

U.S. Appeals Court
MAIL

Valiant-Bey v. Morris, 829 F.2d 1441 (8th Cir. 1987). A federal appeals court held that a prison mail policy, which expressly required that any censorship of mail be justified on the basis of institutional security and safety of employees and prisoners, was not unconstitutionally overbroad. However, the court found that the prisoner's allegations concerning the interception and delay of mail from religious organizations stated a claim under section 1983. A prisoner's allegations that prison officials wrongfully confiscated memorandum mailed to him by the local chapter of the Moorish Science Temple of America, and did not follow minimum procedural safeguards in doing so, and that prison officials handled and delayed delivery of mail from the religious organization in a manner that discriminated on the basis of race and religion were legally sufficient to state a claim under section 1983. (Missouri Training Center for Men)

1988

U.S. District Court
REGULATIONS

Aliym v. Miles, 679 F.Supp. 1 (W.D.N.Y. 1988). A prisoner who was confined for a year to a special housing unit as a disciplinary measure filed a civil rights lawsuit when he was denied the opportunity to attend Muslim worship services on the basis of a regulation that special housing unit inmates are considered a high risk to the security of the facility. The district court found that prison regulations and the prisoner's right to request attendance at religious services met the tests for balancing prisoner's rights with the State's goals, citing Turner v. Safely, 107 S.Ct. 2400 (1987) and O'Lone v. Shabazz, 107 S.Ct. 2400 (1987). According to the court, when this standard is applied, "it becomes evident that the restriction" on the inmate's right to participate in religious services "was reasonable." Since it would pose a threat to prison security and have a negative impact

on guards, other inmates and the allocation of prison resources, the court concluded that the regulation was reasonably related to the stated interest in keeping prison security. (Special Housing Unit, Elmira Correctional Facility, New York)

U.S. District Court
REGULATIONS
VISITS

Card v. Dugger, 709 F.Supp. 1098 (M.D. Fla. 1988). An inmate, under the sentence of death, brought a civil rights action against prison officials, alleging he was denied daily access to a priest while he was on "death watch." On the defendants' motion for summary judgment, the district court found that the limits placed on the inmate's access to a priest did not violate his right to free exercise of religion, and the state prison policy that allowed prison-employed chaplains to have contact visits with "death watch" inmates on a regular basis, while prohibiting a nonemployee Catholic priest from having contact visits with death watch inmates, did not deprive the Roman Catholic inmate who was on death watch of equal protection of the laws, although all prison chaplains were Protestants. The prison allowed outside religious leaders to visit inmates on a regular basis. All inmates had equal access to outside religious representatives, and all inmates had an equal access to the institutional chaplains.

The State Department of Corrections did not violate the establishment clause of the first amendment when it hired only Protestant ministers as chaplains in a state prison system, where the Department secured Catholic priest volunteers to attend to the needs of Catholic inmates. The court noted that inmates under the sentence of death have "little reason" to fear ordinary disciplinary action because of their situation. They are therefore "desperate and unpredictable persons" and the prison has a legitimate reason to separate them physically from outside social visitors, including visiting priests. (Florida State Prison)

U.S. Appeals Court
OPPORTUNITY TO
PRACTICE
REGULATIONS

Cooper v. Tard, 855 F.2d 125 (3rd Cir. 1988) A federal appeals court upheld the constitutionality of a prison rule that prohibited a group of Muslim inmates from having unsupervised group worship in the prison yard. The court affirmed that prohibiting group activity without supervision does not violate the free exercise rights of inmates in this instance. The court agreed that the Muslim's group prayer, known as Du'a, established a leadership structure within the prison, and authorities had valid rational reason for not permitting inmates to establish structure within the prison. (Trenton State Prison, New Jersey)

U.S. Appeals Court
OPPORTUNITY TO
PRACTICE
SERVICES

Johnson-Bey v. Lane, 863 F.2d 1308 (7th Cir. 1988). Prisoners brought a civil rights action against prison officials claiming that they had been deprived of a right to engage in religious activities of the Moorish Science Temple. The U.S. District Court ruled that the prisoners had to be allowed to conduct their own Moorish services until prison officials arranged for ministers, but denied the prisoners' claim for damages, and both the prisoners and the prison officials appealed. The appeals court found that the prison properly refused to allow prisoners to conduct their own Moorish religious services, and remand was required to determine whether prison officials unreasonably delayed in making arrangements for Moorish ministers to visit the prison, even though the delay may have resulted from a failure of the Moorish prisoners to ask ministers to submit a program statement to the prison, where there was some evidence that the prisoners may have been given the "runaround" regarding how to obtain outside ministers.

Prisons are entitled to employ chaplains and need not employ chaplains of each and every faith to which prisoners might happen to subscribe, but may not discriminate against minority faiths except to the extent required by exigencies of prison administration. The court noted that the bona fide religious nature of the Moorish Science Temple is not questioned, although "three-fourths" of its congregations are inside prisons. The prison had a part-time Islamic chaplain, but he was not a Moor. The prisoners had attempted to persuade prison officials to allow Moorish ministers from a nearby town to conduct services, but this was rejected because the clergy sought to be invited included "convicted criminals" and "they are dangerous." Moorish ministers from another town were approved, but their visit was delayed because of the failure to submit a statement specifying the time, place and nature of the services to be conducted. The federal appeals court said that prisons "need not yield to their [prisoners'] desire to invite convicted felons, frocked or unfrocked, to conduct religious services," nor need they employ "chaplains representing every faith with at least one adherent." Allowing inmates to conduct their own services, the court also noted, may properly be prohibited as potentially fomenting conspiracies and creating a leadership hierarchy among the prisoners. (State Prison, Menard, Illinois)

U.S. Appeals Court
DIETS

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. District Court
PRIVACY
SINCERITY

Lumpkin v. Burns, 702 F.Supp. 242 (D. Nev. 1988). An inmate brought a suit under Section 1983 alleging the violation of his constitutional rights arising from prison's use of "see-through" shower curtains, the absence of "sanitary dividers" between toilets, and the proximity of the toilets to the sinks. The inmate objected to allowing "strangers, females, and high level officials" to view him in the nude and while performing bodily functions. The district court found that the allegation that the prison's use of see-through shower curtains and toilets without dividers impinged on the plaintiff's right to privacy in violation of the fourteenth amendment and stated a claim for relief, and the defendant would be permitted to assert that the prison's policy infringed on the defendant's right to free exercise of religion by interfering with his ability to practice "Christian modesty." In order to prevail on the claim that the prison's use of see-through shower curtains and toilets without dividers violated his free exercise rights to practice "Christian modesty," the inmate was required to show that the belief he asserted was indeed religious, that it was sincerely held and that it was being infringed upon by prison policies which furthered no legitimate penological purpose. The court also stated that inmates possess the right to shield their naked bodies from strangers and members of the opposite sex. A restriction on this privacy right, the court said, must be "reasonably related to legitimate penological objectives" and the burden is on the defendant to establish the existence of such objectives warranting the intrusion into privacy. (Northern Nevada Correctional Center)

U.S. Appeals Court
OPPORTUNITY TO
PRACTICE

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
OPPORTUNITY TO
PRACTICE
SERVICES

Mumin v. Phelps, 857 F.2d 1055 (5th Cir. 1988). Islamic prisoners at a state penitentiary brought an action challenging the refusal of prison officials to transport them from outcamps where they are held to the main prison facility for weekly congregational services. The U.S. District Court denied relief, and the inmates appealed. The appeals court affirmed and found that the refusal of the prison officials to transport the Muslim inmates from outcamps of the prison to the main prison facility for weekly congregational services required by the Islamic creed was a permissible limitation on the prisoners' exercise of their right to freedom of religion. The penitentiary asserted that it was without sufficient financial resources or adequate numbers of security personnel to safely transport the inmates for weekly services, the government objective was content neutral, and there was no showing of alternatives. The alleged peaceful and nonviolent characteristics of Muslim inmates did not preclude a finding that prison security was a legitimate concern for officials in denying the request of the Muslim inmates held at outcamps to be transported to the main prison for weekly religious services. (State Penitentiary, Angola, Louisiana)

U.S. Appeals Court
SINCERITY
HAIR LENGTH

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. Appeals Court
OPPORTUNITY TO
WORSHIP
SERVICES
VOLUNTEERS

Reimers v. State of Or., 863 F.2d 630 (9th Cir. 1988). A prisoner brought a civil rights action alleging a violation of free exercise and establishment clauses of the first amendment. The U.S. District Court entered summary judgment in favor of the defendants, and the prisoner appealed. The appeals court affirmed the decision and found that the prisoner's free exercise rights were not violated when the clergyman of his choice was terminated and he no longer could attend worship services or Bible study with that clergyman. The free exercise clause does not grant a prisoner the right to visit the clergyman of his choice outside of prison walls. The prisoner had attended group Bible study sessions and group worship services conducted by a Pentecostal minister who volunteered at the prison to provide religious instruction. The Roman Catholic priest and Methodist minister, employed as chaplains, were in charge of coordinating volunteer ministers. They prohibited the Pentecostal minister from conducting future Bible study or worship services at the prison because they determined that he violated an institutional rule against "proselytizing". (Oregon State Penitentiary)

U.S. Appeals Court
OPPORTUNITY TO
PRACTICE
SERVICES

Sapanajin v. Gunter, 857 F.2d 463 (8th Cir. 1988). A Native American inmate brought action against the Nebraska Department of Correctional Services and prison officials for failing to comply with a prior consent decree and for allegedly imposing restrictions on religious expression in violation of the first amendment. The U.S. District Court found that the Department had not violated the prior consent decree but that the Department's policy of hiring an official medicine man with certain beliefs and practices contrary to the plaintiff's violated the first amendment. The department and the inmate appealed. The appeals court, affirming the decision, found that the inmate's first amendment rights were violated by the Department's policy of hiring an official medicine man from a variant sect of Sioux Tribe, and the inmate had not demonstrated a violation of the prior consent decree. The Native American inmate's first amendment rights were violated by the Nebraska Department of Corrections' policy of hiring an official medicine man from the "Heyoka" group of Sioux Indians. An expert described the Heyoka group as "institutionalized deviants" among the Sioux, and differences in how the Heyokan medicine man would conduct the worship service from the mainstream Sioux were sizeable. The trial court was entitled to award an expert witness fee of \$100 to the native American Indian who had successfully challenged the constitutionality of the Nebraska's Department of Correctional Services' refusal to provide him with access to a religious leader that shared his religious beliefs. (Nebraska Department of Correctional Services)

U.S. Appeals Court
OPPORTUNITY TO
PRACTICE
REGULATION

Shabazz v. Coughlin, 852 F.2d 697 (2nd Cir. 1988). An inmate brought a civil rights action against the superintendent of a correctional facility and the Commissioner of the New York State Department of Correctional Services alleging that the inmate was unconstitutionally disciplined for violating regulations prohibiting group prayer and prayer in the prison yard. The U.S. District Court denied the prison officials' motion for summary judgment, and appeal was taken. The appeals court, reversing the decision, found that officials could assert personal immunity defenses, such as qualified immunity, but not an eleventh amendment bar, and qualified immunity shielded the prison officials from civil rights liability for disciplining the inmate. At the time the discipline was imposed, a legitimate question existed as to whether a prisoner had a right to engage in group prayer in the prison yard. Muslims must offer "demonstrative prayer" (involving kneeling down, bending forward, etc.) five times a day at times determined by the sun's position. They also believe that group prayer is preferable to individual prayer. The court of appeals noted, however, that it had not, at the time of the discipline, or since then, directly addressed the constitutionality of restrictions on group prayer and prayer in prison yards, nor were there cases in other circuits clearly condemning or condoning such policies. (Attica Correctional Facility, New York)

U.S. District Court
OPPORTUNITY TO
PRACTICE
SERVICES

Termunde v. Cook, 684 F.Supp. 255 (D. Utah 1988). Prison officials' right to assess the security requirements of their facility and tailor their programs and policies to meet those requirements was sufficient rationale to support denial of an inmate's request for injunctive relief prohibiting prison officials from restricting inmate attendance at religious services. A ban on religious services in special administrative segregation unit of prison did not violate the free exercise clause. Legitimate security interests and specific problems of transportation and equal treatment among inmates dictated curtailment of group services. (Utah State Prison)

U.S. Appeals Court
WORK

Franklin v. Lockhart, 890 F.2d 96 (8th Cir. 1989). A prison inmate brought a civil rights complaint for prison authorities' alleged violation of free exercise and eighth amendment rights. The U.S. District Court entered an order dismissing the complaint, and the inmate appealed. The appeals court, affirming in part, reversing in part, and remanding, found that the allegations in the inmate's complaint that work which he had to perform while assigned to the prison hoe squad taxed him beyond his physical capacity, were sufficient to state an eighth amendment claim. The allegations in the complaint, that the work involved the handling of manure and dead animals contrary to the inmate's Muslim faith, were also sufficient to state a free exercise claim. (Arkansas State Prison)

U.S. Appeals Court
BEARDS

Fromer v. Scully, 874 F.2d 69 (2nd Cir. 1989). An Orthodox Jewish inmate brought action for declaratory relief challenging a prison beard length regulation. The U.S. District Court found in favor of the inmate, and appeal was taken. The appeals court affirmed and certiorari was granted. The Supreme Court vacated and remanded. The court of appeals remanded without opinion. The U.S. District Court found that the regulation violated the free exercise clause, and appeal was taken. The appeals court, in reversing the original decision, found that a regulation forbidding inmates from wearing beards in excess of one inch in length did not violate the free exercise rights of an Orthodox Jew. According to the court, the Orthodox Jewish inmate who challenged the beard length regulation had the burden to demonstrate that correctional concerns were irrational. The Department of Correctional Services did not have to demonstrate a logical connection between the one-inch beard limitation and the interest of prison officials in identifying inmates for regulation to survive the inmate's free exercise challenge. A rational connection existed between the regulation limiting the inmates' beards to one inch in length and the ease of identification of the inmates' facial features and, thus, the beard length regulation did not violate a free exercise clause. The prison officials' concerns with being able to identify inmates' facial features did not require officials to choose between a regulation forbidding all beards or a rule permitting all beards. The regulation prohibiting beards in excess of one inch in length was a reasonable compromise for purposes of the free exercise clause. According to the appeals court, the district court failed to show proper deference to judgment of prison officials when the court found that the state regulation forbidding inmates from wearing beards more than one inch long violated the free exercise rights of Orthodox Jews; the district court's belief that there were few Orthodox Jews in prison, unsupported by record evidence, impermissibly placed the burden on prison officials. (New York State Prison)

U.S. Appeals Court
OPPORTUNITY
TO PRACTICE
DIETS

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)

U.S. Appeals Court
OPPORTUNITY TO
PRACTICE

Holloway v. Pigman, 884 F.2d 365 (8th Cir. 1989). Inmates filed a prisoner civil rights action, and the U.S. District Court granted defense motions for summary judgment and to dismiss, and the inmates appealed. The appeals court affirmed and found that the inmate who did not show that he was being deprived of all opportunity to practice his religion did not show a violation of constitutional rights in the claim that certain Native American religious items were being withheld from him. (Maximum Security Unit, Arkansas Department of Corrections)

State Appeals Court
OPPORTUNITY TO
PRACTICE

Johnson v. Lynaugh, 766 S.W.2d 393 (Tex.App.--Tyler 1989). An inmate brought an in forma pauperis action against the director of the Department of Corrections. The 349th District Court dismissed the suit as frivolous, and the inmate appealed. The appeals court, affirming the decision, found that the trial court did not abuse its discretion in dismissing the case as frivolous. The inmate claimed that the policy denying him a cassette tape player in his cell deprived him of something necessary in order for him to meditate three times daily, a practice of his religion. The court stated that "a rule denying inmate's unfettered possession of objects which could be used for weapons is certainly reasonable." (Texas Department of Corrections)

U.S. Appeals Court
ARTICLES
OPPORTUNITY TO
PRACTICE
SINCERITY
SATANISM

McCorkle v. Johnson, 881 F.2d 993 (11th Cir. 1989). A state inmate brought a civil rights action challenging a prison policy that restricted inmate access to satanic materials. The U.S. District Court dismissed and the inmate appealed. The appeals court, affirming the lower court decision, found that the policy did not violate the inmate's first amendment rights. Even if Satanism was a religion entitled to first amendment protection and even if the state inmate was a sincere believer in Satanism, a prison policy restricting the access to satanic materials was justified by the prison officials' concern for institutional security and order, particularly in view of the fact that the inmate could practice Satanism without materials. The court found that the policy adopted was valid as reasonably related to a legitimate penological interest in institutional security and order and was an "informed and measured response to the violence inherent in Satan worship, and to the potential disorder that it might cause within the prison." (Holman Facility, Alabama)

U.S. District Court
OPPORTUNITY TO
PRACTICE
SERVICES

Matiyn v. Commissioner Dept. of Corrections, 726 F.Supp. 42 (W.D.N.Y. 1989). A prisoner brought an action under Section 1983 seeking to compel the prison to hold separate services for Sunni and Shia Muslims. The district court dismissed the case, finding that the separate services were not required under the first amendment. The free exercise clause of the first amendment was not offended by the prison's refusal to grant the Sunni Muslim prisoner's request that Sunni Muslims be provided facilities for religious worship separate from Shia Muslims; the combined service was conducted in Sunni tradition, only two inmates had requested separation, and provision for separate services would have imposed an administrative burden disproportionate to imperfections of the existing situation. (Attica Correctional Facility, New York)

U.S. District Court
DIETS
PLACE TO
WORSHIP

Muhammad v. McMickens, 708 F.Supp. 607 (S.D.N.Y. 1989). A former prison inmate brought an action under Section 1983 against prison authorities alleging that they violated his rights under the first and fourteenth amendments to the free exercise of his Muslim faith. Upon the defendants' motions for summary judgment, the district court found that single instances of missing one meal prepared in a manner consistent with dictates of the inmate's Muslim religion and of being required to pray in unsanitary surroundings did not invoke municipal liability under Section 1983, absent proof of a municipal policy. The court also found that a genuine issue of material fact existed as to whether the inmate's religious dietary obligations were sufficiently accommodated during his incarceration. (House of Detention for Men, Rikers Island, New York)

U.S. District Court
OPPORTUNITY TO
PRACTICE
SERVICES

Ra Chaka v. Franzen, 727 F.Supp. 454 (N.D. Ill. 1989). A Muslim prison inmate sued state corrections department officials, alleging violations of civil rights when his request for prison-wide "Jumha" religious services was denied. In order to improve security, the prison had divided inmates into three units, based on personality types, and prison-wide services would have involved an undesirable mixing of personnel from different units, and services were available within units. The district court found that the granting of permission to hold such services did not render the prisoner's case moot as he also claimed monetary damages for past deprivation. State officials were not protected from individual liability by the eleventh amendment. A prohibition against services was warranted on prison security grounds; even if deprivation were deemed not valid, officials would not be personally liable and the equal protection rights of the inmate were not violated when they allegedly did not receive a proportionate share of the prison budget for their religious activities. The prison was merely required to provide a "reasonable opportunity" for them to practice their religion. (Stateville Correctional Center, Illinois)

U.S. Appeals Court
OPPORTUNITY TO
PRACTICE
RECOGNIZED
RELIGIONS
VOLUNTEERS

Siddiqi v. Leak, 880 F.2d 904 (7th Cir. 1989). A county jail inmate brought an action against the county jail executive director alleging the inmate was denied free exercise rights under the first amendment during his incarceration at jail. The U.S. District Court entered judgment against the inmate, and appeal was taken. The appeals court, affirming the decision, found that whether a jail regulation which impinged upon an inmate's first amendment free exercise rights was reasonably related to a legitimate penological objective was a question for the jury, and the trial court's failure to precisely follow guidelines of a federal rule requiring the judge to explain instructions to be given to the jury was harmless. A Chaplaincy Council was formed by the Cook County Jail which was made up of representatives of religious organizations, to oversee religious activities in the jail. While there was a Muslim group represented on the council at one time, a dispute arose over the recognition of a second Muslim group and the inability of the two groups to work together. The first group later dissolved. By the time that regular Muslim services were later resumed in Cook County Jail, the plaintiff-prisoner had been transferred out. It was found by the court that the jail's policy of providing that religious ministrations to inmates would be handled by the Council was rationally

related to jail security, which was a legitimate penological objective. Use of the Council to coordinate giving credentials to recognized ministers was legitimate. The inmate's argument, that the Council was not legitimate because it refused to recognize a second Muslim group while recognizing nine separate Christian religious groups, was rejected by the court. There was, the court noted, "turmoil in the Muslim community" regarding proper Muslim representation on the Council. Further, the second group, when offered a chance to minister at the jail, was unable to recruit the necessary number of ministers. The lack of bias by the Council was shown by the fact that the Council later recognized this group. (Cook County Jail, Illinois)

U.S. Appeals Court
OPPORTUNITY TO
PRACTICE
SERVICES

Whitney v. Brown, 882 F.2d 1068 (6th Cir. 1989). Jewish inmates brought a Section 1983 action challenging a prison policy prohibiting them from congregating in weekly Sabbath services and an annual Passover Seder. The U.S. District Court granted partial relief, and appeal was taken. The appeals court, affirming in part, reversing in part and remanding in part, found that the prison policy eliminating Jewish inmates' intercomplex travel to weekly Sabbath services and annual Passover Seders impermissibly infringed upon the inmates' free exercise of religion. There was no showing of a reasonable relation between the ban and a legitimate penological interest. The ban deprived the inmates of all forms of religious exercise, and intercomplex travel imposed minimum burdens on the prison staff and resources. The prison had been divided into three complexes with various security levels and the policy prohibited intercomplex travel except for prisoners undergoing medical or psychiatric treatment or involved in work assignment or attendance at the prisoner pension fund committee meetings. It was noted by the court that the Jewish religion requires that Sabbath services involve a gathering of no less than ten persons and that there were only ten Jewish prisoners in the three complexes. The court found that the policy eliminating intercomplex travel to weekly services impermissibly violated the inmates' free exercise of religion. (State Prison of Southern Michigan)

U.S. Appeals Court
RECOGNIZED
RELIGIONS
CORRESPONDENCE

Woods v. O'Leary, 890 F.2d 883 (7th Cir. 1989). A defendant sued state prison authorities, claiming a deprivation of first amendment rights in connection with the prison's refusal to permit him to mail documents relating to a group that was allegedly a church. The U.S. District Court entered a judgment for the prison, and the prisoner appealed. The appeals court, affirming the decision, found that the regulation requiring approval of mailings was not unconstitutional, as applied to the prisoner's mailings on behalf of the alleged church. Three inmates at an Illinois state correctional facility were all ministers of the "Universal Life Church" (ULC). They attempted to establish a ULC congregation at the prison and one of them attempted to mail out fifty letters soliciting contributions or sales of church paraphernalia. The prison prevented the mailings on the grounds that the inmate was attempting to operate an inmate run business venture, relying in part on the IRS's denial of tax exempt status to the ULC. The refusal would continue, the prison stated, until the inmate complied with institutional regulations requiring approval. The inmate sued, claiming that the prevention of the mailings violated his first amendment right to free exercise of religion.

Numerous security implications arise by increased prison mail volume, the court noted, including increases in the costs of mail monitoring, decreased in the amount of personnel available for other security purposes, and the potential overburdening of the mail system "and its negative impact on other inmates' mail." (Stateville Correctional Center, Joliet, Illinois)

1990

U.S. Appeals Court
HAIR LENGTH
REGULATION
ARTICLES

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
REGULATION

Blankenship v. Gunter, 898 F.2d 625 (8th Cir. 1990). Two inmates, in separate cases, challenged a prison regulation forbidding inmates from using the money in their inmate trust fund account for religious donations. The trial courts, in both instances, upheld the regulation and the inmates appealed. The U.S. Court of Appeals found that the regulation did not violate the inmates' First Amendment rights to free exercise of religion. The regulation allowed prisoners to use their trust fund accounts to assist with support of their families, make necessary purchases in the canteen and from approved vendors, or for deposit in interest bearing accounts in designated financial institutions, or for legal expenses. Inmates could open accounts outside the institution over which the prison would have no control and therefore, alternative means existed for inmates to make such donations. According to the court, restricting the use of funds was rationally related to legitimate prison security interests in controlling illegal activities such as gambling, contraband and coerced expenditures. Furthermore, too great a burden would be imposed on the prison to investigate the legitimacy of every requested donation or recipient organization. (Nebraska State Penitentiary)

U.S. Appeals Court
BEARDS
HAIR LENGTH

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
BEARDS

Friedman v. State of Arizona, 912 F.2d 328 (9th Cir. 1990), cert. denied, 111 S.Ct. 996. Two orthodox Jewish inmates filed a federal civil rights lawsuit against a state prison challenging a policy prohibiting beards, arguing it violated their First Amendment right to exercise their religion freely. The U.S. Court of Appeals upheld the prison policy against the inmate's challenge. It found that the prison had presented evidence that the policy was rationally related to legitimate security interests, including orderly conduct of day-to-day activities, identification of prisoners responsible for disturbances and apprehension of escapees by aiding rapid and accurate identification. In addition, allowing someone to have a beard was not a guarantee that the person would "maintain the beard in exactly the same style, length or color as he had in the photograph," and the identification problem thus becomes unmanageable. The court noted that the prison allowed the inmates participation in other religious activities and practices, provided Kosher food and access to a rabbi. (Arizona State Prison)

U.S. District Court
OPPORTUNITY TO
PRACTICE
COUNSELING
PRIVACY

Griffin v. Coughlin, 743 F.Supp. 1006 (N.D.N.Y. 1990). Inmates in a protective custody unit brought a suit seeking injunctive relief to remedy allegedly unconstitutional conditions in the unit. The district court found that protective custody inmates, who are not permitted "truly private meetings" with religious advisors, were not afforded a reasonable opportunity to exercise their religious freedom. These inmates were rarely provided opportunities to engage in confidential discussions in rooms apart from their cells with a priest, chaplain or other religious advisor. For segregated inmates, "individual religious counseling and ministrations" provides a reasonable alternative to "attendance at regular general religious services" when prison officials prohibit congregative religious activities because of legitimate concerns for the maintenance of order and security in their facility. Although the security of inmates and staff might be a concern, the court could not find that security concerns would act to prevent such private meetings as to the entire protective custody population. The court also found that there was no alternative means available to the inmates by which they could exercise their right to private meetings with spiritual advisors. (Clinton Correctional Facility, New York)

U.S. Appeals Court
DIETS

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)

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 Corr. Center, Missouri)

U.S. District Court
JEWELRY/
ORNAMENTS
VISITS

McClafin v. Pearce, 739 F.Supp. 537 (D. Or. 1990). A state inmate brought a civil rights action against prison officials alleging a violation of his rights under the first, eighth and fourteenth amendments. The inmate, who sought a preliminary injunction directing that he be allowed to have a plastic rosary and extended visits with a priest, failed to establish the possibility of irreparable injury due to the prison prohibiting his possession of a rosary or that the balance of hardships tipped in his favor sufficient to warrant the issuance of a preliminary injunction. The rosary and extended visits with a Catholic priest were not essential elements of the religion and could be withheld from an inmate who is in a disciplinary segregation unit, even though provided to inmates in the general population. (Eastern Oregon Corr. Inst.)

U.S. District Court
VISITS
REGULATION
OPPORTUNITY TO
PRACTICE

McClafin v. Pearce, 743 F.Supp. 1381 (D. Or. 1990). A Roman Catholic inmate brought a Section 1983 action alleging unconstitutional restrictions on his ability to practice his religion. On the government's motion for summary judgment, the district court found that a change in prison policy which resulted in the inmate being housed in a disciplinary segregation unit which was temporarily denied visits by a Catholic priest did not violate the inmate's free exercise rights. The change in the visitation policy was reasonably related to legitimate penological interests and there was no evidence that it was aimed at members of a particular religion. (Eastern Oregon Correctional Institution)

U.S. Appeals Court
NAME

Salaam v. Lockhart, 905 F.2d 1168 (8th Cir. 1990). An inmate who changed his name after imprisonment brought a Section 1983 action, alleging that the prison's committed name policy violated his right to free exercise of religion. The appeals court found that the prison's policy of using only committed names on prison records and clothing, and in the mailroom, was an unreasonable restraint on the first amendment rights of an inmate who changed his name after incarceration upon conversion to the Muslim faith. Given the availability of an "a/k/a" alternative, the prison authorities would be required to deliver mail to the inmate addressed to him only in his Muslim name, and to allow the addition of his Muslim name to his clothing, but would be required to reform their recordkeeping only to the extent necessary to allow the inmate to receive services and information in his new name within the prison. (Arkansas State Prison)

U.S. District Court
OPPORTUNITY TO
PRACTICE
SERVICES

Stroud v. Roth, 741 F.Supp. 559 (E.D. Pa. 1990). An inmate brought an action against prison officials alleging that he was denied his right to free exercise of his Islamic faith while being held in administrative segregation and that his medical treatment and diet for stomach problems were inadequate. On the prison officials' motion for summary judgment, the district court found that precluding the prisoner from attending Islamic Services while he was in administrative segregation for his own protection was not an improper limitation on his free exercise rights, based upon threats of retaliation within the prison's Muslim community following the inmate's assault of the inmate Muslim leader. The restriction was related to a legitimate interest in maintaining the inmate's safety and in preserving general institutional security. The inmate was afforded an

opportunity to participate in services by watching closed circuit television or video-tapes of the prison's services. Allowing the inmate to attend Islamic services with the general prison population could jeopardize the security of other prisoners and prison personnel, and there appeared to be no safe alternatives involving the inmate's physical presence at services. It was also found by the court that the inmate received on-going medical attention and treatment for his stomach problems that did not amount to deliberate indifference to his serious medical needs. The inmate received doctor's care for his stomach problems nearly every month he spent at the prison. He was provided medication and a bland diet according to doctor's orders and was given vegetarian meals when his stomach problems did not sufficiently respond. There was no evidence that the inmate's digestive troubles and dietary needs were ignored, or his prescribed treatment thwarted, by prison officials. The inmate received ongoing medical attention and treatment and, at most, his claims of inadequate treatment sounded in tort. (Montgomery Co. Corr. Facility, Pennsylvania)

U.S. Appeals Court
HAIR
BEARDS

Swift v. Lewis, 901 F.2d 730 (9th Cir. 1990). Inmates appealed from a judgment of the U.S. District Court which dismissed a civil rights action challenging a grooming policy. The appeals court, reversing and remanding, found that the Department of Corrections did not show that particular interests behind the grooming policy justified treating the plaintiff inmates differently than members of other religious groups, and the complaint stated a cause of action for damages against another inmate who had allegedly excluded one of the plaintiff inmates from a religious group. Two prisoners claimed to be Christians who as part of their religion adhere to the "Vow of the Nazirite," which prohibits, among other things, one's cutting his hair and beard. They argued that the officials had discriminated against their religion by exempting certain religious groups, such as Sikhs and American Indians, from the policy, but not exempting them. The appeals court found that the state Department of Corrections did not show that the grooming policies were actually based on the need for quick inmate identification, the prevention of sanitary problems, reducing contact between prisoners and guards during body searches, and reducing homosexual attractiveness of inmates or that any of those interests justified treating one group of inmates who claimed a religious belief precluding them from cutting their hair differently than other religious groups who made such a claim and were not subjected to the grooming policy prohibition of long hair and beards. Prison officials are not required to prove that their policy is the least restrictive method of furthering relevant penological interests, even when it infringes on an inmate's practice of religion, but they must at least produce some evidence that their policy is based on legitimate penological justifications. (Arizona State Prison)

U.S. District Court
OPPORTUNITY TO
PRACTICE
REGULATIONS
CLOTHING
ARTICLES
VOLUNTEERS

Young v. Lane, 733 F.Supp. 1205 (N.D. Ill. 1990), reversed, 922 F.2d 370. Jewish inmates brought a federal civil rights action against state prison officials, alleging the denial of their right to practice their religion. The district court found that the prison policy allowing yarmulkes to be worn only inside the cell and during religious services deprived the Jewish inmates of their free exercise rights. The prison officials' failure to reimburse Jewish rabbis for travel expenses violated the Jewish inmates' first amendment rights. The prison policy of no inmate-led services was a legitimate regulation not infringing on the Jewish inmates' first amendment rights. The inmates would be awarded only nominal damages of \$1 with respect to their claims against the state prison officials in their individual capacities. The appeals court reversed the lower court finding. (Dixon Correctional Center, Illinois)

1991

U.S. Appeals Court
OPPORTUNITY TO
PRACTICE

Al-Alamin v. Gramley, 926 F.2d 680 (7th Cir. 1991). Muslim inmates brought an action against prison officials. The district court granted injunctive relief and awarded nominal damages, and prison officials appealed. The appeals court found that prison officials were adequately accommodating the religious needs of Muslim prisoners. The prison provided inmates with reasonable opportunity to practice their Muslim religion by paying an imam \$75 for four hours of service each week in addition to mileage and tolls, by providing Halal food to Muslim inmates, by making available a full-time chaplain to administer to all religious groups, and by allowing volunteers to provide additional religious service when the imam was not available. (Dixon Correctional Center, Dixon, Illinois)

U.S. District Court
OPPORTUNITY TO
PRACTICE

Benford v. Wright, 782 F.Supp. 1263 (N.D. Ill. 1991). An inmate brought a Section 1983 action, claiming religious discrimination. The district court found that the Islamic inmate was not subject to religious discrimination when he was prohibited from engaging in the communal practice of his religion for a period of 15 days while in segregation for violation of prison rules. The court found that prison officials must be allowed to mete out punishments for rule infractions and to do so shortly after the violation and not necessarily wait until periods of religious significance have passed. Although imposed during a religious holiday, the prompt punishment was not an unconstitutional impingement on the religious freedom of the inmate and advanced reasonable penological goals. (Stateville Correctional Facility, Joliet, Illinois)

U.S. District Court
OPPORTUNITY TO
PRACTICE

Benford v. Wright, 782 F.Supp. 1263 (N.D. Ill. 1991). An inmate brought a Section 1983 action, claiming religious discrimination. The district court found that the Islamic inmate was not subject to religious discrimination when he was prohibited from engaging in the communal practice of his religion for a period of 15 days while in segregation for violation of prison rules. The court found that prison officials must be allowed to mete out punishments for rule infractions and to do so shortly after the violation and not necessarily wait until periods of religious significance have passed. Although imposed during a religious holiday, the prompt punishment was not an unconstitutional impingement on the religious freedom of the inmate and advanced reasonable penological goals. (Stateville Correctional Facility, Joliet, Illinois)

U.S. Appeals Court
PRIVACY
REGULATION
SERVICES
OPPORTUNITY TO
PRACTICE

Clifton v. Craig, 924 F.2d 182 (10th Cir. 1991), cert. denied, 112 S.Ct. 97. A federal prison inmate sued a prison chaplain, claiming an impermissible interference with his constitutional right to exercise his religious beliefs. The chaplain was granted summary judgment by the U.S. District Court, and the inmate appealed. The appeals court found that the restrictions on an inmate's exercise of religious beliefs, including the refusal to prevent the church of which he was a member to hold Sunday morning worship services apart from all other Christian groups, were reasonable in light of such factors as security, staffing and space. In addition to the general Christian communion and worship services on Sunday mornings, members had been allotted a weekly two-hour meeting time, which they apparently devoted to Bible study. Because of the large number of religious groups represented in the prison population, separate accommodation of all the religious needs of each individual group is not possible. (United States Penitentiary, Leavenworth, Kansas)

U.S. District Court
DIETS

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
OPPORTUNITY TO
PRACTICE

Freeman v. Abdullah, 925 F.2d 266 (8th Cir. 1991). An inmate brought an action against the Nebraska Director of Corrections, the warden, and a Muslim coordinator to recover for alleged dissolution of a particular Muslim sect. The U.S. District Court dismissed the case prior to service of process, and the inmate appealed. The court of appeals, reversing and remanding, found that the inmate's allegations were not frivolous and should not have been dismissed. The inmate alleged that the dissolution of the sect violated his First and Fourteenth Amendment rights because it deprived him of religious classes, Jummah prayer, and Ramadan fasting. According to the court, there was an arguable basis underlying the inmate's factual allegations and legal theories. (Neb. State Penitentiary)

U.S. Appeals Court
ARTICLES
JEWELRY/
ORNAMENTS
REGULATION

Friend v. Kolodziejczak, 923 F.2d 126 (9th Cir. 1991). Inmates brought a civil rights action against jail officials challenging as unconstitutional a regulation prohibiting them from possessing rosaries and scapulars in their cells. The U.S. District Court entered summary judgment against the inmates, and they appealed. The court of appeals found that prohibiting inmates from keeping rosaries and scapulars in their cells did not violate the First Amendment. The prohibition had a logical connection to a legitimate penological interest of preventing inmates from obtaining drugs, fabricating weapons, and otherwise disrupting jail security or threatening jail security by creating the impression of favoritism toward Roman Catholic prisoners, and the inmates had alternative means of practicing their religion. (Alameda North County Jail, California)

U.S. Appeals Court
ARTICLES
REGULATION
HAIR LENGTH

Hall v. Bellmon, 935 F.2d 1106 (10th Cir. 1991). A Native American state prisoner appealed a dismissal by the United States District Court of his claims that prison policies and procedures and action of prison employees violated his First Amendment right to free exercise of religion. The court of appeals found that the inmate did not state a claim in connection with the confiscation of his talisman, a sharp bear tooth necklace, and medicine bag, which had a thong that could be used for wearing around the neck. Prison regulations prohibiting any inmate from possessing sharp objects or items that could be worn around the neck, including religious items, were on their face reasonably related to a legitimate penological interest in protecting the safety of other inmates and prison personnel and preventing suicide attempts. Inmates were guaranteed other avenues for practice of their respective religions, including Native American beliefs, and a civil rights claim based on intentional destruction of his property in violation of due process was insufficient based on the prisoner's conclusory allegations of intent with respect to the destruction of the religious items. The court also found that, for purposes of the inmate's claim that cutting his hair violated his religious beliefs, the intake facility's policy of

cutting new inmates' hair was reasonably related to the legitimate penological interest in preventing inmates from hiding weapons in long hair and from easily changing their appearance should they escape, as well as facilitating good hygiene. (Lexington Assessment and Reception Center, Oklahoma)

U.S. District Court
HAIR LENGTH

Harris v. Dugger, 757 F.Supp. 1359 (S.D. Fla. 1991). A pro se civil rights action was brought by a prison inmate against various state corrections officers based on allegations that the inmate's constitutional rights were violated when he was punished with restrictive confinement and loss of gain time because of his refusal to cut his hair. The U.S. District Court found that the prison regulation requiring a Rastafarian inmate to cut his hair did not violate the First Amendment's free exercise clause since it was the least restrictive means of advancing the substantial government interest in preventing prison escape. (Glades Correctional Institution, Florida)

U.S. District Court
OPPORTUNITY TO
WORSHIP
REGULATION
SERVICES

Hobbs v. Pennell, 754 F.Supp. 1040 (D. Del. 1991). An inmate filed a Section 1983 action against a state prison chaplain alleging that the chaplain's enforcement of a prison policy prohibiting the Nation of Islam from holding services at the prison without an outside Imam violated the inmate's constitutional rights under the free exercise clause of the First Amendment. After a nonjury trial, the district court found that the prison chaplain was the appropriate defendant in the civil rights suit, even though he was not alleged to have instituted the allegedly unconstitutional policy, where he was responsible for enforcement of the policy and failed to assert any affirmative defenses to claims made by the plaintiff. It was also found that the prison policy did not violate the inmate's First Amendment free exercise rights, where the policy was rationally related to legitimate and neutral penological objectives of security and rehabilitation, the inmate had alternative means by which to practice his religion, the accommodation of the inmate's right would have an adverse impact on guards, other inmates and the prison's finances, and no other easy alternative policy was available to prison officials. In addition, the penological objectives of security and rehabilitation which were goals of the prison policy were neutral in character as required by the constitution. (Delaware Correctional Center)

U.S. District Court
DIETS
SERVICES

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. The court also found that the prison decision to conduct religious services on Friday evenings rather than Friday afternoon, as requested by the Muslim inmate, did not violate the inmate's constitutional right to free exercise of religion. The decision was reasonably related to an institutional interest in avoiding the disruption of work and educational programs while not depriving inmates of the ability to attend services. (Lansing Correctional Facility, Lansing, Kansas)

U.S. Appeals Court
DIETS
OPPORTUNITY TO
PRACTICE

Johnson v. Moore, 926 F.2d 921 (9th Cir. 1991). An inmate brought a civil rights action against the superintendent of a state correctional facility. The U.S. District Court entered summary judgment against the inmate, and he appealed. The court of appeals found that neither the failure to make a minister of an inmate's faith available to him nor the failure to provide the inmate with vegetarian meals constituted a First Amendment violation. The Constitution does not necessarily require prisons "to provide each inmate with the spiritual counselor of his choice; prisons need only provide inmates with a 'reasonable opportunity' to worship in accord with their conscience." There was also no evidence that the inmate's professed vegetarianism was rooted to his religious beliefs. (Clallam Bay Corrections Center, Washington)

U.S. Appeals Court
OPPORTUNITY TO
PRACTICE

Johnson v. Moore, 948 F.2d 517 (9th Cir. 1991). An inmate brought an action against the superintendent of a facility, challenging the constitutionality of prison conditions and policies. The U.S. District Court entered summary judgment in favor of the superintendent, and the inmate appealed. The court of appeals found that the failure to make a Unitarian Universalist minister available to the inmate did not violate the inmate's First Amendment rights absent a showing that such failure denied him "reasonable opportunity" to exercise his faith. It was also found that the inmate's challenge to prison policies was rendered moot by his transfer to another facility, absent any reasonable expectations of returning to the first facility. (Clallam Bay Corrections Center, Washington)

U.S. Appeals Court
HAIR

Kemp v. Moore, 946 F.2d 588 (8th Cir. 1991), cert. denied, 112 S.Ct. 1958. An inmate appealed from an order of the U.S. District Court denying his request for injunctive relief seeking to prohibit prison officials from enforcing hair length regulations. The court of appeals found that the inmate who followed religious tenets and practices of the Native American religion, including the practice involving wearing of long hair, was not entitled to enjoin Missouri prison officials from enforcing regulations requiring hair to be cut to collar length. (Farmington Correctional Center, Missouri)

U.S. Appeals Court
DIETS

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. Appeals Court
ARTICLES
OPPORTUNITY TO
PRACTICE

McKinney v. Maynard, 952 F.2d 350 (10th Cir. 1991). A Native American inmate filed a pro se civil rights complaint alleging violation of his First Amendment right to practice Native American religion while incarcerated. The complaint was dismissed as frivolous by the U.S. District Court and the inmate appealed. The court of appeals found that the appeal was not moot on the ground that the inmate had been transferred from prison and was currently on preparole status, and that the complaint alleging deprivation of all means of religious expression was not frivolous, given allegations that he had been deprived of all means of religious expression by being forced to comply with the grooming code, by being required to relinquish his medicine bag containing ceremonial tobacco when inmates were permitted to wear necklaces and pendants, and by having no means to practice his religion while incarcerated. (Howard McLeod Corr. Center, Farris, Oklahoma)

U.S. Appeals Court
RECOGNIZED
RELIGION
OPPORTUNITY TO
PRACTICE
HAIR

Mosier v. Maynard, 937 F.2d 1521 (10th Cir. 1991), cert. denied, 114 S.Ct. 260. An inmate brought a civil rights action against Oklahoma prison officials alleging violation of his First Amendment right to free exercise of religion by denying him exemption to a prison grooming code. The U.S. District Court granted summary judgment in favor of the officials, and the inmate appealed. The court of appeals, reversing and remanding, found that genuine issues of material fact existed as to whether the inmate was sincere in his beliefs in the Native American religion requiring accommodation for his beliefs and whether the exemption to the grooming requirements was reasonable, precluding summary judgment. (Oklahoma Department of Corrections)

U.S. District Court
AIDS
OPPORTUNITY TO
PRACTICE
REGULATION
SERVICES

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 denying the inmate access to congregate religious services, pursuant to ad hoc policy, abridged her First Amendment right to free exercise of religion. No evidence showed that the decision to deny the inmate access to church services was reasonably related to the prevention of the spread of HIV infection. (Erie County Holding Center, New York)

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. District Court
OPPORTUNITY TO
PRACTICE

Phelps v. Dunn, 770 F.Supp. 346 (E.D. Ky. 1991). A prison inmate brought a civil rights action alleging that his constitutional rights were violated by a deputy's decision to bar him from taking a leadership role in chapel services because he was gay. The U.S. District Court found that the inmate's right to practice his religion was not violated by the deputy's decision. There was strong disagreement among other inmates as to whether gays should be allowed to participate in services, and the deputy's decision was reasonably related to penological interests of security and rehabilitation of inmates by providing religious programs for the inmate population as a whole. (Northpoint Training Center, Burgin, Kentucky)

U.S. Appeals Court
PUBLICATIONS

Skelton v. Pri-Cor, Inc., 963 F.2d 100 (6th Cir. 1991). An inmate brought a Section 1983 action alleging the unconstitutional refusal to deliver a hardbound Bible and to grant access to the law library. The United States District Court entered summary judgment in favor of the defendant, and the inmate appealed. The appeals court, affirming the decision, found that the refusal to deliver the hardbound Bible to the inmate was reasonably related to a legitimate penological interests and did not violate the inmate's First and Eighth Amendment rights. (Greene County Detention Center, Tennessee)

U.S. District Court
FORCED EXPOSURE
OPPORTUNITY TO
PRACTICE

Stafford v. Harrison, 766 F.Supp. 1014 (D. Kan. 1991). A prison inmate brought a civil rights action alleging his constitutional rights were violated by an alcohol rehabilitation program he was required to complete while at prison. The U.S. District Court found that requiring the inmate to participate in the treatment program modelled on precepts of Alcoholics Anonymous did not interfere with the inmate's practice of his religion or establish religion and impose the religion on the inmate. There was a strong and legitimate penological interest in assuring that inmates received appropriate treatment for substance abuse before their release, and the program was widely used in prison. Moreover, participation in the program did not seriously burden the inmate's religious beliefs, in that the spiritual element of the program was flexible and the inmate did not show that the program caused him to abandon or contravene any tenet of his faith. (Larned State Security Hospital, Kansas)

U.S. District Court
NAME
SINCERITY

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. (NC DOC)

U.S. Appeals Court
HATS
REGULATIONS

Young v. Lane, 922 F.2d 370 (7th Cir. 1991). On appeal and cross appeal from an order of the U.S. District Court in Jewish inmates' federal civil rights action against state prison officials, the court of appeals found that the state prison's policy of allowing Jewish inmates to wear their yarmulkes only inside their cells and during religious services did not deprive the inmates of their right to free exercise of religion, as the prison had a strong institutional interest in limiting the effectiveness of gangs by restricting the variety of available headgear, and that the policy operated with neutrality toward the content of religious expression and did not deprive the inmates of all means thereof. Furthermore, even if the state prison officials' failure to reimburse rabbis for their travel expenses to and from prison while simultaneously reimbursing other clergy for visiting the prison violated their free exercise rights, the alleged violation was not so "clearly established" at the time of the conduct as to remove the officials' qualified immunity. (Dixon Correctional Center, Illinois)

1992

U.S. Appeals Court
DIETS

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
WORK

Blair v. Graham Correctional Center, 782 F.Supp. 411 (C.D. Ill. 1992), affirmed, 4 F.3d 996. A prison employee brought an action under Title VII alleging that his employer and his union had discriminated against him on the basis of his religion which required him not to work from Friday sundown to Saturday sundown, when he was discharged for excessive absenteeism after refusing to work on Saturdays. According to the court, the prison's attempts to work with the prison workers' union and other agencies to have the employee reassigned was a reasonable attempt to accommodate the employee's religious beliefs, and neither the employer nor union were liable under Title VII for failing to give the employee a schedule which would accommodate his religious beliefs when, under terms of the collective bargaining agreement, the employee was not entitled to such a schedule. (Graham Correctional Center, Hillsboro, Illinois)

U.S. Appeals Court
SERVICES
OPPORTUNITY TO
PRACTICE

Blair-Bey v. Nix, 963 F.2d 162 (8th Cir. 1992). Prison inmates brought a civil rights action contending that the penitentiary's policy of providing only a single Islamic religious advisor violated their constitutional rights. The district court ordered the penitentiary to hire a part-time religious advisor to serve the prisoners' particular Islamic sect, and the warden appealed. The court of appeals found that those who belonged to the Moorish Science Temple sect of the Islamic religion were not entitled to their own MST advisor separate from the Islamic advisor already provided by the penitentiary. According to the court, prisoners need not be provided the religious advisor of their choice or one that belongs to their individual religious sect, and a religious advisor does not need to be provided for every sect represented in a penitentiary; prisoners must simply be given a reasonable opportunity to exercise their religious freedom. (Iowa State Penitentiary)

U.S. Appeals Court
HAIR LENGTH

Campbell v. Purkett, 957 F.2d 535 (8th Cir. 1992). An inmate brought an action challenging the constitutionality of a correctional center's prohibition against prisoners wearing "long hair." The U.S. District Court dismissed the complaint, and the inmate appealed. The court of appeals found that the prohibition was reasonably related to a legitimate penological interest, and it did not violate the right of free exercise of religious beliefs or the equal protection clause. (Farmington Correctional Center, Missouri)

U.S. District Court
OPPORTUNITY TO
WORSHIP

Jaben v. Moore, 788 F.Supp. 500 (D. Kan. 1992). A prison inmate filed a Section 1983 action alleging a violation of his constitutional rights as a result of his transfer from a Kansas facility to the Missouri Department of Corrections. The district court found that correctional facilities need not provide identical opportunity for worship to all inmates. The Jewish inmate had constitutionally adequate accommodations for his religious needs where a Rabbi and chapel were available on request. (Missouri Dept. of Corrections)

U.S. Appeals Court
SEARCH

Jordan v. Gardner, 953 F.2d 1137 (9th Cir. 1992), affirmed, 986 F.2d 1521. Female inmates brought a suit challenging the constitutionality of a prison regulation which permitted cross gender pat searches. The U.S. District Court enjoined prison officials from implementing the policy and the prison officials appealed. The appeals court, reversing the decision, found that the regulation did not violate inmates' freedom of religion. The fact that female inmates had no alternative means of observing religious objections to searches did not require invalidation of the regulation permitting cross gender pat searches under the First Amendment given that inmates were able to follow other tenets of their religion and that the inmates failed to show alternatives to the prison policy. The court found that the prison regulation which permitted cross gender searches was reasonable and did not violate the Fourth Amendment, given that searches were conducted for security purposes, were brief in duration and conducted on fully clothed inmates, were conducted in a professional manner, and given that requiring same sex searches would displace officers throughout the prison. The regulation was adopted to meet the prison's internal security needs after careful consideration, prison guards were carefully trained to conduct searches in the least threatening manner, and brief pat searches did not violate evolving standards of decency. (Washington Corrections Center for Women, Washington)

U.S. Appeals Court
HAIR LENGTH

Longstreth v. Maynard, 961 F.2d 895 (10th Cir. 1992), cert. denied, 114 S.Ct. 260. Inmates brought a free exercise of religion challenge to a general grooming policy of the Oklahoma Department of Corrections. Following remand of appeal of one of the inmates, the U.S. District Court denied an inmate's request for preliminary injunction. In a separate action, the U.S. District Court granted the department's motion for summary judgment. In another action, the U.S. District Court denied an inmate's request for injunction. On consolidated appeal, the court of appeals found that the inmate's appeal challenging the policy was not moot on the basis of the department's change to a grooming code policy which reinstated provisions for seeking religious exemptions. Circumstances did not afford assurance that the threatened harm would not recur, in that the inmates were denied exemptions under the last regulation which contained exemption procedures; moreover, the prison's policy had varied considerably. The court also found that genuine issues of material fact did exist as to whether one inmate was sincere in his belief in the Holy American Church of the Essene, and whether he was entitled to an exemption from the prison grooming requirements, precluding granting summary judgment. In addition, inmates established a substantial likelihood that they would prevail on the merits of their challenge and, thus, they were entitled to a preliminary injunction forbidding the department from cutting their hair. (Oklahoma Department of Corrections)

U.S. Appeals Court
ARTICLES
REGULATIONS

Muhammad v. Lynaugh, 966 F.2d 901 (5th Cir. 1992). Inmates brought a Section 1983 action alleging that they were being denied their constitutional right to exercise religious freedom. The U.S. District Court dismissed, and the inmates appealed. The court of appeals, affirming the decision, found that evidence established that prison regulations restricting the use of Kufi caps and religious insignia bore a reasonable relationship to legitimate penological interests of prison security. Allowing inmates to wear caps and insignia in their cells and in religious services in chapel provided them an opportunity for exercise of constitutionally guaranteed religious freedoms. In addition, inmates failed to

establish that the prison chaplain who followed a different Muslim Illuminate unconstitutionally discriminated against them in denying them use of a religious tape; the chaplain afforded them the same opportunity to worship as was available to all Muslim inmates, and his reason for denying use of the tape, that it was the only copy he had available, was patently legitimate. Finally, an inmate failed to establish equal protection violation in denial of a tape player allegedly necessary to learn the original language of the Muslim Holy Book; all inmates housed in the inmate's unit were prohibited from possessing tape players, and the ban was not related to any particular religious beliefs or practices. (Texas Department of Criminal Justice)

U.S. District Court
ARTICLES
REGULATION

Munir v. Scott, 792 F.Supp. 1472 (E.D. Mich. 1992), reversed, 12 F.3d 213. Muslim inmates brought a civil rights action against a prison official alleging violation of their religious rights due to a total ban on prayer oils and incense. The district court held that the total ban on prayer oils was unconstitutional. The prison official should have been aware that religious oils used by the Muslims during prayer could be accommodated in prison and that the total ban was contrary to the Department of Corrections policy, and he thus was not entitled to qualified immunity. However, the total ban on incense used by Muslims in prayer services was justified because of the possibility that the odor could be used to mask the smell of marijuana, "spud juice," or smoke from arson attempts. In addition, the pervasive smell of incense could be offensive to other prisoners, leading to disruption in the housing unit. The appeals court reversed the lower court decision. (Joseph Cotton Facility, Jackson, Michigan)

U.S. Appeals Court
BEARDS
HAIR LENGTH

Powell v. Estelle, 959 F.2d 22 (5th Cir. 1992). Prisoners brought civil rights actions alleging that the Texas Department of Criminal Justice's prohibition against long hair and beards violated their First Amendment right to exercise their religion freely. The U.S. District Court found no infringement on the prisoners' First Amendment rights, and the inmates appealed. The court of appeals found that the prohibition was rationally related to the achievement of the goal of advancing prison security by preventing the concealment of weapons and contraband in hair and beards, and evidence supported the district court's conclusion that the prohibition was rationally related to a security-related goal of identifying prisoners. Evidence was also sufficient to support the district court's conclusion that long hair and beards would have an adverse impact on the safety of prisoners working around industrial equipment and on the hygiene of the prison population as a whole. (Texas Department of Criminal Justice)

U.S. Appeals Court
PRIVACY
OPPORTUNITY TO
PRACTICE

Richards v. White, 957 F.2d 471 (7th Cir. 1992). An inmate brought an action against prison officials asserting that they interfered with his right to practice his religion. The U.S. District Court entered judgment in favor of the prison officials, and the prisoner appealed. The court of appeals found that the prisoner, who asserted that he needed one half hour of uninterrupted privacy each day for meditation, was not entitled to be placed in a single cell or to exclusive use of the prison chapel for one-half hour each day. Providing individual space for one-half hour each day or providing a single cell would place an unreasonable burden on the correctional institution. No prisoner had exclusive right to the chapel, but a pass system was in effect that allowed all prisoners access to the prison chapel as long as a regularly scheduled event was not in progress. (Waupun Correctional Institution, Wisconsin)

U.S. Appeals Court
HAIR

Scott v. Mississippi Dept. of Corrections, 961 F.2d 77 (5th Cir. 1992). Mississippi State Penitentiary inmates who were members of the Rastafari religion brought a suit alleging that a hair-grooming regulation was an unconstitutional violation of their free exercise of religion. The U.S. District Court entered summary judgment and the inmates appealed. The court of appeals found that the Mississippi Department of Corrections' hair-grooming regulation, which required short hair, did not violate the free exercise of religion rights of Rastafari inmates, even though religious beliefs included never cutting or combing one's hair, since the regulation was reasonably related to legitimate penological concerns of identification and security, other forms of expressing the inmate's religion remained open, and it was unlikely that penological interests could be equally well satisfied by other alternatives proposed by the inmates. (Mississippi State Penitentiary, Parchman, Mississippi)

U.S. Appeals Court
HAIR

Sours v. Purkett, 978 F.2d 1086 (8th Cir. 1992). A prisoner brought a civil rights suit under Section 1983 claiming interference with his First Amendment right to freely exercise his religious beliefs. The U.S. District Court granted summary judgment for the defendants, and the prisoner appealed. The court of appeals, affirming the decision, found that requiring a prisoner to cut his hair in accordance with Missouri Department of Corrections rules did not violate the prisoner's First Amendment right to freely exercise his religious beliefs, although the prisoner argued that the defendants prohibited him from observing his "Vow of the Nazarite." (Farmington Correctional Center, Missouri)

U.S. Appeals Court
OPPORTUNITY TO
WORSHIP
RESTRICTIONS

Aziz v. Moore, 8 F.3d 13 (8th Cir. 1993). Muslim inmates brought a Section 1983 action against Missouri corrections officials, alleging First and Fourteenth Amendment violations. The defendants moved for injunctive relief. The district court granted the defendants' motion and denied the inmates' motion. The inmate appealed. The court of appeals found that restrictions imposed on Muslim inmates did not violate the First Amendment. The restrictions were in response to fights and the discovery of weapons in the chapel. The Muslims were left with reasonable opportunities to exercise their faith. A Muslim inmate failed to show the probability of success on the merits as required for entitlement to an injunction against the issuance of disciplinary violations by corrections officials for failure to attend Muslim services while the inmate was on the religious outcount. The outcount policy was, in part, a response to fights and the discovery of the weapons in the chapel. (Jefferson City Correctional Center, Missouri)

U.S. District Court
OPPORTUNITY TO
PRACTICE

Childress v. Delo, 820 F.Supp. 458 (E.D. Mo. 1993). An inmate brought an action against prison officials, alleging violations of Section 1983 concerning restrictions imposed following an altercation that occurred when correctional officers instructed several inmates to remove gang colors displayed in a dining room. On the defendants' motion for summary judgment, the district court found that limitations on group religious services and religious materials following the altercation were reasonable and did not violate the inmate's First Amendment rights. All group activities, not merely religious services, were suspended. There was no indication that security concerns were exaggerated or unwarranted, inmates were allowed to request visits from the prison chaplain, and while the inmate's hard-bound Koran was confiscated, he could always have requested and received a soft-back Koran. (Potosi Correctional Center, Missouri)

U.S. Appeals Court
REGULATION

Conner v. Sakai, 994 F.2d 1408 (9th Cir. 1993). An inmate brought a Section 1983 action against the State of Hawaii and various prison officials. The U.S. District Court entered summary judgment for the state and the inmate appealed. The appeals court, affirming in part, reversing in part and remanding, found that the due process clause prohibited the state from punishing the inmate for praying aloud in Arabic. The language of the prison rule requiring inmates to communicate in the English language only, including telephone calls, visits and letters, on its face clearly proscribed only interpersonal communication. The state's interpretation of the English only rule as proscribing praying aloud in non-English was most unexpected and highly unusual and therefore, the rule could not be constitutionally applied to punish the inmate, as the rule gave the inmate insufficient notice that he was forbidden to pray in a foreign language. The court also found that Hawaii's prison regulations created a liberty interest in the inmate remaining free from disciplinary segregation. The regulations stated that the inmate had to admit guilt or the prison disciplinary committee had to be presented with substantial evidence before the committee could make a finding of guilt. If the inmate did not admit guilt or the committee did not find substantial evidence, then freedom from disciplinary segregation had to follow. (Halawa Correctional Facility, Hawaii)

U.S. Appeals Court
ARTICLES

Mark v. Nix, 983 F.2d 138 (8th Cir. 1993). An inmate sued prison officials under Section 1983 after his rosary with an attached hard plastic crucifix was confiscated. The U.S. District Court dismissed the claim, and the inmate appealed. The court of appeals, affirming the decision, found that the confiscation of the inmate's rosary did not violate his constitutional right to exercise freely his religion. Although the inmate had a sincere religious belief in the crucifix, the confiscation was reasonably related to the legitimate penological interests of preventing inmates from using hard plastic crucifixes to unlock their handcuffs. The court noted that the policy that prohibited inmates from possessing metal and hard plastic crucifixes did allow the inmates to possess plain rosaries, but rosaries attached to the prohibited crucifixes were confiscated. (Iowa State Penitentiary)

U.S. District Court
DIETS

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. District Court
BLOOD TEST

Ryncarz v. Eikenberry, 824 F.Supp. 1493 (E.D. Wash. 1993). A prisoner sued various prison officials based on alleged violation of his constitutional rights resulting from being required to submit to a blood draw pursuant to a Washington statute requiring that blood be drawn from any inmate convicted of a sex offense or a violent offense, for purposes of DNA identification analysis. The district court found that the Washington statute did not violate the Fourth Amendment in light of its minimal intrusion and the state's interest in

identification. In addition, reasonable officers would have believed their conduct in drawing blood was reasonable under the Eighth Amendment and they were thus entitled to qualified immunity. It was also found that, absent a showing that the inmate directly told officials he considered the blood draw to be contrary to his religious practices, officials were entitled to qualified immunity with respect to the prisoner's First Amendment claim. (Washington State Penitentiary)

U.S. Appeals Court
OPPORTUNITY TO
PRACTICE
PLACE TO WORSHIP

Salahuddin v. Coughlin, 993 F.2d 306 (2nd Cir. 1993). A Moslem inmate brought a civil rights action alleging wrongful denial of congregate religious services. The U.S. District Court entered summary judgment for the department of corrections, and appeal was taken. The appeals court found that fact issues, about whether congregate religious services could have been accommodated at an uncompleted facility to which the inmate was transferred, and whether it was reasonable for the department of corrections to transfer inmates who regularly participated in congregate services, rather than only those inmates whose constitutional rights would not be compromised by the transfer, precluded summary judgment for the department. (Sullivan Correctional Facility, New York)

U.S. Appeals Court
ARTICLES
DIETS
REGULATION

Ward v. Walsh, 1 F.3d 873 (9th Cir. 1993), cert. denied, 114 S.Ct. 1297. An orthodox Jewish prisoner in a state prison sued prison officials alleging that their denial of a kosher diet violated his First Amendment free exercise right. The U.S. District Court entered judgment for the prison officials after a bench trial, and the inmate appealed. The court of appeals, affirmed in part, reversed and remanded. It found that remand of claim to district court of whether the denial of the Kosher diet to the only Orthodox Jewish prisoner in the prison was reasonably related to the prison's legitimate interest in streamlining the food service was required for specific factual findings. The court found that serious safety and security concerns raised by allowing inmates to possess and use candles outweighed curtailment of the Orthodox Jewish inmate's religious practice. In addition, the prison did not infringe upon the inmate's free exercise right by not providing an Orthodox rabbi. That the Orthodox Jewish inmate would have access to an Orthodox rabbi if he were moved to a different prison was insufficient to justify finding that the prison infringed upon the inmate's right to free exercise. The inmate was a maximum security prisoner and the prison was the only maximum security prison in the Nevada prison system. (Ely State Prison, Ely, Nevada)

U.S. District Court
HAIR LENGTH

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 inmate stated a free exercise claim under the First Amendment against the prison employees. The inmate alleged that he was a member of the Nubian Islamic Hebrew faith, and that he had taken a vow requiring him to refrain from cutting his hair. Prison employees forced him to cut his hair on two separate occasions, interfering with his religious practice. However, the rule was found to be constitutionally permissible as it was reasonably related to legitimate penological interests. (State Correctional Institution, Mansfield, Ohio)

1994

U.S. District Court
OPPORTUNITY TO
PRACTICE
REGULIZED
RELIGIONS
REGULATION

Allah v. Menej, 844 F.Supp. 1056 (E.D. Pa. 1994). A prisoner brought an action seeking the opportunity to practice religion of Islamic sect in a penal institution. The district court refused to grant a summary judgment, noting that the Religious Freedom Act is unambiguous and the plain meaning of the statutory language requires application of the Act to actions involving prisoners. The purpose of the Act is remedial and, therefore, the Act should be read broadly. It requires an application of a compelling interest test to decide whether state action places an impermissible burden in the path of prisoners' religious exercise. Evidence was presented that the prisoner and his associates provided prison officials with numerous documents detailing goals, beliefs, and practices of Islamic sect. The court noted that the state may not promote one religion or religious theory against another or question the rationale of honestly held beliefs. (Pennsylvania State Correctional Institution, Graterford, Pennsylvania)

U.S. District Court
OPPORTUNITY TO
PRACTICE

Antonelli v. Sheahan, 863 F.Supp. 756 (N.D.Ill. 1994). Action was brought by a pretrial detainee under Section 1983 against jail officials for alleged constitutional deprivations. On the jail officials' motion to dismiss, the district court found that the pretrial detainee failed to establish that jail officials acted with requisite intent to deny him a reasonable opportunity to practice his religion to amount to a constitutional violation, where he did not allege that jail officials were aware of his exclusion from religious services. (Cook County Jail, Illinois)

U.S. Appeals Court
HAIR LENGTH
REGULATION

Bettis v. Delo, 14 F.3d 22 (8th Cir. 1994). A Native American inmate brought a civil rights action against corrections officials alleging a violation of his First Amendment right to free exercise of religion. A summary judgment for the defendants was granted by the

U.S. District Court and the inmate appealed. The appeals court, affirming the decision, found that prison regulations under which the Native American inmate was required to have his hair cut did not unconstitutionally infringe on the inmate's First Amendment right to free exercise of religion. In addition, prison regulations prohibiting ceremonial pipes, medicine bags, eagle claws, and alter stones in administrative segregation were necessary because of increased security risks. The appeals court affirmed that the regulations did not violate the Native American inmate's First Amendment right to free exercise of religion. (Potosi Correctional Center, Missouri)

U.S. District Court
FREEDOM OF
RELIGION
MAIL

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. Appeals Court
DIET
FREEDOM OF
RELIGION
RESTRICTIONS

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
REGULATION
RFRA- Religious
Freedom
Restoration Act

Campbell-El v. District of Columbia, 874 F.Supp. 403 (D.D.C. 1994). A prisoner claimed that enforcement of various prison security measures violated his rights under the Fifth and Eighth Amendment and under the Religious Freedom Restoration Act. The district court found that confinement to maximum security and the enforcement of a lockdown policy were reasonable in light of prison security concerns and did not violate either the Fifth Amendment due process or the Eighth Amendment cruel and unusual punishment clauses. This is particularly true where the prisoner was in maximum security at his own request for protective custody. The court also found that, to determine whether the prisoner's rights under the Religious Freedom Restoration Act (RFRA) had been violated, further discovery was required on the prisoner's claim that enforcement of the prohibition against gathering of more than 10 or 12 prisoners in a cellblock violated his religious freedom rights. There was insufficient evidence in the record to show whether the regulation was the least restrictive means for furthering a compelling government interest in prison security. (Maximum Security Facility, Lorton, District of Columbia)

U.S. District Court
FREEDOM OF
RELIGION
JEWELRY/
ORNAMENTS
RFRA- Religious
Freedom
Restoration Act

Campos v. Coughlin, 854 F.Supp. 194 (S.D.N.Y. 1994). Inmates brought an action alleging constitutional and statutory violations caused by a prison rule prohibiting inmates from wearing Orisha beads in conformity with the Santeria religion. On the inmates' motion for a preliminary injunction requiring the Department of Correctional Services (DOCS) to return the confiscated beads and allow inmates to wear the beads under clothing during the pendency of the action, the district court found that the inmates established a likelihood of success on merits under the compelling governmental interest test of the Religious Freedom Restoration Act of 1993. The court granted a preliminary injunction that permitted inmates to wear beads under clothing and place beads on shrines in a manner avoiding public display. The court also found that the inmates established the likelihood of success on merits under the reasonableness standard because no rational relationship existed between totally prohibiting wearing of beads under clothing and the prison's attempt to minimize the use of beads as gang identifiers. The inmates have no alternative means to exercise their religion in which wearing of beads was believed to be required, and the impact on the prison system of allowing beads to be worn under clothing was constitutionally insignificant. On the equal protection claim, the DOCS was unable to establish that prohibition of Orisha beads without imposing similar burdens on rosary and Dhikr beads was reasonably related to a legitimate penological interest. (Sing Sing Correctional Facility and Oneida Correctional Facility, New York)

U.S. District Court
HAIR LENGTH
HEADGEAR
JEWELRY/
ORNAMENTS
REGULATIONS
RFRA- Religious
Freedom
Restoration Act

Diaz v. Collins, 872 F.Supp. 353 (E.D.Tex. 1994). A Native American inmate brought a Section 1983 action complaining of alleged violations of his right to practice Native American religion. The district court found that a prison regulation requiring inmates to cut their hair did not violate the Religious Freedom Restoration Act, despite the Native American inmate's claim that his religion required that he grow his hair long. Security concerns were compelling governmental interests, and the regulations were the least restrictive means available to achieve these compelling interests. The prison's requirement that a medicine pouch sought by the inmate be sent through the unit warden's office and that the inmate allow visual inspection of it for contraband was reasonable within the prison environment and did not substantially burden the inmate's right to freely practice his religion. The prison policy of requiring that the inmate's medicine pouch be stored in the inmate's cell did not substantially burden the inmate's religious beliefs. The prison regulation governing religious headbands did not substantially burden the practice of the Native American religion, and was founded upon a compelling state interest to maintain security and minimize carrying of contraband within the prison. The regulation required that any headband be kept in the inmate's cell. The inmate was confined to his cell for 22 to 23 hours per day and could wear the headband during that time. (Texas Department of Criminal Justice, Institutional Division, Coffield Unit)

U.S. District Court
HAIR LENGTH
OPPORTUNITY TO
WORSHIP
PLACE TO WORSHIP
REGULATIONS
SERVICES

Hamilton v. Schriro, 863 F.Supp. 1019 (W.D.Mo. 1994). An inmate confined in a Missouri correctional facility brought a civil rights action challenging the prison's hair length regulation and prison officials' denial of the use of a sweat lodge and other items. The magistrate judge recommended that the prison officials be enjoined from enforcing their regulations and grooming policies which burdened exercise of the inmate's Native American religion and that accommodations should be made to allow the inmate to practice the religion, including the right to have weekly sweat lodge ceremonies. The district court adopted the report and recommendation as modified and ordered the parties to meet and arrive at an acceptable compromise regarding the specific means by which a remedy would be effected. (Missouri Department of Corrections)

U.S. District Court
OPPORTUNITY TO
PRACTICE

Howard v. U.S., 864 F.Supp. 1019 (D. Colo. 1994). A prison inmate sought to prevent prison officials from enforcing a policy that prohibited the inmate from practicing satanic rituals. The district court found that the inmate established the likelihood of success on the merits of the claim that prison officials' enforcement of a policy to deny the inmate's request to perform satanic rituals violated the free exercise clause of the First Amendment. Despite the officials' alleged security concerns, other inmates were allowed to engage in religious activities involving similar implements as those requested. No evidence supported a claim that inmate unrest would result and the inmate did not advocate human sacrifice or bloodletting. The inmate was not given a viable alternative to performing the rituals. Officials failed to demonstrate that the inmate's request was unreasonable in light of available resources or that alternative ways to accommodate the inmate were unavailable. The court found that irreparable injury was established by the allegation that First Amendment rights were violated. The preliminary injunction granted by the court that prevented the prison officials from enforcing the policy that prohibited the inmate from performing satanic rituals only minimally prejudiced the government, as the inmate's First Amendment rights were allegedly violated by the policy and the injunction gave prison authorities great discretion in accommodating the inmate's request. (Federal Correctional Institute at Englewood, Littleton, Colorado)

U.S. District Court
DIETS

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 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
PUBLICATIONS
REGULATIONS

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 the practices violated the inmates' rights, and the prison officials appealed. The court of appeals affirmed in part and remanded. On appeal, the U.S. Supreme court vacated and remanded. The court of appeals in turn remanded the case to the district court. The district court found that the Religious Freedom of Restoration Act (RFRA), restoring the compelling interest test to cases where free exercise of religion was substantially burdened, applied retroactively. Although the prison officials' practice of routinely banning religious literature of the Hebrew Israelite faith furthered the officials' compelling interest in maintaining internal order and security,

an outright ban was not the least restrictive means of furthering that interest, and therefore violated the RFRA and the First Amendment. The fact that particular individuals representing the Florida Department of Corrections had been replaced by other individuals in the same official capacity did not render the inmates' action moot. (Florida Department of Corrections)

U.S. Appeals Court
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
DIETS

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
DIETS

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
ARTICLES
DIETS
VISITS

Pippins v. Adams County Jail, 851 F.Supp. 1228 (C.D. Ill. 1994). A pretrial detainee brought a civil rights action against a jail and a jail administrator for violating his constitutional rights. The district court found that the jail's denial of a hard-cover Koran, because of legitimate security interests of preventing weapons and smuggling, and its failure to provide a substitute main course when serving pork did not support the detainee's claim of religious discrimination. The pretrial detainee's right to exercise religious freedom was not violated by the jail's refusal to permit a visit from his Imam minister, who was on parole. Obvious concerns dictate against allowing paroled felons to meet with incarcerated people, and jail officials never barred any other Imam from visiting the jail. (Adams County Jail, Illinois)

U.S. District Court
FORCED EXPOSURE

Scarpino v. Grosshiem, 852 F.Supp. 798 (S.D. Iowa 1994). Inmates and the civil liberties association brought a suit against public officials to challenge the operation of an alcoholic rehabilitation program at a correctional facility. On the officials' motion for summary judgment the district court found that prison officials enjoyed qualified immunity from liability on establishment clause claims arising from the prisoners' participation in the program which had a heavy religious component. A reasonable official in the officials' position in 1991-92 could have believed that the program's purpose was to help inmates overcome addiction, that its primary effect was to help them do so, and that no significant interest with religion was involved. Prison officials were entitled to qualified immunity on the inmates' free expression claims arising from their participation in the program. Reasonable officials in the position of the defendants could have believed at the time that the program, which allegedly had a heavy religious component, was rationally related to the legitimate purpose of treating inmates' addictions, and that alternate means of exercising constitutional rights of free expression existed. (Clarinda Correctional Facility, Clarinda, Iowa)

U.S. District Court
REGULATION

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
OPPORTUNITY TO
PRACTICE
SERVICES

Thomas v. Gunter, 32 F.3d 1258 (8th Cir. 1994). A prisoner brought a Section 1983 action against prison officials and the Department of Correctional Services alleging violations of his First and Fourteenth Amendment rights to free exercise of religion and equal protection of law while he was incarcerated. The U.S. District Court granted the prison officials and the department's motion for summary judgment and the prisoner appealed. The appeals court, reversing and remanding, found that a material issue of fact existed as to whether the refusal to allow the prisoner daily access to a prison sweat lodge for prayer was logically related to a legitimate penological objective, precluding summary judgment in the prisoner's Section 1983 action for violations of his First and Fourteenth Amendment rights to free exercise of religion and equal protection. Evidence suggested that the sweat lodge was the only appropriate location for the prisoner's daily prayer activities, and that the security effect of allowing daily access for prayer was insignificant. (Omaha Correctional Center, Nebraska)

U.S. District Court
PLACE TO WORSHIP

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 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. (District of Columbia Correctional System- the Lorton Minimum Security Annex, the Correctional Treatment Facility, the Central Detention Facility)

1995

U.S. District Court
OPPORTUNITY TO
PRACTICE
RESTRICTIONS

Abdul Jabbar-Al Samad v. Horn, 913 F.Supp. 373 (E.D.Pa. 1995). Muslim inmates brought a civil rights suit against prison officials challenging a rule which prohibited inmates from leading religious groups. The district court denied the defendants' motion to dismiss, finding that the inmates stated claims for violation of their civil rights. The court found that the inmates had stated a claim under § 1980 and the First Amendment by alleging that the prison rule violated a tenet of Islam that requires Muslims to choose their religious leaders from within their congregation. The court also found that the inmates stated a claim under the equal protection clause of the Fourteenth Amendment because civic and religious prison groups were similarly situated and that it was not established that one group was fundamentally more dangerous than the other. (SCI-Graterford, Pennsylvania)

U.S. Appeals Court
RFRA-Religious Freedom
Restoration Act
WORK
SERVICES

Abdur-Rahman v. Michigan Dept. of Corrections, 65 F.3d 489 (6th Cir. 1995). An inmate sued the Michigan Department of Corrections alleging violation of his right to exercise his religion. The district court granted summary judgment for the defendants and the appeals court affirmed. The appeals court held that the prison's policy that denied the inmate release from his work assignment for security reasons did not affect an essential tenet of the inmate's Muslim religious beliefs; evidence presented by a religious leader and teacher of Islamic religion established that Muslims could be legitimately excused from Friday services for reasons such as illness and work activities. Therefore, the prison policy which denied the inmate permission to be released from his job to attend religious services did not substantially burden the inmate's capacity to exercise his beliefs of faith in violation of the Religious Freedom Restoration Act. (State Prison of Southern Michigan)

U.S. District Court
ARTICLES
HAIR LENGTH
RFRA- Religious
Freedom
Restoration
Act

Belgard v. State of Hawaii, 883 F.Supp. 510 (D. Hawaii 1995). A Native American prisoner brought a civil rights action against prison officials for allegedly violating his constitutional right to free exercise of religion and also requested a temporary restraining order. The district court found that, in enacting the Religious Freedom Restoration Act (RFRA), Congress did not violate a separation of powers but, rather, Congress sought to protect the free exercise rights to an extent greater than the United States Supreme Court interpreted the constitution to require. The court also found that the prisoner was not entitled to a temporary restraining order. Evidence indicated that prison officials exempted the prisoner from hair length restrictions pending the final outcome of the case and permitted the prisoner to meet with Native American religious counselors. Officials also replaced the prisoner's lost or destroyed religious articles and permitted him to use and store the replacements in the prison chapel. (Halawa Correctional Facility, Hawaii)

U.S. District Court
DIET
OPPORTUNITY TO
PRACTICE

Best v. Kelly, 879 F.Supp. 305 (W.D.N.Y. 1995). An inmate brought a civil rights action against prison officials alleging that his First Amendment rights to free exercise of religion were violated when he was removed from the prison's alternative diet and not permitted to attend services of the prison's Jewish congregation. The district court found that the prison did not substantially burden the inmate's exercise of his religion when it removed the inmate from Jewish congregation services and refused to serve him an alternate diet served to Jewish inmates. The inmate was allowed to practice his religious beliefs in the privacy of his cell and had not alleged that attendance at services was essential to following his religion. In addition, the inmate did not request a special diet primarily for religious reasons, and voluntarily removed himself from the kosher diet after it was reinstated. Even if the inmate was substantially burdened when he was prohibited from attending Jewish religious services,

the inmate's removal furthered a compelling interest in maintaining order and security in the institution, where the inmate was disruptive during services to the point of interfering with other inmates' rights of worship. (Attica Correctional Facility, New York)

U.S. District Court
RFRA-Religious Freedom
Restoration Act
SERVICES

Boomer v. Irvin, 919 F.Supp. 122 (W.D.N.Y. 1995). An inmate sued corrections officials under § 1983 alleging violation of his First Amendment rights in connection with an officer's refusal of his request to attend religious congregational services which conflicted with a scheduled callout for an appointment with a mental health clinician. The district court denied summary judgment, finding that genuine issues of material fact existed as to whether the inmate's First Amendment rights were violated, and whether it was objectively unreasonable for the officer to refuse the inmate's request. The court noted that the inmate's right to attend services was clearly established and the mental health callout was not mandatory. (Wende Correctional Facility, New York)

U.S. District Court
ARTICLES

Bryan v. Administrative of F.C.I. Otisville, 897 F.Supp. 134 (S.D.N.Y. 1995). An inmate brought a pro se action against a corrections officer and officials alleging denial of access to his personal prayer materials after a three-day administrative detention. The district court found that the inmate's allegations that he was deprived of his Quran and prayer beads for a period of three days were insufficient to state a First Amendment claim, given the legitimate security concerns arising in the prison context and the brief duration of the confiscation of the religious items. (Low Security Correctional Institution, Allenwood, Pennsylvania, and Federal Correctional Institution, Otisville, New York)

U.S. Appeals Court
OPPORTUNITY TO
PRACTICE
SERVICES

Bryant v. Gomez, 46 F.3d 948 (9th Cir. 1995). A prisoner brought a Section 1983 action seeking to compel a prison to provide him with a full religious Pentecostal service. The U.S. District Court entered a judgment for the prison and the prisoner appealed. The appeals court, affirming the decision, found that the prison had not imposed a substantial burden upon the free exercise of religion rights of the prisoner, by denying him the opportunity to participate in a full Pentecostal service, which denied him the practices and "traditional instruments" distinctive to his faith such as "speaking in tongues" and "laying hands on each other." The court noted that the prisoner had not indicated that he could not accomplish the mandates of his religion through the "interfaith" Christian services available at the prison, the Pentecostal literature in the prison library and the Pentecostal volunteer available to attend the Bible study classes and focus on the beliefs of the faith. (California Department of Corrections)

U.S. District Court
ARTICLES

Caffey v. Johnson, 883 F.Supp. 128 (E.D. Tex. 1995). A prisoner, proceeding pro se, brought a Section 1983 action against a prison officer alleging that the officer wrongfully seized and either destroyed or lost the prisoner's Holy Koran, handkerchief with an Islamic prayer on it, and Islamic papers. The officer moved for summary judgment. The district court found that since the inmate did not designate himself a Muslim in accordance with a prison regulation stating that only those prisoners who designated themselves with a particular religious group may possess religious paraphernalia, the inmate's Holy Koran, handkerchief with an Islamic prayer on it, and Islamic papers were contraband and it was not unreasonable for the prison officer to seize and discard these items. The officer was entitled to qualified immunity for purposes of the inmate's Section 1983 action. (Texas Department of Criminal Justice, Institutional Division, Stiles Unit)

U.S. District Court
NAME
MAIL
OPPORTUNITY TO
PRACTICE

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
RFRA-Religious Freedom
Restoration Act
PUBLICATIONS
RESTRICTIONS

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 Institution, Wisconsin)

U.S. District Court
RFRA-Religious Freedom
Restoration Act
CLASSIFICATION
RESTRICTIONS
CLOTHING

Hall v. Griego, 896 F.Supp. 1043 (D.Colo. 1995). An inmate brought an action against prison officials alleging violation of his rights under the Religious Freedom Restoration Act (RFRA). The district court found that the inmate stated a claim for violation of his rights under RFRA in being prohibited from wearing headgear and being transferred after conducting religious services. The court held that material questions of fact precluded summary judgment on whether the inmate's transfers were retaliatory. The court noted that if a second correctional facility offers fewer or inferior opportunities for religious practice, the transfer of an inmate to

that facility may be punitive, so as to be impermissible retaliation. The court found that reclassification of the inmate's security status did not trigger constitutional due process. (Colorado State Penitentiary)

U.S. Appeals Court
SINCERITY
DIET

Hayes v. Long, 72 F.3d 70 (8th Cir. 1995). A Muslim inmate brought a § 1983 action against prison officials after he was disciplined for refusing to handle pork while he was working in a prison kitchen. The district court granted summary judgment for the prison officials based on qualified immunity and the inmate appealed. The appeals court reversed the lower court decision, finding that Muslim inmates had clearly established rights not to handle pork at the time the plaintiff was disciplined and that it would be unreasonable for prison officials to be unaware of such rights. (Cummins Unit, Arkansas Department of Correction)

U.S. Appeals Court
RFRA-Religious Freedom
Restoration Act
BEARDS
HAIR

Hicks v. Garner, 69 F.3d 22 (5th Cir. 1995). A Rastafari inmate proceeding in forma pauperis brought an action against Texas prison officials, challenging grooming regulations that prohibited long hair and beards. The district court dismissed the complaint as frivolous, but the appeals court affirmed in part and vacated and remanded in part. The appeals court found that the regulations did not violate the inmate's First Amendment right to free exercise of religion but that the district court should not have summarily dismissed the claim under the Religious Freedom Restoration Act because the standards of RFRA were undefined. (Administrative Segregation Section, Alfred D. Hughes Unit, Texas Department of Criminal Justice)

U.S. Appeals Court
VISITS

Ingram v. Ault, 50 F.3d 898 (11th Cir. 1995). A death row inmate brought a civil rights action alleging that denial of face-to-face contact with a spiritual advisor during the hours preceding his execution violated the First Amendment. The U.S. District Court denied the inmate's motion for a temporary restraining order and the inmate appealed. The appeals court, affirming the decision, found that the death row inmate was not entitled to a temporary restraining order. He failed to demonstrate the substantial likelihood of success on the merits of his claim. (Georgia Diagnostic & Classification Center, Jackson, Georgia)

U.S. District Court
BEARDS
DIET
HAIR LENGTH
HATS
OPPORTUNITY TO
PRACTICE

Luckette v. Lewis, 883 F.Supp. 471 (D. Ariz. 1995). A prisoner brought an action against prison officials alleging violation of his constitutionally protected right to practice his religion. He applied for a preliminary injunction. The district court found that the prisoner firmly established that his religious convictions were legitimate and sincere. In addition, the court found that the prison officials substantially burdened the prisoner's religious practices, for purposes of the prisoner's request for a preliminary injunction, where the prisoner could not practice a Kosher diet without the approval of officials, where the prisoner was not allowed to grow his facial hair to a required length, and where the prisoner was prevented from wearing a headcovering of an appropriate color. The court noted that the cost of providing Kosher meals to the few prisoners who had legitimate religious beliefs which required them to maintain a Kosher diet was minimal. Permitting the prisoner to keep his beard at a certain length, as required by his religion, did not raise compelling safety concerns justifying the denial of the prisoner's Free Exercise rights, where the prisoner was merely asking that he be allowed to maintain a beard one quarter of an inch in length. Although evidence showed that other groups were permitted to wear headcoverings, the district court was required to give due deference to the prison officials' expertise in determining whether colors of a head band the prisoner sought to wear, as required by his religious beliefs, were gang colors which posed a safety risk to the prison. Prison officials did not substantially burden the prisoner's religious practice of taking a vow of poverty, for purposes of the prisoner's request for a preliminary injunction, where prisoners were permitted to donate their money or spend their money on a variety of charities. (Arizona State Prison, Florence, Arizona)

U.S. District Court
NAME

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
HAIR
RFRA-Religious Freedom
Restoration Act
- 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 district court held that a prison requirement that he undo his dreadlocks in order to facilitate a hair search did not violate the Religious Freedom Restoration Act (RFRA) or any clearly established First Amendment right, even though the requirement did substantially burden the inmate's rights to exercise his Rastafarian religion. The court found that the prison's requirement that any inmate who was leaving or returning to the facility loosen their hair was the least restrictive means of furthering the prison's valid security interests. The court also found that confining the inmate to his cell for less than 24 hours to undo his braids in preparation for his transfer from the facility on the following day did not violate the inmate's rights. 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
RFRA-Religious Freedom
Restoration Act
SERVICES
CHAPLAIN
- Muhammad v. City of New York Dept. of Corrections, 904 F.Supp. 161 (S.D.N.Y. 1995). A jail inmate who was a member of the Nation of Islam brought a suit against corrections officials alleging violation of his rights under the Religious Freedom Restoration Act (RFRA), First Amendment, and state law. The district court held that failure to provide inmates with a Nation of Islam minister or congregate services did not violate RFRA, the New York Constitution, or city regulations. The court noted that the corrections department offered numerous religious services and accommodations for Muslim inmates, including a generic Muslim prayer service every Friday and religious study groups, and permitted inmates to have unlimited personal clergy/counsel visits with any spiritual leader. The court noted that the increasing number of inmates and the rapid turnover of the inmate population made it difficult to provide separate religious services for any specific sect or group. (New York City Department of Corrections)
- U.S. District Court
RFRA-Religious Freedom
Restoration Act
HATS
RESTRICTIONS
- Muslim v. Frame, 891 F.Supp. 226 (E.D.Pa. 1995). A former pretrial detainee brought a § 1983 action alleging that a county prison rule prohibiting inmates from wearing head gear in common areas unconstitutionally restricted the Muslim detainee from wearing his prayer cap in an expression of his faith. The district court granted summary judgment for the defendants in part, and denied it in part. The court found that state law did not give prisoners a liberty interest in the unrestricted wearing of religious ornamentation, and that the prison head gear rule was not the result of religious discrimination. But the court denied summary judgment on the issues of whether the ban on head gear substantially burdened the detainee's free exercise of religion, in violation of the Religious Freedom Restoration Act, and whether the head gear restrictions were the least restrictive means of achieving safe prisons. The court noted that prison officials failed to establish that allowing head gear would unduly increase their administrative costs, that allowing head gear would permit a means of expressing gang affiliation, and that allowing head gear would impede the need to visually identify prisoners during movement. (Chester County Prison, Pennsylvania)
- U.S. District Court
MEDICAL CARE
BLOOD TESTS
- Pacheco v. Comisse, 897 F.Supp. 671 (N.D.N.Y. 1995). An inmate filed a § 1983 action against corrections officials and the district court granted summary judgment for the defendants, in part, and denied it in part. The court found that the department of corrections was not entitled to qualified immunity on the allegation that a superintendent retaliated against an inmate for exercising his constitutional right to petition the government for redress of grievances. The inmate was prevented from attending a trial on his claim against the State of New York. Prison officials contend that the inmate was not allowed to attend because of his nine month refusal to take a TB test, which made him a health risk. The inmate acknowledged that he refused to take the test, but claims he did so for religious reasons and that the official knew he was amenable to other forms of testing. The inmate alleged that the official used the TB test to justify refusal to allow him to attend court, in retaliation for legal action. The TB test required injecting a serum derived from bacterium into the skin, and the inmate, an orthodox Muslim, claimed he was prohibited from voluntarily ingesting the bacterium under his interpretation of the Qur'an. The court noted that evidence demonstrated that the inmate had lodged numerous complaints against the superintendent, that the superintendent had applied the TB policy inconsistently, and that the superintendent did not use any alternative means to test the inmate, precluding summary judgment. The court also found that summary judgment was inappropriate on the inmate's claim of interference with his legal mail, where the inmate submitted evidence that the addressee provided affordable legal services to Muslim prisoners, and claimed that not receiving postage for his letter prejudiced his attempt to find a lawyer. (Shawagunk Correctional Facility, New York)
- U.S. District Court
HAIR LENGTH
- 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. District Court
RFRA-Religious Freedom
Restoration Act
PUBLICATIONS
RIGHT TO PRACTICE
- 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
RFRA-Religious Freedom
Restoration Act
RESTRICTIONS
SERVICES
ARTICLES
- Rust v. Clarke, 883 F.Supp. 1293 (D.Neb. 1995). State inmates filed a § 1983 action alleging violation of their rights under the Religious Freedom Restoration Act (RFRA). The district court found that although the denial of the inmates' requests for various items, privileges and an individualized weekly worship time would be assumed to have substantially burdened the inmates' exercise of their religion, denial of the requests was the least restrictive means of furthering a compelling government interest of fairly apportioning the prison's space, time, personnel and monetary resources so that all inmates could freely exercise their choice of faith; therefore, there was no violation of RFRA. The inmates had alleged that their religious preference is Asatru which is an Icelandic term for the ancient religion of the Teutonic people of Northern Europe; this is also known as "Odinism" and "Troth." The inmates had requested the following of prison officials, asserting that they were needed to practice the Asatru religion: an evergreen tree, a charm necklace depicting Thor's Hammer, a small stone altar and a small wooden bowl for each member in his individual cell, a drinking horn for each member, a cauldron, an ash spear with a rubber head, an evergreen branch for each ceremony, Viking-type swords made of soft wood, a sauna, a group hobby card to facilitate making religious items, ability to purchase and sacrifice goods into the fire or to sacrifice goods purchased by the state, meats for the ritual, permission to celebrate 23 holidays--19 of which involve feast meals, permission to form a culture club, and permission to leap over the sacred fire during worship services. (Nebraska State Penitentiary)
- U.S. District Court
RFRA-Religious Freedom
Restoration Act
- Sasnett v. Department of Corrections, 891 F.Supp. 1305 (W.D.Wis. 1995). Several state inmates sued a corrections department and prison officials, challenging rules that restrict inmates' rights to possess religious and legal material. The court dismissed the suit, in part, and denied the defendants' motion to dismiss in part. The court held that the inmates' claims that prison regulations improperly forced them to give up their cross necklaces and religious books were sufficient to state a claim under the Religious Freedom Restoration Act. (Columbia Correctional Institution, Wisconsin)
- U.S. District Court
RFRA-Religious Freedom
Restoration Act
FREEDOM OF
RELIGION
ARTICLES
- Taylor v. Cox, 912 F.Supp. 140 (E.D.Pa. 1995). An inmate challenged the constitutionality of seizure of his personal property in a pro se suit. Prison officials moved to dismiss the case, and the district court denied the motion in part, finding that the inmate had stated claims with regard to interference with access to court and interference with freedom of religion. The inmate was temporarily transferred to another state correctional facility for a parole violation hearing. The inmate claimed that certain legal and religious materials were seized from him and held in the receiving prison's property room until his parole hearing was completed. The inmate claimed that the seizure of his legal material interfered with his defense at one hearing and prevented his appearance at another hearing; the district court found that these allegations, if proved, might have infringed on the inmate's right of reasonable access to court. The court also found that the seizure of the inmate's Koran, which allegedly prevented him from engaging in religious rites, might be construed as substantial interference with his freedom of religion in violation of the Religious Freedom Restoration Act (RFRA) and with the inmate's First Amendment rights to freedom of religion. (SCI-Graterford, Pennsylvania)
- U.S. District Court
SERVICES
PUBLICATIONS
ARTICLES
OPPORTUNITY TO
WORSHIP
RESTRICTIONS
SERVICES
RFRA-Religious Freedom
Restoration Act
- 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 held that group worship services led by a protestant chaplain who was a fundamentalist Christian adequately protected the inmate's right to free exercise of religion and equal protection, and the three hours per week provided for group worship afforded a reasonable opportunity for the inmate to exercise his religion. The court found that the inmate was not entitled to damages with respect to the former practice of allowing only one hour of group worship per week because RFRA defendants cannot be sued for money damages in their official capacities. The court also found that the fact that the protective custody inmate could not attend group worship services on Sunday did not infringe upon or substantially burden his exercise of religion, nor did denying the inmate permission to take his Bible into an exercise yard constitute denial of equal protection or violation of his right to free exercise of religion. 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. The court also found that the lack of a facility in the prison chapel for public baptism by immersion substantially burdened the inmate's exercise of religious,

entitling him to injunctive relief. The immersion ceremonies were being conducted in the prison infirmary with only the chaplain and the candidate present which denied both the candidate and participants in the service the opportunity to participate in the entire baptism ceremony, thus denying a fundamentalist Christian inmate a central part of his religious experience. (Iowa State Penitentiary)

U.S. Appeals Court
OPPORTUNITY TO
PRACTICE
REGULATIONS
RFRA - Religious
Freedom
Restoration
Act

Werner v. McCotter, 49 F.3d 1476 (10th Cir. 1995). A state prisoner brought a civil rights action against prison officials alleging an unconstitutional interference with the prisoner's free exercise of his chosen religion, Native American shamanism. The U.S. District Court granted summary judgment for the officials and the prisoner appealed. The appeals court found that the Religious Freedom Restoration Act applied to the prisoner's claims and applied retroactively. The absence of evidence as to a governmental interest and burden associated with the provision of a sweat lodge to facilitate the exercise of the prisoner's chosen religion precluded summary judgment for prison officials. However, the prison officials' alleged failure to provide the prisoner with a Cherokee Native American spiritual advisor or religious literature or with various religions symbols did not violate the Religious Freedom Restoration Act. Officials' attempts to facilitate the prisoner's practice of his chosen religion were often obstructed by the prisoner, who refused to accept assistance or objects from non-Cherokee Native American sources. The prison officials were entitled to qualified immunity from damages claims in the prisoner's action. The officials reasonably acted in good faith under then-existing standards, and the Religious Freedom Restoration Act which set forth more rigorous standards became effective after the prisoner commenced the suit. (Utah Prison)

U.S. District Court
OPPORTUNITY TO
PRACTICE
PLACE TO WORSHIP
RFRA-Religious Freedom
Restoration Act
SERVICES

Woods v. Evatt, 876 F.Supp. 756 (D.S.C. 1995). State inmates brought a Section 1983 action alleging violation of their First Amendment rights and violation of the Religious Freedom Restoration Act (RFRA). The district court found that the prison officials' assigning a space for the Muslim inmates in a multipurpose building for their weekly congregational prayer service did not discriminate against the inmates in the practice of their religion, although Christian inmates were permitted to hold services in the visitation room and outside visitors could attend the services. The Muslim services had to be held on Friday afternoons and the visitation room was used on Friday afternoons. A Muslim service in the visitation room would prevent visitation for approximately 90% of the prison population, potentially resulting in tension and conflict between Muslim and non-Muslim inmates. Christians held their services on Sunday mornings, which did not interfere with visitation. The court also found that the fact that the weekly Muslim service was not open to the general inmate population as was the Christian service did not constitute a substantial burden on the Muslim inmates' exercise of their religion. Requiring inmates to register as Muslims before they can attend Friday afternoon services for Muslims did not impose a substantial burden on the inmates' rights to practice their religion in violation of the First Amendment or the RFRA. Since the timing of many of the Muslim events was different from that of other religious faith groups, registration of inmates' religious preferences allowed prison officials to know which inmates were entitled to the special accommodations made for Muslim inmates. (Allendale Correctional Institution, South Carolina)

1996

U.S. District Court
HAIR LENGTH

Abordo v. State of Hawaii, 938 F.Supp. 656 (D.Hawaii 1996). A Native American inmate confined at a maximum security prison filed a civil rights action alleging that prison officials violated his equal protection rights and his rights under the Religious Freedom Restoration Act (RFRA) by requiring him to have his hair cut to conform with prison hair length regulations. The district court found that the regulations did not violate the inmate's rights. The court noted that while the regulation may have shown intentional discrimination against inmates with long hair, the regulation was reasonably related to legitimate penological interests. The court also found that the difference in hair length policies between male prisons and female prisons did not violate the equal protection clause because the disparity was due to differing security concerns between the prisons and not because of any illegitimate discrimination on the basis of gender. (Halawa Correctional Facility, Hawaii)

U.S. Appeals Court
PRIVACY
SEARCH BY FEMALE

Canedy 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. District Court
SATANISM
PUBLICATIONS

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. District Court
RFRA-Relig. Freedom
Restoration Act

Cockrell-El v. District of Columbia, 937 F.Supp. 18 (D.D.C. 1996). An inmate brought an action against corrections officials alleging violation of his constitutional rights in connection with an alleged assault by a guard when the inmate was returning from a religious service, and from a disciplinary proceeding arising from the assault. The district court held that the inmate's right of free exercise of religion pursuant to the Religious Freedom Restoration Act was not violated because the inmate was neither prevented from attending a service nor pressured to commit any act forbidden by his religion. The court found that the inmate failed to establish a denial of due process violation during a disciplinary proceeding because the inmate did not have a protected liberty interest in remaining free from administrative segregation, and was informed of the charges against him and notified of his hearings. The court found that a prison guard did not violate the inmate's Eighth Amendment rights because the guard had asserted that his blow to the inmate's face was necessary for both self-protection and to maintain internal safety in a cell block. The court found the inmate's contention that his hands were in handcuffs to be incredible given the guard's injuries--a cut lower lip and injuries to his wrist and arm. (Maximum Security Facility, District of Columbia)

U.S. District Court
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 "nutriloaf" 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
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
HAIR
REGULATIONS
RFRA-Religious Freedom
Restoration Act

Estep v. Dent, 914 F.Supp. 1462 (W.D.Ky. 1996). An inmate moved for a preliminary injunction in this suit against prison officials. The court granted the inmate's motion with regard to his claim that the prison policy which required him to cut his earlocks violated the Religious Freedom Restoration Act. The court found that the inmate established the likelihood of success on his claim that earlocks were a component of the Orthodox Hasidic Judaism faith, and that the inmate adhered to the tenets of his faith religiously. Requiring the inmate to cut his earlocks would substantially burden the inmate's faith, according to the court, and prison officials had failed to establish that the policy was the least restrictive means of furthering its interest in maintaining security, particularly in light of the fact that there was a three-month delay before the inmate's earlocks were cut. (Kentucky State Penitentiary)

U.S. Appeals Court
RFRA-Religious Freedom
Restoration Act
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
OPPORTUNITY TO
PRACTICE
SERVICES
RFRA-Religious Freedom
Restoration Act

Gilmore-Bey v. Coughlin, 929 F.Supp. 146 (S.D.N.Y. 1996). An inmate sued corrections officials alleging violation of his rights under the Religious Freedom Restoration Act (RFRA), free exercise and establishment clauses, and equal protection clause. The inmate challenged the officials' refusal to permit inmates who were members of the Moorish Science Temple of America (MSTA) to observe religious holidays or to gather for congregational worship and religious study. The district court granted summary judgment to the defendants, finding that their policies were rationally related to a legitimate interest in running the facility safely and efficiently. The court found that the state endeavored to distribute limited resources equitably in order to provide spiritual guidance for all inmates, and not to advance any one or more religious group, and that the state established a program permitting outside religious advisors to visit inmates in an attempt to accommodate individual needs. (Greenhaven Correctional Facility, New York)

U.S. Appeals Court
RESTRICTIONS
HAIR LENGTH
SERVICES
RFRA-Religious Freedom
Restoration Act

Hamilton v. Schriro, 74 F.3d 1545 (8th Cir. 1996). A Native American inmate filed a suit alleging prison officials violated his First Amendment right to free exercise of religion by requiring him to cut his hair and by denying him access to a sweat lodge. The district court granted injunctive relief and the prison officials appealed. The appeals court reversed, ruling that the officials did not violate the inmate's First Amendment rights or the Religious Freedom Restoration Act (RFRA). The court found that denial of access to a sweat lodge was rationally

related to legitimate safety and security interests, and that alternative means remained open to the inmate for exercising his religion. The court noted that the inmate refused to accept other less restrictive alternatives and that an outright prohibition against the sweat lodge ceremony was the least restrictive means of achieving the compelling interests in safety and security. (Potosi Correctional Center, Missouri)

U.S. Appeals Court
RFRA-Relig. Freedom
Restoration Act
HAIR

Harris v. Chapman, 97 F.3d 499 (11th Cir. 1996). A Rastafarian inmate brought a § 1983 action against officers of a "closed custody" facility alleging that they forcibly removed him from his cell and had his hair cut while beating him and using racial slurs. The district court jury exonerated five defendants but awarded \$500 in punitive damages against the sixth. The appeals court held that evidence supported the punitive damages award against the sixth officer. The officer allegedly kicked and beat the inmate, snapped his head back with a towel, "mugged" or slapped him twice in the face, and harassed him with several racial epithets and other taunts. The court also held that Florida's hair length rule does not violate the First Amendment or RFRA. (Martin Correctional Institution, Florida)

U.S. District Court
SEARCH

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. District Court
OPPORTUNITY TO
PRACTICE
RESTRICTIONS

Hyde v. Texas Dept. of Criminal Justice, 948 F.Supp. 625 (S.D.Tex. 1996). An inmate brought an action against the Texas Department of Criminal Justice alleging that his religious group was not allowed to meet under the same circumstances as other religious groups. The district court held that the group was entitled to meet in sessions of less than 15 without an approved outside volunteer and in the same size group as other religious groups. The court also held that "time off" of work for ten days compensated the inmate for his problems with religious meetings. The inmate asserted that members of the Muslim faith were able to meet under circumstances that were more lenient than required for his Jehovah's Witnesses. When the inmate filed a written complaint, the warden responded that the Muslims were allowed to meet without a representative due to a law suit they had filed and won. (Texas Department of Criminal Justice)

U.S. District Court
EQUAL PROTECTION
RFRA-Relig. Freedom
Restoration Act
DIET
OPPORTUNITY TO
PRACTICE

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 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
MEDICAL CARE
RFRA-Religious Freedom
Restoration Act

Jolly v. Coughlin, 76 F.3d 468 (2nd Cir. 1996). A Rastafarian inmate brought a suit claiming that his confinement for refusing to submit to a screening test for latent tuberculosis violated his right to free exercise of religion under the Religious Freedom Restoration Act (RFRA) and his right to be free from cruel and unusual punishment under the Eighth Amendment. The district court granted preliminary injunctive relief, requiring prison officials to release him from "medical keeplock" during the pendency of the suit, and the officials appealed. The appeals court affirmed, finding that the inmate demonstrated a substantial likelihood of success on his claims and that the inmate would suffer irreparable harm in the absence of the injunction. The court found that the inmate's right to free exercise of religion was substantially burdened by a tuberculosis test which involved injection of a small amount of purified protein into the skin. The court noted the inmate's steadfast adherence to the claim that submitting to the test would violate the tenets of his religion, despite his continued confinement in medical keeplock for three and one-half years. The court also noted that even if the inmate had taken the test and was found to have tested positive and refused to take medication, he would have been placed with the general population rather than in medical keeplock. The court found that prison officials could have required the inmate to submit to chest x-rays periodically or to provide sputum samples as an alternative to the disputed test. (Attica Correctional Facility, New York)

U.S. District Court
MEDICAL CARE

Jones-Bey v. Wright, 944 F.Supp. 723 (N.D.Ind. 1996). A prisoner who had been placed in a medical isolation unit after he refused to submit to a tuberculosis screening test brought a federal civil rights action against corrections officials. After he was isolated, corrections officials obtained a court order allowing the test to be performed, which they did against the wishes of the prisoner. The district court granted summary judgment to the defendants. The court found that isolation of the prisoner, and the force used to immobilize the prisoner and administer the test, did not violate the Eighth Amendment. The court held that requiring the prisoner to lay down and have his arm immobilized during the test did not violate his rights and that the force used by officials was de minimis because the entire incident took only three or four minutes. A videotape of the incident indicated that the prisoner refused to cooperate and that the officers acted with professionalism and restraint. The court also found that the placement of the prisoner in isolation did not increase his chances of contracting tuberculosis and therefore did not violate the Eighth Amendment. The court found that denying the prisoner permission to participate in congregate religious ceremonies during the time he was medically isolated did not violate the prisoner's free exercise rights. (Maximum Control Complex, Indiana)

U.S. District Court
MEDICAL CARE

Karolis v. New Jersey Dept. of Corrections, 935 F.Supp. 523 (D.N.J. 1996). An inmate who was a Christian Scientist sued corrections officials alleging violation of his rights under the First Amendment and the Religious Freedom Restoration Act (RFRA). The prisoner had refused to take a tuberculosis screening test and was punished for his refusal. The court held that the test substantially burdened the inmate's right to free exercise of religion under RFRA, where the tenets of Christian Science prohibit intrusive medical procedures. But the court upheld the state's involuntary administration of the test, finding it was justified under RFRA since it was the least restrictive means to further the state's compelling interest in preventing the spread of tuberculosis. (North State Prison, New Jersey)

U.S. Appeals Court
FORCED EXPOSURE

Kerr v. Farrey, 95 F.3d 472 (7th Cir. 1996). An inmate brought a § 1983 action against corrections officials alleging that requiring him to attend religious-based narcotics rehabilitation meetings violated his constitutional rights. The district court granted summary judgment to the defendants but the appeals court reversed and remanded. The appeals court found that requiring the inmate to attend meetings upon pain of being rated a higher security risk and suffering adverse effects for parole eligibility violated the establishment clause, but that the defendants were entitled to qualified immunity. The court held that under the establish clause the inmate could not be forced to attend meetings of an organization for narcotics rehabilitation whose program referred to "God, as we understood Him." (Oakhill Correctional Institution, Wisconsin)

U.S. District Court
EQUAL PROTECTION
SERVICES
ARTICLES
CHAPLAIN

Lucero v. Hensley, 920 F.Supp. 1067 (C.D.Cal. 1996). Native American inmates brought a pro se § 1983 action against correctional officers alleging interference with their ability to practice their traditional religion in violation of the First, Eighth, and Fourteenth Amendments. The district court found that the inmates failed to show that refusal to let them keep ceremonial animal hides in housing units or in separate lockers violated a mandatory precept of their religion. The court also found that the inmates failed to show that they could not accomplish their religious mandates without a full-time Native American chaplain or that alleged interference with their religious activities inflicted pain in violation of the Eighth Amendment. But the court held that the officers failed to show a good-faith attempt to treat different religious groups equally, entitling inmates to pursue their equal protection claim based on failure to employ a full-time Native American chaplain, as the prison employed a full-time rabbi for an equal number of Jewish inmates at the facility. The court noted that several inmates had been ordained to perform certain religious ceremonies, and that the prison provided access to a sweat lodge 13 hours a day, seven days a week. (California Men's Colony, San Luis Obispo)

U.S. District Court
RFRA-Relig. Freedom
Restoration Act

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
RFRA-Relig. Freed.
Restoration Act
PUBLICATIONS
RESTRICTIONS

Metheney v. Anderson, 953 F.Supp. 854 (N.D. Ohio 1996). A state inmate brought a pro se action against prison officials alleging cruel and unusual punishment and violation of his free exercise rights under the Religious Freedom Restoration Act (RFRA). The district court granted summary judgment for the officials, finding that the inmate's alleged exposure to tuberculosis while incarcerated was not sufficiently serious to support an Eighth Amendment claim for cruel and unusual punishment. The court also found that the officials did not violate the prisoner's free exercise rights by confiscating certain

religious materials (a bible correspondence course) concerning the Aryan nation from his cell. The court noted that the confiscated literature espoused racial separation or white supremacy and therefore threatened the safety and security of the facility. (Grafton Correctional Institution, Ohio)

U.S. Appeals Court
CLASSIFICATION
RFRA-Religious Freedom
Restoration Act

Ochs v. Thalacker, 90 F.3d 293 (8th Cir. 1996). A state inmate filed a § 1983 action against prison officials, alleging violation of his due process rights. The inmate had requested that he be housed with persons of his own race, claiming a religious motivation, and officials refused his request. The inmate also alleged deliberate indifference to his allergic reaction to metal handcuffs. The district court dismissed the complaint and the appeals court affirmed. The court held that officials had legitimate reasons for rejecting the inmate's request for segregated housing, as they believed that random cell assignment lessened racial tensions and promoted security. The court found that officials did not subsequently assign him to administrative segregation in retaliation for his request; evidence showed that the officials segregated the inmate to protect him and others because he had identified himself as a racist at a time of racial tension in the prison. (Iowa Mens Reformatory)

U.S. Appeals Court
RFRA-Relig. Freedom
Restoration Act
OPPORTUNITY TO
WORSHIP

Small v. Lehman, 98 F.3d 762 (3rd Cir. 1996). Inmates brought a § 1983 action against prison officials, alleging violations of their First and Fourteenth Amendment rights of free exercise of religion. The district court granted summary judgment for the defendants, but the appeals court reversed and remanded. The appeals court held that the Religious Freedom Restoration Act applied even if inmates did not mention it in their complaint, and summary judgment was precluded by an issue of fact as to whether the state burdened the inmates' exercise of religion by refusing to provide separate worship facilities for a separate Muslim sect. (Pennsylvania State Correctional Institution at Huntingdon)

U.S. Appeals Court
RFRA-Relig. Freedom
Restoration Act
PUBLICATIONS

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. District Court
RFRA-Relig. Freedom
Restoration Act
DIET
WORK

Tinsley v. Pittari, 952 F.Supp. 384 (N.D.Tex. 1996). A prison inmate brought an action against chaplains alleging violation of her rights under the Religious Freedom Restoration Act (RFRA) when they denied her request for a special diet, and for work proscriptio days. The district court held that the chaplains, who were following a Bureau of Prisons policy as they understood it, were entitled to qualified immunity. The court also held that because the central administration had not recognized her religion, her equal protection rights were not violated. The inmate had submitted a written request to the Chaplain's Office stating that she was "a Christian whose faith is practiced according to the tenants of the early Christian church" and stating that she celebrated passover but that as an "orthodox Christian" her calendar was lunar rather than solar. (Federal Medical Center, Carswell, Fort Worth, Texas)

1997

U.S. Appeals Court
OPPORTUNITY TO
PRACTICE

Anderson v. Angelone, 123 F.3d 1197 (9th Cir. 1997). An inmate brought a civil rights action challenging prison regulations that prohibited an inmate from acting as a minister of his own church. The district court dismissed the action and the inmate appealed. The appeals court reversed and remanded. On remand, the district court entered summary judgment in favor of the officials and the inmate appealed. The appeals court dismissed the appeal, finding that the regulations did not violate the inmate's First Amendment right to free exercise of religion. According to the court, requiring an outside minister to lead a religious activity among inmates contributed to prison security and helped ensure that the inmate activity was supervised by responsible individuals. (Nevada Department of Prisons)

U.S. Appeals Court
DIET
OPPORTUNITY TO
PRACTICE
FREE EXERCISE

Ashelman v. Wawrzaszek, 111 F.3d 674 (9th Cir. 1997). A prisoner brought at § 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
RFRA-Religious Freedom
Restoration Act
OPPORTUNITY TO
PRACTICE

Boomer v. Irvin, 963 F.Supp. 227 (W.D.N.Y. 1997). An inmate brought a § 1983 action against correctional officers alleging violation of his right of free exercise of religion. The inmate was not allowed to attend a Muslim Jummah service when he was in keeplock status. The district court held that the inmate's keeplock confinement during the Jummah service did not violate the Religious Freedom Restoration Act (RFRA) or the free exercise clause, because the inability of the inmate to attend one service did not substantially interfere with the inmate's obligations as a practicing Muslim. (Wende Correctional Facility, New York)

U.S. Appeals Court
RESTRICTIONS
RFRA-Relig. Freedom
Restoration Act
ARTICLES

Brock v. Carroll, 107 F.3d 241 (4th Cir. 1997). A prison inmate brought a civil rights action alleging prison officials violated his constitutional and/or statutory rights in connection with the confiscation of his prayer pipe. The district court dismissed the claim and the prisoner appealed. The appeals court affirmed, finding that the prison regulation which prohibited all "contraband" was a neutral law of general applicability which did not violate the free exercise rights of the prisoner who allegedly had possessed an unauthorized prayer pipe. According to the court, the prisoner had apparently purchased an ordinary pipe from the prison canteen and had altered it to create a "prayer pipe." (Indian Creek Correctional Center, Virginia)

U.S. Supreme Court
RFRA-Religious Freedom
Restoration Act

City of Boerne v. Flores, 117 S.Ct. 2157 (1997). The Catholic Archbishop of San Antonio, applied for a building permit to enlarge a church in Boerne, Texas. When local zoning authorities denied the permit, relying on an ordinance governing historic preservation in a district which, they argued, included the church, the Archbishop brought suit challenging the permit denial under, inter alia, the Religious Freedom Restoration Act of 1993 (RFRA). The District Court concluded that by enacting RFRA, Congress exceeded the scope of its enforcement power under §5 of the Fourteenth Amendment. The Fifth Circuit Court of Appeals reversed, finding RFRA to be constitutional. The Supreme Court held that RFRA exceeds Congress' power, finding that RFRA is not a proper exercise of Congress' §5 enforcement power because it contradicts vital principles necessary to maintain separation of powers and the federal state balance. (City of Boerne, Texas)

U.S. District Court
SEARCH BY FEMALE
RFRA-Religious Freedom
Restoration Act

Collins v. Scott, 961 F.Supp. 1009 (E.D.Tex. 1997). A male Muslim inmate sued prison officials alleging violation of the Religious Freedom Restoration Act (RFRA) and § 1983 arising from a strip search by a female officer. The district court dismissed the case, finding that ordering the inmate to submit to a strip search did not substantially burden his religious rights and was the least restrictive means of furthering a compelling government interest in maintaining security. The court found that prison officials did not use excessive force in conducting the strip search and that they were entitled to qualified immunity. The officials had shocked the inmate with an electronic capture shield and placed him in restraints when he refused to submit to a search. The court noted that the inmate was willing to be strip searched by a males in all cases, and by females in emergency or extraordinary circumstances, despite the teaching of the inmate's religion that he should not be naked in the presence of males or females. Prison officials usually accommodated the inmate's request to be strip searched by male staff. (Coffield Unit, Texas Department of Criminal Justice)

U.S. District Court
FREE EXERCISE
SINCERITY
ARTICLES

Combs v. Corrections Corp. of America, 977 F.Supp. 799 (W.D.La. 1997). Inmates brought a § 1983 action against the Louisiana Department of Corrections and the corporate operator of a correctional facility, arising from limitation of the inmates' participation in Native American Religion. The district court held that restricting the practice of Native American Religion to those prisoners who could demonstrate a Bureau of Indian Affairs (BIA) number or Native American ancestry violated the First Amendment free exercise clause because it effectively limited the inmates' freedom to believe. Although the inmates had claimed violations of the Religious Freedom and Restoration Act (RFRA), the American Indian Religious Freedom Act, and the Indian Civil Rights Act, the court found only a First Amendment violation, noting that RFRA had been found unenforceable under the U.S. Supreme Court decision in City of Boerne. The court noted that there was no dispute that the plaintiffs desired to practice Native American Religion but were denied because they could not prove their ethnicity to the satisfaction of prison officials. According to the court, the prison's policy "...offends the fundamental constitutional right to practice religion of one's choice." The court found the policy to be "...akin to a requirement that practicing Catholics prove an Italian ancestry, or that Muslims trace their roots to Mohammed." The court stressed that the free exercise clause embraces two concepts: the freedom to believe and the freedom to act. The court denied the inmates' request for money damages because there was no evidence presented that they suffered any actual injuries.

The inmates asserted that they were permitted to practice the Native American Religion until October 1995, when a new policy terminated their participation and denied the use of certain items sacred to their religion, including pipes, tobacco, kinnikinnik and other sacred herbs, saliva, artemesia, cedar, sweetgrass, sacred stones, Indian drums and rattles, medicine wheels, and a sweat lodge. The court held that inmates were entitled to practice Native American Religion with the use of sacred items not described in a prison policy restricting religious practice, when the items could be used without breaching prison security. The court found that restricting the construction of a sweat lodge was reasonably related to legitimate penological concerns. (Winn Correctional Center, Winnfield, Louisiana, operated for the Louisiana Department of Corrections by the Corrections Corporation of America)

U.S. District Court
RFRA-Religious Freedom
Restoration Act
HAIR LENGTH

Davie v. Wingard, 958 F.Supp. 1244 (S.D.Ohio 1997). An inmate filed a civil rights action challenging a prison hair length regulation, and alleging violation of his rights under the Religious Freedom Restoration Act (RFRA). The inmate claimed he was a "Nazarite" and that his religious beliefs were centered on the Nazarite vow, which appears in the Old Testament and provides that "...there shall be no razor come upon his head...and shall let the locks of the hair on his head grow." The district court granted judgment for the defendants, finding that prison officials' safety, security and discipline concerns were "compelling government interests" that justified the hair length regulations. The court accepted the officials' arguments that hair styles are used by inmates as gang identifiers, and that long hair provides hiding places for contraband such as drugs and weapons. According to the court, permitting inmates to wear long hair styles would require more thorough and frequent searches which would require increased physical contact between inmates and staff and result in increased tension and a higher potential for staff injuries. The court held that the hair regulation did not violate the inmate's equal protection rights because female inmates posed less of a security threat than male inmates. (Madison Correctional Institution, Ohio)

U.S. Appeals Court
FREE EXERCISE
RESTRICTIONS

Freeman v. Arpaio, 125 F.3d 732 (9th Cir. 1997). A state inmate who was a practicing Muslim brought a § 1983 action against prison officials alleging violation of his right to free exercise of religion and discrimination based on his faith. The district court granted summary judgment in favor of the officials. The appeals court affirmed in part and reversed and remanded in part. The appeals court found that genuine issues existed as to whether the inmate and other Muslim inmates were prevented from attending Jumah services in violation of the free exercise clause. The court also found that officials may have violated the inmate's equal protection rights by allegedly refusing to let him attend religious services and by shackling Muslim inmates on their way to religious services. However, the court did not find free exercise or equal protection violations in connection with allegations that officials failed to give Muslim inmates 10-15 minute notice prior to services, by requiring them to sign attendance sheets at services, or by verbally abusing them. According to the court, verbal harassment or abuse is not sufficient to state a claim under § 1983, but abusive language directed at an inmate's religion may be evidence that prison officials acted in an intentionally discriminatory manner. (Maricopa County Jail, Arizona)

U.S. District Court
DIET

Gholson v. Murry, 953 F.Supp. 709 (E.D.Va. 1997). Inmates brought a § 1983 action against prison officials alleging violation of their constitutional rights. The district court granted summary judgment for the officials. The court found that denial of work opportunities and certain educational programs for inmates in segregated housing did violate the due process clause or the Eighth Amendment. The court also found that denial of transfers to other facilities so that inmates could practice their religious diet did not violate the First Amendment, the Religious Freedom Restoration Act (RFRA), the equal protection clause or the Eighth Amendment where the inmates failed to present evidence that they had not received a proper religious diet at the facility at which they were incarcerated. The court held that allegedly small recreation facilities provided to segregated inmates did not violate the Eighth Amendment or the equal protection clause; individual exercise areas measuring approximately 8 feet by 20 feet were provided, and the inmates were permitted at least six hours of outside recreation per week. The court held that officials did not violate the Eighth Amendment with respect to lead in the prison water system because the officials reviewed the situation and informed staff and inmates of the steps they needed to take to safeguard themselves from exposure. (Mecklenburg Correctional Center, Virginia)

U.S. District Court
RFRA-Religious Freedom
Restoration Act

Harris v. Lord, 957 F.Supp. 471 (S.D.N.Y. 1997). A Muslim inmate brought a § 1983 action against correctional officers after she was denied permission to attend a weekly religious service and when she did not obtain immediate mental health services. The district court found that the section of the Prison Litigation Reform Act (PLRA) that denied an inmate a civil action for mental or emotional injury without a showing of physical injury did not apply retroactively. The court held that the inmate had presented a viable claim under the First Amendment or the Religious Freedom Restoration Act (RFRA). The court denied qualified immunity to the

corrections officials with regard to their denial of access to the religious service. Although the denial of access to the weekly service occurred only once, the court noted that the officials offered no reasons for their action. The court held that a prison official's verbal threats to an inmate do not violate due process unless accompanied by physical force or the present ability to effectuate the threat. (Bedford Hills Correctional Facility, New York)

U.S. Appeals Court
CLOTHING
FREE EXERCISE
RECOGNIZED
RELIGIONS

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. Appeals Court
HAIR
RFRA-Religious Freedom
Restoration Act

May v. Baldwin, 109 F.3d 557 (9th Cir. 1997). A state prison inmate filed a § 1983 action against prison officials alleging violation of his right to free exercise of religion under the Religious Freedom Restoration Act (RFRA). The district court granted summary judgment for the officials and the inmate appealed. The appeals court affirmed, finding that the prison policy requiring the inmate to unbraided his dreadlocks for searches when the inmate was transferred to and from prison was the least restrictive means of furthering the state's compelling security interest. (Eastern Oregon Correctional Institution)

U.S. District Court
SEARCH
ARTICLES

Robinson v. Ridge, 996 F.Supp. 447 (E.D.Pa. 1997). A prisoner sued state officials and employees alleging violation of his rights as the result of a random prison-wide security search. The district court held that the prisoner's right to free access to courts was not violated by the seizure of his legal materials, absent actual injury. The court also held that the seizure of the prisoner's religious materials in the course of a random security search, no matter how harmful the seizure might have been to the prisoner's religious practices, did not violate the Free Exercise Clause if it was reasonably related to the prison's legitimate penological interests. The prisoner's cell was searched as part of a prison-wide search during a declared state of emergency. During the search, the prisoner's personal property, including legal documents and articles of his Islamic faith, were thrown on the floor and swept into the trash. The prisoner asked for a receipt and was refused. He filed a grievance and was denied relief, but was subsequently offered \$50, which he rejected. (SCI Graterford, Pennsylvania)

U.S. District Court
WORK

Rowold v. McBride, 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)

U.S. Appeals Court
PUBLICATIONS

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. Appeals Court
RFRA-Relig. Freedom
Restoration Act
OPPORTUNITY TO
PRACTICE
- Thomas v. Gunter, 103 F.3d 700 (8th Cir. 1997). A Native American inmate brought a civil rights action alleging that denying him daily access to a prison sweat lodge for prayer violated his constitutional rights to free exercise of religion and to equal protection. The appeals court affirmed the district court judgment in favor of prison officials, which determined that denial of extended daily access to the sweat lodge was rationally related to legitimate penological interests. The sweat lodge was located near a truck delivery entrance, and the court found that denying access to the sweat lodge during the hours that the entrance was in use was rational. (Omaha Correctional Center, Nebraska)
- U.S. District Court
FORCED EXPOSURE
- Torricellas v. Poole, 954 F.Supp. 1405 (C.D.Cal. 1997). An inmate brought a § 1983 action against prison officials and a fellow prisoner alleging violation of her constitutional rights when a Christmas party was held in a prison visiting room when she was present. The inmate complained about the propriety of the party and was subsequently charged with a disciplinary violation. The district court held that the Christmas party did not violate the inmate's First Amendment rights. According to the court, the Christmas party had a primarily secular purpose of permitting inmates and their families to celebrate the holidays in a festive atmosphere under controlled circumstances. The sole religious aspects of the party identified by the inmate were that the party was designated as a "Christmas" party and that some of the carols and songs contained religious lyrics. The court found that the inmate failed to show that retaliation for her filing of grievances was the substantial and motivating factor behind the bringing of disciplinary charges against her. The court also found that the inmate lacked a protected liberty interest in her cancelled conjugal visit. (California Institution for Women, Frontera, California)
- U.S. District Court
FREE EXERCISE
DIET
- Washington v. Garcia, 977 F.Supp. 1067 (S.D.Cal. 1997). A Muslim inmate brought a § 1983 action against prison officials alleging violation of his right to free exercise because he was denied a special diet during the month of Ramadan. The district court denied summary judgment for the officials, finding that the inmate set forth sufficient evidence, including inmate appeal forms, to create a genuine issue of material fact as to whether supervisory prison officials deprived him of his right to practice his religion. (Centinela State Prison, California)
- U.S. Appeals Court
CHAPLAIN
OPPORTUNITY TO
PRACTICE
PUBLICATIONS
RESTRICTIONS
RFRA-Religious Freedom
Restoration Act
- Weir v. Nix, 114 F.3d 817 (8th Cir. 1997). A former protective custody inmate sued prison officials under § 1983 alleging violation of his rights to free exercise of religion, and his rights under the Religious Freedom Restoration Act (RFRA). The inmate, a fundamentalist, separatist Christian, challenged the failure of officials to provide him with a spiritual advisor who shared his separatist beliefs. He also challenged the limitation of three hours per week of group worship in the chapel, holding religious services on Fridays as opposed to Sundays, allowing the inmate to have at most 25 books in his cell at one time, and prohibiting personal property--including Bibles--in the prison yard. The district court entered judgment for the officials and the appeals court affirmed, finding that the prison practices had not placed a "substantial burden" on the inmate's rights. The court noted that even though the prison chaplain was a nonseparatist who took an inclusive approach in administering the prison's Protestant service, the chaplain's beliefs were not significantly different from the inmate's, as the chaplain was himself a fundamentalist Christian who understood and preached the basic tenants of the fundamentalist faith. (Iowa State Penitentiary)
- U.S. District Court
PUBLICATIONS
RFRA-Religious Freedom
Restoration Act
- 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)
- U.S. Appeals Court
MAIL
PUBLICATIONS
- Williams v. Brimeyer, 116 F.3d 351 (8th Cir. 1997). A prison inmate brought a § 1983 action against a deputy warden and mail room clerk, alleging they violated his First Amendment free exercise rights by twice denying him materials sent by the Church of Jesus Christ Christian (CJCC). The district court awarded the inmate \$1 in compensatory damages and \$500 punitive damages from each of the two defendants. The appeals court affirmed, finding that a blanket ban on CJCC materials--without review of their individual contents--was unconstitutional and that punitive damages were warranted. According to the court, the inmate had a right to receive materials mailed to him by the Church of Jesus Christ Christian (CJCC), even though those materials expressed racist and separatist views, because the materials did not

counsel violence and there was no evidence that they ever caused a disruption. The court found that the deputy warden and mail room clerk were "callously indifferent" to the inmate's First Amendment free exercise rights, warranting punitive damages. The deputy warden knew that the blanket ban on CJCC materials was unconstitutional when the materials were first withheld, and the clerk did not consult a list naming CJCC materials as approved because she believed the blanket ban remained in effect, despite her knowledge that the ban was unconstitutional. (Iowa Men's Reformatory)

1998

U.S. District Court
MEDICAL CARE
RELIGION

Africa v. Horn, 998 F.Supp. 557 (E.D.Pa. 1998). A prisoner challenged his confinement in administrative segregation which resulted from his refusal to submit to a skin test for tuberculosis. The district court entered judgment for the prison defendants, finding that the prison requirement that prisoners who refused to be tested be segregated in administrative custody for one year had a legitimate penological reason that overcame the prisoner's claim that his religion prohibited puncturing of the skin. (Pennsylvania Department of Corrections)

U.S. District Court
OPPORTUNITY TO
PRACTICE

Arroyo Lopez v. Nuttall, 25 F.Supp.2d 407 (S.D.N.Y. 1998). A Muslim inmate brought a § 1983 action against a corrections officer alleging violation of his First Amendment right to freedom of religion. The district court found that the officer violated the inmate's right to freedom of religion and held that the officer was not entitled to qualified immunity. The court awarded compensatory damages of \$2,000 and punitive damages of \$5,000. The court found that the officer violated the inmate's right by shoving him and disrupting his prayer, acted without justification or provocation, and his actions were not reasonably related to any legitimate penological objectives. The court concluded that a reasonable officer would have known that he could not shove the inmate and disrupt his prayer when he was praying quietly during quiet time without disturbing others. The court awarded compensatory damages, even though the inmate was not physically injured and his emotional anguish was minimal. The court found punitive damages were appropriate because the officer, at the least, acted recklessly and with callous indifference to the inmate's rights, the officer had been embroiled in a "running battle" with Muslim inmates, and the officer was simply wrong about the ability of inmates to pray quietly during quiet time. (Downstate Correctional Facility, New York)

U.S. District Court
SEARCHES

Aziz Zarif Shabazz v. Pico, 994 F.Supp. 460 (S.D.N.Y. 1998). A prison inmate brought a § 1983 action against prison officials and employees alleging violation of his constitutional rights. The district court granted summary judgment for the defendants. The court held that the pat frisk and strip frisk searches performed on the inmate were permissible and did not violate the provisions of a consent decree. The court found that performing a strip frisk on the prison inmate prior to his transfer to another facility did not violate his right of free exercise of religion, notwithstanding the inmate's religious objections to the requirement that he remove his clothing. According to the court, alleged verbal taunts, no matter how inappropriate, unprofessional or reprehensible they might seem, did not support a claim of cruel and unusual punishment absent any injury. Any psychological or emotional scars to the inmate were found to be de minimis and did not support a claim of cruel and unusual punishment. (Green Haven Correctional Facility, New York)

U.S. District Court
MEDICAL CARE

Darul-Islam v. Dubois, 997 F.Supp. 176 (D.Mass. 1998). An inmate sued corrections officials alleging violation of his constitutional rights by their denial of his request to have hospital-administered dental care. The district court granted summary judgment for the officials, finding that the inmate did not show that he would be irreparably harmed if he did not receive hospital-based instead of prison-based dental care, and that he was not entitled to injunctive relief. The inmate claimed to be in dire need of dental care but refused to consent to any treatment that involved the use of novocaine. The inmate alleged that he is allergic to novocaine and that his religious beliefs do not permit him to use the anesthetic. He asserted that his dental needs had to be treated in a hospital, where he could be given laughing gas or general anesthesia instead of novocaine. The court noted that the inmate refused to take a test which would establish his alleged allergies to the anesthetics used in the prison, and the inmate's medical records indicated he had regularly been treated by a dentist. (MCI Cedar Junction, Massachusetts)

U.S. District Court
DIET
SHOES

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. District Court
ARTICLES
SATANISM
REGULATIONS

Doty v. Lewis, 995 F.Supp. 1081 (D.Ariz. 1998). A prisoner filed a suit seeking a permanent injunction which would bar prison officials from banning his possession of certain Satanic materials. The district court denied the prisoner's petition, finding that the ban on the prisoner's possession of candles, incense, a Baphomet tapestry and Satanic books in a high security unit did not impinge on his free exercise rights. The religious tracts advocated retaliation, sacrifices, spells and racial separation, and the court found that they were not essential to the practice of the prisoner's religious tenets. (Arizona State Prison Complex)

U.S. District Court
MEDICAL CARE

Hasenmeier-McCarthy v. Rose, 986 F.Supp. 464 (S.D.Ohio 1998). An inmate who was forcibly compelled to submit to a tuberculosis (TB) test brought a § 1983 action against corrections officials seeking injunctive and monetary relief. The district court granted summary judgment for the officials, finding that mandatory TB testing accomplished the legitimate penological objective of protecting other inmates and staff from infectious diseases. The court found that the inmate's unsupported allegations regarding deprivation of communication, clean bedding, clean clothing and hot food during her period of respiratory isolation were not objectively sufficiently serious to support a claim of cruel and unusual punishment. The court supported the prison's policy of placing inmates in respiratory isolation pending their submission to TB tests, noting that inmates were monitored daily. (Ohio Reformatory for Women)

U.S. Appeals Court
HAIR
BEARDS
FREE EXERCISE

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
EQUAL PROTECTION
OPPORTUNITY TO
WORSHIP
PUBLICATIONS
SERVICES
REGULATIONS

Maberry v. McKune, 24 F.Supp.2d 1222 (D.Kan. 1998). A Thelemic inmate brought an 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
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-

mandated 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
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
FORCED EXPOSURE

Ross v. Keelings, 2 F.Supp.2d 810 (E.D.Va. 1998). An inmate challenged the constitutionality of his forced participation in a drug rehabilitation program that allegedly contained a religious study component. The district court found that prison officials violated the Establishment Clause of the First Amendment by forcing the inmate to attend the program, but that the officials had qualified immunity from the suit because the inmate's rights were not clearly established at the time that they compelled the inmate's attendance. The inmate had been forced to participate in a Therapeutic Community program which included the goal of "...teaching life, coping and spiritual skills...to help an inmate develop his own spirituality." (Indian Creek Correctional Center, Virginia)

U.S. District Court
OPPORTUNITY TO
WORSHIP

Salahuddin v. Coughlin, 999 F.Supp. 526 (S.D.N.Y. 1998). A Muslim inmate alleged denial of access to congregate religious services in a civil rights action. The district court entered summary judgment for some defendants, but the case was reversed and remanded on appeal. On remand, the district court found that the right of prisoners in keeplock to attend congregate services was clearly established at the time the inmate was denied that right, and that evidence was sufficient to permit a jury to find that some prison officials were personally involved in the constitutional deprivation. The court noted that non-Muslim inmates were permitted to attend congregate religious services, and that the inmate had been permitted to attend services when he was confined in another facility even though he had the same disciplinary record that was cited as justification for denial in the current facility. (Sullivan Corr'l Facility, New York)

U.S. District Court
OPPORTUNITY TO
WORSHIP

Saunders-El v. Tsoulos, 1 F.Supp.2d 845 (N.D.Ill. 1998). A prisoner brought a § 1983 action against state prison officials seeking damages for their denial of his request to observe the Islamic holiday of Ramadan. The district court granted summary judgment in favor of the officials, finding that a dispute existed as to whether Islam was the official religion of the Moorish Science Temple of America, to which the prisoner claimed membership. (Stateville Correctional Center, Illinois)

U.S. Appeals Court
FREE EXERCISE
SEARCH

Shaffer v. Saffle, 148 F.3d 1180 (10th Cir. 1998). A state prisoner brought a pro se § 1983 action challenging the constitutionality of a state statute that required him to provide a deoxyribonucleic acid (DNA) sample for the compilation of a DNA Offender Database. The district court dismissed the action and the appeals court affirmed. The appeals court held that the prisoner's rights against unreasonable searches and seizures and self-incrimination had not been violated. The appeals court also held that the prisoner's rights under the Free Exercise Clause and the Ex Post Facto clause had not been violated. The court noted that the statute was neutral and generally applicable, and was not applied to him differently because of his religious belief. The court also noted that the legislature expressed its intent that the statute apply retroactively. (Mack Alford Center, Oklahoma)

U.S. District Court
HATS
OPPORTUNITY TO

Sledge v. Cummings, 995 F.Supp. 1276 (D.Kan. 1998). An inmate brought a § 1983 action against prison officials alleging violation of his right to free exercise of religion. The district court granted summary judgment in favor of the defendants, finding that a prison

PRACTICE
RESTRICTIONS

policy that required religious headwear to be carried, not worn, to religious services did not violate the inmate's free exercise rights. The court found that the policy sought to prevent inmates from carrying concealed contraband or weapons and displaying gang affiliation, and noted that inmates were allowed to wear their headwear in their cells and while attending religious services. The court also found that the inmate was not placed in segregation to prevent him from attending religious services. (El Dorado Correctional Facility, Kansas)

U.S. District Court
ARTICLES
BEARDS
EQUAL PROTECTION
HATS
MAIL
CHAPLAIN

Sutton v. Stewart, 22 F.Supp.2d 1097 (D.Ariz. 1998). A state prisoner sued prison officials alleging denial of his rights to free exercise of religion under the First Amendment and the Religious Freedom Restoration Act (RFRA), denial of his equal protection rights, and obstruction of his mail. The district court granted summary judgment for the officials. The court held that regulations that barred the inmate's possession of scented oils that he wanted for use in a prayer ritual did not violate his free exercise rights because they were reasonable in light of the oil's flammable nature and because possession by only Muslim inmates would pose safety and security threats. The court found that a regulation that limited where the prisoner could wear a kufi prayer cap was reasonable and did not violate his right to free exercise of religion. The regulation restricted wearing of the cap to his cell, designated living areas and during religious ceremonies, and was found reasonable by the court because the cap provided a potential symbol of group affiliation that threatened prison security. The court also found that a prohibition on inmate beards did not violate the inmate's rights because beards obscured inmates' identities and thereby presented a security risk. According to the court, failing to provide clergy of the inmate's faith did not violate equal protection; the inmate had requested that clergy representing the Sahih variant of the Muslim faith, which was not found to be a mainstream religion that would be in demand by other faiths. The court ruled that officials were not liable to the inmate for obstruction of mail due to a ten-month delay in processing a brochure sent to the inmate by his mother. According to the court, it was reasonable for officials to deny the inmate access to a vendor with which he was not permitted to transact, and the brochure was distinguishable from magazines other inmates received because it was exclusively devoted to the advertisement of unauthorized items. (Arizona State Prison Complex-Winslow)

U.S. District Court
FORCED EXPOSURE

Warburton v. Underwood, 2 F.Supp.2d 306 (W.D.N.Y. 1998). A prisoner was granted permission to proceed in forma pauperis in his § 1983 action. The court held that the coerced participation of the inmate in a Narcotics Anonymous (NA) program violated the establishment clause of the First Amendment because the program had a religious basis. The prisoner alleged that he was not offered a secular alternative, and the court found that the program's emphasis on God, spirituality, and faith in a "higher power" indicated that the underlying basis of the program was religious. The court denied qualified immunity to the prison officials who allegedly conspired to deny the prisoner his earned good time credits unless he participated in the NA program. (Groveland Correctional Facility, New York)

U.S. District Court
OPPORTUNITY TO
PRACTICE
RESTRICTIONS

Withrow v. Bartlett, 15 F.Supp.2d 292 (W.D.N.Y. 1998). A Muslim inmate brought a § 1983 action claiming that a prison superintendent and correctional officers violated his First Amendment rights by disciplining him for participating in a group demonstrative prayer in a recreation yard. The district court granted summary judgment for the defendants, finding that prohibiting group demonstrative prayer in a prison recreational yard did not violate the inmate's right to free exercise of religion. The court found that a group demonstrative prayer in a highly populated prison yard posed the risk of disturbing other inmates with chanting and movements, and that the prohibition was rationally related to a legitimate penological interest in maintaining security. According to the court, the inmate had the option of engaging in nondemonstrative prayer in the yard or returning to his cell for prayer. (Wende Correctional Facility, New York)

1999

U.S. Appeals Court
FREEDOM OF
RELIGION
RESTRICTIONS

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
RESTRICTIONS

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. (Winn Correctional Center, Louisiana)

U.S. Appeals 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
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
DIET

Denson v. Marshall, 59 F.Supp.2d 156 (D.Mass. 1999). A Muslim inmate sued prison officials alleging violation of his free exercise rights because they refused to comply with his request for special food provisions so that he could observe monthly three-day fasts. The court held that the refusal of the officials to comply with the request did not violate the inmate's free exercise rights. The court noted that the inmate was held in a high security wing of the prison, and that accommodating the inmate's request would have represented a significant disruption to normal kitchen operations and would have threatened security. According to the court, the prison provided Muslim inmates with adequate means to practice their religion. (Cedar Junction Massachusetts Correctional Institution in Walpole)

U.S. Appeals Court
DIET
SINCERITY

Jackson v. Mann, 196 F.3d 316 (2nd Cir. 1999). A state prisoner brought a § 1983 action against a prison's Jewish chaplain and other prison officials alleging that their refusal to provide him with a kosher diet violated his constitutional rights. The district court granted summary judgment for the defendants and the prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that fact issues existed as to whether the prisoner's beliefs in the Jewish religion were sincerely held and that the officials were not entitled to qualified immunity. According to the appeals court, "the relevant inquiry is not whether the belief is accurate or logical, but whether the beliefs professed by the claimant are sincerely held and whether they are, in his own scheme of things, religious; a claimant need not be a member of a particular organized religious denomination to show sincerity of belief." (Shawagunk Correctional Facility, New York)

U.S. District Court
RULES

MacDonald v. Angelone, 69 F.Supp.2d 787 (E.D.Va. 1999). A state prisoner sued corrections officials alleging his right to privacy was violated by a prison policy that prohibited coverings over his cell door observation windows, even when he was using the toilet. The district court granted summary judgment for the officials, finding that the prison policy was a sensible and reasonable security measure that did not violate the prisoner's right to privacy. The court noted that inmates have a right to be protected from gratuitous and unnecessary observation while they use their cell toilets, but that the prisoner had alternative means to gain privacy, such as covering himself with a sheet or towel to create a "privacy shield" while he used the toilet. (Greensville Correctional Center, Virginia)

U.S. Appeals Court
DIET

Makin v. Colorado Dept. of Corrections, 183 F.3d 1205 (10th Cir. 1999). A former inmate brought a § 1983 action against prison officials alleging that they violated his right of free exercise of his religion. The district court entered judgment for the inmate and the appeals court affirmed in part, vacated in part, and remanded. According to the appeals court, the officials'

failure to accommodate the inmate's meal requirements during the Muslim holy month of Ramadan violated his First Amendment right to freely exercise his religion. The court also found that evidence that the inmate suffered mental or emotional distress as the result of the officials' actions supported more than a mere nominal damage award, but the trial court had incorrectly based its compensatory damages award on the abstract value of a constitutional right rather than on actual injuries the inmate suffered from the denial of that right. The trial court had awarded \$9000 in compensatory damages, which the appeals court ordered it to review on remand. (Colorado State Penitentiary)

U.S. District Court
ARTICLES

Mitchell v. Angelone, 82 F.Supp.2d 485 (E.D.Va. 1999). A non-Native American inmate sued corrections officials challenging the validity of a policy that prevented him from obtaining Native American spiritual items. The district court found that the race-based policy violated the Equal Protection Clause and ordered an injunction preventing its application. The items requested by the inmate were abalone shells and herbs. The policy allowed Native American inmates to obtain such items by receiving an exemption from the property restrictions, which the court found to be solely based on race and did not address whether non-Native Americans had a sincere faith. The inmate was a member of a group called H.E.A.R.T. (Heritage Examined Around Redman Traditions.) But the court found that the inmate failed to prove that the policy violated his First Amendment rights because there was no evidence of the inmate's beliefs or that he sincerely held religious tenets. (Greensville Correctional Center, Virginia)

U.S. Appeals Court
SEARCH BY
FEMALE

Moore v. Carwell, 168 F.3d 234 (5th Cir. 1999). An inmate brought an in forma pauperis § 1983 suit against prison officials alleging that his First, Fourth and Eighth Amendment rights were violated by alleged multiple strip and body cavity searches performed by a female officer. The district court dismissed the case as frivolous and the inmate appealed. The appeals court affirmed in part, reversed and remanded in part. The appeals court held that the inmate's Fourth Amendment claim was not frivolous. According to the court, conducting strip and body cavity searches of a male prisoner by a female prison official, in the absence of an emergency or extraordinary circumstances and in the presence of male officers, would violate the inmate's Fourth Amendment right to be free from unreasonable searches and seizures. The inmate argued that his Baptist faith requires modesty and prohibits him from being viewed naked by a female other than his wife. (Beto I Unit, Texas Department of Criminal Justice)

U.S. District Court
FREE EXERCISE
OPPORTUNITY TO
PRACTICE

Muhammad v. Klotz, 36 F.Supp.2d 240 (E.D.Pa. 1999). An inmate filed a § 1983 action against prison officials alleging his rights to free exercise of his religion were violated. The district court granted summary judgment for the officials, finding that the inmate's rights were not violated. The inmate alleged that he was denied the ability to engage in daily congregational prayer during the religious holiday of Ramadan. The court found that the inmate had an alternative means of exercising his right and that limited prison resources prevented prison staff from supervising all inmate group activities. (Lehigh County Prison, Pennsylvania)

U.S. Appeals Court
AIDS
EQUAL PROTECTION

Onishea v. Hopper, 171 F.3d 1289 (11th Cir. 1999). State inmates who tested positive for the human immunodeficiency virus (HIV) brought a class action suit against prison officials challenging segregation of prison recreational, religious and educational programs based on inmates' HIV-positive status. The inmates alleged that the practices were unconstitutional and violated the Rehabilitation Act. At the male prison at which HIV-positive male inmates were housed they were excluded from participation in various prison jobs, vocational classes, inmate barber jobs, laundry jobs, gardening, and other activities and programs. The district court denied relief after a bench trial and the inmates appealed. The appeals court affirmed in part and vacated and remanded in part. On remand the district court again denied relief and the inmates again appealed. The appeals court affirmed. The appeals court held that a "significant risk" of HIV transmission existed for any prison program in which HIV-positive inmates sought participation. The appeals court affirmed the district court's finding that integrated programs would risk violence and that segregation of HIV-positive inmates was not an exaggerated response. The court also affirmed the finding that hiring additional guards to accommodate integration of programs was too costly and imposed an undue burden on the prison system. The court noted that the Rehabilitation Act did not require a state corrections department to do whatever it was legally capable of doing to accommodate HIV-positive inmates. (Limestone Corr. Facil. and Julia Tutwiler Prison for Women, Ala.)

U.S. Appeals Court
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
OPPORTUNITY TO
PRACTICE

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. (Minnesota Correctional Facility, Stillwater)

U.S. Appeals Court
EQUAL PROTECTION
RFRA- Religious
Freedom
Restoration Act
JEWELRY/
ORNAMENTS

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
FREEDOM OF RELIG.
REGULATIONS

Searcy v. Simmons, 68 F.Supp.2d 1197 (D.Kan. 1999). An inmate brought a § 1983 action against correctional officials seeking a preliminary injunction to compel the officials to allow him to participate in a treatment program for sex offenders without conditions. The district court denied the inmate's request, finding that the policy of reducing the inmate's privileges because he refused to fill out an "admission of responsibility" form did not violate his privilege against self-incrimination because the inmate retained the right to choose whether to enter the program and the loss of privileges did not rise to the level of compulsion. The form requires the inmate to list all past behavior that may have constituted a sex offense, whether the inmate was ever arrested, charged or convicted as a result of the conduct. The court also held that the condition which required the inmate to submit to a plethysmograph examination which used explicit sexual material did not violate the inmate's religious freedoms. (Sexual Abuse Treatment Program, Hutchinson Correctional Facility, Kansas)

U.S. District Court
FAST

Sinnett v. Simmons, 45 F.Supp.2d 1210 (D.Kan. 1999). An inmate brought a § 1983 action against various prison workers alleging interference with his freedom of religion, violations of due process and equal protection, and failure to provide adequate protection. The district court granted summary judgment for the defendants. The district court held that even if the inmate's fast had been religious in nature, and a prison worker therefore had no obligation to counsel the inmate on the effects of starvation pursuant to a prison regulation on hunger strikes, such counseling constituted de minimis interference with the inmate's right to exercise of religion and was not of constitutional significance. The court ruled that correctional officers did not unreasonably interfere with the inmate's right to exercise his religion by threatening to place him in a medical clinic or in administrative segregation during his fast, since the inmate would have been free to exercise his religious right to fast in any area of the prison. (Ellsworth Correctional Facility, Kansas)

U.S. Appeals Court
ARTICLES
DIET
NAME
OPPORT. TO WORSHIP
RESTRICTIONS

Spies v. Voinovich, 173 F.3d 398 (6th Cir. 1999). A Zen Buddhist inmate sued prison officials alleging that various prison regulations violated his First Amendment free exercise rights. The district court granted summary judgment in favor of the prison officials. The appeals court affirmed with regard to all of the inmate's First Amendment claims. The appeals court held that a prison regulation that required five documented members of a faith to be interested in forming a faith group before such a group could be formed did not violate the inmate's free exercise rights. The court also held that a prohibition against the inmate possessing certain religious articles in his cell did not violate his free exercise rights. The court noted that a small statue of Buddha, an altar cloth, a wooden fish, a picture of Buddha, and incense could be fashioned into weapons or could be used to cover up illegal activities. The court upheld the prison's prohibition against inmate-led groups and the prison's refusal to use the inmate's religious name. The court found that the prison's refusal to provide the inmate with a vegan meal did not violate his free exercise rights because a vegan diet was not a requirement for Zen Buddhist practice and the inmate was provided with the vegetarian meal that was required under

Buddhist practice. (North Central Corr. Institution, Ohio)

2000

U.S. District Court
FORCED EXPOSURE

Alexander v. Schenk, 118 F.Supp.2d 298 (N.D.N.Y. 2000). An inmate brought a § 1983 action alleging that his First and Thirteenth Amendment rights were violated because he was compelled to participate in an alcohol and substance abuse program that had religious components. The district court found that the inmate was coerced into participating, in violation of the Establishment Clause. The court noted that the inmate objected to attending program meetings during his initial interview, constantly complained about his enrollment in the program, refused to sign the enrollment contract, raised issues of the program's religious aspects with prison officials, and was ordered to return to the group sessions despite officials' knowledge that he objected to them on religious grounds. The court denied qualified immunity for the officials. The court awarded nominal damages of \$1. The court held that requiring the inmate to work without compensation while incarcerated did not violate the Thirteenth Amendment, which expressly did not prohibit involuntary servitude imposed as a legal punishment for a crime. (Cayuga Correctional Facility, New York)

U.S. District Court
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
HAIR LENGTH

Bell v. Stalder, 111 F.Supp.2d 796 (W.D.La. 2000). An inmate sued corrections officials seeking to enjoin implementation of a hair length policy because it infringed on his religious beliefs. The district court found that the policy was constitutional because it was reasonably related to legitimate penological interests of security and inmate identification. The policy required all inmates to keep their hair cut to two or three inches in length. (Winn Correctional Center, Louisiana)

U.S. District Court
EQUAL PROTECTION
OPPORTUNITY TO
PRACTICE
PUBLICATIONS

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. (Stafford County Detention Center, Virginia)

U.S. District Court
RESTRICTIONS

Butler v. Snyder, 106 F.Supp.2d 589 (D.Del. 2000). A state prisoner brought a § 1983 action against correctional authorities in two states alleging violation of his constitutional rights by denying him a furlough to attend a pre-burial ceremony for his 13-year-old daughter. The district court held that the denial did not violate the prisoner's free exercise rights, as the privilege of attending religious events was one of many rights forfeited when the prisoner was sentenced to incarceration. The court noted that the record supported negligence, at most, by the officials who failed to authorize the furlough. (Delaware Correctional Center and Greensville Correctional Center, Virginia)

U.S. District Court
HAIR
EQUAL PROTECTION

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. 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)

U.S. Appeals Court
FREE EXERCISE
BEARDS

Green v. Polunsky, 229 F.3d 486 (5th Cir. 2000). A prison inmate brought a civil rights action against state prison officials challenging a grooming policy that barred him from wearing a quarter-inch beard. The district court dismissed the case and the inmate appealed. The appeals court affirmed, finding that the policy of refusing to allow inmates to wear any beard, except for medical reasons, did not violate the free exercise rights of the Muslim inmate. (Texas Department of Criminal Justice)

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 state corrections officials refused to recognize his legally changed religious name within the prison. The district court directed the officials to comply with a dual-name policy on the inmate's prison identification card. The appeals court affirmed, finding that the refusal of officials violated the inmate's free exercise rights. The inmate had legally changed his name to a Muslim name. (Union Correctional Institution, Raiford, Florida)

U.S. District Court
BEARDS
HAIR LENGTH

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
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
DIET

Muhammad v. Warithu-Deen Umar, 98 F.Supp.2d 337 (W.D.N.Y. 2000). Prison inmates who were of the Muslim faith brought a § 1983 action alleging violation of their religious rights. The district court entered judgment for the defendants. The court found that the prison did not violate the exercise of religion and equal protection rights of the Muslim inmates by denying them access to kosher menus made available to Jewish inmates because the inmates could choose the "religious alternative menu" which did not include any foods found objectionable to Muslim teachings. (New York State Department of Correctional Services)

U.S. District Court
RESTRICTIONS

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)

U.S. District Court
DEATH PENALTY

U.S. v. Hammer, 121 F.Supp.2d 794 (M.D.Pa. 2000). After the date for his execution was set, an inmate moved to preclude the autopsy of his body and to have the execution be carried out between

10 a.m. and 4 p.m. The district court granted the motions in part and denied them in part. The court held that inmate's religious belief opposing autopsies outweighed the government's interest in protecting itself from lawsuit by the inmate's next of kin, and instead ordered an external examination of the inmate by a medical doctor prior to and after the execution, and permitted the taking of photographs and videotaping of the execution. The court ruled that Pennsylvania law relating to the implementation of the sentence of death, including the method and time of execution, applied to a sentenced imposed under the federal death penalty statute in the Commonwealth of Pennsylvania, even though the execution would take place in Indiana. (United States Penitentiary, Terre Haute, Indiana)

2001

U.S. District Court
FORCED EXPOSURE

Bausch v. Sumiec, 139 F.Supp.2d 1029 (E.D.Wis. 2001). A parolee brought a § 1983 action alleging that mandatory attendance in a drug treatment program with religious components violated the Establishment Clause. The district court denied summary judgment for the defendants, finding that it was precluded by fact questions. (Wisconsin Department of Corrections)

U.S. Appeals Court
WORK
OPPORTUNITY TO
PRACTICE

Clark v. Long, 255 F.3d 555 (8th Cir. 2001). A Muslim inmate sued prison officials alleging violation of his First Amendment rights because he was compelled to wash pans containing pork. The district court granted judgment for the defendants as a matter of law and the inmate appealed. The appeals court affirmed, finding no evidence that any of the named defendants compelled the inmate to wash the pans, but only an unnamed officer allegedly threatened the inmate with discipline if he refused. (Missouri Eastern Correctional Center)

U.S. District Court
RFRA- Religious
Freedom Restoration
Act
OPPORTUNITY TO
PRACTICE

Crocker v. Durkin, 159 F.Supp.2d 1258 (D.Kan. 2001). Inmates, and members of a religious organization on behalf of inmates, sued prison officials alleging violation of their rights to free exercise of religion, due process and equal protection. The district court dismissed the free exercise, race and religious discrimination, and due process claims. The court found that the inmates alleged substantial interference with their rights, justifying the amendment of their complaint to include Religious Freedom Restoration Act (RFRA) claims. The inmates alleged that prison officials refused to allow them to participate in a fast, and that all members of their Nation of Islam faith are required to participate in such fasts. (United States Penitentiary, Leavenworth, Kansas)

U.S. District Court
BLOOD TESTS
OPPORTUNITY TO
PRACTICE
DIET

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
OPPORTUNITY TO
PRACTICE

Dekoven v. Bell, 140 F.Supp.2d 748 (E.D.Mich. 2001). A prisoner sued individuals, a state, the United States and foreign counties, alleging they failed to recognize him as the "God-Messiah" of the Holy Bible. The district court dismissed the case, finding it was "patently frivolous, implausible, and devoid of merit." According to the court, the prisoner had no constitutional right to be recognized and treated as the "Messiah-God" or any other holy, extra-worldly, or supernatural being or power. The court found the prisoner's request of payment from the federal government of certain precious and semi-precious metals to be the equivalent of a *Bivens* type of claim for money damages, which is barred by sovereign immunity absent a waiver. (Standish Maximum Correctional Facility, Michigan)

U.S. Appeals Court
HAIR

Flagner v. Wilkinson, 241 F.3d 475 (6th Cir. 2001). A prisoner brought a civil rights suit seeking damages and injunctive and declaratory relief against the enforcement of a prison grooming policy under which he was required to cut his beard and sidelocks that were required by his Hasidic Jewish faith. The district court denied summary judgment to the officials and they appealed. The appeals court reversed and remanded, finding that the officials were entitled to qualified immunity because the constitutional right alleged by the prisoner was not clearly established at the time the officials took action against him. (Ohio Department of Rehabilitation and Correction)

U.S. District Court
FORCED EXPOSURE

Garvin v. Terhune, 157 F.Supp.2d 416 (D.N.J. 2001). A prisoner brought a § 1983 action challenging the decision by prison officials to deny him reduced custody status because he refused to participate in a drug treatment program that had a religious component. The district court granted summary judgment in favor of the defendants, finding that compelling the prisoner to participate in the program in order to receive reduced custody status did not violate his constitutional rights, even assuming he was not in need of the program. According to the court,

where the drug treatment program was not oppressive, punitive or otherwise harsh in its consequences, it was within prison officials' discretion to order the inmate to participate in the program in order to receive reduced custody status. The inmate objected to the Nu Way Drug Treatment Program, which is operated by a private provider, and is modeled on the 12 step program of Alcoholics Anonymous and Narcotics Anonymous. (South Woods State Prison, Bridgeton, New Jersey)

U.S. Appeals Court
RFRA- Religious
Freedom Restoration
Act
VISITS

Kikumura v. Hurley, 242 F.3d 950 (10th Cir. 2001). A federal prisoner sued for injunctive relief on the basis of violations of his First and Fifth Amendment rights and violation of the Religious Freedom Restoration Act (RFRA) because prison officials had denied him pastoral visits from a Christian minister. The district court denied a preliminary injunction and the prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the prisoner failed to show the likelihood of success on the merits of his First Amendment free exercise claim, but that the prisoner did establish his claim of irreparable injury because post-trial relief would not adequately compensate him for any violation of his religious rights. According to the court, RFRA remains constitutional as applied to federal governments and that the portions of RFRA that were found unconstitutional by the U.S. Supreme Court were severable. The court noted that the relaxed definition of "religious exercise" made applicable to RFRA through the passage of the Religious Land Use and Institutionalized Persons Act (RLUIPA), under which religious exercise need not be mandatory for it to be protected, was applicable to a suit filed prior to its passage. (United States Penitentiary, Administrative Maximum, Florence, Colorado)

U.S. Appeals Court
EQUAL PROTECTION
REGULATIONS
RESTRICTIONS

Morrison v. Garraghty, 239 F.3d 648 (4th Cir. 2001). An inmate sued prison officials under § 1983 alleging violation of his equal protection rights because of their refusal to consider his request to obtain Native American religious items because he was not of Native American heritage. The district court enjoined officials from refusing to consider the inmate's request solely on the basis that he was not of the Native American race, and the officials appealed. The appeals court affirmed, finding that the officials' refusal violated the equal protection clause. The court noted that the inmate's claim involved the right to be treated the same as Native American inmates who requested the same items. According to the appeals court, prison officials could not measure the sincerity of an inmate's beliefs solely by his racial make-up, and the policy was not reasonably related to legitimate penological interests inasmuch as the items requested were not any less dangerous in the hands of Native American inmates. (Greensville Correctional Center, Virginia)

U.S. Appeals Court
DIET

Searles v. Van Beber, 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. (Hutchinson Correctional Facility, Kansas)

U.S. District Court
DIET
PUBLICATIONS
JEWELRY/ORNAMENTS

Shaheed-Muhammad v. Dipaolo, 138 F.Supp.2d 99 (D.Mass. 2001). A prisoner brought a pro se civil rights action against employees of the Massachusetts Department of Corrections for alleged violation of his right to practice his Muslim religion. The district court held that the prisoner's transfer to a correctional facility outside the jurisdiction of Massachusetts rendered his claims for injunctive relief moot, but that the Prison Litigation Reform Act (PLRA) did not bar the prisoner's claims under § 1983 for violation of his right to practice his Muslim religion. The prisoner alleged that corrections officials failed to provide him with vegetarian meals in accordance with his religious practices, denied him access to a newspaper published by followers of the Nation of Islam, confiscated a medallion of religious significance, and transferred him to another facility in retaliation for asserting his religious freedoms. (Massachusetts Department of Corrections)

U.S. District Court
OPPORTUNITY TO
PRACTICE
ARTICLES
REGULATIONS

Tart v. Young, 168 F.Supp.2d 590 (W.D.Va. 2001). An inmate brought § 1983 claims against a warden and commissioner of corrections alleging they violated his free exercise rights. The district court granted summary judgment in favor of the defendants. The court held that a prison policy that prohibited inmates from "smudging" with herbs did not violate the First Amendment. The court also found no free exercise violations in the prison policy that denied the inmate access to a sweat lodge and by failing to establish Native American group meetings. The court noted that the prison policy required all religious groups to have more than one inmate from a housing unit. According to the court, the inmate's transfer from a Connecticut prison to a Virginia prison did not violate the inmate's rights under the Equal Protection Clause. (Wallens Ridge State Prison, Virginia)

U.S. District Court
RESTRICTIONS
RFRA- Religious Free-
dom Restoration Act

U.S. v. Jefferson, 175 F.Supp.2d 1123 (N.D.Ind. 2001). The government petitioned to revoke the supervised release of a defendant who had failed several drug urinalysis tests and who admitted smoking marijuana almost continually. The government granted the petition, finding that while the supervised release condition prohibiting the releasee's use of drugs substantially burdened the

Rastafarian defendant's exercise of a sincerely held religious belief within the meaning of the Religious Freedom Restoration Act (RFRA), the condition was the least restrictive means of accomplishing the government's compelling interest in uniform enforcement of drug laws. The parties had stipulated to the fact that Rastafarianism emphasizes the use of marijuana in ceremonies designed to bring the believer closer to the divinity and to enhance unity among believers. The defendant claimed that his use of marijuana was "for meditation purposes only" and to "give praise to God." (Allen County Work Release Facility, Indiana)

U.S. District Court
RFRA- Religious
Freedom
Restoration Act
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 worshipping, 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)

U.S. District Court
FREE EXERCISE

Youngbear v. Thalacker, 174 F.Supp.2d 902 (N.D.Iowa 2001). Native American inmates brought a § 1983 action against state prison officials for violation of the First Amendment free exercise of religion clause, and the Fourteenth Amendment equal protection clause because the officials delayed the construction of a sweat lodge to be used to conduct Native American religious ceremonies at a state prison. The district court found that the year-long delay violated the inmates' First Amendment rights, did not violate the Fourteenth Amendment, and that prison officials were entitled to qualified immunity for the First Amendment violation. The state officials had decided to wait for a Native American consultant to be hired before proceeding to construct the sweat lodge, but the court found that this was not reasonably related to valid penological interests in violation of the First Amendment because a consultant was available at all relevant times and there was no alternative available for performing the ceremony, which is a central tenet of the Native American religion. According to the court, accommodating the inmates' needs would have had a negligible impact on correctional staff and would have imposed little cost. The court did not find that the delays were the result of discrimination against the Native American inmates and that the delays were "the result of mischance and not the product of discriminatory intent." Qualified immunity was granted to the officials because the "contours of the right asserted was not at the time of the violation defined sufficiently by prior case law" to the extent that the officials would have understood that there was a violation. (Fort Dodge Correctional Facility, Iowa)

2002

U.S. District Court
NAME
RFRA- Religious
Freedom Restoration
Act

Ali v. District of Columbia, 278 F.3d 1 (D.C. Cir. 2002). A District of Columbia inmate who was transferred to a Virginia prison and then back again, sued state and District officials alleging various violations of his constitutional rights and the Religious Freedom Restoration Act (RFRA). The district court dismissed the action and the inmate appealed. The appeals court affirmed, finding that the inmate could not establish that D.C. prison officials were liable under § 1983 for alleged constitutional violations by Virginia prison officials. The Virginia officials required the inmate to register under this birth name rather than his religiously-inspired legal name. The court noted that the Interstate Corrections Compact provided that confinement in the receiving state would not deprive an inmate of any legal rights which he would have had if confined in the sending state, but did not waive the receiving state's sovereign immunity under the Eleventh Amendment. (District of Columbia Lorton Central Facility, and Sussex II, Virginia.)

U.S. District Court
DIET
RESTRICTIONS
CHAPLAIN
OPPORTUNITY TO
PRACTICE

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
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
OPPORTUNITY TO
PRACTICE
RESTRICTION
ARTICLES
RLUIPA- Religious
Land Use and
Institutionalized
Persons Act

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 Correctional Institution, Wisconsin)

U.S. District Court
ARTICLES
RLUIPA- Religious
Land Use and
Institutionalized
Persons Act

Charles v. Verhagen, 220 F.Supp.2d 955 (W.D.Wis. 2002). A Muslim inmate sued prison officials alleging violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA), seeking monetary and injunctive relief. The district court issued an injunction, finding that the prison prohibition on the possession of religious oil violated the Act. The court also found that the Act was a valid exercise of congressional authority under the Spending Clause, and that it did not violate the First or Tenth Amendment. (Oshkosh Correctional Institution, Wisconsin)

U.S. Appeals Court
WORK
RLUIPA- Religious
Land Use and
Institutionalized
Persons Act

Fenelon v. Riddle, 34 Fed.Appx. 265 (9th Cir. 2002). An inmate brought an action against prison officials, alleging that the First Amendment required the prison to permit him to attend a weekly Jumu'ah service for Muslims, and that time spent at the service should count toward reducing his sentence under a state work incentive program. The district court granted summary judgment in favor of the inmate and entered a permanent injunction. The appeals court reversed and remanded, finding that the district court erred in interpreting Jumu'ah as a special religious function in order to "avoid a constitutional quandary." The court noted that the state's voluntary cessation of the alleged unlawful practice did not render the inmate's actions moot. The appeals court advised the district court, on remand, to consider the impact of any intervening changes in the law, including the Religious Land Use and Institutionalized Persons Act of 2000. (Calif. Medical Facility Prison)

U.S. Appeals Court
EQUAL PROTECTION
FREE SPEECH

Fraise v. Terhune, 283 F.3d 506 (3rd Cir. 2002). State inmates brought a § 1983 action against corrections officials challenging their classification and treatment as members of a "Security Threat Group" (STG). The district court granted summary judgment in favor of the officials and the inmates appealed. The appeals court affirmed, finding that the STG policy did not violate the inmates' free exercise or equal protection rights, and that the transfer of the inmates to a STG management unit did not deprive them of a protected liberty interest. According to the court, the inmates' free exercise rights were not violated by the STG policies and practices because the officials had a legitimate and neutral objective in maintaining order and security in the prison system, and the officials had adequate grounds to conclude that the inmates were "core members" of an STG. The court noted that the inmates had alternative means available to practice their religion, which they call the Five Percent Nation. The inmates were recognized leaders of the Five Percent Nation and had taken documented roles in the group's activities. The appeals court found no violation of the inmates' equal protection rights because the inmate group had demonstrated a greater propensity for violence, and religion did not play any role in the decision to treat the group as an STG. (New Jersey Department of Corrections)

U.S. District Court
ESTABLISHMENT
CLAUSE
FORCED EXPOSURE

Freedom From Religion Foundation, Inc. v. McCallum, 179 F.Supp.2d 950 (W.D.Wis. 2002). A private organization challenged the constitutionality of a state's funding of a faith-based, long-term alcohol and drug addiction treatment program. The district court granted the plaintiffs' motion for summary judgment in part, and denied it in part. The district court held that the

funding that the faith-based treatment program received under a state workforce grant represented governmental indoctrination of religion in violation of the Establishment Clause. The court noted that it was not possible to separate the religious components of the treatment program from its secular ones. The court was unable to determine if offenders participated in the program of their own free choice, and was therefore unable to determine if funding the program received from the state corrections department violated the Establishment Clause. The court ordered a trial to make that determination. (Wisconsin Department of Corrections and Faith Works Milwaukee, Inc.)

U.S. District Court
RFRA· Religious
Freedom Restoration
Act
BEARDS
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
RLUIPA· Religious
Land Use and
Institutionalized
Persons Act

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. District Court
ARTICLES
OPPORTUNITY TO
PRACTICE

Gonzalez v. Litscher, 230 F.Supp.2d 950 (W.D. Wis. 2002). A Native American prisoner brought a § 1983 action alleging First and Fourteenth Amendment violations. The district court held that denial of access to a sweat lodge was reasonably related to a legitimate penological interest, but denial of access to other religious articles presented fact issues that precluded summary judgment. The court held that the prison's denial of access to a medicine bag, ceremonial drums, feathers and a smoking pipe presented free exercise of religion claims that required further action. (Supermax Correctional Facility, Boscobel, Wisconsin)

U.S. District Court
RLUIPA· Religious
Land Use and
Institutionalized
Persons Act

Johnson v. Martin, 223 F.Supp.2d 820 (W.D. Mich. 2002). A state prisoner brought an action alleging that a corrections department's classification of a religion and its prisoner members as a security threat group violated the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court denied the state's motion for summary judgment, finding that RLUIPA did not violate the Establishment Clause and that Congress did not exceed its powers under the Commerce Clause or Spending Clause. The court also held that RLUIPA did not violate the Tenth Amendment by legislating in areas reserved to the states, because the Act merely regulated states' activity and gave states the option to comply or to forego federal funding. The state had argued that the Act's mandates for accommodating religious practices enhanced the rights of religious groups over those of secular groups, by subjecting the regulation of religious activity in prison to strict scrutiny. The court held that RLUIPA imposed no burden on non-beneficiaries, and did not advance or inhibit religion. According to the court, "Government does not have to treat religion like an untouchable pariah in order to avoid state entanglement with religion in violation of the Establishment Clause." (Michigan Department of Corrections)

U.S. Appeals Court
FREE EXERCISE

Levitan v. Ashcroft, 281 F.3d 1313 (D.C. Cir. 2002). Catholic prison inmates challenged the constitutionality of a rule that prevented them from consuming small amounts of Communion wine. The district court granted summary judgment for the defendant prison officials and the inmates appealed. The appeals court reversed and remanded, finding that a fact issue existed as to whether the rule substantially burdened the inmates' First Amendment free exercise rights, barring summary judgment. (Federal Prison Camp, Pensacola, Florida)

U.S. Appeals Court FREE EXERCISE	<u>Lomholt v. Holder</u> , 287 F.3d 683 (8 th 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 DIET	<u>Love v. McCown</u> , 38 Fed.Appx. 355 (8 th 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. District Court FREEDOM OF RELIGION OPPORTUNITY TO PRACTICE RESTRICTIONS SINCERITY RLUIPA- Religious Land Use and Institutionalized Persons Act	<u>Marria v. Broaddus</u> , 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. (Green Haven Correctional Facility, New York)
U.S. District Court OPPORTUNITY TO PRACTICE	<u>Merriweather v. Sherwood</u> , 235 F.Supp.2d 339 (S.D.N.Y. 2002). Prison officials moved, under the Prison Litigation Reform Act (PLRA), to dissolve a prison conditions consent decree entered 24 years earlier. Prisoners moved to postpone the automatic stay of the consent decree's provisions. The district court held that it lacked the discretion to postpone the automatic stay once the stay came into effect 30 days after the motion to dissolve was filed. The court noted that even assuming it had the discretion to postpone the automatic stay, the prisoners failed to show that they were entitled to a postponement, where the record did not demonstrate widespread or ongoing constitutional violations of rights to religious freedom, medical care, or access to counsel. The court held that the decision to deny Jum'ah services on the day of the week on which a qualified Imam was not available from the outside community was supported by sound penological grounds, where efforts by unqualified inmates to lead the Jum'ah had in the past led to riots. (Orange County Correctional Facility, New York)
U.S. District Court WORK	<u>Murphy v. Carroll</u> , 202 F.Supp.2d 421 (D.Md. 2002). A Jewish inmate brought a pro se § 1983 action against prison officials asking for injunctive relief and damages. The prisoner alleged that the officials violated his First Amendment right to the free exercise of religion by refusing to accommodate his request for an alternative cell cleanup day, other than Saturday. The district court granted summary judgment in favor of the officials, finding that while the policy violated the inmate's First Amendment right, this right was not clearly established at the time of the violation and the officials were entitled to qualified immunity. The court found no rational relationship between the Saturday-only cell cleaning policy that outweighed the inmate's right to honor the Jewish Sabbath by not working. The court was critical of the officials', finding them entitled to qualified immunity "despite the patent unreasonableness of the defendants' refusal to provide him with cleaning equipment on a day other than his Sabbath." (Maryland Corr'l Training Center)
U.S. District Court FORCED EXPOSURE	<u>Nusbaum v. Terrangi</u> , 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
FREE EXERCISE
BLOOD TESTS

Schreiber v. Ault, 280 F.3d 891 (8th Cir. 2002). An inmate filed a § 1983 action alleging that state prison officials violated his civil rights when they failed to dispose of his medical blood samples in a manner consistent with his religious beliefs. The district court found no violation and the inmate appealed. The appeals court affirmed, finding that while the inmate presented a valid free exercise claim, there was a valid, rational connection between the officials' penological concerns for public health and safety and their refusal to dispose of the inmate's blood sample as the inmate had demanded. The inmate was a practicing Jehovah's Witness who believed that after his blood had been tested it should be returned to the earth by pouring it on the ground and covering it with dust. The inmate based his belief on the biblical Old Testament scripture, but his interpretation went beyond the teachings of Jehovah's Witnesses. (Iowa State Prison)

U.S. Appeals Court
ARTICLES
REGULATIONS
RESTRICTIONS

Tarpley v. Allen County, Indiana, 312 F.3d 895 (7th Cir. 2002). A former inmate sued a county, alleging interference with his right to exercise his religion and denial of meaningful access to courts. The district court entered summary judgment for the county and the inmate appealed. The appeals court affirmed. The court held that the inmate's free exercise rights were not violated by the county's refusal to allow him to use his own Bible and requiring him to use the jail's Bible, even though his personal Bible had commentary that the jail Bible did not have. The court found the jail policy of not allowing inmates to keep personal books to be reasonably related to its interest in maintaining safe conditions and preventing disputes over lost or damaged items. The court noted that the inmate did not assert that the commentary in his personal Bible had become part of fundamental texts of his religion as a whole. (Allen County Jail, Indiana)

U.S. District Court
FREE EXERCISE
OPPORTUNITY TO
PRACTICE

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)

U.S. District Court
MEDICAL CARE

Word v. Croce, 230 F.Supp.2d 504 (S.D.N.Y. 2002). An inmate sued state corrections officials alleging violation of her constitutional rights when she was left in segregated housing after she refused to submit to a tuberculosis test for religious reasons. The district court granted summary judgment to the officials. The court held that the prison regulation that requires segregated housing of inmates who refuse to submit to a test for latent tuberculosis did not violate the First Amendment rights of the inmate, because the regulation was rationally related to a legitimate penological interest in retarding the spread of a deadly disease. (Bedford Hills Correctional Facility, New York)

2003

U.S. District Court
FREE EXERCISE

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
RLUIPA- Religious Land
Use & Institutionalized
Persons Act

Charles v. Verhagen, 348 F.3d 601 (7th Cir. 2003). A Muslim inmate sued state prison officials alleging violations of the Religious Land Use and Institutionalized Persons Act (RLUIPA) and the First Amendment. The district court granted summary judgment for the officials on the First Amendment claims and on a prayer feast RLUIPA claim. But the district court ruled that the officials' refusal to allow the inmate to possess prayer oil violated RLUIPA. After intervention by the United States, the constitutionality of RLUIPA was upheld. The officials appealed and the appeals court affirmed. The appeals court held that neither the Commerce Clause nor the Tenth

Amendment provided an independent constitutional bar to the conditions imposed on states' receipt of federal funding through the enactment of RLUIPA. The appeals court also held that enactment of RLUIPA did not violate the Establishment Clause, and that the Act was a valid exercise of Congress' Spending Clause authority. (Oshkosh Correctional Institute, Wisconsin)

U.S. District Court
FORCED EXPOSURE
ESTABLISHMENT
CLAUSE

Clanton v. Glover, 280 F.Supp.2d 1360 (M.D.Fla. 2003). An inmate in a city corrections facility who had participated in a voluntary drug treatment program brought a § 1983 action. The inmate alleged that the disciplinary measures he suffered for refusing to participate in "group closures" that ended program meetings and that featured an inmate-led prayer, constituted a violation of the Establishment Clause. The district court denied summary judgment for the defendants, finding that it was precluded by fact issues as to whether the prayers constituted a city endorsement of, or coercion of religious activity. The court noted that the inmate was not required to verbalize the prayer, but that inmates were required to stand together as a group while the prayer was recited or face the loss of good time credits. (City of Jacksonville, Florida)

U.S. District Court
NAME
DIET
RLUIPA- Religious
Land Use and
Institutionalized
Persons Act

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. 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
ESTABLISHMENT
CLAUSE
FORCED EXPOSURE

Freedom From Religion Foundation, Inc. v. McCallum, 324 F.3d 880 (7th Cir. 2003). A taxpayer group sought to enjoin state authorities from funding a halfway house that incorporated Christianity into its treatment program, alleging that such funding constituted establishment of religion. Following a bench trial, the district court entered judgment in favor of the state. The taxpayers appealed and the appeals court affirmed, finding that the funding did not violate the Establishment Clause. The court noted that offenders were free to choose between the halfway house and secular programs, there was no evidence that parole officers were influenced by their own religious beliefs in recommending the halfway house or other programs to offenders, and all the other programs with which the state contracted were secular. The halfway house incorporated programs similar to Alcoholics Anonymous. (Faith Works Milwaukee, Inc.)

U.S. Appeals Court
OPPORTUNITY TO
PRACTICE
SINCERITY

Ford v. McGinnis, 352 F.3d 582 (2nd Cir. 2003). A Muslim inmate brought a § 1983 action alleging infringement of his religious rights because corrections officials refused to serve a religious feast in a high-security area. The district court granted the defendants' motion for summary judgment and the inmate appealed. The appeals court vacated and remanded. The appeals court held that whether the inmate had a Free Exercise Clause claim depended on whether the inmate sincerely believed in the postponed feast's religious significance. The court found that the fact that the officials' religious authorities had determined that participation in the feast was not mandated by the religion of Islam did not, by itself, render the burden on the inmate's free exercise non-substantial. (Downstate Correctional Facility, New York)

U.S. Appeals Court
DIET

Kind v. Frank, 329 F.3d 979 (8th Cir. 2003). A county jail inmate brought a § 1983 action against jail officials, alleging violation of his First Amendment right to free exercise of religion, by their refusal to place him on a vegetarian diet. The district court granted summary judgment in favor of the defendants and the inmate appealed. The appeals court affirmed. The appeals court affirmed that the officials were entitled to qualified immunity, even though a state human rights department subsequently determined that the jail violated the inmate's rights. The court noted that the officials investigated Muslim practices before determining that a pork-free diet, but not a vegetarian diet, was a necessary part of the Muslim religion. (Washington County Jail, Minnesota)

U.S. District Court
SERVICES

Lewis v. Washington, 265 F.Supp.2d 939 (N.D.Ill. 2003). State inmates filed a class action under § 1983 alleging that prison officials violated their constitutional rights while they were in protective

custody. The district court granted summary judgment for the officials, in part. The court held that officials were entitled to qualified immunity because it was not clearly established that inmates in temporary protective custody after they appealed denial of their requests for permanent protective custody, had First Amendment rights to communal religious services, and Fourteenth Amendment rights to programs and services equivalent to those offered to other inmates. (Stateville Correctional Center, Illinois)

U.S. Appeals Court
RLUIPA- Religious Land
Use and Institutional-
ized Persons Act
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 Dept. of Corr.)

U.S. Appeals Court
OPPORTUNITY TO
PRACTICE
RFRA- Religious
Freedom Restoration
Act

O'Bryan v. Bureau of Prisons, 349 F.3d 399 (7th Cir. 2003). A federal prison inmate sued the Bureau of Prisons under the Religious Freedom and Restoration Act (RFRA), alleging infringement of his right to practice the religion of Wicca. The district court dismissed the case and the inmate appealed. The appeals court vacated and remanded, finding that RFRA governed the inmate's action. The appeals court instructed the district court to apply RFRA's standards to the inmate's claim. (Federal Bureau of Prisons)

U.S. District Court
FREE EXERCISE
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
FREE EXERCISE
RLUIPA- Religious Land
Use & Institutionalized
Persons Act
RFRA-Religious
Freedom Restoration
Act

Resnick v. Adams, 348 F.3d 763 (9th Cir. 2003). A pro se federal prisoner, an Orthodox Jew, sued a warden and a prison's food service administrator, alleging they had infringed on his First Amendment right to free exercise of religion by requiring him to fill out a standard prison form in order to receive kosher meals. The district court granted summary judgment in favor of the defendants and the appeals court affirmed. The appeals court held that prison officials had stated their willingness to work with prisoners who identified special needs regarding religious diets, and at least one other prisoner was receiving completely kosher meals after applying for them on a standard prison form. The appeals court held that the Religious Freedom Restoration Act (RFRA) and the Religious Land Use and Institutionalized Persons Act (RLUIPA) did not apply to the claim by the federal prisoner, since requiring the prisoner to sign a piece of paper was not a "substantial burden." (United States Penitentiary at Lompoc, California)

U.S. District Court
RESTRICTIONS
SERVICES

Roberts v. Champion, 255 F.Supp.2d 1272 (N.D.Okla. 2003). An inmate brought a claim under § 1983 against prison officials, alleging multiple constitutional violations arising from the inmate's misconduct proceedings and his transfer from a correctional center to a maximum security facility. The district court granted the defendants' motion to dismiss. The court found that prison regulations, limiting Muslim inmates' attendance at weekly services to every other week, on a day other than those designated under the structures of Islam, and limiting the number of inmates attending any service to 10, were reasonably related to legitimate penological interests, including security safeguards and the orderly administration of prison activities. (Dick Conner Correctional Center, and Oklahoma State Penitentiary)

U.S. District Court
MEDICAL CARE

Selah v. Goord, 255 F.Supp.2d 42 (N.D.N.Y. 2003). An inmate brought an action against a state corrections department, challenging its policy of placing inmates who refuse annual, mandatory tuberculosis skin tests on religious grounds, into tuberculin hold for one year. The district court granted the inmate's motion for a preliminary injunction. The court held that the tests were a violation of the inmate's right to free exercise of religion, but the inmate was required to prove that he "sincerely held" the religious beliefs professed by him, and that he was denied reasonable accommodation for the exercise of his beliefs. The court found that there was no legitimate connection between the tuberculin hold and the ease of monitoring, as experts testified that there would be no greater cost or effort to monitor prisoners if they were in the general population. (New York State Department of Corrections)

U.S. Appeals Court
REGULATIONS
PUBLICATIONS

Sutton v. Rasheed, 323 F.3d 236 (3rd Cir. 2003). State prisoners brought a § 1983 action alleging infringement upon their rights under the free exercise clause of the First Amendment. The district

court granted summary judgment for the defendants and the prisoners appealed. The appeals court affirmed, finding that although the prisoners' rights had been violated, corrections officials were entitled to qualified immunity because the law was not clearly established at the time. The court held that a state prison regulation that prohibited "books other than legal materials and a personal Bible, Holy Koran or other religious equivalent" was invalid as applied to restrictive status prisoners, who were precluded from possessing Nation of Islam texts on the basis that those documents were not religious. The court found that there was no legitimate penological interest in prison administrators' denial of those texts. (Special Management Unit, State Correctional Institution-Camp Hill, Pennsylvania)

2004

U.S. Appeals Court
OPPORTUNITY TO
PRACTICE
RESTRICTIONS
SERVICES
RLUIPA- Religious Land
Use and Institution-
alized Persons Act

Adkins v. Kaspar, 393 F.3d 559 (5th Cir. 2004). A Texas state prisoner who was a member of the Yahweh Evangelical Assembly (YEA) filed a pro se action against the chaplaincy department of a state corrections agency. The prisoner alleged violation of his federal constitutional rights and the Religious Land Use and Institutionalized Persons Act (RLUIPA) in connection with his not being permitted to observe particular days of rest and worship. The district court dismissed the case and the prisoner appealed. The appeals court affirmed. The appeals court held that the agency's religious accommodation policy was rationally related to legitimate government objectives and that the inability of YEA inmates to assemble on every Sabbath and holy day did not "substantially burden" the practice of their religion in violation of RLUIPA. The court held that the YEA inmates had alternative means of exercising their religion, in the form of supplemental services, materials and other accommodations, and were not required to work on their Sabbath. The court noted that the inmates were allowed to attend live services when an accredited religious volunteer was able to attend. (Coffield Unit, Texas Department of Criminal Justice, Institutional Division)

U.S. District Court
EQUAL PROTECTION
FREE EXERCISE
RESTRICTIONS
RLUIPA- Religious Land
Use and Institution-
alized Persons Act

Ahmad v. Ehrmann, 339 F.Supp.2d 1134 (D.Colo. 2004). A Muslim prisoner brought an action against prison officials asserting claims for deprivation of his constitutional rights and violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court granted summary judgment in favor of the defendants in part, and denied in part. The court held that a prison regulation that prohibited group prayer and "individual demonstrative prayer" in open areas was rationally related to the legitimate penological goal of maintaining prison security, and therefore did not violate the prisoner's First Amendment free exercise right. The court noted that the regulation was applied equally to all faiths, and that it allowed an alternative means for the prisoner to practice his religion. According to the court, the prisoner failed to establish that group prayer was a constitutionally protected activity, even though the prisoner asserted that he was forced to pray in his cell in the presence of a toilet, which his religion allegedly forbade. The court noted that the prisoner was allowed to pray his religion's mandatory group prayer every week. (Sterling Correctional Facility, Colorado)

U.S. Appeals Court
RLUIPA Religious Land
Use and Institution-
alized Persons Act

Benning v. Georgia, 391 F.3d 1299 (11th Cir. 2004). A state inmate who was a "Torah observant Jew" brought a suit alleging violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA) when corrections officials denied his request for a kosher diet and for permission to wear a yarmulke. The district court dismissed the inmate's claims against individual defendants, but upheld the constitutionality of RLUIPA and denied a motion to dismiss with regard to the state and a state corrections agency. The state appealed. The appeals court upheld, finding that RLUIPA did not violate the Tenth Amendment because it was within the enumerated power of Congress, and that Congress properly exercised its spending power by unambiguously conditioning the use of federal funds for state prisons on the related accommodation of the religious exercise of prisoners. (Georgia Department of Corrections)

U.S. District Court
CLOTHING
OPPORTUNITY TO
PRACTICE

Boles v. Neet, 333 F.Supp.2d 1005 (D.Colo. 2004). A prison inmate brought a civil rights action against a warden, alleging that prison officials had refused to allow him to wear religious garments required by Jewish law while being transported from prison to receive medical care. Because he was not allowed to wear the garments the prisoner refused to be transported and his surgery was postponed. The district court denied summary judgment for the warden, ordering further proceedings to determine whether the restrictions were reasonable. The court noted that in March 2001, when this incident occurred, it was clearly established that unreasonable limitations placed on prisoners who were exercising their religious rights were a violation of the First Amendment. The inmate has insisted on wearing his "yarmulke" (a skull cap or head covering) and "tallit katan" (undergarment bearing fringes, or "tzitzit") (Fremont Correctional Facility, Colorado)

U.S. District Court
EQUAL PROTECTION
ARTICLES

Borzych v. Frank, 340 F.Supp.2d 955 (W.D.Wis. 2004). A prisoner brought a civil rights action against prison officials. The district court held that the prisoner stated a First Amendment claim with his allegation that the prison officials denied him a copy of an Odinist text, without which he was unable to practice his religion. But the court found that the prisoner could not maintain a claim based on the allegation that he was not allowed to have a copy of a catalogue in which items

related to Wiccanism, Satanism and Odinism were sold, where the prisoner did not allege or suggest that he either used or needed a copy of the catalogue in order to practice his Odinst religion. The court held that the prisoner stated an equal protection claim by alleging that, unlike Christian and Muslim inmates, officials discriminated against him by refusing to let him have a copy of the central text of his religion. (Secure Program Facility, Wisconsin)

U.S. District Court
OPPORTUNITY TO
PRACTICE
EQUAL PROTECTION
CHAPLAIN

Burks-Bey v. Stevenson, 328 F.Supp.2d 928 (N.D.Ind. 2004). A prisoner who was a member of the Moorish Science Temple of America brought a pro se civil rights complaint alleging various constitutional violations in connection with the treatment of his religion. The district court held that the prisoner failed to state a First Amendment free exercise claim arising out of the cancellation of certain communal worship and study sessions when the prison was short-staffed or on occasional days because of illness of the chaplain or a paperwork oversight. The court found that the prisoner stated an equal protection by alleging that his sect's programs were cancelled for reasons that had not resulted in the cancellation of other religion's programs. The court also found that the prisoner stated a claim against a prison chaplain for allegedly denying him all pastoral and spiritual care. The court determined that the prisoner's free exercise rights were not violated by refusing to allow him to attend the communal worship and study of other religions, where there were obvious legitimate institutional security and scheduling issues related to allowing inmates to attend the services of all religions. (Indiana)

U.S. District Court
ESTABLISHMENT
CLAUSE
FORCED EXPOSURE
REGULATIONS

Byar v. Lee, 336 F.Supp.2d 896 (W.D.Ark. 2004). A former county jail detainee filed an action against a former county sheriff, alleging violations of her constitutional rights arising out of the sheriff's promulgation of a set of detainee rules for the county jail. The district court held that the rules, which were modeled on the Ten Commandments, were excessively and impermissibly entangled with religion and constituted an endorsement or advancement of religion. The court found that a sufficient nexus existed between the requirement that the detainee read, sign, and agree to follow the rules and the imposition suffered by the detainee by having religious tenets forced upon her in the guise of secular rules of behavior. The detainee alleged that she considered it offensive to have the government direct her to obey particular religious tenets and she was fearful that she might be perceived as violating the rules and therefore be disciplined. The court denied the sheriff qualified immunity from liability, finding that he knew, or reasonably should have known, that his actions violated the Establishment Clause. The court noted that the sheriff had previously been sued about the rules and was given notice that posting the Ten Commandments in any form would violate the Establishment Clause. The court found that the use of the Ten Commandments as a model for detainee rules served no secular purpose and that the primary effect of the rules was to advance religion. (Benton County Jail, Arkansas)

U.S. District Court
FREE SPEECH
RLUIPA-Religious Land
Use and Institution-
alized Persons Act

Coronel v. Paul, 316 F.Supp.2d 868 (D.Ariz. 2004). An inmate brought an action against a private prison, alleging violations of the Religious Land Use and Institutionalized Persons Act (RLUIPA) and the Free Exercise Clause of the First Amendment. The district court denied summary judgment for all parties. The court held that issues of fact existed as to whether the prison's refusal to allow the inmate, a Dianic pagan who was not a Pasqua Yaqui or native Hawaiian, to attend Pasqua Yaqui and native Hawaiian religious ceremonies, placed a substantial burden on the inmate's religious exercise. (Florence Correctional Center, Arizona, and Corrections Corporation of America)

U.S. Appeals Court
DIET
FREE EXERCISE
EQUAL PROTECTION

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
OPPORTUNITY TO
PRACTICE
SERVICES

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
OPPORTUNITY TO
PRACTICE
RECOGNIZED
RELIGIONS

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. Appeals Court
HAIR LENGTH

Henderson v. Terhune, 379 F.3d 709 (9th Cir. 2004). A Native American state prison inmate brought a § 1983 action against corrections officials, alleging that a regulation governing inmates' hair length infringed on his rights under the First Amendment Free Exercise Clause. The district court granted summary judgment for the officials and the inmate appealed. The appeals court affirmed, finding that the hair-length regulation was reasonably related to several legitimate penological interests, including identification of inmates and ease of control of contraband. The court noted that cutting the inmate's hair implicated a strict religious prohibition about the sanctity and purity of the body. According to the court, a clear connection existed between the regulation and the officials' desire to prevent inmates from quickly changing their appearance, hiding weapons and contraband in their hair or displaying gang related hairstyles. The court held that the American Indian Religious Freedom Act did not provide a means of legal recourse for any tribe or individual, but was merely a policy statement. (California Department of Corrections)

U.S. District Court
DIET
RESTRICTIONS

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
RFRA - Religious
Freedom Restoration
Act

Jama v. U.S.I.N.S., 343 F.Supp.2d 338 (D.N.J. 2004). Undocumented aliens who were detained pending determination of their asylum status brought an action alleging inadequate living conditions, torture, beatings, and other mistreatment at a facility operated by a private contractor. The court held that officials of the contractor were not government employees, and therefore the aliens' claims were not barred by a previous settlement agreement between the aliens and the United States, which included non-tort claims. The district court denied summary judgment in part, finding that issues of fact as to whether the burdens placed on the aliens' exercise of religion were in furtherance of a compelling governmental interest and were the least restrictive means of furthering that interest. The court found that the aliens could seek money damages against guards, in their individual capacities, for alleged violation of their rights under the Religious Freedom Restoration Act (RFRA). (Facility operated by Esmor, Elizabeth, New Jersey)

U.S. District Court
BEARDS
WORK
RLUIPA- Religious Land
Use and Institution-
alized Persons Act

Mayweathers v. Terhune, 328 F.Supp.2d 1086 (E.D.Cal. 2004). Muslim state prisoners brought a class action under the Religious Land Use and Institutionalized Persons Act (RLUIPA) and § 1983, alleging violation of their rights to free exercise of religion and equal protection. The district court granted summary judgment in favor of the prisoners and entered a permanent injunction. The injunction prohibited prison officials from disciplining the inmates for missing work assignments in

order to attend an hour-long Friday Sabbath service, and allowed the inmates to wear at least a half-inch beard for religious purposes. (California State Prison- Solano)

U.S. Appeals Court
DIET

McEachin v. McGuinnis, 357 F.3d 197 (2nd Cir. 2004). A prisoner, proceeding in forma pauperis, brought a civil rights complaint against prison officials. The district court dismissed the action under the screening provisions of the Prison Litigation Reform Act (PLRA). The prisoner appealed, and the appeals court affirmed in part, reversed in part and remanded. The court held that the screening provisions of PLRA did not warrant sua sponte dismissal of free exercise claims involving the prisoner's placement on a restricted diet as a disciplinary measure, which deprived him of blessed food for his Ramadan observance. The inmate also alleged that the disciplinary action was the product of religious discrimination, because an officer issued an order that he knew the prisoner would not obey until after he finished his prayer. (Southport Correctional Facility, New York)

U.S. Appeals Court
FREE EXERCISE
RLUIPA-Religious Land
Use and Institutionalized
Persons Act

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, religious 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
BOOKS

Neal v. Lewis, 325 F.Supp.2d 1231 (D.Kan. 2004). A Shiite Muslim prisoner filed a pro se § 1983 alleging that prison officials interfered with his religious observance in violation of his constitutional rights. The district court granted summary judgment in favor of the officials, finding they were entitled to qualified immunity. The court held that the policy of limiting prisoners to possession of twelve books, plus one dictionary and one thesaurus and the primary religious text for their declared religion, did not violate the prisoner's First Amendment or Equal Protection rights. The court also upheld the regulation requiring delivery of publications directly from the publisher. The court noted that both regulations served the internal security objective of controlling, managing and tracking property in the correctional facility, and that the regulations were applied to inmates irrespective of their religion. (El Dorado Correctional Facility, Kansas)

U.S. District Court
RESTRICTIONS
FREE EXERCISE

Pierce v. Smith, 347 F.Supp.2d 1143 (M.D.Ala. 2004). A Native American inmate filed a § 1983 action alleging that his religious rights were violated by a state prison chaplain's ban on home-made foods to celebrate a Harvest Moon Festival. The district court granted summary judgment in favor of the chaplain, finding that the ban did not violate the inmate's First Amendment free exercise rights. The court noted that the law was not clearly established at the time of the incident and the chaplain was entitled to qualified immunity. Native American inmates were permitted to partake in food provided by the facility in association with their observance, and the restriction was imposed on all inmate religious groups. (State Correctional Facility, Alabama)

U.S. Appeals Court
WORK

Searles v. Dechant, 393 F.3d 1126 (10th Cir. 2004). An inmate brought a § 1983 action against prison officials, alleging they violated his religious freedom by requiring him to work in a prison kitchen where he could not avoid the ingestion of non-kosher odors and handling non-kosher food. The district court granted summary judgment in favor of the officials and the inmate appealed. The appeals court dismissed in part and affirmed in part. The court held that the inmate made an insufficient showing that the infringement on his rights outweighed legitimate penological interests. The court found that budgetary concerns and the need for non-discriminatory and consistent prison staffing appeared to be legitimate penological interests, even though the inmate had presented sufficient evidence of the sincerity of his beliefs. The Jewish inmate had alleged that the kitchen area was unclean for a Jewish person, particularly since there was no mikveh (purifying bath involving rainwater stored in a ceremonial fashion) for purification. After refusing to work in the kitchen the inmate was disciplined for a work performance violation. He was again assigned to the kitchen. The prison's religious programs director obtained an opinion from a local rabbi that working in a non-Kosher kitchen did not violate the Jewish faith, and that the inmate

could wear gloves if he was concerned about contamination. (Hutchinson Correctional Facility, Kansas)

U.S. Appeals Court
PUBLICATIONS
ARTICLES
RLUIPA- Religious Land
Use and Institution-
alized Persons Act

Shakur v. Selsky, 391 F.3d 106 (2nd Cir. 2004). A state prisoner brought claims under § 1983 against corrections officers and officials alleging various constitutional violations and violations of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court dismissed the prisoner's complaint with prejudice, and the prisoner appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that the prisoner stated a legally cognizable First Amendment claim by alleging that a prison regulation that banned all literature from outside organizations unless those organizations had been approved, did not authorize officers' confiscation of his literature. The prisoner alleged that the materials were confiscated because of the officers' personal prejudice, and that the officers failed to invoke a media committee's review of the material as required by procedures. The officers had confiscated 26 books and pamphlets of "New Afrikan political literature." (Great Meadows Correctional Facility, New York)

U.S. District Court
ESTABLISHMENT
CLAUSE
FORCED EXPOSURE

Turner v. Hickman, 342 F.Supp.2d 887 (E.D.Cal. 2004). An inmate filed a § 1983 action claiming that corrections officials had established religion in violation of the First Amendment by demanding that he participate in a drug treatment program to be eligible for consideration for parole. The district court held that requiring inmates, as a condition for being granted parole, to participate in a drug treatment program based on the concept of a higher power to which participants had to submit, was an establishment of religion prohibited by the First Amendment. According to the court, even though the program's literature said that it was "not a religious program," it unequivocally and wholeheartedly asserted that belief in "God" was a fundamental requirement of participation. The court noted that the inmate had standing to raise a claim, even though he was allegedly a Christian. The court entered an injunction, prohibiting officials from considering the prisoner's refusal to participate in Narcotics Anonymous at any point in time, as a basis for denying parole. (California Department of Corrections)

U.S. Appeals Court
RESTRICTIONS
OPPORTUNITY TO
PRACTICE

Wares v. Simmons, 392 F.3d 1141 (10th Cir. 2004). A state prisoner brought a § 1983 action alleging that denial of access to essential religious texts violated the First Amendment. The district court dismissed the action and the prisoner appealed. The appeals court vacated and remanded. The court held that dismissal was precluded by questions as to whether the prison's restrictions on the Jewish prisoner's possession of religious texts served penological interests, whether he had alternative means of practicing his religion, and whether allowing access to the texts would interfere with prison administration or could otherwise be accomplished at de minimis cost. (Hutchinson Correctional Facility, Kansas)

U.S. District Court
OPPORTUNITY TO
PRACTICE

Wares v. Vanbebber, 319 F.Supp.2d 1237 (D.Kan. 2004). A state inmate filed a § 1983 action alleging that prison officials interfered with his right to observe a Jewish holiday. The court granted summary judgment for the defendants in part, and denied it in part. The court held that the officials did not interfere with the inmate's Sukkot observance by failing to provide a Sukkah booth in the prison yard, but that fact issues remained as to whether the denial was due to security concerns or was merely a pretext for interfering with the inmate's right to freely exercise his religion. The court also found that summary judgment was precluded by a genuine issue of material fact as to whether the Jewish inmate's oral request for the Sukkah booth was a legitimate method of requesting a religious accommodation. The court held that the officials were not entitled to qualified immunity. (Hutchinson Correctional Facility, Kansas)

U.S. District Court
VISITS

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. The court also found no violation for the alleged denial of inmates' access to telephones for 55 days, to hygiene services for 65 days, to hot meals for 30 days, and to exercise equipment. According to the court, suspending all personal visits to death row inmates for the first 54 days of the lockdown did not violate the inmates' First Amendment rights, where visitation privileges were a matter subject to the discretion of prison officials. (Indiana State Prison)

2005

U.S. District Court
SWEAT LODGE
CHAPLAIN
RLUIPA- Religious Land
Use and Institution-
alized Persons Act

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. Appeals Court
SEARCH

Conyers v. Abitz, 416 F.3d 580 (7th Cir. 2005). A state prison inmate brought a § 1983 action against prison officials, challenging a search imposed on him when he left a prison chapel. The inmate also claimed that prison officials hindered his observance of a religious fast, violating his right to religious exercise. The district court granted summary judgment for the officials on the ground that the inmate failed to exhaust his claims. The inmate appealed. The appeals court affirmed in part, and vacated and remanded in part. The court held that any Fourth Amendment privacy interest that the inmate had in not being frisked upon leaving a prison chapel was insufficient to overcome the judicial deference generally afforded to prison officials when they are evaluating what is necessary to preserve institutional order and discipline. The court noted that the officials produced evidence that they had a legitimate security interest in frisking inmates as they left the prison chapel because the chapel was a hotbed of contraband exchanges. The court held that summary judgment was barred by fact issues as to whether prison officials had sufficient reasons to ignore the inmate's request to participate in a religious fast, which was made after an administrative deadline. The court found that the inmate's procedural shortcoming of failing to follow the prison's time deadlines for filing a grievance only amounts to a failure to exhaust administrative remedies, as required by the Prison Litigation Reform Act (PLRA), if prison administrators specifically relied on that shortcoming. (Illinois)

U.S. Appeals Court
RLUIPA-Religious Land
Use and Institutional-
alized Persons Act

Cutter v. Wilkinson, 423 F.3d 579 (6th Cir. 2005). 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 actions were consolidated and the district court denied the defendants' motion to dismiss. The defendants appealed and the appeals court reversed and remanded. The U.S. Supreme Court reversed and remanded. On remand, the appeals court held that it was a proper exercise of Congressional power under the spending clause to make compliance with RLUIPA a condition for states which receive federal funds for prison activities or programs. The court noted that the RLUIPA furthered the general welfare of the United States, and the language of RLUIPA made it clear to states that applied for federal funding for prison programs that they were subject to RLUIPA. According to the court, the conditions set forth in RLUIPA were reasonably calculated to address the federal government's interest in the rehabilitation of state prisoners. (Ohio Department of Rehabilitation and Correction)

U.S. District Court
FREE EXERCISE
RESTRICTIONS

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
BEARDS
RLUIPA- Religious Land
Use and Institutional-
alized Persons Act

Gooden v. Crain, 405 F.Supp.2d 714 (E.D.Tex. 2005). A state prisoner brought a pro se action against prison officials under § 1983 and the Religious Land Use and Institutionalized Persons Act (RLUIPA), alleging that he should be permitted to grow a beard in accordance with his Muslim religious beliefs. The district court dismissed the case, finding that the policy that prohibited the inmate from growing a beard did not violate RLUIPA and the policy did not violate the inmate's equal protection rights. The court noted that although the prisoner was prohibited from growing a beard, he was permitted to practice the fundamental aspects of his religious beliefs. According to the court, the policy was the least restrictive means to further the government interest in security, given the need for accurate pictures of inmates. The court found no equal protection violation even though inmates with a skin condition were allowed to have quarter inch beards, noting that the policy was applied equally to all religious groups. (Coffield Unit, Texas Board of Criminal Justice)

U.S. Appeals Court
CHAPLAIN
EQUAL PROTECTION

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 inmate alleged that the officials knew that: numerous Muslim inmates had been subject to attack by a ruling Muslim group in the prison chapel; the chaplain knew that the ruling Muslim group was trying to steal prayer oil from other Muslim inmates; the chaplain informed the ruling group that he had secretly delivered the oil to another inmate; and the chaplain told the ruling group that the inmate did not follow the teachings of Muhammad. The inmate alleged that an officer was not present when he was attacked even though inmates were not allowed in the chapel without supervision. (Calipatria State Prison, California)

U.S. District Court
FORCED EXPOSURE
RLUIPA- Religious Land
Use and Institution-
alized Persons Act
ESTABLISHMENT
CLAUSE

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
ESTABLISHMENT
CLAUSE
SINCERITY
SERVICES
RESTRICTIONS

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. (Waupun Correctional Institution, Wisconsin)

U.S. District Court
EQUAL PROTECTION
DIET
PUBLICATIONS
SINCERITY
RLUIPA- Religious Land
Use and Institution-
alized Persons Act

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. District Court
SERVICES
OPPORTUNITY TO
PRACTICE
VOLUNTEERS

McRoy v. Cook County Dept. of Corrections, 366 F.Supp.2d 662 (N.D.Ill. 2005). A Muslim inmate at a county correctional facility brought a civil rights action under § 1983, alleging that his opportunities to practice his faith were restricted in violation of the Free Exercise Clause of the First Amendment. The district court granted summary judgment in favor of the defendants. The court held that the inmate's free exercise rights were not violated by the cancellation of Muslim services during lockdowns, staff shortages, and when no volunteer imams were available to preside over services. The court noted that inmates should not be granted authority as religious leaders

over other inmates, and cancellation of services when volunteer imams were not available was warranted. The court found that the policy of limiting the number of Muslim services to three each week did not violate the inmate's free exercise rights, nor was a policy that limited the number of inmates who could attend Muslim services at the same time. The court upheld the facility's decision not to create a Muslim-only living unit. The court noted that the inmate was permitted to pray in his cell using religious materials he was allowed to keep there, as well as being allowed to pray in the common area of his living unit. (Cook County Department of Corrections, Illinois)

U.S. District Court
FREE EXERCISE

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
EQUAL PROTECTION
RESTRICTIONS
PUBLICATIONS

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. District Court
PUBLICATIONS
RESTRICTIONS
JEWELRY/ORNA-
MENTS
VISITS
OPPORTUNITY TO
PRACTICE
RLUIPA - Religious Land
Use and Institution-
alized Persons Act

Rowe v. Davis, 373 F.Supp.2d 822 (N.D.Ind. 2005). A state inmate brought a pro se § 1983 action alleging that his rights under the Religious Land Use and Institutionalized Persons Act (RLUIPA) had been violated. The district court held that the inmate could proceed on his claim for injunctive relief challenging the denial of his right to receive visits from a religious leader, on his claim for injunctive relief challenging the refusal to allow him to have a Celtic Cross necklace, and on his claim seeking individual review of his case to determine his eligibility to participate in communal worship while in segregation. The court found that the alleged confiscation of the inmate's religious literature, even though it did not fall within the prohibition against gang-related literature or literature supporting or encouraging prison disturbances, substantially burdened the inmate's exercise of his religion and stated a claim under RLUIPA. The court also found a potential RLUIPA violation in the inmate's allegation that denial of his right to receive visits from a religious leader of his own faith. The court ruled that denial of the Celtic Cross necklace might place a substantial and unnecessary burden on the practice of his religion, where the inmate alleged that wearing such a necklace was part of the way in which he practiced and expressed his religious beliefs. The court found a potential RLUIPA violation in the enforcement of a prison policy that prohibited all religious services for prisoners in administrative segregation. (Michigan Department of Corrections)

U.S. District Court
DIET
PUBLICATIONS

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. 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
JEWELRY/ORNA-
MENTS
RLUIPA- Religious Land
Use and Institution-
alized Persons Act

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
EQUAL PROTECTION
ESTABLISHMENT
CLAUSE
FORCED EXPOSURE

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. Appeals Court
HAIR LENGTH
RLUIPA- Religious Land
Use and Institution-
alized Persons Act

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. District Court
FREE EXERCISE
WORK
RLUIPA- Religious Land
Use and Institution-
alized Persons Act

Williams v. Bitner, 359 F.Supp.2d 370 (M.D.Pa. 2005). An inmate brought a § 1983 action against employees and officials of a state corrections department, alleging violations of his right of free exercise of religion, protected by the Religious Land Use and Institutionalized Persons Act (RLUIPA), and the First Amendment. The district court granted summary judgment in favor of the defendants, in part. The court held that summary judgment was precluded by genuine issues of material fact as to whether the issuance of a misconduct report against the Muslim inmate who refused to assist in the preparation of pork while working in the prison kitchen, and his placement on cell restriction for 30 days, constituted a substantial burden on his exercise of sincere religious belief and whether the sanctions were the least restrictive means of furthering compelling government interests. The court noted that the right of Muslim inmates to avoid handling pork was clearly established at the time of the incidents. (Pennsylvania Department of Corrections)

U.S. District Court
HAIR

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)

2006

U.S. District Court
ESTABLISHMENT
CLAUSE
FORCED EXPOSURE

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
OPPORTUNITY TO
PRACTICE
RESTRICTIONS

Beasley v. Konteh, 433 F.Supp.2d 874 (N.D. Ohio 2006). A state prisoner brought a civil rights action against prison officials, alleging violation of his First Amendment right to practice his religion. The prisoner moved for an order to require officials to transport him to an orthodox Jewish synagogue for conversion to Judaism. The district court held that the prisoner was not entitled to a court order requiring officials to transport him to the synagogue, even if failure to transport the prisoner would frustrate his ability to convert to Judaism, where the officials claimed that the trip would create a serious security risk and disrupt the prison's normal administration. The court noted that prisoners do not have the right to leave prison to: (1) be present in court at any stage of civil proceedings they bring, (2) attend funerals of relatives, or (3) visit court to satisfy the personal appearance requirement for obtaining a marriage license. According to the court, prison officials need not affirmatively assist inmates by allowing them to leave prison temporarily to accomplish a lawful objective that implicates a constitutional right, such as the right to marry. (Toledo Correctional Institution, Ohio)

U.S. Appeals Court
BOOKS
OPPORTUNITY TO
PRACTICE
RLUIPA-Religious Land
Use and Institution-
alized Persons Act

Borzzych 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
ESTABLISHMENT
CLAUSE
FORCED EXPOSURE

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. District Court
ESTABLISHMENT
CLAUSE
OPPORTUNITY TO
PRACTICE
EQUAL PROTECTION

Ha'min v. Lewis, 440 F.Supp.2d 715 (M.D.Tenn. 2006). A Muslim county jail inmate sued a county, claiming that the county violated his First Amendment rights by failing to accommodate his religious needs. The district court dismissed the complaint in part and the county moved for summary judgment. The court held that the Establishment Clause was not violated when the county provided Bibles to inmates, but did not provide the Quran to the Muslim inmate, where the county, which did not pay for any religious materials, distributed donated Bibles to inmates and would have distributed donated Qurans, if any had been received. The inmate's request the county removed his copy of the Quran from his stored personal property and gave it to him. The court found that the county did not violate the free exercise of religion rights of the inmate by failing to hold Muslim services, where two Imams recruited by the county quit, the county was searching the Muslim community for a replacement, the complaining inmate was barred from conducting services himself by a policy against any inmate-led religious ceremonies, and the county accommodated the inmate in private worship by providing a Quran, prayer rug, and a compass.

(Montgomery County Jail, Tennessee)

U.S. District Court
RESTRICTIONS
ARTICLES
OPPORTUNITY TO
WORSHIP

Hastings v. Marciulionis, 434 F.Supp.2d 585 (W.D.Wis. 2006). A state inmate brought an action alleging that his First Amendment right to practice his Native American religion was violated while he was on supervised probation in an alcohol treatment program. The district court entered summary judgment in favor of the defendants. The court held that the probationer's First Amendment right to practice his Native American religion was not violated when he was not allowed to go to church and a Native American Pow Wow during his initial 14-day restriction and evaluation period, because the restriction rule did not target a specific religion or religious practice. All new residents of alcohol treatment program must complete a 14-day restriction period, and during this period a resident may not leave the facility for any reason except for employment or emergency situations. This rule allows new residents to become acclimated to the rules and treatment programs and allows staff time to conduct an evaluation to determine if the resident is appropriate for the program. During this period the staff is provided the opportunity to assess the resident to ensure the safety of the community. The court also held that the probationer's First Amendment right was not violated when he was not allowed to keep his eagle feather at the program, noting that the feather was illegal because the probationer did not have a required permit. (Wazee House, Wisconsin)

U.S. District Court
SEARCHES
RLUIPA- Religious Land
Use and Institution-
alized Persons Act

Jean-Laurent v. Wilkerson, 438 F.Supp.2d 318 (S.D.N.Y. 2006). A detainee in a state facility sued officers and supervisors under § 1983, claiming that he was searched in violation of his due process rights. The district court held that the detainee stated a claim of unconstitutional strip search, under the Fourth Amendment, when he alleged that officers, having conducted a legitimate search in connection with prison-wide strip searches, took him out of his cell and subjected him to a second search, even though he had been in their custody ever since the first search, precluding any hiding of contraband on his person. The court also found that the detainee stated claim that the second of two strip searches violated his First Amendment rights as a Muslim, to avoid being seen naked. The court noted that while first search was in furtherance of a compelling government need to maintain order, allowing the search despite religious objection, there was no compelling government need for the second search. The court held that the detainee stated a claim that officers imposed a substantial burden on the religious exercise of the Muslim inmate, in violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA), by forcing him to submit to the second strip search. (George Motchan Detention Center, New York City)

U.S. District Court
PUBLICATIONS
RLUIPA- Religious Land
Use and Institution-
alized Persons Act

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
OPPORTUNITY TO
PRACTICE
RLUIPA- Religious Land
Use and Institution-
alized Persons Act

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 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. According to the court, even assuming that the policy of double-celling some inmates in New York's maximum-security prisons burdened religious practices of Muslim inmates by making it difficult for them to pray in their cells. According to the court, the policy was rationally related to the legitimate goal of finding sufficient bed space to house all maximum security inmates, and thus did not violate the inmates' right to free exercise of religion. The court ruled that the inmates were not entitled to

amend their complaint to add a claim under the Religious Land Use and Institutionalized Persons Act (RLUIPA). (Department of Correctional Services)

U.S. District Court
OPPORTUNITY TO
PRACTICE
RLUIPA- Religious Land
Use and Institution-
alized Persons Act

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 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. Appeals Court
RLUIPA- Religious Land
Use and
Institutionalized
Persons Act
FREE EXERCISE

Lovelace v. Lee, 472 F.3d 174 (4th Cir. 2006). A Muslim prisoner sued state prison officials for violating his free exercise and due process rights, as well as his rights under the Religious Land Use and Institutionalized Persons Act (RLUIPA), by removing him from a list of Ramadan participants, because he allegedly broke Ramadan fast. The district court entered summary judgment for prison officials and the prisoner appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that the removal of the prisoner from a Ramadan observance pass list imposed a “substantial burden” within the meaning of RLUIPA in that it excluded him from pre-dawn and post-sunset Ramadan meals, prevented him from fulfilling one of the five pillars of Islam, could not participate in group prayers or services before or after the special breakfast meal, and because the weekly services were canceled during Ramadan, he was barred from participating in all congregational religious exercises during Ramadan once he allegedly broke the fast. According to the court, the officials did not fulfill their burden of showing that their policies were the least restrictive means of furthering a compelling government interest, as required for the policies to conform to RLUIPA. The prison officials’ explanation for the policies, a “legitimate interest in removing inmates from religious dietary programs where the inmate flouts prison rules reasonably established in order to accommodate the program,” did not fulfill the officials' burden of showing that the policies were the least restrictive means of furthering a compelling government interest. The court noted that because the Virginia Department of Corrections (VDOC) received federal monies, it was subject to the RLUIPA provision that generally prohibited the government from imposing a substantial burden on prisoner’s religious exercise. (Keen Mountain Correctional Center, Virginia)

U.S. District Court
DIET
RLUIPA-Religious Land
Use and Institution-
alized Persons Act

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. Appeals Court
RLUIPA-Religious Land
Use and Institution-
alized Persons Act
DIET

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

- U.S. District Court
RLUIPA-Religious Land
Use and Institutionalized
Persons Act
- Mark v. Gustafson*, 482 F.Supp.2d 1084 (W.D.Wis. 2006). A state prison inmate sued a prison and individuals, alleging that “magic seals” were removed from the interior of his prison cell in violation of his religious rights, and that officials conspired to transfer him to another facility. The district court entered judgment for the defendants. The court held that prison officials did not violate the Religious Land Use and Institutionalized Persons Act (RLUIPA) when they prohibited the inmate from affixing “magic seals,” presumably part of the inmate's practice of religion involving magic, to the walls of his cell. According to the court, the prohibition furthered a compelling government security interest in minimizing opportunities to hide undesirable items, and the prohibition was the least restrictive way of intruding upon religious rights, as it left open the opportunity to deploy seals within the cell in variety of ways. (Oakhill Corr'l Institution, Wisconsin)
- U.S. District Court
SERVICES
RLUIPA- Religious Land
Use and Institutionalized
Persons Act
- 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
ESTABLISHMENT
CLAUSE
FREE EXERCISE
FORCED EXPOSURE
- Moeller v. Bradford County*, 444 F.Supp.2d 316 (M.D.Pa. 2006). Taxpayers and a former inmate of a county prison sued the county, the U.S. Department of Justice, and a private organization providing vocational rehabilitation services to inmates, claiming that funding of the group, which proselytized for the Christian religion, was a violation of Establishment Clause. The district court dismissed the case in part, and the county moved for judgment on the pleadings. The court held that it had jurisdiction over claims that payments to religious organizations violated the state constitution and that the plaintiffs sufficiently stated a claim that the county violated the Establishment Clause, despite the claim that funding was race neutral, where there was no other vocational program funded in the county prison system. According to the court, the county was coercing inmates into involvement with Christianity, as the only way to get valuable rehabilitation benefits. The court also found that a claim was stated that the county engaged in employment discrimination based on religion. The court held that the taxpayers had standing to bring suit when Congressional appropriations were used to finance the organization's efforts to proselytize for the Christian religion, undertaken concurrently with vocational training. The court described the program, operated by the Firm Foundation as follows: “The program not only provides vocational training, but spends a significant amount of time and resources on religious discussions, religious lectures, and prayer. The Firm Foundation describes its program as a prison ministry. It requires its staff to adhere to Christian beliefs and to share these beliefs when the opportunity arises. The Firm Foundation routinely proselytizes to the inmates in the vocational training program, and does not make an effort to segregate government funds for the purely secular purpose of vocational training.” Funding for the program was derived from a federal grant under the Workforce Investment Act from the United States Department of Labor. The Firm Foundation also received funds from Bradford County and the Pennsylvania Commission on Crime and Delinquency. (Bradford County Correctional Facility, Pennsylvania)
- U.S. District Court
DIET
FREE EXERCISE
RLUIPA- Religious Land
Use and Institutionalized
Persons Act
- 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 the 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
EQUAL PROTECTION
RLUIPA - Religious Land
Use and Institution-
alized Persons Act
ESTABLISHMENT
CLAUSE
RESTRICTIONS

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
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)

U.S. District Court
RLUIPA- Religious Land
Use and Institution-
alized Persons Act
OPPORTUNITY TO
WORSHIP

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
HAIR
BEARDS
RLUIPA- Religious Land
Use and Institution-
alized Persons Act

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. District Court
BEARDS
RESTRICTIONS
RLUIPA- Religious Land
Use and Institution-
alized Persons Act

Rasul v. Rumsfeld, 433 F.Supp.2d 58 (D.D.C. 2006). Detainees at the United States naval facility in Guantanamo Bay, Cuba, sued the government, claiming that their treatment violated the Religious Freedom Restoration Act (RFRA). The district court denied the government's motion to dismiss holding that: (1) RFRA applied outside of the continental United States; (2) RFRA applied to Guantanamo Bay; (3) a claim of liability under RFRA was stated; and (4) there was no qualified immunity from suit under RFRA. The Muslim inmates claimed harassment when practicing their religion, forced shaving of religious beards, and placement of the Koran in a toilet. (United States Naval Station at Guantanamo Bay, Cuba)

<p>U.S. Appeals Court FREE EXERCISE RLUIPA-Religious Land Use and Institutional- alized Persons Act</p>	<p><i>Salahuddin v. Goord</i>, 467 F.3d 263 (2nd Cir. 2006). An inmate brought an action against prison officials, alleging that they violated his First Amendment right to free exercise of religion and his free-exercise right under the Religious Land Use and Institutionalized Persons Act (RLUIPA), by forcing Shi'ite and Sunni Muslims to conduct Ramadan services jointly. The district court entered summary judgment for the prison officials; the inmate appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that it was clearly established, for the purposes of qualified immunity, that prison officials could not substantially burden an inmate's right to religious exercise without some justification. The court held that a prison policy under which Shi'ite and Sunni Muslims were required to conduct Ramadan services jointly, if proven not to be justified by a legitimate penological interest or a compelling governmental interest as required by RLUIPA, violated the inmate's free-exercise and RLUIPA rights. (Woodbourne Correctional Facility, Eastern Correctional Facility, Downstate Correctional Facility, Auburn Correctional Facility, Lakeview Correctional Facility, Attica Correctional Facility, New York)</p>
<p>U.S. District Court OPPORTUNITY TO PRACTICE RLUIPA- Religious Land Use and Institutional- alized Persons Act RFRA- Religious Freedom Restoration Act</p>	<p><i>Sample v. Lappin</i>, 424 F.Supp.2d 187 (D.D.C. 2006). An inmate brought suit for declaratory and injunctive relief, claiming that a denial of his request for wine violated the Religious Freedom Restoration Act (RFRA) and the Religious Land Use and Institutionalized Persons Act (RLUIPA), and that the Bureau of Prisons' (BOP) Director failed to train, supervise, and promulgate policies requiring his subordinates to comply with RFRA and RLUIPA. The defense moved to dismiss, and the parties cross-moved for summary judgment. The district court held that genuine issues of material fact existed as to whether an outright ban on an inmate's consumption of wine was the least restrictive means of furthering the government's compelling interest in controlling intoxicants. The inmate described himself as "an observant Jew" who "practiced Judaism before his incarceration and continues his practice of Judaism while confined," and who "sincerely believes that he must drink at least 3.5 ounces of red wine (a reviit) while saying Kiddush, a prayer sanctifying the Sabbath, during Friday night and Saturday shabbos services." The court found that the inmate exhausted his administrative remedies, as required by the Prison Litigation Reform Act (PLRA), with respect to his request for wine, regardless of whether he asked that a rabbi, a chaplain, or a Bureau of Prisons (BOP) staff member administer the wine to him. According to the court, the inmate's obligation to exhaust his administrative remedies did not require that he posit every conceivable alternative means by which to achieve his goal, which was the unburdened exercise of his sincere religious belief. (Federal Correctional Institution, Beaumont, Texas)</p>
<p>U.S. District Court RECOGNIZED RELIGIONS SERVICES</p>	<p><i>Scott v. Ozmint</i>, 467 F.Supp.2d 564 (D.S.C. 2006). A state prisoner brought a civil rights action seeking an injunction requiring a state corrections director and prison chaplains to recognize the Neterian faith as a religion. The defendants moved for summary judgment and the district court granted the motion. The court held that: (1) the prisoner did not satisfy the requirement of the Prison Litigation Reform Act (PLRA) that he show physical injury as required for a civil rights suit for mental or emotional injury; and (2) the decision was reasonably related to legitimate penological concerns. According to the court, the decision not to recognize the prisoner's Neterian faith, which meant that the prisoner could not hold group religious meetings, but still could practice his faith individually, was reasonable related to legitimate penological interests, and thus did not violate the prisoner's free exercise rights. The court noted that the prisoner failed to provide information about the faith and names of religious leaders who could be contacted regarding its practice, as required under the prison regulation. Limited information available about the faith indicated that group worship was not necessary for its practice, and accommodating the prisoner's request for twice-weekly group meeting for the three inmates would have unduly burdened the prison resources. (McCormick Correctional Institution, South Carolina)</p>
<p>U.S. District Court NAME OPPORTUNITY TO WORSHIP RLUIPA-Religious Land Use and Institutional- alized Persons Act</p>	<p><i>Shidler v. Moore</i>, 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</p>

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
RLUIPA- Religious Land
Use and Institutionalized
Persons Act
OPPORTUNITY TO
WORSHIP
NAME
RESTRICTIONS

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
ARTICLES
EQUAL PROTECTION
OPPORTUNITY TO
PRACTICE

Thunderhorse v. Pierce, 418 F.Supp.2d 875 (E.D.Tex. 2006). A Native American inmate brought a pro se action against state prison officials, alleging violations of his free exercise rights and of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court granted the officials' motion for summary judgment. The court held that prison officials did not violate the inmate's free exercise rights by requiring him to send a medicine bag obtained from a non-approved vendor through a unit warden's office for visual inspection. The court found that officials were not required to distinguish between those who practiced shamanism and those who did not, where only 1.66 percent of prisoners identified their religious preference as "Native American." The court noted that members of small religious groups must be afforded a reasonable opportunity to practice their faith in prisons, but need not be provided with facilities or personnel identical to those given to members of more populous denominations. The court held that the officials' denial of the inmate's access to a sacred pipe did not violate his free exercise rights, where inmates were not allowed to possess pipes, the inmate's classification in administrative segregation precluded him from attending pipe ceremonies for security reasons, and the lack of services congruent with inmate's beliefs was due to a lack of volunteers rather than a discriminatory purpose. According to the court, if the state prison policy designating holy days for Native Americans was oriented toward the Plains Indian culture, the policy did not violate the free exercise rights of the Algonquin inmate where prison officials could not reasonably be expected to differentiate between holy days for all branches of Native American religion, the inmate was in administrative segregation and so did not require lay-ins from work, and inmates were permitted to request additional holy days. The inmate explained that he is a practitioner of Native American religion and referred to himself as a "shaman." He stated that the Native American religious program existing in the corrections department gives preferential treatment to "Christian-oriented" Native American beliefs while "disfavoring and excluding" traditionalist Native American ceremonial leaders known as shamans. The officials quoted a law review article entitled *Sacred Standards: Honoring the Establishment Clause in Protecting Native American Sacred Sites*, as follows: "[I]t is difficult to describe one Native American religion, because Native Americans identify themselves by tribe, and many beliefs differ by tribe. Native American religions reflect traditions that have existed in the Americas for over 30,000 years and a rich plurality of religions have evolved." (Texas Department of Criminal Justice, Institutional Division)

U.S. Appeals Court
FREE EXERCISE

Williams v. Bitner, 455 F.3d 186 (3rd Cir. 2006). An inmate brought a § 1983 action against prison officials. The district court denied the officials' motion for summary judgment on the inmate's First Amendment claim, and the officials appealed. The court of appeals affirmed. The court held that the First Amendment right of Muslim inmate to avoid handling pork was clearly established for purposes of qualified immunity. According to the court, the First Amendment right that was violated when prison officials punished the inmate for refusing to handle or assist in preparing pork while working in a prison kitchen was a clearly established right, and thus, officials were not entitled to qualified immunity on the inmate's § 1983 claim that officials violated his right to free

exercise of religion. The court noted that although neither the Supreme Court nor court of appeals had directly addressed whether requiring Muslim inmates to handle pork violated their right to free exercise of religion, other courts that had considered this precise question had uniformly held that prison officials had to respect and accommodate, when practicable, Muslim inmates' religious beliefs regarding prohibitions on handling pork. (State Correctional Institution at Rockview, Pennsylvania)

2007

U.S. Appeals Court
ESTABLISHMENT
CLAUSE
FORCED EXPOSURE

Americans United for Separation of Church and State v. Prison Fellowship Ministries, Inc., 509 F.3d 406 (8th Cir. 2007). A separation of church and state advocacy group, state prison inmates, and others, sued the State of Iowa and a Christian provider of rehabilitation services, claiming that funding of a contract with the Christian organization providing pre-release rehabilitation services to inmates violated the Establishment Clause. The district court granted declaratory and equitable relief in favor of advocacy group and the inmates. The provider and state corrections officials appealed. The appeals court affirmed in part and reversed in part. The appeals court held that the state funding constituted an endorsement of religion, but that the district court abused its discretion in awarding recoupment of state funds that had been paid to the provider. The court noted that even though the provider had the ability to repay the funds, the district court gave no weight to the fact that specific statutes authorized the funding, made no finding of bad faith by the state legislature and governor, and did not consider the testimony of state prison officials that the program was beneficial and that the state received much more value than it paid for. (Iowa Department of Corrections)

U.S. Appeals Court
DIET
OPPORTUNITY TO
PRACTICE
SERVICES
EQUAL PROTECTION
FREE EXERCISE
RLUIPA- Religious Land
Use and Institutionalized
Persons Act

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. Appeals Court
CLOTHING

Boles v. Neet, 486 F.3d 1177 (10th Cir. 2007). A state inmate filed a § 1983 action alleging that a warden violated his rights under the First Amendment by refusing to allow him to wear religious garments required to be worn by Orthodox Jews while he was being transported outside the facility for medical treatment. The district court denied the warden's motions to dismiss and for summary judgment. The appeals court affirmed. The court held that the inmate established a violation of his free exercise rights, as required to preclude a qualified immunity defense, and the warden failed to identify any legitimate penological interests served by refusing the inmate's request. The court found that the warden was not entitled to immunity simply because he was following the prison regulations, and nothing indicated that the regulation requiring inmates to be transported in orange jumpsuits was related to a legitimate penological interest. (Freemont Correctional Facility, Colorado)

U.S. District Court
BEARDS
OPPORTUNITY TO
PRACTICE

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. District Court
DIET
RLUIPA- Religious Land
Use and Institutionalized
Persons Act

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
FREE EXERCISE
RLUIPA- Religious Land
Use and Institutionalized
Persons Act
WORK

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. Appeals Court
ESTABLISHMENT
CLAUSE
FORCED EXPOSURE

Inouye v. Kemna, 504 F.3d 705 (9th Cir. 2007). A parolee brought a § 1983 action in state court against his parole officer, alleging that the officer violated his First Amendment rights by requiring him to attend a drug treatment program that required participation in meetings that were rooted in a regard for a higher power. The case was removed to federal court. The district court granted summary judgment in favor of the parole officer, and parolee appealed. The appeals court reversed and remanded, finding that the parole officer violated the Establishment Clause, and that pertinent Establishment Clause law was clearly established at the time of officer's violation. The parole officer had recommended the revocation of the parolee's parole because he refused to participate. (Hawaii)

U.S. District Court
OPPORTUNITY TO
PRACTICE
RLUIPA- Religious Land
Use and Institutionalized
Persons Act

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
PUBLICATIONS
RLUIPA- Religious Land
Use and Institutionalized
Persons Act

Kaufman v. Schneider, 524 F.Supp.2d 1101 (W.D.Wis. 2007). A former state inmate sued prison officials for declaratory, injunctive, and monetary relief, alleging that he was subjected to retaliatory transfer and that his rights under the First and Eighth Amendments and Religious Land Use and Institutionalized Persons Act (RLUIPA) were violated. The court granted the officials' motion for summary judgment. The court held that the warden was not involved in the inmate's transfer to a maximum security institution, precluding the warden's liability on the claim alleging that he transferred the inmate in retaliation for the inmate's filing of an earlier lawsuit against him. The court found that there was no evidence that any of the prison officials sued by the inmate were personally involved in denying delivery to the inmate of the letter underlying his free speech claim, and therefore the officials could not be held liable under § 1983. According to the court, there were no facts in evidence that the former state inmate was prevented from ordering publications about his religion of atheism while incarcerated at a maximum security facility, was in the facility's step program, or was in any other way injured by the step program's no-publications policy, and therefore the former inmate lacked standing to litigate his claim that the policy violated his free exercise rights and rights under Religious Land Use and Institutionalized Persons Act (RLUIPA). The court held that the former state inmate did not show that while he was incarcerated at a maximum security facility, he ever chose to use out-of-cell time to visit the law library, as opposed to out-of-door exercise, and thus to show an injury-in-fact required for the former inmate to have standing to challenge the prison official's policy of requiring inmates to choose between out-of-cell exercise time and law library time under the Eighth Amendment. (Wisconsin Secure Program Facility)

- U.S. Appeals Court
 RLUIPA- Religious Land
 Use and Institutionalized
 Persons Act
 BOOKS
 ARTICLES
 OPPORTUNITY TO
 PRACTICE
- Kay v. Bemis*, 500 F.3d 1214 (10th Cir. 2007). A prisoner, proceeding in forma pauperis, brought a § 1983 action against prison officials claiming multiple violations of his constitutional rights arising from his imprisonment. The district court dismissed the claims and the prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that allegations made by the prisoner, who identified his religion as Wicca, that he persistently asked prison officials for permission to possess tarot cards to practice his religion and that he twice surreptitiously brought tarot cards into prison and was punished, established that he was a sincere devotee of the Wiccan faith and that he sincerely believed that use of tarot cards was required to practice his religion, as required to support his claim that prison officials violated his First Amendment right to freely exercise his religion by denying him tarot cards, incense, and religious books. The court found that it was unnecessary for the prisoner to show that the use of tarot cards and other items was necessary to the practice of the religion of Wicca if his belief in their use was sincerely held, to support his free exercise claim. The court remanded the case to address the prisoner's claim that prison officials violated RLUIPA by denying him tarot cards, incense, and religious books. (Bonneville Community Correctional Facility, Utah)
- U.S. Appeals Court
 HAIR LENGTH
 RLUIPA- Religious Land
 Use and Institutionalized
 Persons Act
- Longoria v. Dretke*, 507 F.3d 898 (5th Cir. 2007). A prisoner brought a *pro se* action against prison officials, claiming his right to exercise his religion was denied when they denied him permission to grow his hair. The district court dismissed the action and the prisoner appealed. The appeals court affirmed. The court held that the prison's grooming policy did not violate the Religious Land Use and Institutionalized Persons Act (RLUIPA) and did not violate equal protection. The court noted that even if the grooming policy created a substantial burden on the prisoner's religious exercise, the policy served the prison's compelling interest in maintaining order and safety in the prison, since long hair facilitated the transfer of contraband and weapons and long hair could allow escaped prisoners to more easily alter their appearance. The court held that the policy was the least restrictive means to achieve that interest. According to the court, although female prisoners were not subject to the same grooming policy, the policy applied to all prisoners incarcerated in the male prison, and the application of different grooming regulations to male and female inmates did not implicate equal protection concerns. (Robertson Unit, Texas Department of Criminal Justice-Institutional Division)
- U.S. District Court
 FREE EXERCISE
 OPP. TO PRACTICE
 RLUIPA- Relig. Land Use
 and Instit. Persons Act
 SERVICES
- Larry v. Goetz*, 575 F.Supp.2d 965 (W.D.Wis. 2007). A prisoner brought an action against a volunteer chaplain, alleging that the chaplain violated his rights under the free exercise clause of the First Amendment and the Religious Land Use and Institutionalized Persons Act (RLUIPA) when he failed to arrange for Jumah services at a county jail. The district court granted summary judgment in favor of the chaplain. The court held that the chaplain could not be held liable where there was no showing that the chaplain had either a responsibility or the authority to arrange Jumah services at the jail. (Dane County Jail, Wisconsin)
- U.S. District Court
 OPPORTUNITY TO
 WORSHIP
- Monk v. Williams*, 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 because the inmate failed to appeal the prison administrator's denial of his grievance. (Howard R. Young Correctional Institution, Delaware)
- U.S. Appeals Court
 EQUAL PROTECTION
 SINCERITY
 RLUIPA- Religious Land
 Use and Institutionalized
 Persons Act
- Murphy v. Missouri Dept. of Corrections*, 506 F.3d 1111 (8th Cir. 2007). A prisoner brought an action under § 1983 and under the Religious Land Use and Institutionalized Persons Act (RLUIPA) against prison officials, alleging that he was improperly denied privileges that had been given to other religious groups, including communal worship, religious funding and institutional TV airtime for religious videos. The prisoner was a member of the Christian Separatist Church. The district court granted summary judgment in favor of the prison officials, and the prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. On remand, the district court denied the prisoner's motion for a new trial after a jury returned a verdict in favor of the defendants, and the prisoner again appealed. The appeals court affirmed. The court held that the prisoner was required to prove that racially-segregated services were a sincerely held tenet or belief central or fundamental to church doctrine in order to recover under his claim that prison officials substantially burdened his ability to exercise his religion in violation of RLUIPA. (Crossroads Correctional Center, Cameron, Missouri)
- U.S. District Court
 OPPORTUNITY TO
 PRACTICE
 RLUIPA- Religious Land
 Use and Institutionalized
 Persons Act
- Sanders v. Ryan*, 484 F.Supp.2d 1028 (D.Ariz. 2007). A hearing-impaired inmate brought a civil rights action against a prison official and the State of Arizona, claiming his rights were violated under the Religious Land Use and Institutionalized Persons Act (RLUIPA), the First Amendment, Arizona civil rights laws, and the Americans with Disabilities Act (ADA). The district court granted summary judgment in favor of the defendants. The court held that a prison official's refusal to give the prisoner, who listened to audiotapes of Baptist church services as part of his faith, two new tapes unless he exchanged two tapes already in his possession to be destroyed, rather than stored, did not "substantially burden" the prisoner's exercise of his religion, as required to establish a violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The inmate had alleged that such conduct violated a state statute requiring the return of authorized inmate property to the inmate upon his release. According to the court, the state department of corrections policy of limiting property an inmate could possess in his cell or in storage did not violate the rights of prisoners under the Religious Land Use and Institutionalized Persons Act (RLUIPA), where the policy served the "compelling governmental interest" of enhancing the safety and security of prison facilities. The court found that the policy was the "least restrictive means" available to accommodate the government's compelling interests in safety and security. The court noted that the inmate was permitted to practice his religion by engaging in personal Bible study and prayer, receiving

pastoral visits from an accredited minister, and listening to religious tapes. The inmate was able to mail excess religious tapes back to the church in exchange for new ones, and the inmate did not suggest an alternative that was less restrictive but which would accommodate the State's interests of safety and security. (Arizona Dept. Corr.)

U.S. District Court
FREE EXERCISE
RLUIPA- Religious Land
Use and Institutionalized
Persons Act

Schnitzler v. Reisch, 518 F.Supp.2d 1098 (D.S.D. 2007). An inmate who was a practicing Jehovah's Witness brought a § 1983 action against a secretary of corrections, warden, and prison officials, alleging that a prison's sex offender treatment program violated his religious beliefs by requiring his participation in explicit group discussions of a sexual nature as well as viewing certain images. The defendants moved for summary judgment and the district court granted the motion in part and denied in part. The court held that the prisoner's First Amendment rights were not violated by participation in the program, but the prisoner stated a claim for violation of his statutory free exercise of religion under the Religious Land Use and Institutionalized Persons Act (RLUIPA). The court held that the § 1983 claims against the secretary and warden were not based upon the theory of respondeat superior. The court found that summary judgment was precluded by a genuine issue of material fact as to the level of personal involvement of the warden and the Secretary of the South Dakota Department of Corrections in the determination that no alternative form of sex offender treatment program should be provided to the prisoner. (Mike Durfee State Penitentiary, Springfield, South Dakota)

U.S. District Court
CLOTHING
FREE EXERCISE
HAIR
RLUIPA- Religious Land
Use and Institutionalized
Persons Act
RESTRICTIONS

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.

The court also found that the inmate sincerely believed that he was required to possess a second Kanga, which was a Sikh religious comb, and therefore the prison's policy of limiting the inmate to a single Kanga placed a substantial burden on his religious beliefs under RLUIPA. Summary judgment was denied because of fact issues regarding the security risk posed by the Kara, which was a steel bracelet worn by Sikhs, and whether there was a compelling governmental interest to allow the Sikh inmate to only wear the Kara for 30 minutes at a time during meals. The court held that the inmate established a First Amendment free exercise claim with respect to his free exercise clause claim regarding his right to use a reading lamp at night for prayer purposes. The court concluded that the DOCS speculation that the beliefs of the inmate might not be sincere and could instead be "partly" motivated by his resistance to the prison environment was insufficient to defeat the inmate's motion for summary judgment on his free exercise clause claim. According to the court, given that the Sikh inmate would be unable to tie his turban in one of the traditional ways, in a manner sufficient to cover his head using a cloth that was merely 30 inches by 36 inches, the inmate established that the prison's policy regarding cloth length substantially burdened his religious beliefs. The court also found that because the inmate was required to shower with his turban, and to wash his turban every day, the limitation of two turbans was a substantial burden on the inmate's religious practice. The inmate also challenged several other prison policies that involved his hair, separate storage of his religious materials, and other restrictions. (Fishkill Correctional Facility, New York)

U.S. Appeals Court
FREE EXERCISE
RESTRICTION
RLUIPA- Religious Land
Use and Institutionalized
Persons Act

Smith v. Allen, 502 F.3d 1255 (11th Cir. 2007). An inmate brought a civil rights action against prison officials to recover for alleged violation of his free exercise rights under the First Amendment and under the Religious Land Use and Institutionalized Persons Act (RLUIPA), based on prison officials' denial of requests for religious accommodations allegedly associated with his practice of Odinism. The district court granted the officials' motion for summary judgment, and the inmate appealed. The appeals court affirmed. The court held that the term "appropriate relief," as used in section of RLUIPA creating a private cause of action in favor of prison inmates whose free exercise rights are violated, and further providing that, if the inmate successfully sues, then he/she may "obtain appropriate relief," is broad enough to include monetary damages, but the provision could not be construed as creating a private right of action against individual prison officials in their personal capacity for award of monetary damages. The court found that the inmate's practice of Odinism constituted a "religious exercise" for purposes of the RLUIPA, but decisions by the prison officials did not substantially burden the inmate's free exercise rights. Prison officials provided the inmate with a secure location in which to practice the rites of his religion and did not allow him to observe these rites in general prison area. They denied his request for a small fire pit and instead provided only a candle to represent "pine fire of purification." (Religious Activities Review Committee of the Alabama Department of Corrections, Limestone Correctional Facility, Alabama)

U.S. Appeals Court
RESTRICTIONS
RLUIPA- Religious Land
Use and Institutionalized
Persons Act
OPPORTUNITY TO
PRACTICE

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 Corr'l Institution, Rhode Island)

U.S. District Court
FREE EXERCISE
PUBLICATIONS

Wares v. Simmons, 524 F.Supp.2d 1313 (D.Kan. 2007). A prisoner brought suit pursuant to § 1983, claiming violations of the Fifth Amendment and the free exercise clause of the First Amendment, arising from the prison defendants' prohibition on his possession of certain religious texts. The court granted summary judgment in favor of the defendants. The court held that the prisoner's exercise of his religion was not substantially burdened by prison regulations preventing him from possessing a Psalm book (which he had in another form) and a book of teachings by a particular rabbi, and therefore his rights under the free exercise clause of the First Amendment were not violated. According to the court, by virtue of the other religious materials and items that the prisoner was permitted to possess and ceremonies that he was permitted to engage in, his religious conduct or expression was not significantly inhibited or constrained, he remained able to express adherence to his faith, and he had a reasonable opportunity to exercise his sincerely-held religious beliefs. The court found that even if the prisoner's exercise of his religion was substantially burdened by the prison regulations, prison administrators did not violate the prisoner's First Amendment rights since they identified legitimate penological interests in security, safety, rehabilitation, and sound correctional management that justified the impinging conduct, and alternative means of achieving the prisoner's right to freely exercise his religion were available. (Hutchinson Corr. Facility, Kansas)

U.S. Appeals Court
OPPORTUNITY TO
PRACTICE
BOOKS
RESTRICTIONS
RLUIPA- Religious Land
Use and Institutionalized
Persons Act

Washington v. Klem, 497 F.3d 272 (3rd Cir. 2007). A prisoner filed a pro se action against a Department of Corrections (DOC), pursuant to § 1983 and the Religious Land Use and Institutionalized Persons Act (RLUIPA), alleging the DOC's policy of only allowing ten books in a prisoner's cell violated his religious exercise. The district court granted summary judgment in favor of the DOC and the prisoner appealed. The appeals court reversed and remanded. The court held that the policy "substantially burdened" the prisoner's religious exercise under RLUIPA, since the prisoner could not practice his religion in the absence of reading 4 books per day about Africa and African people and then proselytizing about what he had read. The court noted that the DOC allowed only one weekly visit to the prison library which precluded the prisoner from reading 4 books daily, or 28 books per week, that the DOC provided no evidence that the prisoner could freely trade books located inside the prison, and that the DOC forced the indigent prisoner to have outsiders continuously mail books to him which severely inhibited his ability to read 4 new books daily. The court found that the valid interests of the DOC in the safety and health of prisoners and DOC employees were not furthered by the DOC's policy of limiting the prisoner to 10 books in his cell, as required to uphold the policy against the prisoner's claim that the policy violated RLUIPA by substantially burdening his religious exercise. The court concluded that the book limitation policy did not decrease the likelihood of fire or hiding places for contraband in a cell, given the DOC's permission for the prisoner to have magazines and newspapers in addition to the 10 books. The court also held that the policy was not the least restrictive means of achieving the DOC's valid interests in safety and health, as required to uphold the policy against the prisoner's challenge, given the DOC's other policies allowing the prisoner to have 4 storage boxes of personal property in his cell and permitting more than 10 books if approved for educational purposes. According to the court, the least restrictive means would have been to allow the prisoner to choose what property he could keep in his storage units, as long as the property did not violate a prison policy for an independently legitimate reason. (State Correctional Institution-Retreat, Pennsylvania)

2008

U.S. District Court
MEDICAL CARE

Abdur-Raqiyb v. Erie County Medical Center, 536 F.Supp.2d 299 (W.D.N.Y. 2008). A jail prisoner brought a federal civil rights suit against public hospitals and a physician, alleging violation of his First and Eighth Amendment rights during emergency treatment for a suspected heart attack. The district court granted the defendants' motions for summary judgment. The court held that the Muslim prisoner's First Amendment right to free exercise of religion was not violated when hospital personnel administered drugs that were pork-derived and gave him a CT scan in which shellfish-derived dye was used to rule out a possible heart attack, in response to his complaints of chest pain, without informing him in advance of the nature of the substances involved. The court noted that the prisoner acknowledged that his religion permitted the administration of otherwise forbidden substances in emergencies, and hospital staff would have exposed themselves to liability had they not administered the medications and CT test. (Groveland Correctional Facility, New York)

U.S. Appeals Court
OPPORTUNITY TO
PRACTICE
SWEAT LODGE
RLUIPA- Religious Land
Use and Institutionalized
Persons Act

Alvarez v. Hill, 518 F.3d 1152 (9th Cir. 2008). A prisoner brought an action against prison officials alleging that they substantially burdened his religious exercise by denying him various accommodations. The district court granted summary judgment in favor of the officials and the prisoner appealed. The appeals court affirmed in part, reversed in part and remanded. The court held that the complaint established a plausible entitlement to relief under the Religious Land Use and Institutionalized Persons Act (RLUIPA), thereby satisfying the short and plain statement pleading standard, even though the complaint did not cite RLUIPA. The court noted that the prisoner did reference RLUIPA in a subsequent motion and in his opposition to summary judgment. The inmate alleged that officials burdened his religion by denying him the "right to participate and practice the Sweat Lodge Ceremony and Sacred Pipe Ceremony" and by making it "difficult if not impossible to communicate with any of his tribe[']s religious representatives." He also alleged that they forbade him from wearing a headband, consuming tobacco for ceremonial purposes and participating in group worship. (Snake River Correctional Institution, Oregon)

U.S. District Court
ESTABLISHMENT
CLAUSE
FORCED EXPOSURE

Bader v. Wren, 532 F.Supp.2d 308, (D.N.H. 2008). A state prisoner brought a § 1983 action against the commissioner of a Department of Corrections, alleging that a prison rehabilitation program violated the Establishment Clause by improperly endorsing religion as part of the rehabilitative process. The parties cross-moved for summary judgment. The district court granted summary judgment for the defendants. The court held that the rehabilitation program, Alternatives to Violence, "was not religious. According to the court, the state prison's recommendation that the prisoner participate in a violence rehabilitation program did not constitute coercive pressure advancing a religion, or excessive governmental entanglement in religion, as required to support a finding that primary effect of recommendation was to advance religion in violation of the Establishment Clause.

The court noted that although the program was rooted in the non-violent philosophy of a certain religion, the program was secular, not religious, given that nothing about the program promoted, advanced, or even subtly endorsed that religion. The court found that program guides did not allude to, invoke, or call upon any religious books, scriptures, passages or moral code, the program did not implement any cognizable religious practice or methodology, and, notwithstanding the program's identification of a "Transforming Power," the program was explicitly individualistic, relying primarily on the participant's ability to change himself. (New Hampshire State Prison)

U.S. District Court
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
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
DIET
FREE EXERCISE
RLUIPA- Religious Land
Use and Institutionalized
Persons Act

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 Corporation of America, Mississippi)

U.S. Appeals Court
DIET
EQUAL PROTECTION
FREE EXERCISE
HAIR LENGTH
RLUIPA- Religious Land
Use and Institutionalized
Persons Act

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 court held that the prison policy prohibiting male inmates from wearing hair below their collar, which prevented the inmate, who followed the Assemblies of Yahweh, from leaving his hair untrimmed, did not violate RLUIPA. Prison officials gave examples of inmates using hair to conceal contraband and to change their appearance after escaping, and, although the officials allowed shoulder-length hair in the women's barracks, the women were housed in a single unit and thus had less opportunity to obtain and transport contraband. The court also found that the policy did not violate the inmate's free exercise rights. According to the court, the policy did not violate the inmate's equal protection rights, inasmuch as differences in security risks between male and female inmates was a valid reason for differing hair-length rules for men and women, and the policy was reasonably related to the state's legitimate, penological interests of safety and security. The court noted that the district court's finding that the corrections department director's expert testimony that male inmates presented greater security risks than female inmates was credible, and was not clearly erroneous.

The court found that a policy that generally prohibits inmates from wearing beards, which prevented the inmate from refraining from "rounding the corners" of his beard, did not violate RLUIPA, even though inmates with medical conditions were allowed to have a quarter-inch beard. The court ruled that safety and security concerns constituted a compelling penological interest, and the prohibition was the least restrictive means available to further that interest. The court found that the beard policy did not violate the inmate's free exercise or equal protection rights.

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)

<p>U.S. Appeals Court RLUIPA- Religious Land Use and Institutionalized Persons Act SWEAT LODGE</p>	<p><i>Fowler v. Crawford</i>, 534 F.3d 931 (8th Cir. 2008). A state prisoner brought an action against prison officials, alleging that the officials' refusal to grant him access to a sweat lodge in which to practice his Native American faith violated the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court granted summary judgment to the prison officials. The prisoner appealed. The appeals court affirmed. The court held that the prohibition on the sweat lodge on the grounds of a maximum-security prison was in furtherance of a compelling governmental interest, and that the ban was the least restrictive means by which to further that compelling interest. The court noted that serious safety and security concerns arose due to the burning of embers and hot coals, blunt instruments such as split wood and large scalding rocks, sharper objects such as shovels and deer antlers, and an enclosed area inaccessible to outside view, and the sweat lodge would have drained prison security's manpower over the 6 to 7 hour duration of the ceremony. The court noted that even though another prison within the state had previously operated a sweat lodge, ordering every prison to do so would result in a requirement that every institution within the jurisdiction accommodate inmates of the Native American faith, which would discourage officials from accommodating other religious practices, knowing that all institutions would likely have to accommodate the same practices. Prison officials had suggested alternatives to, and sought a compromise with, the prisoner to no avail, offering him an outdoor area where he could smoke a ceremonial pipe and practice other aspects of his faith in open view. The prisoner rejected anything short of a sweat lodge with a minimum of 17 times per year. (Jefferson City Correctional Center, Missouri)</p>
<p>U.S. District Court ESTABLISHMENT CLAUSE</p>	<p><i>Freedom From Religion Foundation, Inc. v. Olson</i>, 566 F.Supp.2d 980 (D.N.D. 2008). An organization that opposed government endorsement of religion and its members brought an action against the state of North Dakota, and officials from various state and county agencies, alleging that they improperly directed taxpayer funds to the support of religion in violation of the Establishment Clause. The organization sought declaratory and injunctive relief. The district court dismissed the case. The court held that the members of the organization lacked standing to sue state officials and lacked municipal taxpayer standing to sue county officials. The court noted that the action did not attack any legislative action or appropriation, but rather challenged the discretionary distribution of funds made by executive branch officials carrying out their official duties. The suit challenged public funding of the Dakota Boys and Girls Ranch that provides residential treatment and educational services to children referred for treatment by North Dakota government agencies, including state correctional agencies. The ranch is a publicly accredited Christian organization, and receives taxpayer appropriations pursuant to disbursement programs authorized by the North Dakota Legislative Assembly. The organization alleged that allocation of public funds to the ranch violates "the fundamental principle prohibiting government endorsement of religion by disbursing taxpayer appropriations for the operation of a faith-based organization that includes the integration of religion as an inherent component of services provided." (North Dakota Department of Corrections and other state and local agencies)</p>
<p>U.S. Appeals Court OPPORTUNITY TO WORSHIP RLUIPA- Religious Land Use and Institutionalized Persons Act</p>	<p><i>Greene v. Solano County Jail</i>, 513 F.3d 982 (9th Cir. 2008). A former prisoner sued a county jail official asserting statutory and constitutional challenges to the county jail's policy of prohibiting maximum security prisoners from participating in group worship. The district court entered summary judgment for the official and the prisoner appealed. The appeals court reversed in part, vacated in part, and remanded. The court held that the religious exercise at issue in the prisoner's suit under the Religious Land Use and Institutionalized Persons Act (RLUIPA) was engaging in group worship, not practicing his religion as a whole. Therefore, even if the ban on group worship did not place a substantial burden on the prisoner's practice of Christianity, such fact would not ensure that ban was in compliance with RLUIPA. According to the court, the jail's policy of prohibiting the maximum security prisoner from attending group religious worship services substantially burdened the prisoner's ability to exercise his religion as required for the ban to violate RLUIPA. The court found that summary judgment was precluded by genuine issues of material fact as to whether the jail's policy was the least restrictive means of maintaining security. (Solano County Jail, Claybank Facility, California)</p>
<p>U.S. District Court DIET OPPORTUNITY TO PRACTICE RLUIPA- Religious Land Use and Institutionalized Persons Act</p>	<p><i>Harnett v. Barr</i>, 538 F.Supp.2d 511 (N.D.N.Y. 2008). A prisoner brought a civil rights action against corrections defendants, alleging they interfered with the practice of his religion in violation of the First Amendment and the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court denied the defendants' motion to dismiss. The court held that, without more, it could not be stated that the prisoner could prove no set of facts that would entitle him to relief under the First Amendment or RLUIPA. The prisoner alleged that the corrections defendants confiscated his religious meal, denied a sweet breakfast at the end of Ramadan, denied the ability to retain food in his cell on Mondays and Thursdays, and denied permission to hem his pants. The court found that failure of a supervisory official to investigate a letter of protest written by the inmate is not sufficient to show personal involvement for the purposes of establishing § 1983 liability. According to the court, the same is true if the only involvement of the supervisory official is to refer the inmate's complaint to the appropriate staff for investigation. (Upstate Correctional Facility, New York)</p>
<p>U.S. District Court DIET FREE EXERCISE</p>	<p><i>Holloway v. Bizzaro</i>, 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 Co. Fla.)</p>
<p>U.S. District Court DIET PLACE OF WORSHIP RLUIPA- Religious Land Use and Institutionalized Persons Act</p>	<p><i>Hudson v. Dennehy</i>, 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.</p>

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. District Court
BEARDS

Jacobs v. Wilkinson, 529 F.Supp.2d 804 (N.D. Ohio 2008). An inmate brought a § 1983 suit, claiming constitutional violations arising from prison officials' forcing him to shave his beard in contravention of his religious beliefs. The inmate also alleged denial of proper medical work restrictions. The district court dismissed the suit for failure to exhaust administrative remedies as required by the Prison Litigation Reform Act (PLRA). The inmate moved to reopen, and to consolidate his complaint and the court's prior screening order. The court held that a Supreme Court decision holding that courts should not dismiss prisoner complaints under the PLRA in their entirety when the prisoner presents both exhausted and unexhausted claims did not apply retroactively to the inmate's case. (Mansfield Correctional Institution, Ohio)

U.S. District Court
RFRA-Religious Freedom
Restoration Act

Jama v. Esmor Correctional Services Inc., 549 F.Supp.2d 602 (D.N.J. 2008). An alien brought an action alleging that a government contractor that detained her pending asylum proceedings violated the Religious Freedom Restoration Act (RFRA) and state law. After a jury verdict in the alien's favor, the alien moved for attorney fees and expenses. The district court granted the motion, finding that the alien was the "prevailing party, and that the alien's calculation of the percentage of attorney hours devoted to her RFRA claims was reasonable. The attorney fees and expenses approved by the court totaled \$642,399. The decision was vacated and the case was remanded by an appeals court in 2009. The district court noted that "...the case arose out of the appalling conditions that prevailed at the detention center in Elizabeth, New Jersey". The appeals court held that the district court could not attribute a portion of the alien's state law tort award to her RFRA claim but that the court may consider the results on the tort claims. The appeals court affirmed the district court's determination of market billing rates. (Esmor Correctional Services, Inc., Elizabeth, New Jersey)

U.S. District Court
HAIR LENGTH
OPPORTUNITY TO
PRACTICE
RLUIPA- Religious Land
Use and Institutionalized
Persons Act

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
FREE EXERCISE
RFRA-Religious Freedom
Restoration Act

Kaemmerling v. Lappin, 553 F.3d 669 (D.C. Cir. 2008). A federal prisoner sought to enjoin application of the DNA Analysis Backlog Elimination Act (DNA Act), alleging the Act violated his rights under the Religious Freedom Restoration Act (RFRA) and the First, Fourth, and Fifth Amendments. The district court dismissed the action for failure to exhaust administrative remedies. The prisoner appealed. The appeals court affirmed. The court held that the prisoner's allegation that DNA collection burdened his free exercise of religion failed to state a claim under the First Amendment and RFRA. The court found that the potential criminal penalty for failure to cooperate with the collection of a DNA sample did not violate RFRA. According to the court, the collection of prisoner DNA furthers a compelling government interest using the least restrictive means. The court also found that the DNA Act does not violate equal protection despite the fact that it requires collection of DNA only from felons who are incarcerated or on supervised release, rather than those who are no longer under the supervision of the Bureau of Prisons (BOP), where the BOP's measure of control over supervised and incarcerated felons makes it significantly easier to collect their DNA samples. The court noted that the extraction, analysis, and storage of the prisoner's DNA information did not call for the prisoner to modify his religious behavior in any way, did not involve any action or forbearance on the prisoner's part, and did not interfere with any religious act in which the prisoner was engaged. (Federal Correctional Institution, Seagoville, Texas)

U.S. Appeals Court
DIET
FREE EXERCISE
RLUIPA- Religious Land
Use and Institutionalized
Persons Act
RESTRICTIONS

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
DIET
EQUAL PROTECTION

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
CLOTHING
OPPORTUNITY TO
PRACTICE
RLUIPA- Religious Land
Use and Institutionalized
Persons Act

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
PLACE TO WORSHIP
PUBLICATIONS
RLUIPA- Religious Land
Use and Institutionalized
Persons Act
VOLUNTEERS

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. Appeals Court
DIET
ESTABLISHMENT
CLAUSE
FREE EXERCISE
RLUIPA- Religious Land
Use and Institutionalized
Persons Act
RFRA- Religious Freedom
Restoration Act

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
FREE EXERCISE
RESTRICTIONS

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 an injunction relating to restrictions of detainees' religious rights based on security concerns was narrowly drawn and extended no further than necessary to correct the violation of the federal right of pretrial detainees in administrative segregation. The injunctive order, with its provision for the curtailment or elimination of pretrial detainees' religious rights based on security concerns, provided for no more than a minimum level of ongoing participation in religious activities.

The court held that providing pretrial detainees housed in administrative segregation only 90 minutes of exercise per week, less than 13 minutes per day, constituted punishment in violation of due process standards. The court found that an order requiring that inmates in administrative segregation be permitted exercise at least twice each week for a total of not less than 2 hours per week was necessary to correct the current and ongoing violation.

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)

U.S. District Court
EQUAL PROTECTION
ESTABLISHMENT
CLAUSE
FREE EXERCISE
OPPORTUNITY TO
PRACTICE
RLUIPA- Religious Land
Use and Institutionalized
Persons Act

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. The court held that summary judgment was precluded by genuine issues of material fact as to whether the corrections department's regulations relating to Shi'ite prisoners, which failed to provide for Friday prayer services independent of Sunni participation, were reasonably related to legitimate penological interests. The court also held that genuine issues of material fact existed as to whether the corrections department was able to accommodate Shi'ite prisoners so as not to violate their rights under the Establishment Clause at de minimis cost. The court held that summary judgment was precluded by genuine issues of material fact as to whether the Shi'ite prisoners' religious beliefs were substantially burdened by attendance at a Sunni-led, Sunni-dominated Friday Jumah service, and/or use of a Zohr prayer as a substitute for attending Jumah services. The court found that summary judgment was precluded by genuine issues of material fact as to whether Shi'ite prisoners were similarly situated to other religious denominations and yet treated differently, and as to whether the distinctions made between Shi'ites and other religious denominations, including the denial of independent services, were reasonably related to legitimate penological interests. 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
RFRA- Religious Freedom
Restoration Act

Rasul v. Myers, 512 F.3d 644 (D.C. Cir. 2008). Former detainees at a military facility in Guantanamo Bay, Cuba sued the Secretary of Defense and commanding officers alleging they were tortured. The detainees asserted claims under the Alien Torture Statute, under the Geneva Conventions, under the Religious Freedom Restoration Act (RFRA) and also asserted Fifth and Eighth Amendment claims on a *Bivens* cause of action. The defendants moved to dismiss and the district court granted the motion in part and denied the motion as to the RFRA claim. Both sides appealed. The district court affirmed in part and reversed as to the RFRA claim. The court held that the acts of torture allegedly committed against aliens detained at the military base in Cuba were "within the scope of employment" of military personnel who were allegedly committing such acts, for the purpose of deciding whether the United States should be substituted as defendant. The court found that the aliens were without property or presence in the United States and lacked any constitutional rights and therefore could not assert a *Bivens* claim against military personnel for alleged due process violations and cruel and unusual punishment inflicted upon them. The court held that the term "persons" as used in the RFRA to generally prohibit the government from substantially burdening a "person's exercise of religion" did not extend to non-resident aliens. (United States Naval Base at Guantanamo Bay, Cuba)

<p>U.S. Appeals Court DIET FREE EXERCISE EQUAL PROTECTION RLUIPA- Religious Land Use and Institutionalized Persons Act</p>	<p><i>Shakur v. Schriro</i>, 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 a 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)</p>
<p>U.S. District Court DIET RLUIPA- Religious Land Use and Institutionalized Persons Act</p>	<p><i>Shilling v. Crawford</i>, 536 F.Supp.2d 1227 (D.Nev. 2008). A Washington prisoner who was being housed in Nevada brought an action against prison officials, claiming violation of his rights under the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court granted the officials' motion for summary judgment. The court held that prison authorities imposed a substantial burden on the prisoner's religious beliefs when they conditioned the prisoner's receipt of a kosher meal on his relinquishment of the benefits of living in a lower-security facility. But the court held that even if the prisoner could bring an individual capacity claim against prison officials under RLUIPA, the officials would be entitled to qualified immunity since it would not have been clear to a reasonable official in April 2004 that offering the prisoner a transfer to a higher security prison to accommodate his religious diet would violate his rights under RLUIPA. (High Desert State Prison, Nevada, and Washington Department of Corrections)</p>
<p>U.S. District Court DIET ITEMS PERMITTED PLACE TO WORSHIP RLUIPA- Religious Land Use and Institutionalized Persons Act</p>	<p><i>Sisney v. Reisch</i>, 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. The court also found that summary judgment was precluded by fact issues as to whether officials' denial of the inmate's request, that Jewish inmates be given additional time to conduct group Torah, Kabbalistic and language studies, was the least restrictive means of furthering any legitimate penological interest. The court held that denial of the inmate's request to be provided with kosher coffee was not an equal protection deprivation. The court held that the officials' alleged denial of the inmate's request to possess or use a commercially-prepared Jewish religious calendar did not impose a substantial burden on his exercise of his religion, within the meaning of RLUIPA, where the inmate was allowed to make his own calendar and was not denied access to materials from which he could learn the dates of religious holidays. The court found that officials' denial of the inmate's request to possess and use a lightbulb diffuser and to use oils and burn herbs in his cell appeared to be the least restrictive means for furthering a compelling governmental interest, where diffusers posed a serious fire hazard, other inmates and staff might be allergic to the fumes or find the aroma offensive, and they could be used to conceal prohibited activities such as smoking. (South Dakota State Penitentiary)</p>
<p>U.S. District Court DIET</p>	<p><i>Smith v. Bruce</i>, 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)</p>
<p>U.S. District Court DIET RECOGNIZED RELIGIONS</p>	<p><i>Stanko v. Patton</i>, 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)</p>
<p>U.S. District Court DIET</p>	<p><i>Thomas v. Northern</i>, 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</p>

no evidence that the inmate ever told officials that he had a religious preference. (Southeast Correctional Center, Missouri)

U.S. District Court
BEARDS
RLUIPA- Religious Land
Use and Institutionalized
Persons Act

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
ARTICLES
EQUAL PROTECTION
FREE EXERCISE
OPPORTUNITY TO
PRACTICE

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. (North Dakota State Penitentiary)

U.S. Appeals Court
DIET
RLUIPA-Religious Land
Use and Institutionalized
Persons Act

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
FREE EXERCISE
OPPORTUNITY TO
WORSHIP
RLUIPA- Religious Land
Use and Institutionalized
Persons Act

Crawford v. Clarke, 578 F.3d 39 (1st Cir. 2009). Muslim inmates confined in a special management unit (SMU) sued the Commissioner of the Massachusetts Department of Correction (DOC) under the Religious Land Use and Institutionalized Persons Act (RLUIPA), alleging that he violated their right to freely exercise their religion by preventing them from participating in Jum'ah Friday group prayer. The district court entered an injunction requiring closed-circuit broadcasting of Jum'ah in any SMU in which the plaintiff inmates were housed or might be housed in the future, and subsequently denied the commissioner's motion for reconsideration. The commissioner appealed. The appeals court affirmed. The appeals court held that the district court did not abuse its discretion in issuing the injunction requiring corrections officials to provide closed circuit television broadcasts of services in any SMU in which the plaintiff inmates were housed or might be housed in the future, as opposed to the SMU in which they were currently housed, without making findings as to whether other SMUs were suitable for closed circuit broadcasts. The court found that the injunction did not violate the Prison Litigation Reform Act (PLRA), where the prospective relief was narrowly drawn and providing closed-circuit broadcasting was the least intrusive means to alleviate the burden on the inmates' rights. The court noted that the commissioner put nothing in the record to differentiate other SMUs on the issues of a compelling governmental interest or least restrictive means. (Massachusetts Department of Correction, MCI-Cedar Junction)

U.S. District Court
DIET
COSTS
RLUIPA-Religious Land
Use and Institutionalized
Persons Act

Dawson v. Burnett, 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)

<p>U.S. District Court APPEARANCE CHAPLAIN HATS OPPORTUNITY TO PRACTICE RFRA-Religious Freedom Restoration Act SEARCHES</p>	<p><i>Forde v. Zickefoose</i>, 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)</p>
<p>U.S. Appeals Court DIET EQUAL PROTECTION FREE EXERCISE</p>	<p><i>Gallagher v. Shelton</i>, 587 F.3d 1063 (10th 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)</p>
<p>U.S. Appeals Court FREE EXERCISE RLUIPA- Religious Land Use and Institutionalized Persons Act</p>	<p><i>Gladson v. Iowa Dept. of Corrections</i>, 551 F.3d 825 (8th Cir. 2009). State inmates sued an assistant warden, alleging that he violated their free exercise and Religious Land Use and Institutionalized Persons Act (RLUIPA) rights by limiting their observance of a Wiccan holiday. The inmates sought damages and injunctive relief. The district court denied injunctive relief and the inmates appealed. The appeals court affirmed. The court held that the prison did not substantially burden the Wiccan inmates' observance of the Samhain religious holiday, and thus did not violate their free exercise or RLUIPA rights. According to the court, the inmates failed to offer any evidence that a grant of only three hours for the celebration significantly inhibited or constrained their conduct or expression, meaningfully curtailed their ability to express adherence to their faith, or denied them reasonable opportunities to engage in activities fundamental to their religion. The court noted that a former prison treatment director had reduced the quantity of food available for the celebration but that the current treatment director had not continued that practice. (Iowa State Penitentiary)</p>
<p>U.S. District Court DIET EQUAL PROTECTION FREE EXERCISE RLUIPA-Religious Land Use and Institutionalized Persons Act</p>	<p><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)</p>
<p>U.S. District Court EQUAL PROTECTION FREE EXERCISE RECOGNIZED RELIGION RFRA-Religious Freedom Restoration Act</p>	<p><i>Harrison v. Watts</i>, 609 F.Supp.2d 561 (E.D.Va. 2009). A former federal inmate brought a Bivens action against various employees and administrators within the federal Bureau of Prisons (BOP), asserting that his free exercise, equal protection, and rights under the Religious Freedom Restoration Act of 1993 (RFRA) were violated. The district court granted the defendants' motion to dismiss. The court denied the inmate's motion for reconsideration. The court held that the inmate's practice of the "Nation of Gods and Earths" was not a religion. According to the court, the inmate's practice of the "Nation of Gods and Earths" (NOGE) was a "way of life" and not a religion warranting free exercise protection, where the inmate had a long-standing and adamant position that the NOGE was not a religion and that its precepts were not religious in nature. (Federal Correctional Complex Petersburg, Virginia)</p>

U.S. District Court
FREE EXERCISE
RESTRICTIONS
RLUIPA- Religious Land
Use and Institutionalized
Persons Act

Houseknecht v. Doe, 653 F.Supp.2d 547 (E.D.Pa. 2009). An inmate brought an action against current and former deputy wardens alleging they violated his right to freely exercise his religion under the First Amendment. The defendants moved for summary judgment. The court granted the motion in part and denied in part. The court held that the restriction of the inmate's religious rights due to his election to enter into protective custody, under which there were no formal religious ceremonies or formal classes similar to those provided to general population inmates, was rationally related to legitimate penological interest in maintaining security and order, and thus did not violate inmate's First Amendment right to free exercise of religion. According to the court, it was reasonable for an inmate who opted for more protective conditions to enjoy fewer amenities. The court noted that the inmate had regular communication with a chaplain who regularly brought reading materials to the inmates in protective custody, and the inmate was not prevented from sitting with other inmates and doing his own Bible study in the unit day room. The court held that it could not require the prison to permit inmates in protective custody to attend formal gatherings with other inmates, given the purpose of protective custody to segregate inmates who believed that other inmates posed a danger to them, and the provision of additional reading materials or access to additional religious media programming could likely not be accomplished without significant cost. The court found that the Inmate's religious exercise was not substantially burdened by his election to enter into protective custody, under which there were no formal religious ceremonies or formal classes similar to those provided to general population inmates, as required to establish a violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The court found that there was no suggestion that prison officials placed substantial pressure on the inmate to substantially modify his behavior or to violate his beliefs, he was not forced to choose between following the precepts of his religion and forfeiting benefits otherwise generally available to other inmates, and he acknowledged that he received and read the inmate handbook, which advised that protective custody carried with it restrictions on religious access. (Berks County Prison, Pennsylvania)

U.S. Appeals Court
DIET
OPPORTUNITY TO
PRACTICE
RESTRICTIONS
RLUIPA- Religious Land
Use and Institutionalized
Persons Act

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 held that prison officials' restrictions which allowed a prisoner to serve as a facilitator of meetings only if the religion was known outside of the prison and prohibited the prisoners' demand to spar and receive professional martial arts training, was the least restrictive means of furthering their compelling interests of safety and institutional security, for the purposes of prisoners' action alleging violation of their rights under RLUIPA. According to the court, the restriction struck a delicate balance between allowing prisoners to participate in congregational activities while ensuring the meetings did not serve as proxies for gang recruitment and organization, while furthering the officials' compelling interests in safety and institutional security. 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
FREE EXERCISE
BOOKS

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. District Court
CHAPLAIN
EQUAL PROTECTION
OPPORTUNITY TO
PRACTICE
PLACE TO WORSHIP
VOLUNTEERS

McCullum v. California, 610 F.Supp.2d 1053 (N.D.Cal. 2009). A volunteer Wiccan chaplain for inmates incarcerated by the California Department of Corrections and Rehabilitation (CDCR) filed suit alleging disparate treatment from volunteers of other faiths and retaliation for his complaints about the CDCR's treatment of Wiccans. The district court granted the defendants' motion for summary judgment. The court held that equal protection was not denied to the volunteer Wiccan chaplain who alleged he was not being permitted to see inmates at times and in locations when and where other chaplains were permitted, and that being denied access to chapel time for religious instruction and benefits extended to other administrative volunteer chaplains including access to telephone and computer, and being subjected to more rigorous security scrutiny. According to the court, there was no evidence that other voluntary clergy did not encounter the same difficulties or as to inmates that were denied access to his services. The court found that the CDCR did not retaliate against the volunteer Wiccan chaplain for protected speech complaining against the mistreatment of Wiccans by "denigrating" him while addressing a group of Protestant chaplains or by refusing to hire him as community partnership manager at a women's facility and a state prison. The court noted that the claimed denigration, even if true, did not result in the loss of a valuable government benefit, and that the decision not to hire him was based on the superior qualifications of those ultimately hired rather than on his religion. (California Corrections Institution)

U.S. Appeals Court
DIET
RLUIPA-Religious Land
Use and Institutionalized
Persons Act

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. Appeals Court
FREE EXERCISE
RLUIPA-Religious Land
Use and Institutionalized
Persons Act

Ortiz v. Downey, 561 F.3d 664 (7th Cir. 2009). A federal pretrial detainee brought a § 1983 action against the chief of corrections at a detention center, alleging his rights under the First Amendment's Free Exercise Clause were violated. The district court dismissed the complaint and the detainee appealed. The appeals court reversed and remanded. The court held that the detainee stated a § 1983 claim that his First Amendment free exercise rights were violated by alleging that he was denied a religious rosary and a prayer booklet solely because a jail official did not find those items vital to worship. The court also found the alleged denial stated a claim under the Religious Land Use and Institutionalized Persons Act (RLUIPA). (Jerome Combs Det. Center, Kankakee, Illinois)

U.S. District Court
DIET
RLUIPA- Religious Land
Use and Institutionalized
Persons Act

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
FREE EXERCISE
RFRA-Religious Freedom
Restoration Act

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 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. District Court
DIET
FREE EXERCISE

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
DIET
EQUAL PROTECTION
RLUIPA-Religious Land
Use and Institutionalized
Persons Act

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 Corr. Institution-Hagerstown)

U.S. District Court
CHAPLAIN
OPPORTUNITY TO
PRACTICE
RELIGIOUS ARTICLES
RLUIPA-Religious Land
Use and Institutionalized
Persons Act

Rouser v. White, 630 F.Supp.2d 1165 (E.D.Cal. 2009). A California state prisoner brought a § 1983 action against current and former directors of the California Department of Corrections and Rehabilitation (CDCR) and wardens at two prisons at which the prisoner was housed, alleging violations of federal and state constitutions, and the Religious Land Use and Institutionalized Persons Act (RLUIPA), related to his practice of the Wiccan religion. The defendants moved for summary judgment and the district court granted the motion in part and denied in part. The court held that the officials significantly burdened the prisoner's exercise of the Wiccan religion under RLUIPA by inhibiting the prisoner's timely receipt of religious articles, restricting Wiccans' use of chapel space, failing to announce Wiccan group worship to the general population, prohibiting use of certain items that are part of group worship, blocking access to religious items, and failing to retain a paid chaplain to provide services to the prisoner and other Wiccans. According to the court, the officials made no deliberate change in policies to prevent the recurrence of the events that caused understaffing that resulted in the prisoner being barred from attending group services. The court held that the failure of the officials to hire a paid chaplain to attend to the religious needs of the prisoner and other Wiccans constituted a substantial burden on the prisoner's religious exercise under RLUIPA, where paid chaplains had certain rights and authority within institutions, which volunteer chaplains and inmates themselves were denied, thus hindering the prisoner's religious exercise. The court found that neither limited resources, nor lack of necessary accommodations to facilitate the religious needs in prisons, constituted a compelling interest under RLUIPA, and thus the California Department of Corrections and Rehabilitation could not avoid liability under RLUIPA in the prisoner's action. The court held that a prison warden, but not the director of the California Department of Corrections and Rehabilitation, was liable for violation of the prisoner's free exercise of the Wiccan religion arising from denial of the prisoner's request for a "Witches Bible" while the prisoner was in administrative segregation. According to the court, even if the warden did not personally sign the form denying the request, it was reasonable to assume that the person who signed the form did so with the warden's authority. But the court found that the proffered reasons were rationally related to the denial of the prisoner's request for incense and candles, and thus did not violate the prisoner's right of free exercise of religion. The director and warden denied the request based on fire safety concerns. The court held that California prison officials instituted a policy of denominational preference by harassing the prisoner on the basis of his Wiccan faith, and denying him access to religious articles, group worship, and a spiritual leader, thus weighing against the officials under the test to determine whether they violated the prisoner's rights under the Establishment Clause. The court noted that the officials' policy to announce to the general population times for certain religious services, but not to announce Wiccan services, had the primary effect of advancing or inhibiting religion. The court denied qualified immunity to the director and the warden because the law was well-settled at the time. The court concluded that the prisoner was entitled to injunctive relief on his claims, even though officials had changed some policies to facilitate the prisoner's access to religious items and group worship. The court found that these changes had not improved the process for approving orders for religious items nor altered the way in which religious groups gained access to items in lockers, and a pattern of constitutional violations existed sufficient to call into question the permanence of any changes the defendants had made. (Pleasant Valley State Prison, California)

U.S. District Court
FREE EXERCISE
OPPORTUNITY TO
PRACTICE
RESTRICTIONS
VOLUNTEERS

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)

<p>U.S. Appeals Court OPPORTUNITY TO PRACTICE RLUIPA- Religious Land Use and Institutionalized Persons Act RESTRICTIONS</p>	<p><i>Singson v. Norris</i>, 553 F.3d 660 (8th Cir. 2009). A prisoner brought an action against a state department of corrections, alleging its policy prohibiting in-cell use of tarot cards violated the Religious Land Use and Institutionalized Persons Act (RLUIPA). The prisoner was a follower of Wiccan and asserted that tarot cards were part of his religious practices. Following a trial, the district court ruled in favor of the department of corrections. The prisoner appealed. The appeals court affirmed. The court held that the policy did not violate RLUIPA, where the potential effect of in-cell use of tarot cards on the guards and allocation of prison resources outweighed the restrictions felt by any interested inmate-users. (Arkansas Department of Correction)</p>
<p>U.S. Appeals Court HAIR LENGTH RLUIPA- Religious Land Use and Institutionalized Persons Act</p>	<p><i>Smith v. Ozmint</i>, 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 Corr. Institution)</p>
<p>U.S. Appeals Court PLACE TO WORSHIP RLUIPA-Religious Land Use and Institutionalized Persons Act</p>	<p><i>Sossamon v. Lone Star State of Texas</i>, 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)</p>
<p>U.S. Appeals Court FREE EXERCISE RELIGIOUS ITEMS RLUIPA- Religious Land Use and Institutionalized Persons Act</p>	<p><i>Van Wyhe v. Reisch</i>, 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. (South Dakota State Penitentiary)</p>
<p>U.S. District Court DIET COSTS FREE EXERCISE</p>	<p><i>Yaacov v. Collins</i>, 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)</p>

U.S. District Court
CLOTHING
FREE EXERCISE

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
DIET
OPPORTUNITY TO
PRACTICE
RLUIPA- Religious Land
Use and Institutionalized
Persons Act
CHAPLAIN
EQUAL PROTECTION

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, RLUIPA did not require state department of corrections to provide a full-time paid Muslim spiritual leader, as RLUIPA required governments to refrain from substantially burdening religion, not to affirmatively subsidize religion. The court held that the state department of corrections' policy of not paying for soft-cover Islamic books for prisoners who could not keep their hardback Islamic books did not violate RLUIPA, as RLUIPA required governments to refrain from substantially burdening religion, not to affirmatively subsidize religion. 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
DIET
FREE EXERCISE
PLACE OF WORSHIP

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. According to the court, the prisoner's allegations that he was denied access to a priest, a place of worship, communion, confessional, congregation with those of his faith and a kosher diet in accordance with his beliefs were sufficient to state a colorable § 1983 claim for violations of First Amendment right to free exercise of his religion. (High Desert State Prison, Nevada)

U.S. District Court
BEARDS
FREE EXERCISE

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. District Court
ESTABLISHMENT
CLAUSE
FREE EXERCISE
FORCED EXPOSURE

Chappell v. Helder, 696 F.Supp.2d 1021 (W.D.Ark. 2010). An inmate brought a § 1983 suit claiming that religious presentations in a dayroom during lockout times contravened the Free Exercise Clause of the Constitution. The court held that the presentations contravened the inmate's rights under the Free Exercise Clause. The court noted that although he was not told to sit and listen, nor was he forced to participate, there was a forced inculcation in the fact that he was unable to remove himself to a place where he did not have to hear the presentations. The court found that allowing only the "Holy Bible" to be possessed by inmates during a morning

lockout violated the inmate's rights under the Establishment Clause, but the inmate's right of meaningful access to the courts was not violated. (Washington County Detention Center, Arkansas)

U.S. District Court
BOOKS
DIET
FREE EXERCISE
PLACE OF WORSHIP
PUBLICATIONS
RLUIPA- Religious Land
Use & Institutionalized
Persons Act

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. The court found that prison officials did not violate the inmate's First Amendment rights by denying him meeting space and time in a prison chapel to conduct religious classes or meetings, based on a state-wide policy of denying meeting space and time to the religious group due to the racial and hate filled nature of the materials and doctrine of the group. But the court found that the officials failed to meet their burden to show that banning the religious group from the chapel was the least restrictive means of achieving a compelling interest, as required for summary judgment on the inmate's RLUIPA claim. 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 Corr'l Center, Jess Dunn Corr'l Center, Oklahoma)

U.S. Appeals Court
DIET
OPPORTUNITY TO
WORSHIP
RLUIPA- Religious Land
Use and Institutionalized
Persons Act

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 court found that the prisoner's First Amendment right of freedom of religion was not violated by the prison's lack of Jewish services and literature, and thus, the prisoner could not prevail in his § 1983 First Amendment claim on that basis. The court noted that the prisoner was the only inmate requesting Jewish services and literature, that prison policies reasonably required a minimum number of inmates to request religious services before they would be held, and there was no showing that the prisoner was restricted from practicing Judaism privately or that the prison prevented him from requesting religious literature.

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. Appeals Court
CLOTHING

E.E.O.C. v. GEO Group, Inc., 616 F.3d 265 (3rd Cir. 2010). The Equal Employment Opportunity Commission (EEOC) brought an action on behalf of a group of female Muslim employees against their employer, a private company that was contracted to run a prison, alleging that the employer violated Title VII's prohibitions on religious discrimination when it failed to accommodate the employees by providing them an exemption to the prison's dress policy which precluded them from wearing Muslim head coverings-- called khimars--at work. The district court granted the employer's motion for summary judgment and denied the EEOC's cross-motion for summary judgment. The EEOC appealed. The appeals court affirmed. The court held that the employer's refusal to allow employees to wear khimars at work did not violate Title VII. According to the court, the employer, a private company, was not required under Title VII to provide to female Muslim employees an exemption to the prison's dress policy, as such a religious accommodation would have caused a safety or security risk and resulted in undue hardship to the employer. The court noted that khimars, like hats, could have been used to smuggle contraband into and around the prison, khimars could have been used to conceal the identity of the wearer, creating problems of misidentification, khimars could have been used against prison employees in an attack, and accommodating the employees would have necessarily required additional time and resources of prison officials. (GEO Group, Inc., George W. Hill Correctional Facility, Delaware County, Pennsylvania)

<p>U.S. District Court DIET FREE EXERCISE RLUIPA- Religious Land Use & Institutionalized Persons Act</p>	<p><i>Florer v. Bales-Johnson</i>, 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)</p>
<p>U.S. District Court FREE EXERCISE RFRA-Religious Freedom Restoration Act SEARCHES</p>	<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>
<p>U.S. District Court EQUAL PROTECTION OPPORTUNITY TO WORSHIP RLUIPA- Religious Land Use & Institutionalized Persons Act</p>	<p><i>Gordon v. Caruso</i>, 720 F.Supp.2d 896 (W.D.Mich. 2010). An inmate sued corrections officials under § 1983 and the Religious Land Use and Institutionalized Persons Act (RLUIPA), claiming that they violated his rights by preventing him from engaging in group worship services with other adherents of his faith. Following denial of a defense motion for summary judgment, officials moved for reconsideration. The appeals court held that summary judgment was precluded by genuine issues of material fact as to whether prison officials' ban on Asatru group worship was the least restrictive means of furthering their interest in maintaining prison security. The court found that prison officials who banned Asatru group worship had a rational basis for treating members of the Asatru faith differently from other groups that promoted racist and supremacist teachings, based on a demonstrated connection between the practice of Asatru and violence and racial conflict in the prison setting, and thus, there was no violation of the inmate's equal protection rights. The court noted that the other groups that were allowed to engage in group activity were not shown to present similar security concerns. (Mich. Department of Corrections)</p>
<p>U.S. District Court FORCED EXPOSURE DIET EQUAL PROTECTION ESTABLISHMENT CLAUSE FREE EXERCISE</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.</p> <p>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.</p> <p>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 FREE EXERCISE RLUIPA- Religious Land Use & Institutionalized Persons Act SATANISM</p>	<p><i>Indreland v. Yellowstone County Bd. of Comr's</i>, 693 F.Supp.2d 1230 (D.Mont. 2010). A state prisoner brought a § 1983 action against a county board of commissioners and prison officials, alleging, among other things, that the defendants' actions, including denying him access to satanic materials and holding him in maximum security, interfered with his free exercise of religion in violation of First Amendment and Religious Land Use and Institutionalized Persons Act (RLUIPA). The court held that prison officials' denial of access to his satanic medallion did not interfere with his free exercise of religion in violation of First Amendment and RLUIPA, where the officials had a legitimate penological interest in denying the prisoner a chain that the officials believed could be used to strangle another inmate. According to the court, prison officials segregated the prisoner because he was involved in fights with other inmates, and not solely on account of his alleged satanic religion, and thus the</p>

prisoner's segregation did not interfere with his free exercise of religion in violation of First Amendment and RLUIPA. The court held that the county detention facility was not required under the First Amendment or RLUIPA to purchase religious materials for the prisoner at its own expense. But the court held that summary judgment was precluded by a genuine issue of material fact as to whether the prison chaplain was working in conjunction with prison staff to deny the prisoner, who claimed to practice satanism, his free exercise of religion, and therefore, whether the chaplain was state actor. (Yellowstone County Detention Facility, Montana)

U.S. District Court
RLUIPA- Religious Land
Use & Institutionalized
Persons Act
WORK

Jackson v. Raemisch, 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)

U.S. District Court
BOOKS
FREEDOM OF RELIGION

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 held that the inmate failed to allege that she sustained an actual injury or that an Arkansas Department of Correction (ADC) official denied her the opportunity to review her mail prior to its being confiscated, as required to support a claim that the official violated the inmate's constitutional right of access to the courts and her First Amendment right to send and receive mail. The court found that summary judgment was precluded by genuine issues of material fact as to whether there was a legitimate penological interest for the alleged destruction of the prison inmate's bible, precluding summary judgment as to whether ADC employees violated the inmate's right to freedom of religion by destroying her bible. (Arkansas Department of Corrections)

U.S. Appeals Court
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
ARTICLES
OPPORTUNITY TO
PRACTICE
RLUIPA- Religious Land
Use & Institutionalized
Persons Act

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. (Calif. State Prison—Sacramento, Mule Creek State Prison and Pleasant Valley State Prison)

U.S. District Court
EQUAL PROTECTION
FREE EXERCISE
OPPORTUNITY TO
PRACTICE
RLUIPA- Religious Land
Use and Institutionalized
Persons Act

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 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 require 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
FREEDOM OF RELIGION
OPPORTUNITY TO
PRACTICE

Sayed v. Profitt, 743 F.Supp.2d 1217 (D.Colo. 2010). An Islamic inmate brought a § 1983 suit against a regional coordinator for faith and citizens programs with the Colorado Department of Corrections (CDCO) and others, claiming a violation of his First Amendment right to freedom of religion. The district court granted the coordinator's motion for summary judgment. The court held that the court lacked any ability to grant injunctive relief against the state on the inmate's § 1983 claim for violation of his First Amendment right to freedom of religion where the inmate failed to identify practices at his current correctional facility that were constitutionally deficient. The court found that the Islamic inmate's practice of ablution prior to prayer was not prevented by a denial of his request to shower prior to services, where the inmate was fully able to engage in a sufficient and adequate alternative that satisfied the requirements of his religious practice, specifically substitute ablution. (Limon Correctional Facility, Colorado)

U.S. District Court
CHAPLAIN
DIET
EQUAL PROTECTION
OPPORTUNITY TO
PRACTICE

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
DIET
RLUIPA- Religious Land
Use & Institutionalized
Persons Act

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)

U.S. District Court
OPPORTUNITY TO
WORSHIP
RLUIPA- Religious Land
Use & Institutionalized
Persons Act

Young v. Ericksen, 758 F.Supp.2d 777 (E.D.Wis. 2010). A state prisoner brought a § 1983 action claiming correctional officers and staff violated his constitutional rights by refusing to allow him to exercise outside his cell for almost an entire year and that they violated the Religious Land Use and Institutionalized Person Act (RLUIPA) by refusing to allow him to attend religious services and meet with an Imam. The district court denied the defendants' motion for summary judgment. The court held that summary judgment was precluded by a genuine issue of material fact as to whether prison officials fairly denied the state prisoner out-of-cell exercise. According to the court, for the purposes of the prison officials' claim of qualified immunity from the state prisoner's § 1983 claim, it was clearly established that denying a prisoner out-of-cell exercise for almost an entire year without legitimate penological concerns would constitute a violation of the prisoner's Eighth Amendment rights. The court held that summary judgment was precluded by a genuine issue of material fact as to whether denying the state prisoner, who was on protective confinement (PC) status, the opportunity to attend public worship services was reasonably related to the prison's interest in protecting the prisoner and maintaining overall security. (Green Bay Correctional Institution, Wisconsin)

U.S. District Court
DIET
EQUAL PROTECTION
HATS

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. The court held that the prisoner had no constitutional right to have his grievances processed or investigated in any particular manner, as would support his § 1983 claim against prison employee who allegedly covered up an investigation into the confiscation of his purportedly religious head wear. (Southport Correctional Facility, New York)

U.S. District Court
FREE EXERCISE
REGULATIONS
RLUIPA- Religious Land
Use & Institutionalized
Persons Act

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 the First 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. Appeals Court
BEARDS
BOOKS
OPPORTUNITY TO
WORSHIP
PLACE TO WORSHIP
PRIVACY
RLUIPA- Religious Land
Use & Institutionalized
Persons Act

DeMoss v. Crain, 636 F.3d 145 (5th 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. According to the court, the prisoner's allegation that TDCJ policies had prevented him from carrying a pocket Qur'an with him out into the recreation yard, on two medical visits, and while on job assignment was insufficient to state a claim under RLUIPA entitling him to relief regarding TDCJ's religious text policy. The court noted that the prisoner did not allege that TDCJ's restrictions required him to act in a way that violated his religious beliefs by forcing him to abandon his study of the Qur'an, nor did the prisoner allege facts suggesting he was forced to choose between studying the Qur'an as his faith required and a generally available, non-trivial benefit. The court found that TDCJ's abandonment of the policy that inmates confined to their cells be prohibited from attending religious services mooted the prisoner's claim for injunctive and declaratory relief relating to the policy. The court noted that an affidavit from the TDCJ director stated that the cell restriction policy had been abandoned and that all inmates on cell restriction would be allowed to attend religious services. 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. Appeals Court
ARTICLES
CLASSIFICATION
FREE EXERCISE
RLUIPA- Religious Land
Use & Institutionalized
Persons Act

Florer v. Congregation Pidyon Shevuyim, N.A., 639 F.3d 916 (9th Cir. 2011). A state prisoner brought an action under § 1983 and the Religious Land Use and Institutionalized Persons Act (RLUIPA) against a Jewish organization that contracted with the prison to provide Jewish religious services to prisoners, a rabbi who was president of the organization, and an outreach program of the organization. The prisoner alleged that the defendants refused to provide basic religious reading materials, other basic materials, and spiritual leadership. The district court granted summary judgment in favor of the organization and the prisoner appealed. The appeals court affirmed. The court held that the prisoner, whose requests for a Torah, Jewish calendar, and rabbi visit were denied by the private Jewish organization could not establish that such denial was the result of a governmental policy, as required to hold the organization liable for any deprivation of the prisoner's free exercise rights under § 1983 or his rights under the RLUIPA. According to the court, there was no evidence that the organization was enforcing a department of corrections (DOC) or governmental policy, or that the organization's internal policy was adopted by the DOC. The court also held that the prisoner could not establish that the organization helped

DOC staff determine whether other prisoners should be classified by the DOC as Jewish, as required to hold the organization liable. The court noted that the private Jewish organization and its rabbi were not “state actors” under the public function analysis, as would allow the defendants to be held liable on the prisoner's claims. (Washington State Penitentiary)

U.S. Appeals Court
CLOTHING
RLUIPA- Religious Land
Use & Institutionalized
Persons Act

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 County Santa Ana Courthouse, California)

U.S. Appeals Court
BEARDS
EQUAL PROTECTION
RLUIPA- Religious Land
Use & Institutionalized
Persons Act

Kuperman v. Wrenn, 645 F.3d 69 (1st Cir. 2011). A Jewish former state inmate brought a § 1983 action against prison officials, alleging a prison regulation prohibiting inmates from growing facial hair longer than one quarter of an inch violated his First Amendment exercise of religion rights, as well as Fourteenth Amendment equal protection and the Religious Land Use and Institutionalized Person Act (RLUIPA). The district court granted summary judgment for the officials and the inmate appealed. The appeals court affirmed, finding that the regulation was reasonably related to the penological interests of prison safety and security and did not prohibit the inmate from alternative means of exercising his rights. The court found that accommodating the inmate's desire to grow a beard would adversely impact prison resources and that there was no ready alternative to the prison regulation. According to the court, the regulation did not violate the inmate's Fourteenth Amendment equal protection rights, and the regulation furthered the compelling government interest of prison safety and security in the least restrictive means of doing so. (New Hampshire State Prison)

U.S. District Court
ARTICLES
CHAPLAIN
OPPORTUNITY TO
WORSHIP
RLUIPA- Religious Land
Use & Institutionalized
Persons Act

Lee v. Johnson, 793 F.Supp.2d 798 (W.D.Va. 2011.) A prisoner, proceeding pro se, brought a § 1983 action against several prison officials, alleging violations of the First Amendment and the Religious Land Use and Institutionalized Persons Act (RLUIPA). The prisoner filed a motion to amend, and the officials filed a motion for summary judgment. The district court granted the motions. The court held that: (1) the chaplain's failure to affirmatively provide the prisoner with religious materials upon the prisoner's request did not violate the prisoner's First Amendment exercise of religion rights; (2) it was not clearly established that the prison chaplain's posting of a sign-up sheet for Catholic services, but not for the House of Yahweh, violated the First Amendment; (3) a prison policy that allowed for group worship only if a minimum of five inmates expressed interest in such services did not violate the First Amendment; and (4) a prison policy that allowed for group worship only if a minimum of five inmates expressed interest in such services did not substantially burden the religious rights of the prisoner under RLUIPA. (Pocahontas State Correctional Center, Virginia)

U.S. Appeals Court
OPPORTUNITY TO
PRACTICE
RLUIPA- Religious Land
Use & Institutionalized
Persons Act

Maddox v. Love, 655 F.3d 709 (7th Cir. 2011). An inmate filed a pro se § 1983 complaint against a prison chaplain and prison wardens, claiming that they violated his rights under the First and Fourteenth Amendments and the Religious Land Use and Institutionalized Persons Act (RLUIPA), and asserting related state law claims. The district court dismissed some claims, and subsequently granted summary judgment against the inmate on the remaining claims. The inmate appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the inmate's allegations that prison officials singled out African Hebrew Israelite (AHI) services for cancellation, purportedly due to budget cuts, disproportionately allocated the prison's religious budget and resources to other religions, and failed to pursue alternatives to allow the inmates to pursue their faith. According to the court, this sufficiently stated a facially plausible claim under § 1983 for denial of a reasonable opportunity to exercise his religion without adequate penological justification. (Lawrence Correctional Center, Illinois)

U.S. Appeals Court
ARTICLES
CHAPLAIN
ESTABLISHMENT
CLAUSE
FREE EXERCISE
VISITS

McCullum v. California Dept. of Corrections and Rehabilitation, 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 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.

The court held that a volunteer Wiccan prison chaplain lacked taxpayer standing to challenge CDCR's paid chaplaincy program, based on violations of his First Amendment right to freedom of religion, where the chaplain did not challenge the expenditure of government funds to provide paid chaplaincies nor even the existence of denomination-specific paid chaplaincies, but rather challenged only the current allocation of chaplaincies among

religious denominations and the procedure for determining such allocations. According to the court, there was no direct evidence of a retaliatory motive by the prison employee who restricted the Wiccan prison chaplain's access to a prison, as required to support the chaplain's First Amendment retaliation claim. The court noted that the incident resulting in restricted access occurred nearly three years after the chaplain filed a lawsuit against CDCR, and an employee's knowledge of the suit, alone, was insufficient to raise a genuine issue of material fact as to a retaliatory motive. (California Department of Corrections and Rehabilitation)

U.S. District Court
FREE EXERCISE
PUBLICATIONS

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. District Court
DIET
EQUAL PROTECTION
FREE EXERCISE
RLUIPA- Religious Land
Use & Institutionalized
Persons Act
WORK

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
DIET
RLUIPA- Religious Land
Use & Institutionalized
Persons Act

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)

2012

U.S. Appeals Court
FREE EXERCISE
RLUIPA- Religious Land
Use & Institutionalized
Persons Act

Alvarez v. Hill, 667 F.3d 1061 (9th Cir. 2012). A former inmate in the Oregon Department of Corrections (ODOC) sued prison officials, alleging that ODOC employees substantially burdened the practice of his religion in violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court granted summary judgment for the defendants and the inmate appealed. The appeals court affirmed. The court held that Oregon's sovereign immunity barred the former inmate's Religious Land Use and Institutionalized Persons Act (RLUIPA) claims for money damages against corrections officials sued in their official capacity, where, for sovereign-immunity purposes, the official capacity claims were treated as claims against the state. The court found that the former inmate lacked a legally cognizable interest in the outcome of his claims for declaratory and injunctive relief, despite his contentions that his claims were capable of repetition, yet would continue to evade

review, and that his claims challenged ongoing prison policies to which other inmates would remain subject. According to the court, there was no indication that the inmate, who had completed his sentence and his post-incarceration supervision, would again be subjected to the challenged prison policies, and current inmates could bring their own RLUIPA claims challenging the policies at issue. The court noted that an Inmate's release from prison while his claims are pending generally will moot any claims for injunctive relief relating to the prison's policies unless the suit has been certified as a class action. (Oregon Department of Corrections)

U.S. Appeals Court
OPPORTUNITY TO
WORSHIP
RLUIPA- Religious Land
Use & Institutionalized
Persons Act

Bader v. Wrenn, 675 F.3d 95 (1st Cir. 2012). A state prisoner filed an action against a Department of Corrections under the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court denied the prisoner's motion for a preliminary injunction and the prisoner appealed. The appeals court affirmed, finding that RLUIPA did not constrain prison transfers based on disadvantages at the transferee prison that were not themselves of the government's creation. According to the court, transfer of the state prisoner for reasons that had not been based on the prisoner's religious practice did not violate RLUIPA although the transfer had the result of restricting his religious opportunities. (Northern Correctional Facility, New Hampshire)

U.S. District Court
HAIR LENGTH
RLUIPA- Religious Land
Use & Institutionalized
Persons Act
SINCERITY

Benning v. Georgia, 845 F.Supp.2d 1372 (M.D.Ga. 2012). An inmate, who was a Torah-Observant Jew, proceeding pro se, brought an action against a state, a board of corrections, a department of corrections (DOC) and its commissioner, seeking injunctive relief on allegations that grooming policies violated the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court held that: (1) the inmate's beliefs were sincerely held; (2) the policy requiring the inmate to remove his earlocks substantially burdened a tenet of his religion; (3) requiring the inmate to purchase or obtain from a charity a depilatory to comply with the policy did not substantially burden a tenet of the inmate's religion; and (4) summary judgment was precluded by a genuine issue of material fact as to whether the prison policy of refusing to allow the inmate to grow earlocks was the least restrictive means of protecting the prison's compelling interests. The court noted that the Religious Land Use and Institutionalized Persons Act (RLUIPA) affords to prison inmates a heightened protection from government-imposed burdens by requiring that the government demonstrate that the substantial burden on the prisoner's religious exercise is justified by a compelling, rather than merely a legitimate, governmental interest. The court noted that the inmate had changed his religion of record with the department of corrections (DOC) to Judaism 10 years previously, he had not changed his religion since, and inmate had spent much of his time grieving and litigating issues related to his Jewish faith. (Autry State Prison, Georgia)

U.S. District Court
HAIR LENGTH
RLUIPA- Religious Land
Use & Institutionalized
Persons Act

Benning v. Georgia, 864 F.Supp.2d 1358 (M.D.Ga. 2012). A Jewish inmate brought an action against the State of Georgia, the Georgia Board of Corrections, the Georgia Department of Corrections (GDC), and its Commissioner, in his official capacity, alleging that the defendants violated the Religious Land Use and Institutionalized Persons Act (RLUIPA) by refusing to allow him to grow earlocks in accordance with his religious beliefs. The court held that: (1) the inmate's religious belief that he was forbidden from shaving his earlocks was sincerely held; (2) the inmate's religious beliefs were substantially burdened by the defendants' refusal to allow him to grow earlocks; (3) uniformity was not a compelling government interest justifying the defendants' refusal to allow the inmate to grow earlocks; and (4) the defendants failed to prove that banning earlocks completely was the least restrictive means of furthering compelling governmental interests. (Autry State Prison, Georgia)

U.S. District Court
FREE EXERCISE
RLUIPA- Religious Land
Use & Institutionalized
Persons Act
SINCERITY
AIRFA- American Indian
Religious Freedom Act

Brooks v. Roy, 881 F.Supp.2d 1034 (D.Minn. 2012). A Native American state prisoner filed a § 1983 action, claiming that his required participation in a prison's substance abuse treatment program violated the Free Exercise Clause, the Religious Land Use and Institutionalized Persons Act (RLUIPA), the American Indian Religious Freedom Act (AIRFA), and the Minnesota Constitution. The prisoner sought an injunction assigning him at his own expense to a privately-run, Native American inpatient treatment program 200 miles from the prison, or readmitting him to the prison's program so that he would be eligible for prison benefits. The prisoner moved for a temporary restraining order or a preliminary injunction. The district court denied the motion. The court held that: (1) the Free Exercise Clause and RLUIPA claims were not actionable; (2) the First Amendment retaliation claim was not actionable; (3) the prisoner would not likely suffer irreparable harm absent a preliminary injunction; (4) the balance of hardships did not favor a preliminary injunction; (5) the public interest did not support a preliminary injunction; and (6) AIRFA lacked a private cause of action. The court noted that the prisoner failed to delineate any sincerely-held religious belief that was in any way infringed on by his participation in the prison substance abuse treatment program, as required to support his claim for infringement of his right to free exercise of religion. The prisoner referenced the Native American belief that a person must confront the root causes of substance abuse, but he did not allege that he held such a belief himself, and the program explicitly required the prisoner to examine the cause of his substance abuse and encouraged him to speak and write freely and to develop his own program for rehabilitation incorporating whatever Native American beliefs and practices he wanted, but he refused to do so. (Minnesota Correctional Facility, Faribault)

U.S. District Court
EQUAL PROTECTION
FREE EXERCISE
OPPORTUNITY TO
WORSHIP

Catanzaro v. Harry, 848 F.Supp.2d 780 (W.D.Mich. 2012). A state prisoner, proceeding pro se, brought a § 1983 action against a state department of corrections, department officials, a warden, parole board members, and numerous prison and department employees, alleging violation of his due process rights, violation of the Fourth Amendment, denial of adequate medical care, his right to free exercise of religion, equal protection, access to courts, and retaliation. The district court held that: (1) the prisoner had no protected interest in early release on parole; (2) the requirement that the prisoner complete a sex-offender treatment program as condition for parole did not violate the Due Process Clause as the condition for parole did not exceed the sentence imposed on the prisoner; (3) the prisoner's conditions at sex-offender treatment facility did not implicate the prisoner's right to procedural due process, notwithstanding the fact that the prisoner did not have access to recreational facilities or a law library, the prisoner could not work, the prisoner had to arrange for his own health care, and the prisoner did not have the opportunity to attend religious services; (4) the transfer of the prisoner to facility for sex-offender treatment program did not violate his right to substantive due process; and (5) the prisoner stated a claim for violation of Free Exercise Clause. (Cooper Street Correctional Facility, Residential Sex Offender Program (RSOP) at the Kalamazoo, and Probation Enhancement Program in Muskegon, Michigan)

<p>U.S. District Court DIET FREE EXERCISE RLUIPA- Religious Land Use & Institutionalized Persons Act</p>	<p><i>Colvin v. Caruso</i>, 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)</p>
<p>U.S. Appeals Court BEARDS RLUIPA- Religious Land Use & Institutionalized Persons Act</p>	<p><i>Couch v. Jabe</i>, 679 F.3d 197 (4th Cir. 2012). A state inmate brought an action alleging that prison officials violated the Religious Land Use and Institutionalized Persons Act (RLUIPA) by refusing to permit him to grow a one-eighth-inch beard in compliance with the requirements of his faith. The district court entered summary judgment in the officials' favor, and the inmate appealed. The appeals court vacated and remanded. The court held that the Muslim inmate's maintenance of a beard was a qualifying "religious exercise" under RLUIPA. The court found that state prison officials failed to satisfy their burden of showing that the policy banning beards for religious purposes was the least restrictive means of furthering the prison's compelling interests in hygiene, prohibiting contraband and gang identification, and facilitating identification of prisoners, and thus officials' refusal to permit Muslim inmates to grow a one-eighth-inch beard in compliance with requirements of his faith violated RLUIPA. The court noted that the officials failed to address the feasibility of implementing a religious exemption, or to explain how the prison was able to deal with the beards of medically exempt inmates but could not similarly accommodate religious exemptions. (Augusta Correctional Center, Virginia)</p>
<p>U.S. District Court FREE EXERCISE JEWELRY/ ORNAMENTS RLUIPA- Religious Land Use and Institutionalized Persons Act</p>	<p><i>Davis v. Abercrombie</i>, 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 held that lack of an irreparable harm to the inmate as a result of damage to his prayer object, a turtle pendant, precluded the issuance of a preliminary injunction, where there was no imminent danger the his sacred items would be desecrated absent injunctive relief. The court noted that the inmate's possession and use of his prayer object, a kukui nut, was a "religious exercise" for purposes of the Religious Land Use and Institutionalized Persons Act (RLUIPA): the object was used in daily prayers and chants, in dances, and other individual religious protocol and communal religious activities, it provided the inmate with spiritual comfort, and it symbolized enlightenment, growth and accomplishment. 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)</p>
<p>U.S. District Court ARTICLES EQUAL PROTECTION FREE EXERCISE RLUIPA- Religious Land Use & Institutionalized Persons Act</p>	<p><i>Davis v. Powell</i>, 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, California)</p>

<p>U.S. District Court EQUAL PROTECTION FREE EXERCISE PUBLICATIONS RLUIPA- Religious Land Use & Institutionalized Persons Act</p>	<p><i>Forter v. Geer</i>, 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. The court held that withholding of a religious poster did not substantially burden the religious exercise of the inmate, who was a member of the Christian Identity Faith, as would violate the Religious Land Use and Institutionalized Persons Act (RLUIPA). The court also held that size restrictions which prevented the inmate from possessing the religious poster did not violate his First Amendment free exercise rights, where the regulations prevented any items, except subscription newspapers, over a certain size. 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)</p>
<p>U.S. Appeals Court FREE EXERCISE HAIR LENGTH RLUIPA- Religious Land Use & Institutionalized Persons Act</p>	<p><i>Grayson v. Schuler</i>, 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)</p>
<p>U.S. Appeals Court PLACE TO WORSHIP RFRA-Religious Freedom Restoration Act</p>	<p><i>Johnson v. Killian</i>, 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)</p>
<p>U.S. District Court DIET OPPORTUNITY TO PRACTICE RLUIPA- Religious Land Use & Institutionalized Persons Act</p>	<p><i>Jones v. Hobbs</i>, 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)</p>
<p>U.S. District Court OPPORTUNITY TO PRACTICE RLUIPA- Religious Land Use & Institutionalized Persons Act RESTRICTIONS ARTICLES</p>	<p><i>Joseph v. Fischer</i>, 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. (Attica Correctional Facility, New York)</p>

<p>U.S. Appeals Court ARTICLES BOOKS</p>	<p><i>Kendrick v. Pope</i>, 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)</p>
<p>U.S. District Court ARTICLES CHAPLAIN FREE EXERCISE PRIVACY RLUIPA- Religious Land Use & Institutionalized Persons Act SEARCHES SWEAT LODGE</p>	<p><i>Knows His Gun v. Montana</i>, 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 Dept. of Corrections; Corrections Corporation of America; Crossroads Correctional Center)</p>
<p>U.S. Appeals Court EQUAL PROTECTION FREE EXERCISE JEWELRY/ORNAMENTS REGULATIONS RLUIPA- Religious Land Use & Institutionalized Persons Act</p>	<p><i>McFaul v. Valenzuela</i>, 684 F.3d 564 (5th Cir. 2012). A prisoner brought a pro se civil rights action against prison officials who had denied his request for a religious medallion to use in Celtic Druid ceremonies. The district court entered summary judgment in favor of the defendants and the prisoner appealed. The appeals court affirmed, finding that the prison's prohibitions on nonconforming neo-Pagan medallions and medallions costing more than \$25 did not violate the prisoner's First Amendment right to free exercise of religion, and the prisoner failed to meet his burden of showing that the prohibitions substantially burdened his ability to practice his religion, in violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The appeals court also held that enforcement of the prohibitions against the prisoner did not violate equal protection. Officials had prevented the prisoner from having a black onyx pentagram for use in Celtic Druid ceremonies, and the court found that the prohibitions were reasonably related to penological interests, including safety, security, and discipline, did not discriminate against nontraditional religions, and did not prevent the prisoner from performing some religious rituals. The court noted that permitting prisoners to possess nonconforming medallions would have forced guards to determine whether the items were permitted religious medallions or contraband items. (Preston Smith Unit, Texas Department of Criminal Justice)</p>
<p>U.S. District Court CORRESPONDENCE OPPORTUNITY TO WORSHIP VOLUNTEERS</p>	<p><i>Moorehead v. Keller</i>, 845 F.Supp.2d 689 (W.D.N.C. 2012). A state inmate, a Messianic Jew, brought a pro se § 1983 action against North Carolina Department of Corrections (DOC) officials, alleging that the officials prevented him from writing to his "spiritual advisor" and discontinued Messianic Jewish services at the prison, in violation of his constitutional rights. The defendants moved for judgment on the pleadings. The district court granted the motion. The court held that the state prison regulation prohibiting prison volunteers from corresponding with inmates was reasonably related to the prison's legitimate penological interest in preventing volunteers from becoming unduly familiar with inmates, and thus the actions of North Carolina Department of Corrections (DOC) officials in preventing the Messianic Jewish inmate from corresponding with his "spiritual advisor," who was a volunteer at the prison, pursuant to regulation did not violate the inmate's constitutional rights. (Mountain View Correctional Institution, North Carolina)</p>
<p>U.S. Appeals Court DIET EQUAL PROTECTION RLUIPA- Religious Land Use and Institutionalized Persons Act SINCERITY</p>	<p><i>Moussazadeh v. Texas Dept. of Criminal Justice</i>, 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.</p> <p>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</p>

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. District Court
TOBACCO
ARTICLES
RESTRICTIONS
RLUIPA- Religious Land
Use & Institutionalized
Persons Act

Native American Council of Tribes v. Weber, 897 F.Supp.2d 828 (D.S.D. 2012). A Native American organization and inmates brought an action against the Secretary of the South Dakota Department of Corrections, alleging the Department's policy banning all tobacco from its facilities violated the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court found that the inmates' use of tobacco was a religious exercise protected under RLUIPA, that the policy placed a substantial burden on the inmates' exercise of their religious beliefs, and the policy was not supported by a compelling governmental interest where there was little evidence that tobacco from the Native American religious ceremonies created a security or safety risk. According to the court, the Native American inmates' use of tobacco in pipes, tobacco ties, and prayer flags was a religious exercise protected under RLUIPA, notwithstanding the use of red willow bark instead of tobacco by other members of their tribe. The court noted that the inmates used tobacco prior to their incarceration as part of traditional healing and other religious ceremonies. (South Dakota Department of Corrections)

U.S. District Court
EQUAL PROTECTION
FREE EXERCISE
RECOGNIZED RELIGION
REGULATIONS
RLUIPA- Religious Land
Use & Institutionalized
Persons Act

Panayoty v. Annucci, 898 F.Supp.2d 469 (N.D.N.Y. 2012). Inmates in a state prison who were affiliated with the religious group Nation of Gods and Earth filed a § 1983 action against prison officials seeking declarative and injunctive relief concerning constraints the prison placed on the practice of their religion, which allegedly violated the First Amendment and Religious Land Use and Institutionalized Persons Act (RLUIPA), as well as the equal protection clause of Fourteenth Amendment. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court found that the inmates' practice of congregating with each other and wearing crowns, as part of their affiliation with the Nation of Gods and Earth group, was religious in the inmates' scheme of beliefs, and sincerely held, as required to demonstrate a prima facie showing of First Amendment free exercise and RLUIPA violations against the prison officials who had established protocols prohibiting such practices. The court noted that one inmate had a twelve-year history of the religious practice, dating back to before he was incarcerated, another inmate's practice extended back 25 years, and both expressed that the Nation of Gods and Earth religion had helped them draw closer to a life of righteousness and had shaped their character.

The court held that there was no evidence that the inmates' practice of displaying the Nation of Gods and Earth's Universal Flag, symbols, and texts in their cells, as part of their affiliation with the group, was religious in the inmates' scheme of beliefs, and sincerely held, and the inmates failed to adequately assert First Amendment free exercise and RLUIPA violations against prison officials. Although the inmates asserted that the prison's prohibition of this practice required them to live under a shroud of secrecy, members of the group were required to register with the facility deputy superintendent for programs, so their practice was well known. The court held that summary judgment was precluded by genuine issues of material fact as to whether the prison prohibition on the practice of congregating with each other and wearing religious crowns was reasonably related to security concerns that the religion was affiliated with gang activity, and whether the measures were the least restrictive means of accomplishing security concerns. (New York State Department of Corrections and Community Supervision, Mid-Orange Correctional Facility, Riverview Correctional Facility)

U.S. Appeals Court
OPPORTUNITY TO
PRACTICE
RLUIPA- Religious
Land Use and
Institutionalized
Persons Act

Pouncil v. Tilton, 704 F.3d 568 (9th 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
FREE EXERCISE
RLUIPA- Religious Land
Use & Institutionalized
Persons Act

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. Appeals Court
DIET
FREE EXERCISE
PLACE TO WORSHIP

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. Appeals Court
FREE EXERCISE
RLUIPA- Religious Land
Use & Institutionalized
Persons Act

Stewart v. Beach, 701 F.3d 1322 (10th Cir. 2012). An inmate sued corrections officers, alleging violations of his rights under the First Amendment's Free Exercise Clause and the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA). The district court entered judgment for the defendants, and the inmate appealed. The appeals court affirmed. The court found that the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) does not permit a claim against individual defendants in their individual capacities. The court noted that Congress enacted RLUIPA pursuant to the Spending Clause of the Constitution, and the spending power cannot be used to subject individual defendants, such as state employees, to individual liability in a private cause of action. (El Dorado Correctional Facility, Kansas)

U.S. District Court
FREE EXERCISE
PLACE OF WORSHIP

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)

2013

U.S. District Court
DIET
SINCERITY
RLUIPA- Religious Land
Use & Institutionalized
Persons Act

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. Appeals Court
HAIR
OPPORTUNITY TO
WORSHIP
RLUIPA- Religious Land
Use & Institutionalized
Persons Act
RESTRICTIONS
NATIVE AMERICANS

Chance v. Texas Dept. of Criminal Justice, 730 F.3d 404 (5th Cir. 2013). A state prisoner brought an action against prison officials, challenging restrictions on his Native American religious practices under the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court granted the defendants' motion for summary judgment. The prisoner appealed. The appeals court affirmed in part, vacated in part, and remanded. The appeals court held that: (1) the prison's complete ban on communal pipe-smoking did not violate RLUIPA; (2) the prison's schedule of Native American religious services did not violate RLUIPA; (3) the prison policy limiting the Native American Smudging ritual to outdoor ceremonies did not violate RLUIPA; but (4) summary judgment was precluded by a genuine issue of material fact with regard to whether the prison's refusal to allow the prisoner to possess locks of relatives' hair in accordance with his Native American religious practice was the least restrictive means of furthering the prison's compelling interests. (Texas Department of Criminal Justice, Michael Unit in Tennessee Colony)

U.S. District Court
DIET
RLUIPA- Religious Land
Use & Institutionalized
Persons Act

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
BOOKS
FREE EXERCISE
RFRA- Religious
Freedom Restoration
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. Appeals Court
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. Appeals Court
BEARDS
RLUIPA- Religious Land
Use & Institutionalized
Person Act

Garner v. Kennedy, 713 F.3d 237 (5th Cir. 2013). A Muslim state prisoner brought an action against prison officials alleging the Texas Department of Criminal Justice’s (TDCJ) policy of prohibiting prisoners from wearing beards for religious reasons violated the Religious Land Use and Institutionalized Persons Act (RLUIPA) and his constitutional rights. The district court granted summary judgment to the defendants, and the prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. On remand, and after a bench trial, the district court granted declaratory and injunctive relief in favor of the prisoner. The defendants appealed. The appeals court affirmed. The appeals court held that TDCJ’s no-beard policy was not the least restrictive means of advancing the compelling government interest in controlling costs, and the no-beard policy was not the least restrictive means of advancing the compelling government interest in security. According to the court, although prison officials testified that there would be additional costs from allowing prisoners to wear quarter-inch beards for religious reasons due to the construction of barbershops, the purchase of barbering supplies, or the creation of new identification cards, almost all of that testimony was speculative, the officials admitted that no specific studies of costs had been done, and there was no evidence that TDCJ, which already imposed limits on hair length, would encounter greater or added difficulty if it enforced a one-quarter-inch as opposed to a clean-shaven rule. Although TDCJ presented evidence that allowing inmates to have beards hindered inmate identification, TDCJ allowed inmates to shave their heads, and there was testimony that shaved heads posed just as many identification problems as allowing prisoners to grow and shave beards. (Texas Department of Criminal Justice, McConnell Unit, Beeville, Texas)

U.S. District Court
DIET
MEDICAL CARE
RLUIPA- Religious Land
Use & Institutionalized
Persons Act

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. Appeals Court
CHAPLAIN
EQUAL PROTECTION
ESTABLISHMENT
CLAUSE
FREE EXERCISE
RLUIPA- Religious
Land Use and
Institutionalized
Persons Act
VOLUNTEERS

Hartmann v. California Dept. of Corrections and Rehabilitation, 707 F.3d 1114 (9th Cir. 2013). California state prisoners brought a § 1983 action against, among others, the California Department of Corrections (CDCR), alleging that the defendants violated their state and federal constitutional rights to exercise their religious beliefs by refusing to hire a paid, full-time, Wiccan chaplain and by failing to apply neutral criteria in determining whether paid chaplaincy positions were necessary to meet the religious exercise needs of inmates adhering to certain religions. The district court dismissed claims against the California State Personnel Board and its individual members, and, dismissed claims against the state, its governor, and various other agencies and individuals. The prisoners appealed.

The appeals court affirmed in part and reversed in part. The court held that: (1) the First Amendment did not require CDCR to provide inmates with chaplain of their choice, regardless of whether the number of Wiccan inmates was greater than the number of inmates practicing faiths for which CDCR did provide staff chaplain, because the prisoners had a reasonable opportunity to exercise their faith via the services of staff chaplains and a volunteer Wiccan chaplain that they already received; (2) the prison policy did not violate prisoners' rights under the Equal Protection Clause where the prison provided the plaintiffs with a volunteer Wiccan chaplain when available, made staff chaplains available to all prisoners to assist in their religious exercise, and the prison administration considered the prisoners' requests at three different levels of review before determining that services were sufficient without hiring a full-time Wiccan chaplain; (3) the prisoners did not plead that their religious exercise was so burdened as to pressure them to abandon their beliefs, precluding their claim that the prison administration violated their rights under Religious Land Use and Institutionalized Persons Act (RLUIPA); (4) two prison officials were proper official-capacity defendants on the prisoners' claim for injunctive relief where the prisoners sought an affirmative injunction requiring the prison administration to adopt and apply neutral criteria in determining chaplain hiring needs and they alleged that each official was responsible for the policies and practices of the California Department of Corrections (CDCR), as well as the day-to-day operation of the prison; and, (5) permitting prisoners to amend complaint was unwarranted on futility grounds.

But the court found that the prisoners did state a claim for violation of the First Amendment's Establishment Clause by alleging that the prison administration created staff chaplain positions for five conventional faiths, refused to hire a paid, full-time, Wiccan chaplain, and failed to apply neutral criteria in evaluating whether the growing membership in minority religions warranted reallocation of resources used in accommodating inmates' religious exercise needs. (California Department of Corrections and Rehabilitation)

U.S. Appeals Court
PAROLE

Hazle v. Crofoot, 727 F.3d 983 (9th Cir. 2013). A parolee, who was an atheist, brought an action against various state officials and a state contractor, seeking damages and injunctive relief for the deprivation of his First Amendment rights, after his parole was revoked following his refusal to participate in a residential drug treatment program that required him to acknowledge a higher power, as a condition of his parole. The contractor, Westcare, was a private regional substance abuse coordination agency, and made the arrangements for the parolee's placement in the program. After the parolee was granted partial summary judgment by the district court, a jury awarded the parolee zero damages. The district court denied the parolee's motion for a new trial, and the parolee appealed. The appeals court reversed and remanded. The court held that the parolee was entitled to an award of compensatory damages for each day that he spent in prison as a result of the violation of his First Amendment rights by various state officials. The appeals court held that summary judgment was precluded by a genuine issue of material fact as to whether the contractor's conduct was the proximate cause of the parolee's unconstitutional imprisonment, when it contracted only with drug treatment facilities offering solely religious based programs or services, and counseled and arranged for the parolee to attend a religion-based facility as part of his state-imposed parole program, despite having been informed that the parolee was an atheist and that he objected to such religious programming. The court held that the parolee's claim under California law for an injunction preventing both a state contractor and various state officials from expending state funds in an unconstitutional manner that required parolees to participate in religious treatment programs in order to be eligible for parole, failed to provide parolees with secular or non-religious treatment alternatives, and revoked the parole of those who protested or resisted participation in religion-based treatment programs, was not rendered moot after the state issued a directive stating that parole agents could not require a parolee to attend any religious based program if the parolee refused to participate for religious reasons, where the state directive had not been implemented in any meaningful fashion. (California Department of Corrections and Rehabilitations, Board of Parole Hearings, Westcare, and Empire Recovery Center, California)

U.S. District Court
DIET
RLUIPA- Religious Land
Use & Institutionalized
Persons Act

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. Appeals Court
BOOKS
ESTABLISHMENT
CLAUSE
FREE EXERCISE
OPPORTUNITY TO
PRACTICE
RLUIPA- Religious Land
Use & Institutionalized
Persons Act
SERVICES

Kaufman v. Pugh, 733 F.3d 692 (7th Cir. 2013). A state prisoner brought an action against prison officials, challenging their refusal to permit a weekly atheist study group, their refusal to allow the prisoner to wear a “knowledge thought ring” that he regarded as a religious symbol, and their failure to make atheist books that he donated available in the prison library. The prisoner asserted claims under the Free Exercise Clause, the Establishment Clause, and the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court granted summary judgment to the prison officials. The prisoner appealed. The appeals court affirmed in part, vacated in part, and remanded. The appeals court held that summary judgment was precluded by fact issue as to how many prisoners in the state prison would be interested in forming a weekly atheism study group.

The court found that refusal to allow the prisoner to wear a “knowledge thought ring” did not discriminate against atheism. The court noted that the prisoner conceded that the ring was an individualized symbol, thereby admitting that his inability to wear the ring did not impose a substantial burden on his ability to practice atheism. According to the court, the prison officials were entitled to draw a distinction between, on the one hand, religious emblems that were common to members of other umbrella religious groups, easy to recognize, and difficult to abuse as a gang symbol, and on the other hand, emblems that were unique to each prisoner and that posed a potential security risks. According to the court, prison officials’ refusal to allow the state prisoner to form a weekly atheism study group did not violate the prisoner’s rights under the Free Exercise Clause or the Religious Land Use and Institutionalized Persons Act (RLUIPA), in the absence of evidence that the prisoner would be unable to practice atheism effectively without the benefit of a weekly study group. The court found that the alleged failure of state prison officials to make available in the prison library three used books on atheism that had been mailed to the prisoner, did not violate the prisoner’s rights under the Free Exercise Clause and the RLUIPA, absent evidence of a substantial burden on the prisoner’s ability to follow his atheistic beliefs. (Stanley Correctional Facility, Wisconsin)

U.S. Appeals Court
EQUAL PROTECTION
HAIR LENGTH
NATIVE AMERICANS
RLUIPA- Religious Land
Use & Institutionalized
Persons Act

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
FREE EXERCISE
RLUIPA- Religious Land
Use & Institutionalized
Persons Act

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)

<p>U.S. Appeals Court EQUAL PROTECTION HAIR LENGTH RLUIPA- Religious Land Use & Institutionalized Persons Act</p>	<p><i>Lewis v. Sternes</i>, 712 F.3d 1083 (7th Cir. 2013). A state prisoner brought an action against prison officials under § 1983 and the Religious Land Use and Institutionalized Persons Act (RLUIPA), alleging removal of his dreadlocks violated his religious rights and denied him equal protection. The district court granted the defendants' motion for summary judgment. The prisoner appealed. The appeals court affirmed. The appeals court held that there was no evidence that the prison had no need to regulate hair length or hairstyle, or that the need was not great enough to warrant interference with the inmate's religious observance. (Dixon Correctional Center, Illinois)</p>
<p>U.S. District Court DIET FREE EXERCISE</p>	<p><i>Lewis v. Zon</i>, 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)</p>
<p>U.S. Appeals Court RELIGIOUS DIET</p>	<p><i>Mays v. Springborn</i>, 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)</p>
<p>U.S. Appeals Court OPPORTUNITY TO WORSHIP RLUIPA- Religious Land Use & Institutionalized Persons Act</p>	<p><i>McCreary v. Richardson</i>, 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)</p>
<p>U.S. District Court DIET FREE EXERCISE</p>	<p><i>Munson v. Gaetz</i>, 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)</p>

U.S. Appeals Court NAME EQUAL PROTECTION RLUIPA- Religious Land Use & Institutionalized Persons Act	<p><i>Mutawakkil v. Huibregtse</i>, 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)</p>
U.S. District Court DIET	<p><i>Parkell v. Morgan</i>, 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)</p>
U.S. Appeals Court DIET RLUIPA- Religious Land Use & Institutionalized Persons Act	<p><i>Rich v. Secretary, Florida Dept. of Corrections</i>, 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)</p>
U.S. District Court OPPORTUNITY TO PRACTICE RLUIPA- Religious Land Use & Institutionalized Persons Act	<p><i>Simmons v. Adamy</i>, 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. According to the court, the prison's scheduling of the Muslim inmate's law library call-outs to conflict with Muslim classes, services, and observances, did not place a substantial burden on the inmate's ability to practice his religion, and thus did not amount to denial of the inmate's religious freedom under the First Amendment or the Religious Land Use Institutionalized Persons Act (RLUIPA), where the overlap occurred less than 20% of the time. (Attica Correctional Facility, New York)</p>
U.S. District Court EQUAL PROTECTION FREE EXERCISE SINCERITY	<p><i>Tavares v. Amato</i>, 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. The court found that the inmate's claims, even if proven, that jail officials confined him in administrative segregation for 132 days, for 23 hours each day, only allowing him to shower during his one hour long recreation period, prohibiting him from wandering around outside of his cell, and forcing him to pick and choose which amenities he wanted to avail himself to given his limited amount of time outside of his cell, did not amount to cruel or unusual punishment in violation of the Eighth Amendment, since the officials' actions involved no specific deprivation of any human need. (Montgomery County Jail, New York)</p>

<p>U.S. District Court EQUAL PROTECTION OPPORTUNITY TO WORSHIP OPPORTUNITY TO PRACTICE RFRA-Religious Freedom Restoration Act RLUIPA- Religious Land Use & Institutionalized Persons Act</p>	<p><i>Uduko v. Cozzens</i>, 975 F.Supp.2d 750 (E.D.Mich. 2013). A prisoner bought claims under <i>Bivens</i>, the Religious Freedom Restoration Act of 1993 (RFRA), the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), and conspiracy, against corrections officers, alleging that the officers had retaliated and discriminated against him for lodging complaints and filing various grievances, by restricting his participation as a religious inmate representative and in religious activities. The officers moved to dismiss. The district court granted the motions in part and denied in part. The court held that the prisoner alleged a substantial burden on his ability to perform religious acts of significance to his faith. The court held that claims that corrections officers restricted the prisoner's active participation in religious services, banned him from attending and participating in any and all religious services and programs held in the chapel area, and prohibited him from prophesying and laying hands on and praying for anyone, alleged a substantial burden on prisoner's ability to perform religious acts of significance to his faith, as required to support prisoner's First Amendment retaliation claims, and claimed violations of RFRA and RLUIPA. (Federal Correctional Institution in Milan, Michigan)</p>
<p>U.S. District Court EQUAL PROTECTION FREE EXERCISE OPPORTUNITY TO WORSHIP WORK DIET</p>	<p><i>Washington v. Afify</i>, 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)</p>
2014	
<p>U.S. District Court EQUAL PROTECTION FREE EXERCISE</p>	<p><i>American Humanist Ass'n v. U.S.</i>, 63 F.Supp.3d 1274 (D.Or. 2014). A federal prison inmate and a secular humanist organization brought an action against the federal government, a prison, and prison officials, alleging that the inmate's constitutional rights were violated when the prison failed to provide accommodations to secular humanists. The defendants moved to dismiss. The district court denied the motion. The court held that secular humanism was a religion for Establishment Clause purposes, and thus the federal prison inmate stated First Amendment claims arising from the prison's failure to provide accommodations to secular humanists equal to those provided to other religious groups. The court held that the officials were not entitled to qualified immunity against the inmate's claims. The court noted that by affirming denial of the inmate's requests to allow secular humanists to meet as a group in a federal prison located in Oregon, and to deny recognition of humanism as a religious preference assignment at the prison, the regional director of the Bureau of Prisons (BOP) intentionally directed the activity as required for the district court to have specific personal jurisdiction over the director with regard to the inmate's claims. (Federal Correctional Institution, Sheridan, Oregon)</p>
<p>U.S. District Court SERVICES</p>	<p><i>Ballard v. Johns</i>, 17 F.Supp.3d 511 (E.D.N.C. 2014). A civil detainee being considered for certification as a sexually dangerous person brought an action against federal employees, in their official capacities and in their individual capacities under <i>Bivens</i>, challenging various conditions of his detention, including claims concerning due process violations and inability to attend religious services. The employees moved to dismiss or for summary judgment and the detainee moved to overrule objections to requests for document production. The district court granted the employees' motion and denied the detainee's motion. The court held that: (1) the detainee did not show that federal employees, by following Federal Bureau of Prisons (BOP) regulations and policies, violated his constitutional rights; (2) the detainee was properly subjected to restrictions and disciplinary consequences of the BOP commitment and treatment program; (3) denial of the detainee's request to attend or receive religious services while in disciplinary segregation did not unduly burden his free exercise of religion; and (4) the employees did not violate detainee's right to be free from unreasonable searches and seizures by searching his cell and seizing his property. (Federal Correctional Institution at Butner, North Carolina)</p>
<p>U.S. District Court DIET</p>	<p><i>Banks v. Annucci</i>, 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)</p>
<p>U.S. District Court OPPORTUNITY TO WORSHIP PUBLICATIONS</p>	<p><i>Boyd v. Arnone</i>, 48 F.Supp.3d 210 (D.Conn. 2014). A state inmate, who was allegedly not permitted to engage in collective worship as a member of the Nation of Gods and Earths religion, brought an action against the state assistant attorney general and various correctional officials, asserting claims under § 1983, the Religious Land Use and Institutionalized Persons Act (RLUIPA), and Connecticut law. 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 inmate sufficiently alleged that a deputy warden was personally involved in the alleged violation of his First Amendment rights, based on the denial of access to a religious newspaper and collective worship, as required to state a § 1983 claim, by alleging that the deputy warden was involved in the unlawful rejection of volumes of religious newspapers and in responding to grievances that he filed regarding the rejection of those newspaper</p>

volumes, and by alleging that the deputy warden denied his requests for televised religious programming and failed to provide him access to collective worship or other religious programming for his faith. The court found that the inmate sufficiently alleged that correctional officials were personally involved in the alleged violation of his First Amendment rights, as required to state a § 1983 claim against the officials, by alleging that the officials were involved in the decision to designate his religion as a disruptive group, helped establish a media review board, which rejected or banned multiple volumes of the religion's newspaper, and were involved in denying grievances related to the inmate's requests to worship collectively. (Osborn Correctional Institution, Connecticut)

U.S. District Court
VOLUNTEERS
WORSHIP
EQUAL PROTECTION
FREE EXERCISE
RLUIPA- Religious Land
Use & Institutionalized
Persons Act

Brown v. Livingston, 17 F.Supp.3d 616 (S.D.Tex. 2014). A prisoner brought an action, individually and on behalf of others similarly situated, alleging that various policies of the Texas Department of Criminal Justice (TDCJ) violated the Religious Land Use and Institutionalized Persons Act (RLUIPA) and the First Amendment. TDCJ moved to terminate a consent decree that prohibited it from discriminating against Muslims in the pursuit of their right to profess their religious beliefs and to exercise their religious practices. The district court denied the motion. The court held that TDCJ's volunteer policy violated the Establishment Clause of the First Amendment, the Free Exercise Clause of the First Amendment, and RLUIPA. The policy required that all religious activities not supervised by a prison chaplain or guard have an outside volunteer in attendance. According to the court, the policy meant that Muslim inmates who were in prisons near populations centers from which Muslim volunteers could not be recruited in greater numbers being able to participate in religious activities only one hour per week, while Catholic, Protestant, and Jewish inmates who could procure more outside volunteers had access to six hours or more of religious activities per week. The court noted that the policy imposed a substantial burden on Muslim inmates' practice of their religion because it substantially limited the opportunity for Muslims to engage in necessary religious aspects of their faith. Muslim inmates had no alternate way to exercise their religious rights because communal worship and instruction were integral to the practice of their faith, and there was no legitimate security interest advanced by prohibiting Muslim inmates from continuing to participate in inmate-led religious activities without an outside volunteer. (Texas Department of Criminal Justice)

U.S. District Court
ARTICLES
CHAPLAIN
FREE EXERCISE
OPPORTUNITY TO
PRACTICE
RLUIPA- Religious Land
Use & Institutionalized
Persons Act
VOLUNTEERS

Cryer v. Spencer, 934 F.Supp.2d 323 (D.Mass. 2013). A state prisoner, claiming to be partially of Native American descent, brought a pro se § 1983 action alleging that prison officials violated his First Amendment right to free exercise of his religion and the Religious Land Use and Institutionalized Persons Act (RLUIPA), as well as his rights under Massachusetts law. The defendants moved to dismiss. The district court allowed the motion in part and denied in part. The district court held that the allegations were sufficient to state claims for violations of RLUIPA, the First Amendment and of a Massachusetts statute prohibiting prisoners from being denied the free exercise of religious belief. The court held that in light of undisputed evidence concerning the importance of Native American languages in Native American religious practices, the allegation that state prison officials limited the prisoner's access to a cassette player and Native American languages audiotapes to use during Native American religious ceremonies were sufficient to state a claim for violations of RLUIPA. According to the court, restricting the prisoner's use of the tapes forced him to choose whether to listen to the tapes and forego participation in the ceremonies, or participate in the ceremonies and give up all opportunities to listen to the tapes. The court also found that the alleged failure of the prison to make available a Native American clergy member or volunteer, or comparable clergy, was sufficient to state an RLUIPA claim. (Souza-Baranowski Correctional Center, Massachusetts)

U.S. District Court
DIET
RLUIPA- Religious Land
Use and Institutionalized
Persons Act

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. Appeals Court
SWEAT LODGE
RESTRICTIONS
RLUIPA- Religious Land
Use & Institutionalized
Persons Act

Haight v. Thompson, 763 F.3d 554 (6th Cir. 2014). Death-row inmates brought an action against prison officials alleging violations of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court granted summary judgment to the officials, and the prisoners appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that: (1) issues of fact precluded summary judgment on the inmates' claim that denial of access to a sweat lodge for Native American religious ceremonies violated RLUIPA; (2) officials' decision to deny certain Native American foods for a powwow imposed a substantial burden on their religious practices; (3) issues of fact precluded summary judgment on the inmates' RLUIPA claim arising from denial of these foods; and (4) RLUIPA did not permit inmates to collect money damages from prison officials sued in their individual capacities. The court noted that although prison officials allowed the prisoners to have some traditional foods, including fry bread, at the powwow ceremony, the powwow was a religious ceremony for members of the Native American Church, the prisoners sincerely believed that a meal accompanied by corn pemmican and buffalo meat was part of that ceremony, and the decision to bar corn pemmican and buffalo meat effectively barred them from this religious practice and forced them to modify their behavior by performing less-than-complete powwows with less-than-complete meals. (Kentucky State Penitentiary)

<p>U.S. Appeals Court FAST RLUIPA- Religious Land Use & Institutionalized Persons Act</p>	<p><i>Holland v. Goord</i>, 758 F.3d 215 (2nd Cir. 2014). A state inmate filed a § 1983 action alleging that prison officials burdened his religious exercise, in violation of Free Exercise Clause and Religious Land Use and Institutionalized Persons Act (RLUIPA), when they ordered him to provide a urine sample while he fasted in observance of Ramadan, breached his due process rights, and retaliated against him. The district court entered summary judgment in the officials' favor, and the inmate appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that state prison officials substantially burdened the Muslim inmate's free exercise rights, in violation of the First Amendment, when they ordered him to drink water in order to provide a urine sample while he fasted in observance of Ramadan. The court noted that breaking his fast prior to sunset would have been a grave sin, regardless of whether atonement was possible. (Wende Correctional Facility, New York)</p>
<p>U.S. Appeals Court FORCED EXPOSURE</p>	<p><i>Jackson v. Nixon</i>, 747 F.3d 537 (8th Cir. 2014). A state prisoner brought an action against various state prison officials, challenging the prison's drug treatment program as in violation of his free exercise rights under the First Amendment. The district court dismissed the action. The prisoner appealed. The appeals court reversed and remanded. The court held that the prisoner stated a § 1983 claim against prison officials for violation of his First Amendment free exercise rights with allegations that he was an atheist, that he was required to attend and complete a substance abuse treatment program that had religious components and invoked religious tenets in order to be eligible for early parole, that due to the religious components of the program and the prison's failure to transfer the prisoner to a secular treatment program, his choices were to withdraw from the program or remain exposed to those religious elements. He chose to withdraw from the program, and was denied early release as a result. The court found that the director of the state department of corrections (DOC) could be held personally liable under § 1983 for the alleged violation of the atheist state prisoner's First Amendment free exercise rights, where under Missouri law, the director was responsible for administering the treatment program, and establishing rules and policies determining how, when, and where offenders could be admitted into or removed from the treatment program. According to the court, the director of the prison's substance abuse treatment program could be held personally liable under § 1983 for the alleged violation of the prisoner's First Amendment free exercise rights, where the program director allegedly could have allowed the prisoner to avoid the religious portions of the program, but still remain enrolled in the program. (Western Reception, Diagnostic, and Corr. Center, Missouri)</p>
<p>U.S. District Court PRIVACY CLOTHING FREE EXERCISE RESTRICTIONS SERVICES OPPORTUNITY TO PRACTICE RELIGIOUS ARTICLES</p>	<p><i>Karsjens v. Jesson</i>, 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. (Minnesota Sex Offender Program)</p>
<p>U.S. District Court EQUAL PROTECTION RLUIPA- Religious Land Use & Institutionalized Persons Act PLACE TO WORSHIP</p>	<p><i>Lloyd v. City of New York</i>, 43 F.Supp.3d 254 (S.D.N.Y. 2014). Muslim inmates brought an action against the New York City Department of Correction, the Department's Commissioner, and the warden of a correctional facility, alleging violation of their free exercise rights under the First Amendment, discrimination in violation of the Equal Protection Clause of Fourteenth Amendment, and violation of their free exercise rights as generated by the Religious Land Use and Institutionalized Persons Act (RLUIPA). The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the Muslim inmates sufficiently alleged that the city's department of correction and prison officials placed a substantial burden on their sincerely held religious beliefs, as required to state a free exercise claim under the First Amendment and RLUIPA, where the inmates asserted that they were forced to conduct regular religious services and daily prayers in the correctional facility's gymnasium, which was frequently flooded, and that they were sometimes forced to conduct Muslim services in a Christian chapel, where pews prevented inmates from kneeling for prayer, and which displayed Christian images that were discordant with their beliefs. The court found that the Muslim inmates stated an equal protection claim by alleging that there was a Christian chapel at the correctional facility, full of Christian imagery and pews for prayer, while Muslim inmates were not provided with an adequate or appropriate worship space, or with a place where they could wash their hands and feet before prayer. (N.Y. City Dept. of Correction, Anna M. Kross Center)</p>
<p>U.S. Appeals Court TOBACCO FREE EXERCISE RLUIPA- Religious Land Use & Institutionalized Persons Act RESTRICTIONS REGULATIONS</p>	<p><i>Native American Council of Tribes v. Weber</i>, 750 F.3d 742 (8th Cir. 2014). A Native American organization and inmates brought an action against prison officials, claiming that the prison's policy of prohibiting tobacco use by Native American inmates during religious activities substantially burdened the exercise of their religious beliefs in violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court found the restrictions violated RLUIPA and ordered the parties to confer. After the parties failed to agree on a new tobacco policy, the district court entered a remedial order granting injunctive relief. The prison officials appealed. The appeals court affirmed. The court held that: (1) the inmates' use of tobacco during Native American ceremonies was a religious exercise; (2) the prison's complete ban on tobacco use substantially burdened the exercise of the inmates' religious beliefs; (3) a complete ban was not the least restrictive means of furthering the prison's interest in order and security; and (4) the district court's remedial order was narrowly tailored to remedy the violation of</p>

inmates' rights. The court noted that Lakota inmates had been taught the importance of tobacco to the exercise of their religious beliefs from a young age and had continued to use tobacco in religious ceremonies throughout adulthood. According to the court, the prison failed to consider the feasibility of reducing the percentage of tobacco in a mixture used by Native American inmates, and other correctional facilities permitted inmates to use tobacco in religious ceremonies. (South Dakota Department of Corrections)

U.S. District Court
DISCRIMINATION
RLUIPA- Religious Land
Use & Institutionalized
Persons Act
FREE EXERCISE
VOLUNTEERS
BOOKS

Pfeil v. Lampert, 11 F.Supp.3d 1099 (D.Wyo. 2014). A pro se prisoner brought an action against prison officials under § 1983 and the Religious Land Use and Institutionalized Persons Act (RLUIPA), alleging that the officials denied him access to religious books and priests. The parties cross-moved for summary judgment. The district court denied the prisoner's motion and granted the officials' motion. The court held that: (1) the fact that a religious volunteer missed a single visit to the prison did not impose a substantial burden on the prisoner's religious exercise; (2) the prison's policy of prohibiting inmates from possessing hardbound books did not impose a substantial burden on the prisoner's religious exercise; (3) the hardbound book policy served to further a compelling governmental interest and was the least restrictive means to do so; (4) the prison's requirement that each volunteer at the prison provide current contract information before being admitted to prison furthered the compelling government interest of maintaining security and safety and was least restrictive means for doing so; (5) the prison's policies were rationally related to a legitimate penological interest; (6) any relaxation of the prison's policies would have an adverse impact on guards, other inmates, and prison resources; (7) prison officials did not impermissibly retaliate against the prisoner for filing a lawsuit; and (8) any limitation on the prisoner's eyesight was not substantial, and thus was not a disability for the purposes of ADA discrimination claim. (Wyoming Honor Farm, Wyoming Honor Conservation Camp)

U.S. District Court
DISCRIMINATION

Richard v. Fischer, 38 F.Supp.3d 340 (W.D.N.Y. 2014). 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. The court found that the inmate's allegations that no other inmate in the prison was "isolated by programming" or restricted to an employment position in his or her cellblock, that the inmate was isolated to programs in his cellblock, presumably because of his race and religion, and that prison employees tasked with assigning work refused to place the inmate on a waiting list for his desired program, when waiting lists were open to "all others," sufficiently stated that the inmate was treated differently than similarly-situated individuals, supporting the inmate's § 1983 claim that employees denied him equal protection by restricting him to employment opportunities in his cellblock. (Five Points Correctional Facility, New York)

U.S. District Court
DIET
DISCRIMINATION
RLUIPA- Religious Land
Use & Institutionalized
Persons Act

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)

U.S. District Court
RLUIPA- Religious Land
Use and Institutionalized
Persons Act
EQUAL PROTECTION
OPPORTUNITY TO
PRACTICE

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)

<p>U.S. District Court SERVICES VOLUNTEERS FREE EXERCISE OPPORTUNITY TO WORSHIP</p>	<p><i>Turner v. Hamblin</i>, 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)</p>
<p>U.S. District Court COSTS FREE EXERCISE OPPORTUNITY TO WORSHIP RLUIPA- Religious Land Use & Institutionalized Persons Act</p>	<p><i>Walker v. Artus</i>, 998 F.Supp.2d 18 N.D.N.Y. 2014). A Muslim inmate housed in a state prison special housing unit (SHU) brought a § 1983 action alleging that state prison officials deprived him of his rights in violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA) and the Free Exercise Clause of the First Amendment. The officials moved for summary judgment. The district court granted the motion. The court held that denial of the inmate's requests to participate in congregate religious services by audio or video feed was reasonably related to legitimate security and cost concerns, and the inmate had adequate means to exercise his burdened right, including weekly visits from an Imam, and thus denial of the inmate's requests did not violate the inmate's free exercise rights under the First Amendment. The court also found that the officials' denial furthered compelling government interests of promoting prison security and managing costs, and the burden placed on the inmate was the least restrictive means necessary to serve those interests, and thus denial of inmate's requests did not violate RLUIPA. (Clinton Correctional Facility, New York)</p>
<p>U.S. Appeals Court ARTICLES FREE EXERCISE DIET OPPORTUNITY TO PRACTICE RLUIPA- Religious Land Use & Institutionalized Persons Act</p>	<p><i>Wall v. Wade</i>, 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)</p>
<p>U.S. District Court HAIR LENGTH RLUIPA- Religious Land Use & Institutionalized Persons Act</p>	<p><i>Williams v. Champagne</i>, 13 F.Supp.3d 624 (E.D.La. 2014). A former inmate who was a practicing Rastafarian brought an action against a sheriff and prison officials under § 1983, the Religious Land Use and Institutionalized Persons Act (RLUIPA), and state law arising out of a grooming policy which he contended substantially burdened his Rastafarian religious practices, and an alleged incident of excessive force. 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: (1) issues of fact as to whether the grooming policy prohibiting dreadlocks and requiring men's hair to be no more than two inches long was the least restrictive means of serving compelling government interests on the RLUIPA claim; (2) issues of fact as to the incident in which the inmate had complied with orders to leave his cell, whether there was any basis for prison officers to use any force at all to maintain discipline after the prisoner had complied with orders to leave his cell, let alone with force sufficient to rip a dreadlock from his scalp; (3) issues of fact as to whether it was objectively unreasonable for prison officers to pull on the chain connecting the prisoner's handcuffs while he was fully restrained in the "suicide chair," and for one officer to strike the prisoner forcefully in the head after the prisoner spit on him, and, (4) issues of fact on the inmate's assault and battery claims. (Nelson Coleman Correctional Center, Louisiana)</p>
<p>U.S. District Court EQUAL PROTECTION OPPORTUNITY TO PRACTICE CHAPLAIN</p>	<p><i>Williams v. King</i>, 56 F.Supp.3d 308 (S.D.N.Y. 2014). A state inmate brought a § 1983 action alleging that prison officials violated his rights to free exercise of religion and due process. 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 issues of fact as to: (1) whether the alleged burdens imposed on the free exercise rights of Shiite Muslim State prison inmates actually served, or were intended to serve, any legitimate penological interests; (2) whether the inmate was denied the right to participate in a religious celebration despite having complied with the prison's registration policy; and, (3) whether the prison's selective registration policy was reasonably related to legitimate penological interests rather than motivated by discriminatory purposes. The court found that the prisoner's allegations that the prison's Muslim chaplain and superintendent of programs were personally involved in the discriminatory policies were sufficient to state a free exercise claim and that the chaplain and superintendent were not entitled to qualified immunity. The inmate alleged that the chaplain made various decisions regarding inmates' celebrations of Muslim holy days which had the effect of allowing Sunni Muslim inmates to follow their practices while not allowing Shiite Muslim inmates to follow certain Shiite practices. He also alleged that the superintendent, despite responding to several grievances based on the chaplain's alleged denials of religious accommodations, allowed those denials to continue and consciously administered an alleged selectively discriminatory policy. (Woodbourne Correctional Facility, New York)</p>

U.S. District Court
DIET
EQUAL PROTECTION
FREE EXERCISE
OPPORTUNITY TO
PRACTICE
RLUIPA- Religious Land
Use & Institutionalized
Persons Act

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)

U.S. Appeals Court
RLUIPA- Religious Land
Use & Institutionalized
Persons Act
PLACE OF WORSHIP

Wood v. Yordy, 753 F.3d 899 (9th Cir. 2014). A state inmate filed an action under the Religious Land Use and Institutionalized Persons Act (RLUIPA) and § 1983 alleging that prison officials had imposed an unwarranted burden on his exercise of religion. The district court entered summary judgment in the officials' favor, and the inmate appealed. The appeals court affirmed. The court held that the state inmate failed to establish that prison officials retaliated against him, in violation of the First Amendment, for his earlier suit, in which he prevailed on appeal in a § 1983 due process claim, when they restricted his access to a prison chapel during the investigation of his relationship with another guard. (Idaho Correctional Institute—Orofino, Idaho State Correctional Institution)

U.S. Appeals Court
SWEAT LODGE
RLUIPA- Religious Land
Use & Institutionalized
Persons Act
SINCERITY

Yellowbear v. Lampert, 741 F.3d 48 (10th Cir. 2014). A state prisoner brought an action against individual prison officials, seeking prospective injunctive relief against them for violations of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court granted summary judgment for the officials and the prisoner appealed. The appeals court vacated and remanded. The appeals court held that summary judgment was precluded by a factual issue as to whether preventing the state prisoner from exercising his sincerely held religious belief --using a sweat lodge -- served a compelling governmental interest, and that it was the least restrictive means of furthering that interest. The appeals court began its opinion by stating: "Andrew Yellowbear will probably spend the rest of his life in prison. Time he must serve for murdering his daughter. With that much lying behind and still before him, Mr. Yellowbear has found sustenance in his faith. No one doubts the sincerity of his religious beliefs or that they are the reason he seeks access to his prison's sweat lodge—a house of prayer and meditation the prison has supplied for those who share his Native American religious tradition. Yet the prison refuses to open the doors of that sweat lodge to Mr. Yellowbear alone, and so we have this litigation." The prison's sweat lodge is located in the general prison yard and Yellowbear was housed in a special protective unit because of threats against him, not because of any disciplinary infraction he had committed. Prison officials asserted that the cost of providing the necessary security to take the prisoner from the special protective unit to the sweat lodge and back was "unduly burdensome." (Wyoming Medium Correctional Institution)

2015

U.S. District Court
RLUIPA- Religious Land
Use and Institutionalized
Persons Act
CLOTHING
OPPORTUNITY TO
WORSHIP

Ajala v. West, 106 F.Supp.3d 976 (W.D. Wisc. 2015). An inmate brought an action against prison officials for alleged violation of his rights under the Religious Land Use and Institutionalized Persons Act (RLUIPA), the Free Exercise Clause, the Establishment Clause, and the Equal Protection Clause. The inmate challenged a prison policy that allegedly prohibited the inmate from wearing a "kufi," a head covering worn by some Muslims, unless he was in his cell or participating in congregate services. The prison officials moved for summary judgment, and the inmate moved for an extension. The district court held that: (1) the policy imposed a substantial burden on the inmate's religious exercise; (2) the policy was not the least restrictive means of furthering the prison's interest of preventing prisoners from using a religious head covering as a potential gang identifier; (3) the policy was not the least restrictive means of furthering the prison's interest in preventing prisoners from hiding contraband; (4) the policy was not the least restrictive means of furthering the prison's interest in preventing prison violence; and (5) prison officials were entitled to qualified immunity from the inmate's constitutional claims. The court noted that the law was not clearly established that the inmate had a constitutional right to wear a kufi at all times. (Wisconsin Secure Program Facility)

U.S. Appeals Court
FREE EXERCISE
RLUIPA- Religious Land
Use and Institutionalized
Persons Act
AIRFA- American Indian
Religious Freedom Act

Brooks v. Roy, 776 F.3d 957 (8th Cir. 2015). A Native American inmate brought an action against a state prison official under § 1983, the Religious Land Use and Institutionalized Persons Act (RLUIPA), the American Indian Religious Freedom Act (AIRFA), and the Minnesota Constitution. The inmate alleged that a required chemical-dependency program conflicted with his religious beliefs. The district court dismissed some claims and granted summary judgment to the officials on the remaining claims. The inmate appealed. The court held that the inmate's complaint did not sufficiently put the officials on notice of the basis for his free exercise claims and give them enough information to respond adequately to the allegations in the complaint. The court noted that the inmate's complaint never specified his Native American faith, his beliefs consistent with that faith, or how the available program at his prison conflicted with his Native American beliefs. The inmate had received a chemical-dependency assessment, as all new inmates are required to have under Minnesota law, and was ordered to complete treatment program in order to be transferred to a lower-security prison, qualify for work release, and avoid disciplinary sanctions. (Minnesota Correctional Facility, Faribault)

U.S. Appeals Court
RFRA- Religious Freedom
Reformation Act
ARTICLES
JEWELRY/ORNAMENTS

Davila v. Gladden, 777 F.3d 1198 (11th Cir. 2015). A prisoner, a Santeria priest, brought an action against federal prison employees in their official and individual capacities, alleging their refusal to allow him to obtain his personal religious bead and shell necklaces violated the Religious Freedom Restoration Act (RFRA) and the First Amendment. The district court dismissed the prisoner's claims for money damages under RFRA and granted summary judgment to defendants on the prisoner's remaining claims. The prisoner appealed. The appeals court affirmed in part and reversed in part. The court held that the prisoner's sincerely held religious belief was substantially burdened. According to the court, summary judgment was precluded by genuine issues of material fact as to whether the prison's refusal to allow the prisoner to obtain his personal bead and shell necklaces furthered a compelling government interest, and whether the prison's policy decision constituted the least restrictive means to further that interest. The court held that refusal to allow the prisoner to obtain his personal religious necklaces did not violate the First Amendment, finding that: (1) the refusal was rationally connected to legitimate government interests in prison safety and resource allocation; (2) the prisoner had alternative means of practicing his religion even without his personal beads; (3) allowing the prisoner to receive religious items from outside the prison would have an impact on prison staff, other inmates, and the allocation of prison resources; and, (4) the only alternative that would allow the prisoner to obtain his beads and shells would be to permit prisoners to receive religious items from outside the prison, which would result in a more than de minimis cost to the prison's interests. (Federal Correctional Institution, Jesup, Georgia)

U.S. Appeals Court
RLUIPA- Religious Land
Use and Institutionalized
Persons Act

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
WORK
OPPORTUNITY TO
PRACTICE

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. Appeals Court
RLUIPA- Religious Land
Use and Institutionalized
Persons Act
WORK

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)

<p>U.S. Appeals Court RLUIPA- Religious Land Use and Institutionalized Persons Act HAIR LENGTH</p>	<p><i>Knight v. Thompson</i>, 796 F.3d 1289 (11th Cir. 2015). Male inmates brought an action alleging that a state prison’s short-hair policy violated the dictates of their Native American religion, in violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court entered judgment in the state’s favor, and the inmates appealed. The appeals court affirmed. The U.S. Supreme Court vacated and remanded. Upon remand, the appeals court reinstated the decision with modifications, affirming. The appeals court held that the district court engaged in a sufficiently focused inquiry, did not impermissibly defer to prison officials, and did not impermissibly disregard the inmates’ assertion that prison systems of 39 other states would allow the accommodation they requested. (Alabama Department of Corrections)</p>
<p>U.S. Appeals Court RLUIPA- Religious Land Use and Institutionalized Persons Act HAIR LENGTH</p>	<p><i>Knight v. Thompson</i>, 797 F.3d 934 (11th Cir. 2015). Native American inmates brought an action against the Alabama Department of Corrections (ADOC), challenging its male short-hair policy under the Religious Land Use and Institutionalized Persons Act (RLUIPA). After a bench trial, the district court entered judgment for the Department. The inmates appealed. The appeals court affirmed. The United States Supreme Court granted certiorari, vacated the judgment, and remanded for further consideration in light of <i>Holt v. Hobbs</i>. On remand, the appeals court held that the challenged policy furthered a compelling interest and that the policy was the least restrictive means of furthering those compelling interests. According to the court, evidence established that the Alabama Department of Corrections’ (ADOC) male short-hair policy substantially burdened religious exercise by Native American prisoners, as an element for violation of the RLUIPA. The prisoners’ expert on Native American spirituality offered extensive, undisputed testimony that long hair had great religious significance for many Native Americans, and each prisoner confirmed that his desire to wear unshorn hair stemmed from deep religious convictions, and the prisoners’ expert further gave an uncontradicted opinion that forcing Native Americans to cut their long hair would amount to an “assault on their sacredness.” (Ala. Dept. of Corrections)</p>
<p>U.S. District Court RLUIPA- Religious Land Use and Institutionalized Persons Act ARTICLES RESTRICTIONS</p>	<p><i>Lagar v. Tegels</i>, 94 F.Supp.3d 998 (W.D. Wis. 2015). An inmate brought an action against a prison’s warden, program manager, and chaplain, alleging they impinged on his religious freedom in violation of the First Amendment and the Religious Land Use and Institutionalized Persons Act (RLUIPA), by denying him the right to wear a “Rosicrucian” emblem. The defendants moved for summary judgment. The district court granted the motion. The court held that the inmate failed to show that denial by prison officials of his request to wear a “Rosicrucian” emblem, consisting of a five-pointed star without a circle around it, a Christian cross, and seven roses arranged around the cross, imposed a substantial burden on the exercise of his religion, as required to establish a prima facie case under RLUIPA. The court noted that the only support the inmate offered as to the importance of the emblem to the exercise of his religion was his own conclusory statement that the emblem contained the key to man’s past evolution, his present condition and future development, together with the method of attainment, and that it assisted in the process of empowering one’s higher self by directing the wearer’s focus toward spiritual, rather than material, purposes. The court noted that even if the denial imposed a substantial burden on the exercise of his religion, the denial was the least restrictive means of furthering compelling governmental interests in maintaining institutional security and quelling gang activity, and thus did not violate RLUIPA. (Jackson Correctional Institution, Wisconsin)</p>
<p>U.S. District Court ARTICLES OPPORTUNITY TO WORSHIP RESTRICTIONS RLUIPA- Religious Land Use and Institutionalized Persons Act</p>	<p><i>LaPlante v. Massachusetts Dept. of Correction</i>, 89 F.Supp.3d 235 (D.Mass. 2015). A state inmate brought an action against the Massachusetts Department of Correction (DOC) and its superintendent under the Religious Land Use and Institutionalized Persons Act (RLUIPA), seeking declaratory and injunctive relief from what he claimed were unlawful burdens on the practice of his Wicca faith. The parties 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 fact issues regarding the limitation on the use of ritual oils and the limitation on the use of ritual herbs. The court found that rules regarding corporate worship, that limited corporate worship to Sundays rather than around the phases of the moon as mandated by the Wiccan faith, substantially burdened the inmate’s religious exercise. According to the court, refusal to provide nuts and fruits violated RLUIPA. But the court held that refusal to allow the inmate to wear ceremonial robes during corporate worship, and refusal to provide the inmate with different varieties of cake, did not substantially burden the inmate’s religious exercise. (Mass. Corr. Institution-Norfolk)</p>
<p>U.S. District Court RLUIPA- Religious Land Use and Institutionalized Persons Act EQUAL PROTECTION FREE EXERCISE SERVICES</p>	<p><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)</p>
<p>U.S. Appeals Court RLUIPA- Religious Land Use and Institutionalized Persons Act ARTICLES DIET JEWELRY/ORNAMENTS</p>	<p><i>Schlemm v. Wall</i>, 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)</p>

U.S. District Court
RLUIPA- Religious Land
Use and Institutionalized
Persons Act
ARTICLES
SERVICES
OPPORTUNITY TO
PRACTICE

Strickland v. Godinez, 104 F.Supp.3d 940 (S.D. Ill. 2015). A state inmate brought an action against prison officials alleging that a state’s policies and practices interfered with his ability to practice his religion, in violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA) and the First Amendment. The inmate moved for a preliminary injunction and/or a protective order. The district court denied the motion finding that an injunction was premature. The inmate practiced Asatru (also known as Odinism). The inmate alleged that officials threatened or retaliated against him and refused to permit him and other inmates who practiced Asatru to have full participation in proper group and individual worship including the ownership of personal ritual items and medallions central to their beliefs. The inmate also sought to participate in outdoor worship and ritual feasts and further sought the “setting aside of sacred land on which blots [i.e rituals] could be conducted.” (Lawrence Correctional Center, Illinois)

U.S. Appeals Court
RLUIPA- Religious Land
Use and Institutionalized
Persons Act

U.S. v. Secretary, Florida Dept. of Corrections, 778 F.3d 1223 (11th Cir. 2015). The federal government brought an action against the Florida Department of Corrections (DOC), alleging that the DOC’s failure to provide a kosher diet to all of its prisoners with sincere religious grounds for keeping kosher violated the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court granted the DOC’s motion for a preliminary injunction and the federal government appealed. The appeals court vacated the district court decision and dismissed the appeal. The court held that the preliminary injunction did not comply with the Prison Litigation Reform Act (PLRA), and thus, expired after 90 days. The court noted that injunctive relief was not narrowly drawn, extended further than necessary to correct the violation of the federal right, and was not the least intrusive means necessary to correct the violation, in violation of PLRA. (Florida Dept. of Corrections)

U.S. Appeals Court
RLUIPA- Religious Land
Use and Institutionalized
Persons Act
OPPORTUNITY TO
PRACTICE

Walker v. Beard, 789 F.3d 1125 (9th Cir. 2015). A state prisoner brought an action against prison officials challenging their classification of him as eligible to occupy a prison cell with an individual of a different race, alleging that such placement would interfere with his religious practice as an Aryan Christian Odinist, violating his rights under the Religious Land Use and Institutionalized Persons Act (RLUIPA) and the First Amendment. The district court held that the prison officials’ actions did not violate the prisoner’s rights. The prisoner appealed. The appeals court affirmed, finding that: (1) the Aryan Christian Odinist warding ritual was a “religious exercise” under RLUIPA; (2) prison officials’ classification of the state prisoner under a housing policy substantially burdened the prisoner’s ritual; (3) prison officials’ compliance with constitutional restrictions on racial segregation in prisons was a compelling governmental interest under RLUIPA; (4) prison officials’ refusal to exempt the prisoner from the housing policy’s classification scheme was the least restrictive means of furthering a compelling interest, and thus the officials’ actions did not violate the prisoner’s rights under RLUIPA; and (5) prison officials’ interest in complying with the Equal Protection Clause was reasonably related to legitimate penological interests, and thus the officials’ refusal to exempt the state prisoner from the housing policy’s classification scheme did not infringe on the prisoner’s rights under the Free Exercise Clause of the First Amendment. (California Department of Corrections and Rehabilitation)

2016

U.S. Appeals Court
FAST
DIET
FREE EXERCISE

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 38: RULES AND REGULATIONS- 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.

1954

U.S. Appeals Court
RULES

Banning v. Looney, 213 F.2d 771 (10th Cir. 1954). Courts are without power to supervise prison administration or to interfere with ordinary prison rules or regulations. (Federal Penitentiary, Leavenworth, Kansas)

1964

U.S. District Court
RULES
JEWELRY

Banks v. Havener, 234 F.Supp. 27 (E.D. Vir. 1964). An inmate is allowed to wear a religious medal even though jewelry has been banned from prisoners in other cases for security reasons. (Youth Center, Lorton, Virginia)

U.S. District Court
RULES
JEWELRY

Coleman v. District of Columbia Commissioners, 234 F.Supp. 408 (E.D. Vir. 1964). Restrictions on wearing of metal ornaments which might be used as weapons is justified. (Lorton Reformatory, Virginia)

1968

U.S. Supreme Court
RULES

Houghton v. Shafer, 392 U.S. 639 (1968) (Per Curiam). Houghton, a Pennsylvania state inmate, brought this 42 U.S.C. Section 1983 action in a U.S. District Court, claiming that prison authorities violated his civil rights by confiscating legal materials Houghton acquired for pursuing his appeal. The legal materials were in the possession of another inmate at the time they were confiscated, in violation of prison rules.

The district court dismissed the complaint on the sole ground that Houghton had not alleged exhaustion of state administrative remedies. The Third Circuit Court of Appeals affirmed without opinion, and Houghton petitioned the Supreme Court for a writ of certiorari. (Reversed)

HELD: On the basis of Monroe v. Pape, 365 U.S. 167; McNesse v. Board of Education, 373 U.S. 668; and Damico v. California, 389 U.S. 416, exhaustion of state remedies [such as taking a dispute to a "classification and treatment" clinic; addressing the superintendent deputy commissioner of correction or the commissioner of correction; seeking final appeal to the state attorney general] is not a necessary requisite to initiation of a 42 U.S.C. Section 1983 action. 392 U.S. at 640. (Pennsylvania Department of Corrections)

U.S. Appeals Court
RULES

Long v. Parker, 390 F.2d 816 (3rd Cir. 1968). Correctional personnel, not the courts, are responsible for promulgating regulations for the safety of the prison population and public as well as for the maintenance and proper functioning of the institution. Correctional officers must be granted wide discretion in the exercise of such authority. (United States Penitentiary, Lewisburg, Pennsylvania)

1970

U.S. District Court
RULES
FREE EXPRESSION

Carothers v. Follette, 314 F.Supp. 1014 (S.D. N.Y. 1970). "Any prison regulation or practice which restricts the right of free expression that a prisoner would have enjoyed if he had not been imprisoned must be related both reasonably...and necessarily... to the advancement of some justifiable purpose of imprisonment...A prisoner could be punished only if he acted or threatened to act in a way that breached or constituted a clear and present danger of breaching the justifiable regulation." (Green Haven State Prison, New York)

U.S. Appeals Court
HAIR LENGTH
FACIAL 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. Supreme Court
RULES
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. Appeals Court
RULES
JEWELRY

Rowland v. Jones, 452 F.2d 1005 (8th Cir. 1971). Jewelry should be banned only if it could be used as a weapon. (Nebraska Penal and Correctional Complex)

U.S. District Court
HAIR
JEWELRY

Seale v. Mason, 326 F.Supp. 1375 (D. Conn. 1971). Arguments for hair restriction are based on health reasons and the need for identification of inmates. Where a prison regulation limited the jewelry women prisoners might wear to a wristwatch, earrings, a ring and a necklace with a religious medal on it, the court held no infringement of any constitutional right existed. (Montville Correctional Center, Connecticut)

U.S. Supreme Court
RULES
ACCESS TO COURT

Younger v. Gilmore, 404 U.S. 15 (1971) (Per Curiam). Citing Johnson v. Avery, 393 U.S. 483 (1969), the court affirmed the judgment of the District Court for the Northern District of California in Gilmore v. Lynch, 314 F.Supp. 105 (1970).

In Gilmore, inmates incarcerated in California correctional facilities challenged certain rules and regulations of the Department of Corrections concerning access to law books, legal materials, lay assistance on preparing documents for court, and procedures of the state law library regarding circulation of legal materials to inmates.

HELD: The U.S. District Court enjoined the enforcement of a regulation which limited access of legal books for inmates to the following:

1. State Penal Code
2. State Welfare & Institutions Code
3. State Health & Safety Code
4. State Vehicle Code
5. U.S. & State Constitutions
6. A recognized Law Dictionary (such as Black's)
7. A text on State Criminal Procedures
8. A subscription to California Weekly Digest
9. State Rules of Court
10. Rules of U.S. Court of Appeals (Ninth Circuit)
11. Rules of U.S. Supreme Court 314 F.Supp. at 112.

The District Court did not indicate which books would be acceptable. However, it did note the absence of the following: Annotated Codes, U.S. Codes, U.S. Reports, Federal Reports, State Reports, Rules of Federal District Courts, Treaties Journals (Law Week).

HELD: The Department of Corrections was given the choice of either expanding the existing list of basic codes and references or adopting some new method to satisfy the legal needs of inmates. 319 F.Supp. at 112. (California Correctional System)

1972

U.S. District Court
RULES
PRETRIAL
DETAINEES

Collins v. Schoonfield, 344 F.Supp. 257 (D. Md. 1972). A detainee can be deprived of constitutional rights only to the extent such denial is required to insure that he appears at trial and to restrain him from endangering or disrupting the security of the institution in which he is detained, or to deter him, if his conduct has already caused such danger or disruption, from repeating such conduct. 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.

Inmates may not be punished for conduct of innocuous or trivial nature under vague and uncertain standards and regulations because such conduct may offend the sensibilities of individual corrections officers where such conduct poses no threat to the security and order of the institution. Racial minority publications may be excluded if an official can show prison security is threatened. (Baltimore City Jail, Maryland)

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)

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)

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
RULES- ITEMS
PERMITTED

Goldsby v. Carnes, 365 F.Supp. 395 (W.D. Mo. 1973). Personal items not permitted will be recorded on property receipts and placed in property file envelopes. Money may be left for prisoners during the day shift and the evening shift. (Jackson County Jail, Kansas City, Missouri)

U.S. District Court
RESTRICTIONS

Hampton v. Schauer, 361 F.Supp. 641 (D. Colo. 1973). Restrictions on the use of typewriters, legal pads, carbon paper, and duplicating machines has been held to be reasonable. (Colorado State Penitentiary)

U.S. District Court
HAIR

Rinehart v. Brewer, 360 F.Supp. 105 (S.D. Ia. 1973), *aff'd*, 491 F.2d 705 (8th Cir. 1974). When beliefs concerning appearance and hair style or length conflict with jail or prison regulations, religious belief must yield. (Iowa State Penitentiary)

1974

U.S. Appeals Court
CORRESPONDENCE

Finney v. Arkansas Board of Corrections, 505 F.2d 194 (8th Cir. 1974). A prison may maintain an approved list of correspondents for each prisoner as long as the list is supported by government interests in order of security or rehabilitation. (Arkansas Board of Corrections)

U.S. Appeals Court
ACCESS TO
ATTORNEY

Souza v. Travisono, 498 F.2d 1120 (1st Cir. 1974). The right of an inmate to see his attorney or his attorney's agent is subject to a reasonable spectrum of prison controls that can range from the primary need of maintaining security and discipline to the maintenance of such housekeeping rules as lunch schedules (banning of visits during meals is upheld). (Adult Correctional Institution, Rhode Island)

1975

U.S. District Court
CLOTHING

Giampetruzzi v. Malcolm, 406 F.Supp. 836 (S.D. N.Y. 1975). Requirement that inmates in administrative segregation submit a request slip before receiving clothing from visitors does not violate the Constitution. (New York City House of Detention for Men)

U.S. Appeals Court
HAIR

Teterud v. Burns, 522 F.2d 357 (8th Cir. 1975). The right of a Native American prisoner to refuse a haircut on the grounds of his adherence to his Native American religion is affirmed. (Iowa State Penitentiary)

1976

U.S. District Court
RULES

Barnes v. Government of the Virgin Islands, 415 F.Supp. 1218 (D. V.I. 1976). Inmates are to be provided with written rules and regulations. (Golden Grove Adult Correctional Facility, Virgin Islands)

U.S. District Court
RULES

Rodriguez v. Jiminez, 409 F.Supp. 582 (D. P.R. 1976). Placing one copy of the prison regulations in the library does not meet due process requirement of informing inmates of institutional rules. (San Juan District Jail)

U.S. District Court
RULES

Taylor v. Perini, 413 F.Supp. 189 (N.D. Oh. 1976). Copies of rules and regulations must be distributed and posted. (Marion Correctional Institution, Ohio)

1977

U.S. District Court
RULES

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. (Platte County Jail, Missouri)

U.S. District Court
CLOTHING

Forts v. Malcolm, 426 F.Supp. 464 (S.D. N.Y. 1977). A prohibition on the wearing of pants by detainees is unconstitutional where its only justification is the administrative inconvenience of having one rule for detainees and another for sentenced prisoners. This justification is not rationally connected with assuring appearance at trial or jail security, which is the only legitimate purpose of detention. (New York City Correctional Institute for Women)

U.S. Appeals Court
RESTRICTIONS

French v. Heyne, 547 F.2d 994 (7th Cir. 1977). Restriction on inmate money raising to finance educational programs must have a rational basis. Though not constitutionally required, classification must have a rational basis for providing vocational educational programs to long-term inmates but not to short-term inmates or inmates with degrees. Prior classification was not found sufficient. (Indiana State Reformatory)

1978

U.S. District Court
RULES

Bono v. Saxbe, 450 F.Supp. 934 (E.D. Ill., 1978). Prisoners confined in the control unit of the Marion Federal Penitentiary brought an action challenging the conditions of their confinement. The district court held that: (1) conditions of confinement in the control unit were not cruel and unusual punishment except for the use of closed-front cells. (Federal Penitentiary, Marion, Illinois)

1979

U.S. Supreme Court
"PUBLISHER-ONLY"
RULE
PACKAGES

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 States 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 confided 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 hrs. 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. Appeals Court
PROPERTY

Jensen v. Klecker 599 F.2d 243 (8th Cir. 1979). Where an inmate's property is not prohibited by rules, property must be returned to the inmate on request. (State Penitentiary, North Dakota)

U.S. District Court
PUBLICATIONS

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)

U.S. District Court
PROPERTY

Velarde v. Ricketts, 480 F.Supp. 261 (D. Colo. 1979). A prison rule which prohibits one prisoner from transferring property (in this case a television set) to another prisoner is valid. Such a rule is intended to prevent the use of legitimate institutional procedures by prisoners to pay gambling debts, bribes, or other illegal prisoner activities. (Colorado State Penitentiary)

1980

U.S. District Court
WORK

Chapman v. Pickett, 491 F.Supp. 967 (C.D. Ill. 1980). Reversed. In determining whether the first amendment freedom of religion has been violated by prison regulations or operations, according to the federal district court a two part test is to be applied: 1) the plaintiff must first show that a legitimate religious practice is being unduly limited by prison regulations; and 2) the government then has a burden of showing a compelling state interest in security, administration, or discipline justifying the restriction, and that the restriction represents the least drastic means of achieving the legitimate institutional goals. Refusal of a Muslim to handle pork which is violative of a serious religious belief is proper. To be a serious religious belief, the belief need not be a mandatory tenet of the faith. Here the government has shown no legitimate interest in having the individual handle pork. On appeal, the circuit court of appeals disagreed, reversing the lower court ruling. (Federal Penitentiary, Leavenworth, Kansas)

U.S. District Court
CUSTODY LEVEL

Hluchan v. Fauver, 482 F.Supp. 1155 (D. N.J. 1980). In October 1979, the district court for New Jersey declared unconstitutional a state standard which denied eligibility for minimum custody status to inmates who had been convicted of more than one "sex offense." Guidelines were set forth in the opinion to help in revising the standard. Within the time allotted, the defendants submitted proposed revisions to the standard. The court first stated that the definition of "sex offense" by reference to specific section of the New Jersey Criminal Code was entirely proper. Furthermore, the court agreed with the categories from which the offenses included in the standard were selected: (1) minors; (2) violence or the threat of violence; or (3) the sale of prohibited sexual goods and services in the course of a business for profit. The court stated that the standard failed, however, because of the inclusion of certain phrases in the definition of "sex offense." One section, which provided for the hiring out or employing of minors for mendicant or immoral purposes, the court found to be irrational. This section referred to the disposing "of the child for any mendicant or slandering business." The court pointed out that "mendicant" is defined as "practicing beggary" or "begging" and that wandering business is not necessarily concerned with sex or immorality. The court stated that if such terms were applied to the definition of "sex offenders," the classification would violate the equal protection clause of the fourteenth amendment. The court then discussed other sections of the proposed standard which listed criminal conduct constituting a "sex offense." The court found it impossible to determine the meanings of these paragraphs. The court also stated that defining sexual offenses by

reference to specific sections of the New Jersey code would render the standard violative of the equal protection clause since the New Jersey code differs in structure from other state codes. The court thus found the proposed standard to be unconstitutional, but granted the commissioner thirty days to make revisions. (New Jersey Department of Corrections)

U.S. District Court
VISITS

Nicholson v. Choctaw Co., Ala., 498 F.Supp. 295 (S.D. Ala. 1980). Visitation is to be provided on terms convenient to the potential visitors, not merely when most convenient to the institutional staff. Visitation is to include at least two hours on Saturday or Sunday and should emphasize evenings, weekends and holidays. Children are to be permitted to visit their parents. (Choctaw County Jail, Alabama)

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)

1981

U.S. District Court
ACCESS TO
RELIGION

Glasshofer v. Thornburgh, 514 F.Supp. 1242 (E.D. Penn. 1981), *aff'd*, 688 F.2d 821 (3rd Cir. 1982). The fact that the room set aside for Jewish religious services must be shared with other religious denominations is rational in light of the limited space available in the institution and the size of the Jewish population in the institution. Locking the room and giving the keys to the institutional chaplains is a reasonable manner of securing the premises. Therefore, posting of a twenty-four hours a day guard is not required. The fact that there is a facility set aside for Christian worship and another for Muslim worship does not indicate that Jews are being denied equal protection since each facility must be shared with multiple denominations and must leave in place fixtures which are antithetical to the beliefs of some of the organizations using the rooms. Detention of the Jewish chaplains at the gate on two occasions was in accordance with a reasonable security procedure which was applied neutrally to all religious and non-religious visitors. Therefore, it did not violate the first amendment. Requiring passes to permit inmates to attend services and requiring all services to break for the regular institutional counts were rational security procedures. (State Correctional Institute, Graterford, Pennsylvania)

1982

U.S. District Court
BEARDS

Furgan v. Ga. State Bd. of Offender Rehabilitation, 554 F.Supp. 873 (N.D. Ga. 1982). A beard cannot be grown because it prevents identification of inmate upon escape. An inmate filed suit against the prison alleging that he was a Sunni Muslim and that his growing a beard was a practice of his Islamic faith. The federal district court held that the regulation's justification outweighed the inmate's sincere reasons for retaining a beard. The regulation was justified for the reason of permitting ease of identification upon escape. The rationale was that an escaped prisoner wearing a beard could more easily modify his appearance than could a clean shaven inmate with short hair. (Diagnostic and Classification Center, Georgia)

U.S. Appeals Court
PUBLICATIONS

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. (Indiana)

1983

U.S. Appeals Court
RELIGIOUS ARTICLES

Childs v. Duckworth, 705 F.2d 915 (7th Cir. 1983). Denial of religious articles to practice satanic beliefs is proper. The Fifth Judicial Circuit Court of Appeals has ruled that denial of an inmate's request to practice his alleged Satanic religion was justified in the interest of prison security. Prison officials had found that the inmate was insincere in his professed belief since he never provided the information required to start an organization, never obtained a sponsor, and was secretive about his group's rituals. Without such information, the practice of the so-called religion presented a potential threat to institutional security since prison authorities had no way of knowing what would occur at the Satanic services. Prison officials properly denied the prisoner a podium from which to propagate his individual beliefs, candles and incense which were a fire hazard, and a crystal ball which could be used to physically harm someone. In addition, prison officials and the district court decided Satanism was not a religion, but rather a "nebulous, philosophic concept." (Indiana State Prison)

U.S. District Court
VOLUNTEERS

Hardaway v. Kerr, 573 F.Supp. 419 (W.D. Wisc. 1983). Denial of visits with prison volunteers is improper. The suit was brought after officials refused to allow a volunteer in a Bible study program to visit one of the inmates with whom she became friends. A facility policy preventing all prison volunteers from visiting inmates was found to be without justification by a federal district court in Wisconsin. The court ruled that the regulation was an "exaggerated response" to any legitimate need to maintain the effectiveness of the volunteer program. Officials tried to justify the rule on the basis that a professional distance needed to be created between the inmates and the prison workers to avoid overly friendly relationships which would undermine the volunteer program. They claimed that a volunteer was more effective in rehabilitating a prisoner if he or she did not become personally involved with that prisoner. (Federal Correctional Institution, Oxford, Wisconsin)

1985

State Appeals Court
BEARDS

Dept. of Corrections v. Piccirillo, 474 So.2d 1199 (Fla. App. 1 Dist. 1985). The United States Constitution prohibits states from issuing anything intended to pass as currency in the ordinary course of business. The exchange used must be fit for general circulation in the community as a substitute for money. The court insisted that coupons used in place of money in a prison canteen did not violate this constitutional requirement. In a Florida prison, officials approved coupon books as the only means of exchange, making currency and coins contraband. However, the court held that the operating procedure would be vacated until the department established its policy through the rule making process. (Union Correctional Institute, Florida)

U.S. District Court
RELIGIOUS ARTICLES

Dettmer v. Landon, 617 F.Supp. 592 (D.C. Va. 1985). Since an inmate's practicing of a religion that was popular in northern Europe in the tenth and eleventh century was found to be a legitimate religion, prison officials were ordered to provide him with ceremonial materials. Against their objections, officials were ordered to supply the inmate with: 1) Sulfur, sea salt or uniodized salt; 2) Quartz clock with alarm; 3) Candles; 4) Incense; 5) A white robe without a hood. The prison has general custody of the items to be made available to the inmate at designated times. A robe without a hood was ordered because of the officials' assertion that the hood could promote an escape attempt. Prisoners who practiced more conventional religions such as Catholicism and Hinduism were allowed access to candles, incense and robes. The plaintiff's religion, referred to as the Church of Wicca (more commonly called witchcraft) is practiced by an estimated 10,000 to 50,000 people in the United States. (Powhatan Correctional Center, State Farm, Virginia)

U.S. District Court
CORRESPONDENCE

Esposito v. Leddy, 618 F.Supp. 1362 (D.C. Ill. 1985). A federal prison inmate's first amendment rights were not violated by prison regulations under which letters from the codefendant, who was incarcerated in a state prison, concerning pending criminal charges in the state court, were returned to the codefendant and under which the prison official refused to mail a letter from the federal inmate to the codefendant until the inmates had utilized administrative grievance procedures and obtained permission to correspond. Prison officials are not necessarily free to invoke administrative regulations concerning inmate correspondence to arbitrarily prohibit one inmate from writing another. Prison officials did not apply administrative regulations concerning inmate correspondence in an arbitrary or unconstitutional manner where a federal prison inmate was not allowed to communicate by letter with his state-incarcerated codefendant until he gained approval from the appropriate authorities. (Metropolitan Correctional Center, Illinois)

U.S. Appeals Court
BEARDS

Hill v. Blackwell, 774 F.2d 338 (8th Cir. 1985). Prison can prohibit growing of beards. A Missouri prison regulation which prohibited prisoners from growing beards was upheld by the Court of Appeals for the Eighth Circuit. A Muslim prisoner contended that the rule interfered with his right to exercise his religious beliefs. The court believed the sincerity of the plaintiff, but found the regulation to be a reasonable response to security needs in the high security facility by minimizing the prisoner's ability to alter his appearance rapidly and significantly. The lower court had struck down the regulation. (Missouri State Penitentiary)

State Appeals Court
RULES-ITEMS
PERMITTED

People v. Cheeks, 493 N.Y.S.2d 518 (A.D. 3 Dept. 1985). An inmate took apart a disposable shaving razor supplied to him by prison authorities and kept only the blade. He was later caught with it between his front teeth. He delivered the somewhat implausible explanation that he intended to use it only for teeth cleaning purposes. The court ruled that the fact that the item was supplied by authorities did not disqualify it as contraband, since it was converted into a weapon. (Elmira Corr. Facility, New York)

State Court
RULES

People Ex Rel Vega v. Smith, 485 N.E.2d 997 (N.Y. 1985). The high court of New York found that misbehavior reports signed by correctional officers were sufficient to reach determinations of guilt without the officers presence under the circumstances in question. Due process requirements are satisfied when the following are found: reports specify an incident; the reports are dated on the same day as the incident; they are endorsed or initialed by one or more other corrections officers; the inmates are offered assistance in preparing for the hearing; no witnesses are requested in advance; and they offer little more than a denial of the charge. The various kinds of rules for which a number of inmates were found guilty involved finding a razor blade inside a Bible, disobeying orders to stand for a head count, and also to show identification upon request. (Attica Correctional Facility, New York)

1986

State Court
RULES

Coakley v. Oregon State Corr. Inst., 730 P.2d 622 (1986). A prison inmate was found guilty of destruction of property and possession of dangerous contraband and was given a three month segregation for each violation, to be served consecutively. On petition for judicial review from the Oregon State Correctional Institution, the court of appeals held that the inmate's removal of elastic from his shorts fell within the scope of a prison rule prohibiting destruction, alteration, tampering with, abuse, waste, or defacing materials or property. (State Corr. Institution, Oregon)

State Court
ITEMS PERMITTED

DeFlumer v. Dalsheim, 505 N.Y.S.2d 919 (A.D. 2 Dept. 1986). A prisoner brought an Article 78 proceeding to compel prison authorities to issue him metal frame as opposed to plastic frame glasses. The Supreme Court granted the petition, and appeal was taken. The Supreme Court Appellate Division held that the prisoner failed to demonstrate that prison authorities acted in a manner sufficiently harmful to evidence deliberate indifference to his serious medical needs. The prisoner failed to demonstrate, for the purpose of the Article 78 proceeding, that prison officials were deliberately indifferent to his serious medical needs, though officials refused to supply him with metal as opposed to plastic frame glasses, where prison optometrist indicated that plastic frame glasses were medically suited for prisoner's visual problems, and that metal frame glasses were not necessary or medically indicated. (Downstate New York)

State Court
RULES

Dennison v. Osp, 715 P.2d 88 (Ore. 1986). An inmate petitioned for a judicial review of a finding of the superintendent of the state penitentiary that he had knowingly engaged in conduct which constituted a substantial step toward manufacturing a weapon. The court of appeals, 770 Or.App. 194, 712 P.2d 186, affirmed, and petition for review was allowed in part. The Supreme Court held that the inmate did not violate the administrative rule in question by drawing blueprints of handguns, absent evidence that necessary products or materials were accessible or available for the manufacturer of the weapon within the penitentiary. (State Penitentiary, Oregon)

U.S. District Court
BEARDS

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. (DOC, New York)

U.S. Appeals Court
RULES

Gibbs v. King, 779 F.2d 1040 (5th Cir. 1986), U.S. cert. denied in 106 S.Ct. 1975. Appeals court upholds prison regulation prohibiting prisoners from making derogatory remarks about employees. A prisoner brought a 42 U.S.C. Section 1983 civil rights action following disciplinary proceedings. One element of his suit challenged a prison regulation (Disciplinary Rule Seven) which provides: "No prisoner shall make or write derogatory or degrading remarks about an employee. Employees shall not be subjected to insults, unwarranted or uncalled for remarks... Prisoners shall address employees by proper title or by 'Mr.', 'Ms.', 'Miss', or 'Mrs.' whichever is appropriate..." The appeals court found that Rule Seven "does not impermissibly inhibit prisoners' freedom of expression...Rule Seven is a reasonable and sensible response to that concern [escalation of tension and verbal challenges to authority]." (Louisiana State Penitentiary)

State Appeals Court
CORRESPONDENCE

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. Appeals Court
RESTRICTIONS

Hendking v. Smith, 781 F.2d 850 (11th Cir. 1986). Appeals court upholds classification practices which deny sex offenders participation in certain programs. A class action suit challenged prison rules which denied certain privileges to inmates with histories of violent sex offenses, alleging a violation of equal protection guarantees. The plaintiff argued that sex offenders are no different from other criminals and should be entitled to the same opportunities and privileges during incarceration. The appeals court disagreed with the plaintiff, stating "...it seems clear as a matter of general knowledge that it would not be appropriate to allow sex offenders the opportunity to leave the prison on passes permitting them to mingle with the general public..." The court found that the prison classification system was neither arbitrary nor capricious. (Alabama)

U.S. Appeals Court
PUBLICATIONS

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.

U.S. District Court
RELIGIOUS ARTICLES

Indian Inmates of NE Penitentiary v. Grammer, 649 F.Supp. 1374 (D.Neb. 1986). Native American inmates in a state penal system filed a motion to show cause why the warden should not be punished for contempt. The district court held that: (1) a prior consent decree did not require prison officials to permit the use of peyote in correctional facilities during Native American Church services, and thus, the warden did not violate a consent decree and was not in contempt of court; and (2) the first amendment did not require that Native American inmates be given access to peyote for Native American Church services. A consent decree, which required that prison officials allow Native American inmates access to Indian medicine men and spiritual leaders and provide facilities for spiritual and religious services, including but not limited to Native American Church services, did not require prison officials to permit the use of peyote within correctional facilities during services. Thus, the warden did not violate a consent decree and was not in contempt of court when he failed to allow

the use of peyote during services. Prison administrators should be accorded wide-ranging deference in adoption and execution of policies and practices that, in their judgment, are needed to preserve internal order and discipline and to maintain institutional security. (State Penitentiary, Nebraska)

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
CLOTHING
TRANSSEXUAL

Lamb v. Maschner, 633 F.Supp. 351 (D. Kan. 1986). Court rules that transsexual inmate is not entitled to transfer to women's facility, hormone treatments, sex change operation or female clothing and cosmetics. An inmate who claimed he was transsexual moved for partial summary judgment seeking transfer to women's facility, female clothing and cosmetics, or preoperative hormone treatment and sex change operation. Prison officials moved for summary judgment. The federal district court held that: (1) the inmate did not have constitutional right to transfer to women's facility or to receive cosmetics and female clothing; and (2) the inmate did not have a constitutional right to preoperative hormone treatment and sex change operation.

There was some question as to whether the plaintiff was in fact a transsexual. A transsexual is someone who sincerely feels they are a member of the opposite sex, or who has actually had a sex change. Evaluations from various medical doctors and psychiatrists did not recommend surgery for a sex change. The court noted that if a transsexual fears sexual harassment or molestation, a request for protection is valid, and officials may order segregation. However, denying transfer to a women's prison of a male inmate who claims he is transsexual served a rational purpose of segregating sexes and did not deny inmate's constitutional rights. (State Security Hospital, Kansas)

U.S. Appeals Court
CORRESPONDENCE

Little v. Norris, 787 F.2d 1241 (8th Cir. 1986). An inmate of a maximum security unit brought civil rights complaints challenging the constitutionality of prison policies which restricted his mail privileges, his right to attend group religious services and his right to receive legal assistance from another inmate. The United States District Court entered summary judgment dismissing the complaints, and the inmate appealed. The court of appeals held that: (1) the prison policy denying the inmate a right to receive or send personal correspondence during thirty days in punitive isolation did not violate the inmate's constitutional rights; (2) suspension of the inmate's right to attend group religious services did not violate the inmate's first amendment right to freedom of religion; and (3) forbidding the inmate in administrative segregation or punitive housing to receive assistance from another inmate in preparation of a legal draft did not violate the inmate's constitutional rights.

A prison policy which prohibited an inmate from possessing loose postage stamps did not violate the inmate's constitutional rights, where the policy was enacted in order to eliminate exchange of contraband among inmates, and the inmates were allowed to purchase envelopes with postage stamps embossed on them at the commissary.

The fact that while the inmate was in punitive isolation, the inmate was denied the right to receive or send personal correspondence but was entitled to receive legal and media mail, did not deny the inmate's constitutional rights, where the purpose of withholding personal mail was to make punitive isolation unpleasant, and thereby discourage improper behavior and promote security within the prison, and such sanction was only imposed for thirty days.

The inmate's exercise of freedom of religion may be restricted by reasonable requirements of prison security. Once prison officials produce evidence that the restriction placed on an inmate's religious freedom was in response to a security concern, the burden is on the inmate to show by substantial evidence that the prison officials' response was exaggerated. (Tucker Maximum Security Unit, Arkansas Department of Corrections)

U.S. District Court
FREE EXPRESSION

Rahman v. Stephenson, 626 F.Supp. 886 (W.D. Tenn. 1986). Prison officials not required to recognize prisoner's informal name and acted properly in removing his name from daily sick call roster. Prison officials acted properly when they refused to allow a prisoner who had informally changed his name for religious reasons to register for sick call using only his newly-adopted name. As a result, the prisoner missed one sick call. The federal court noted that if prisoners refuse to accept identification cards provided by the prison, they violate important prison rules. The same district court recently ruled that prison officials were not required to recognize names which inmates

informally adopted for religious reasons, unless prisoners used established legal channels. When such legal proceedings are followed, officials need only give limited recognition of it. There is no requirement to change internal record keeping.

The court ruled that the inmate's constitutional rights were not violated when he missed sick call or by the refusal of prison officials to recognize his newly-adopted name. (Lake County Regional Prison, Tennessee)

U.S. Appeals Court
BEARDS

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 alleged 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
PUBLICATIONS

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 had 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 Correction)

U.S. Appeals Court
CORRESPONDENCE

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
CORRESPONDENCE
PUBLICATIONS

Abbott v. Meese, 824 F.2d 1166 (D.C. Cir. 1987). Inmates brought an action challenging the regulation of correspondence between inmates of different prisons, and the rejection of publications directed to the inmates. The U.S. District Court entered a judgment permanently enjoining prison officials from applying certain regulations, but granting judgment for prison officials in all other respects, and both parties appealed. The Court of Appeals, reversing and remanding in part, and affirming in part, found that prison officials had a burden of showing that the rejection of a publication was at least generally necessary to protect one or more of legitimate governmental interests of security, order, or rehabilitation.

The prison regulation prohibiting inmate-to-inmate correspondence except for correspondence between family members or correspondence between inmates involved in the same legal action did not prevent the inmate from seeking and obtaining legal assistance from other inmates, in violation of the inmates' constitutional right of access to the courts, where the warden of the prison was required to establish an inmate law library and procedures for access to legal reference materials and legal counsel for the preparation of legal documents.

The prison regulation allowing the warden to reject a publication to which an inmate had subscribed or which had been otherwise sent to the inmate if the publication is determined to be detrimental to security, good order or discipline of the

institution or if it might facilitate criminal activity, failed to satisfy a minimum first amendment requirement that censorship of a publication is generally necessary. The regulation allowed for the rejection of material which met any one of several criteria but required no finding of causal nexus between the possession of listed material and breaches of security or the order or impairment of rehabilitation.

The Federal Bureau of Prisons' practice of rejecting and returning an entire publication to which an inmate had subscribed or which had otherwise been sent to an inmate once a portion of the publication was deemed objectionable, even assuming that the portion was appropriately rejected as generally necessary to protect legitimate governmental interests, was inconsistent with the first amendment. The offending material could be deleted and the remainder turned over to the inmate.

Although deference was to be accorded to the Federal Bureau of Prisons' expertise in determining which publications inmates had subscribed to or which had been otherwise sent to inmates were likely to produce a breach of security or order or impairment of rehabilitation, the prison administrators had a burden of showing that rejection of the publication was at least generally necessary to protect one or more of legitimate governmental interests of security, order or rehabilitation. Each rejection should be addressed individually and none upheld unless consistent with minimum first amendment standards applicable to such publications.

The Court adopted an "all or nothing" rule, finding that where an item coming into an institution contains some material legitimately rejected, the entire document may be refused. To the relief of mail room officers, publications or letters which are partially good and partially bad need not be cut and pasted before delivery. (District of Columbia)

U.S. District Court
GROOMING

Abdool-Rashaad v. Seiter, 690 F.Supp. 598 (S.D.Ohio 1987). A prison inmate brought a suit requesting that prison officials be enjoined from cutting the inmate's hair or otherwise enforcing grooming regulations, requesting that the prison be ordered to recognize the religion created by the inmate, and moved for summary judgment and an evidentiary hearing. The district court granted a motion to dismiss, and found that to grant the inmate's request to order the prison to recognize the "Universalism" religion allegedly established by the inmate would violate the establishment clause of the first amendment, and the inmate's inability to obtain outside verification of the religious basis for his request for exemption from prison rules regarding the cutting of hair or for his religious beliefs precluded the inmate from being entitled to exemption from grooming requirements under either the first amendment or government regulations. (Ohio State Reformatory)

U.S. Appeals Court
PROPERTY

Baker v. Piggott, 833 F.2d 1539 (11th Cir. 1987), cert. denied, 108 S.Ct. 2918. Money was found in the possession of an inmate upon his transfer to another correctional facility. The inmate claimed he had planned to use the money to pay an attorney. There were, however, other means of securing counsel and it was found that he was not deprived of access to the courts, even if he was unable to retain a private attorney after the money was confiscated. Cert den. in 108 S.Ct. 2918 (Union Correctional Institution, Florida)

State Court
RULES

Burgos v. Kuhlmann, 523 N.Y.S.2d 367 (Sup. 1987). A state court found that the posting and publication of prison rules and regulations is not sufficient to satisfy a statutory mandate for promulgation of rules and regulations. A copy of the rules and regulations must be provided to the inmates--in their own language. In this case, a Spanish inmate who could not read English claimed that he was given a copy of the prison rules and regulations which were in English. He asserted that he should not be disciplined under these rules and regulations because of his inability to understand them and asked for a dismissal of charges against him and expungement from his records of any reference to a hearing. The Court concurred, ruling that, since this inmate did not read or comprehend the English language, providing him with an English version of the rules and regulations was that same as "...providing him with nothing." (Sullivan Correctional Facility)

U.S. Appeals Court
CLOTHING
RELIGIOUS
ARTICLES

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
RELIGIOUS
ARTICLES
VISITS

Higgins v. Burroughs, 834 F.2d 76 (3rd Cir. 1987). The United States Supreme Court recently vacated an order of the U.S. Court of Appeals for the Third Circuit. Higgins v. Burroughs, 816 F.2d 119 (3rd Cir.), vacated, 108 S.Ct. 54 (1987). The lower court had ruled that a state prison regulation prohibiting the wearing of rosary beads into a

visiting area violated inmates' First Amendment religious freedom and was not a valid security measure. In light of O'Lone v. Estate of Shabazz, 107 S.Ct. 2400 (1987), in which the court said that prison regulations which are alleged to impinge upon constitutional rights are valid if "it is reasonably related to legitimate penological interests," the Supreme Court asked that the decision be reconsidered. On remand, the Third Circuit expressed its view that this standard should create "no difference in result," but remanded the case to the trial court for further proceedings. (Graterford State Correctional Institute, Pennsylvania)

State Supreme Court
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)

State Appeals Court
DRUG TESTING

Lahey v. Kelly, 524 N.Y.S.2d 30 (Ct. App. 1987). Following the determination that they had used illegal drugs, a number of inmates brought lawsuits to challenge the imposition of discipline. The New York Court of Appeals held that the results of an EMIT test, when confirmed with a second EMIT test or its equivalent, is sufficiently reliable to constitute substantial evidence to support a finding of a use of illegal drugs. While acknowledging that some courts had questioned the reliability of the test, it found these cases factually distinguishable since most involved a single unconfirmed test. It was also shown that a study of the New York State Department of Correctional Services' procedures for testing urine samples conducted by the American Association of Bioanalysts presented a 98.7 to 99.7 percent reliability for a confirmed test. (Attica Correctional Facility, New York)

U.S. Appeals Court
HAIR LENGTH
BEARDS

Martinelli v. Dugger, 817 F.2d 1499 (11th Cir. 1987), cert. denied, 108 S.Ct. 714. According to a federal appeals court, a prisoner who professed a belief in the Greek Orthodox religion was not entitled to an exemption from the prison shaving and hair length rules because the regulations were rationally related to substantial governmental interests and the restriction was no greater than necessary to protect the governmental interest involved. The court noted that proof of the connection between allegedly protected practices and religious beliefs is a properly considered element of the plaintiff's proof that he or she is sincere in asserting that beliefs are protected by the free exercise clause. There is no separate requirement that the claim be "deeply-rooted" in religious beliefs. The court found that the periodic rephotographing of inmates who grow long hair and beards did not present a less restrictive alternative, for free exercise clause purposes, to the prison's hair length and no-beard regulations. 108 S.Ct. 714 (1988). Cert. denied. (Dade Correctional Institution)

U.S. District Court
ACCESS TO
RELIGION
FREE EXPRESSION
RULES

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. District Court
HAIR LENGTH
BEARDS

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)

U.S. Appeals Court
RULES
FREE EXPRESSION

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. District Court
RULES

Robinson v. Young, 674 F.Supp. 1356 (W.D. Wis. 1987). An inmate had a liberty interest in not having his conduct reports upgraded from "minor" to "major" violations without a statement of reasons. Prison regulations stated that specified criteria "should be considered." Moreover, the regulations used the mandatory word "shall" in describing the director's duty to consider the criteria and to indicate the reason for the decision. The statement of reasons given by a disciplinary committee for its finding of guilt with respect to a conduct report was not sufficient to comply with principles of due process, where the statement of reasons indicated only that the hearing officer evaluated all evidence and reached the conclusion that a written statement of the complaining officer was correct. Therefore, the inmate was entitled to expungement from his prison records of conduct reports that were found to be processed as major offenses in violation of his due process rights or on which he was found guilty without adequate statement of reasons, as a remedy in a federal civil rights action. The court ruled that the inmate's interest in avoiding undeserved adverse consequences outweighed prison officials' interest in maintaining adequate records and insuring prison security. (Waupun Correctional Institution, Wisconsin)

U.S. District Court
BEARDS

Ross v. Coughlin, 669 F.Supp. 1235 (S.D.N.Y. 1987). An orthodox Jewish inmate stated a claim against New York prison officials for violating his First Amendment right to freely exercise his religion by forcing him to cut his facial hair, according to a federal district court. The beard trimming regulation being challenged was not reasonably related to governmental interests in identifying and controlling contraband, inmate identification, or prison security. However, the court found that the inmate did not have a claim in connection with his being forced to shave his hair and beard for an initial identification photograph. (Downstate Correctional Facility, New York)

U.S. District Court
RELIGIOUS
ARTICLES

Sample v. Borg, 675 F.Supp. 574 (E.D.Cal. 1987). Vacated 870 F.2d 563. A state prison policy did not sufficiently accommodate the First Amendment religious rights of a Native American inmate. The district court ordered that the policy be modified to permit the inmate, in maximum security, to participate in a pipe ceremony to be celebrated at his cell door. The inmate would also be permitted to possess tobacco ties, subject to reasonable regulations, and to wear a headband. The prohibition against American Indian inmate's participation in a pipe ceremony by passage of pipe through food port in door when visited by medicine man in security housing unit violated free exercise clause. The regulation was not reasonably related to legitimate penological interests. The inmate could use another homemade weapon or bare hands to attack cellmate. Silent prayer and fasting, which could be done without state's permission, did not support reasonableness of regulation. The prison already allowed visits by clergy. The inmate's proposal to permit pipe ceremony at door was alternative to total ban and would have de minimis impact on prison personnel, other inmates, and prison budget. A total ban on American Indian inmate's possession of tobacco ties violated free exercise rights. The burden on prison personnel to inspect ties could be made de minimis by limiting number of ties. Limiting tensile strength of string minimized danger of tie being used as weapon. Requiring tie to be kept in inmate's cell minimized potential for conflict between staff and ripple effect as to other prisoners. During the appeal of this case, the Special Housing Unit was deactivated and all prisoners were reassigned to other units. Therefore, the appeals court vacated the lower court decision and instructed the lower court to dismiss the case as moot. (Security Housing Unit, California State Prison, Sacramento County)

U.S. Appeals Court
PUBLICATIONS

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. Court of Appeals
RELIGIOUS
ARTICLES

Standing Deer v. Carlson, 831 F.2d 1525 (9th Cir. 1987). Native American prison inmates brought action for injunctive and declaratory relief, alleging that a prison regulation which banned the wearing of headgear, including religious headbands, in the dining hall unconstitutionally burdened their ability to practice their religion. The federal appeals court held that the ban was logically connected to legitimate penological interests. There had been complaints about dirty clothing and headgear in the dining hall, with prisoners threatening to "take matters into their own hands," and inspection of headgear for cleanliness would create opportunities for confrontation. Prison regulations banning the wearing of headgear in the dining hall did not violate the American Indian Religious Freedom Act where the warden was aware that Native American inmates attached religious significance to their headbands, but found that limited intrusion on inmates' religious practices was warranted to maintain security, safety, and order in the institution. (United States Penitentiary, Lompoc, California)

1988

U.S. District Court
ACCESS TO
RELIGION
RULES

Aliym v. Miles, 679 F.Supp. 1 (W.D.N.Y. 1988). A prisoner who was confined for a year to a special housing unit as a disciplinary measure filed a civil rights lawsuit when he was denied the opportunity to attend Muslim worship services on the basis of a regulation that special housing unit inmates are considered a high risk to the security of the facility. The district court found that prison regulations and the prisoner's right to request attendance at religious services met the tests for balancing prisoner's rights with the State's goals, citing Turner v. Safely, 107 S.Ct. 2400 (1987) and O'Lone v. Shabazz, 107 S.Ct. 2400 (1987). According to the court, when this standard is applied, "it becomes evident that the restriction" on the inmate's right to participate in religious services "was reasonable." Since it would pose a threat to prison security and have a negative impact on guards, other inmates and the allocation of prison resources, the court concluded that the regulation was reasonably related to the stated interest in keeping prison security. (Special Housing Unit, Elmira Correctional Facility, New York)

U.S. District Court
VISITS

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)

U.S. District Court
RULES

Colon v. Sullivan, 681 F. Supp. 222 (S.D.N.Y. 1988). An inmate's grandmother died while he was incarcerated. Although her name was on the visiting list, the list was not found before the funeral and the inmate was denied permission to attend. The court ruled that denying an inmate permission to attend his grandmother's funeral did not involve a denial of liberty interest protected by the Constitution and that prison officials. Further, the court found that even if the prison officials were negligent, it is not enough for civil rights liability. (Sing Sing Correctional Facility, New York)

U.S. District Court
RESTRICTIONS
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. 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)

State Appeals Court
RESTRICTIONS
RULES
VIOLATION

Montgomery v. Kelly, 526 N.Y.S.2d 274 (A.D. 1988). A prisoner brought a proceeding for judicial review of a determination that he violated a prison rule prohibiting inmates from being out of place in any area of the facility. The supreme court, appellate division, found that the failure to identify any prison rule placing portions of the mess hall off limits to prisoners during a recreational period precluded a determination that the prisoner violated a rule by using a water fountain at one end of the mess hall during recreation period. The court found that the rule book did not state that any portion of the mess hall is off limits to inmates. Since the prison officials failed to identify any rule which the prisoner violated, the disciplinary determination was annulled. (Attica Correctional Facility, New York)

State Appeals Court
RULES
VIOLATION

Parker v. Kelly, 529 N.Y.S.2d 662 (A.D. 1988). An inmate brought an action challenging a determination that he had engaged in fighting with another inmate, and the State Supreme Court transferred the action. The supreme court, appellate division, annulling the determination and granting the petition, found that evidence failed to establish that the inmate engaged in fighting with another inmate in violation of a prison rule. The misbehavior report and hearing testimony indicating that the inmate was attacked by another inmate, and that he merely pushed his assailant away was insufficient to establish that the inmate engaged in fighting with another inmate in violation of a statewide rule. The court noted that, while the rule did not define "fighting," "we construe the term in its ordinary meaning." The court concluded that it had not been shown that the prisoner had violated the rule by his conduct. (Attica Correctional Facility, New York)

U.S. Appeals Court
HAIR LENGTH

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. Supreme Court
VISITS

Thompson v. Com. of Ky., Dept. of Corrections, 109 S.Ct. 1904 (1989). Prisoners in the Kentucky prison system filed a suit alleging that they had a due process liberty interest in visitation privileges. The federal appeals court stated that a procedures memorandum adopted to govern visitation created a due process liberty interest because the policy specified that each inmate is allowed three separate visits a week, and it also limited the discretion of authorities to deny visitation to certain circumstances. Since it was not clear from the record what set of regulations governed other parts of the Kentucky prison system, the court ordered further proceedings to determine the precise regulations applicable, the limits of prison discretion and "the particular procedural process due the plaintiffs when visitation is denied." However, the Supreme Court disagreed, reversing the lower court decision, holding that the Kentucky regulations do not give state inmates a liberty interest in receiving visitors that is entitled to the protections of the Due Process Clause. (Kentucky State Reformatory and Kentucky State Penitentiary)

1989

U.S. Appeals Court
ACCESS TO COURTS

Bonacci v. Kindt, 868 F.2d 1442 (5th Cir. 1989). A federal prisoner alleged that a warden was denying him access to courts and due process, as well as violating Bureau of Prison regulations by not allowing a fellow inmate to assist the prisoner in a telephonic hearing to be held in district court. The district court dismissed the petition without prejudice, ruling that the prisoner had no right to inmate representation at the hearing. The appeals court found that the prisoner's constitutional rights were not infringed by denying his request for assistance by an inmate and affirmed the lower court decision. (Federal Correctional Institution, LaTuna, Texas)

U.S. District Court
PROPERTY

Darwin v. Carlson, 714 F.Supp. 34 (Civ. Div. Dist. Col. 1989). An inmate brought action against prison officials after they refused to return his radio-type player. On the defendants' motion for a summary judgment, the federal district court found that the federal prison officials did not violate the inmate's due process rights under the fifth amendment or seize his property under the fourth amendment when they refused to return the inmate's tape player that had been turned in for safe keeping after the prison policy was changed to prohibit inmates from having tape players in their cells. (Federal Correctional Institution, Oxford, Wisconsin)

U.S. Appeals Court
BEARDS

Fromer v. Scully, 874 F.2d 69 (2nd Cir. 1989). An Orthodox Jewish inmate brought action for declaratory relief challenging a prison beard length regulation. The U.S. District Court found in favor of the inmate, and appeal was taken. The appeals court affirmed and certiorari was granted. The Supreme Court vacated and remanded. The court of appeals remanded without opinion. The U.S. District Court found that the regulation violated the free exercise clause, and appeal was taken. The appeals court, in reversing the original decision, found that a regulation forbidding inmates from wearing beards in excess of one inch in length did not violate the free exercise rights of an Orthodox Jew. According to the court, the Orthodox Jewish inmate who challenged the beard length regulation had the burden to demonstrate that correctional concerns were irrational. The Department of Correctional Services did not have to demonstrate a logical connection between the one-inch beard limitation and the interest of prison officials in identifying inmates for regulation to survive the inmate's free exercise challenge. A rational connection existed between the regulation limiting the inmates' beards to one inch in length and the ease of identification of the inmates' facial features and, thus, the beard length regulation did not violate a free exercise clause. The prison officials' concerns with being able to identify inmates' facial features did not require officials to choose between a regulation forbidding all beards or a rule permitting all beards. The regulation prohibiting beards in excess of one inch in length was a reasonable compromise for purposes of the free exercise clause. According to the appeals court, the district court failed to show proper deference to judgment of prison officials when the court found that the state regulation forbidding inmates from wearing beards more than one inch long violated the free exercise rights of Orthodox Jews; the district court's belief that there were few Orthodox Jews in prison, unsupported by record evidence, impermissibly placed the burden on prison officials. (New York State Prison)

U.S. Appeals Court
PUBLICATIONS

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)

State Supreme Court
PROPERTY
RULES
VIOLATION

Petition of Anderson, 772 P.2d 510 (Wash. 1989), cert. denied, 110 S.Ct. 565. A prison inmate sought review of a disciplinary proceeding finding him guilty of the infraction of possession of a knife, which was found in a cell which the inmate shared with three other inmates. The finding was based on the application of a state prison regulation, known as the "cell tag" provision, which provided that each inmate of a multiple-inmate cell "will be held accountable for an infraction that occurs within the confines of such cell unless he/she can establish a lack of involvement in the infraction." The prisoner claimed that this regulation violated his due process right to a fundamentally fair proceeding. The Supreme Court of Washington disagreed. The effect of the regulation, the court noted, was to "create a rebuttable presumption of involvement of an inmate where an infraction occurs in his cell." While the sanction imposed--a loss of statutory good time credit--deprived the inmate of a liberty interest, there was no violation of due process. Due process is satisfied if a disciplinary determination is supported by "some evidence," the court noted. Since the knife was found in the cell, the court said, the inmate could be said to be in "constructive possession" of it--its presence in the cell was "some evidence" that any one of the four cellmates--or all of them--either possessed the knife, placed the knife in the cell or at least knew of its presence in the cell. If the prisoner could establish his lack of involvement, the court pointed out, he had a defense. Strong policy reasons exist for the "cell tag regulations," because of the serious problem that the existence of such contraband as knives poses for the prison setting. "Cell tag" regulations create group pressure that will help prevent contraband being kept in multi-inmate cells. "Without the regulation, multiple-inmate cells would become safe depositories for contraband, with individual culpability nearly impossible to prove." (Washington State Penitentiary)

U.S. Appeals Court
ACCESS TO
ATTORNEY
FACIAL HAIR

Solomon v. Zant, 888 F.2d 1579 (11th Cir. 1989). The widow of an inmate brought a civil rights action against a prison official who refused to permit the inmate to leave the death row cell block to see his attorney without first complying with shaving regulations. The U.S. District Court entered a judgment in favor of the widow, and the official appealed. The appeals court, reversing the lower court's decision, found that the shaving regulation was a legitimate security rule, and the enforcement of the rule did not violate the inmate's constitutional rights. The prison policy which prohibited any death sentenced inmate from leaving the cell block unless all shaving requirements were complied with was reasonably related to the government's legitimate interest in maintaining security in the penological institutions. Had the institution sought to impose some additional punishment, then it would have been necessary for him to be afforded a proper disciplinary hearing. However, refusing to allow him to leave the cellblock was simply part of the regulation. "After finding that institutions can require that inmates be clean shaven, it is reasonable to conclude that compliance with the policy will not result in a constitutional violation," said the court. (Federal Correctional Institution, Jackson, Georgia)

U.S. Supreme Court
PUBLICATIONS
RESTRICTIONS

Thornburgh v. Abbott, 109 S.Ct. 1874 (1989). Action was brought challenging the regulations governing the receipt of subscription publications by federal prison inmates. The Federal Bureau of Prisons regulations generally permit prisoners to receive publications from the "outside," but authorize wardens, pursuant to specified criteria, to reject an incoming publication if it is found "to be detrimental to the security, good order, or discipline of the institution or if it might facilitate criminal activity." Wardens may not reject a publication "solely because its content is religious, philosophical, political, social[,] sexual, or ... unpopular or repugnant," or establish an excluded list of publications, but must review each issue of a subscription separately. Respondents, a class of inmates and certain publishers, filed a suit in the district court, claiming that the regulations, both on their face and as applied to 46 specifically excluded publications, violated their first amendment rights under the standard set forth in Procunier v. Martinez, 416 U.S. 396, 94 S.Ct. 1800, 40 L.Ed.2d 224. The district court refrained from adopting the Martinez standard in favor of an approach more deferential to the judgment of prison authorities, and upheld the regulations without addressing the propriety of the 46 exclusions. The appeals court, however, utilized the Martinez standard, found the regulations wanting, and remanded the case for an individualized determination on the constitutionality of the 46 exclusions. The U.S. District Court upheld the regulations. The appeals court reversed. The Supreme Court, vacating and remanding, found that the proper inquiry was whether the regulations were reasonably related to legitimate penological interests, and the regulations were facially valid. According to the Court, regulations such as those at issue that affect the sending of publications to prisoners must be analyzed under the standard set forth in Turner v. Safley, 482 U.S. 78, 89, 107 S.Ct. 2254, 2262, 96 L.Ed.2d 64, and are therefore "valid if [they are] reasonably related to legitimate penological interests." It was found that the regulations at issue are facially valid under the Turner standard. (Federal Bureau of Prisons, District of Columbia)

U.S. Appeals Court
OUTGOING MAIL
INMATE-RUN
BUSINESS

Woods v. O'Leary, 890 F.2d 883 (7th Cir. 1989). A defendant sued state prison authorities, claiming a deprivation of first amendment rights in connection with the prison's refusal to permit him to mail documents relating to a group that was allegedly a church. The U.S. District Court entered a judgment for the prison, and the prisoner appealed. The appeals court, affirming the decision, found that the regulation requiring approval of mailings was not unconstitutional, as applied to the prisoner's mailings on behalf of the alleged church. Three inmates at an Illinois state correctional facility were all ministers of the "Universal Life Church" (ULC). They attempted to establish a ULC congregation at the prison and one of them attempted to mail out fifty letters soliciting contributions or sales of church paraphernalia. The prison prevented the mailings on the grounds that the inmate was attempting to operate an inmate run business venture, relying in part on the IRS's denial of tax exempt status to the ULC. The refusal would continue, the prison stated, until the inmate complied with institutional regulations requiring approval. The inmate sued, claiming that the prevention of the mailings violated his first amendment right to free exercise of religion. Religions, the court noted, at times engage in some form of business ventures. The prison's regulation requires that inmate run businesses file a proposal notifying the warden as to: 1) type of business; 2) service or product to be provided; 3) anticipated mail volume; 4) the date the business is to begin; and 5) whether the service or product will be offered or sold to other inmates or state employees. Numerous security implications arise by increased prison mail volume, the court noted, including increases in the costs of mail monitoring, decreased in the amount of personnel available for other security purposes, and the potential overburdening of the mail system "and its negative impact on other inmates' mail." (Stateville Correctional Center, Joliet, Illinois)

U.S. District Court
PROPERTY

Ashford v. Barry, 737 F.Supp. 1 (D.D.C. 1990). An inmate brought action against corrections officers alleging denial of due process in violation of the eighth amendment. The U.S. District Court held that a prison policy of issuing receipts for seized property as soon as practicable was reasonable and did not deprive the inmate of due process. The court also held that seizure of the inmate's sheets, blankets, and toiletries did not rise to the level of an eighth amendment violation where those articles were seized because they were being used to create a disturbance in the facility. (District of Columbia Central Detention Facility)

U.S. Appeals Court
HAIR
ACCESS TO
RELIGION
RELIGIOUS
ARTICLES

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
BEARDS

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
RESTRICTIONS
RULES

Gaston v. Taylor, 918 F.2d 25 (4th Cir. 1990). An inmate brought a Section 1983 action, challenging his conviction of violating a prison regulation prohibiting the possession of contraband. The U.S. District Court entered summary judgment against the inmate, and the inmate appealed. The court of appeals found that triable issues existed as to whether the inmate received an adequate notice that his conduct was prohibited and whether the warden and regional administrator were deliberately indifferent in reviewing the inmate's case. Such action of indifference supported a claim under Section 1983. (James River Correctional Center, Virginia)

U.S. Appeals Court
ARTIFICIAL
INSEMINATION

Goodwin v. Turner, 908 F.2d 1395 (8th Cir. 1990). A federal prisoner requested that he be given authorization and assistance so that he could artificially inseminate his wife. When permission was refused, he filed a law suit seeking a court order allowing him to do so. While he initially sought admission of medical personnel to perform the procedure, he ultimately modified his request to seek only an order that the Bureau provide him with "a clean container in which to deposit his ejaculate, and a means of swiftly transporting the ejaculate outside the prison." The Bureau of Prisons pointed out that if artificial insemination were allowed in one case, all of the Bureau's institutions would either have to "develop collection, handling, and storage procedures for semen or be opened up to private medical or technical persons to come in to collect the semen." The inmate in question had offered to pay for any expenses. However, since the Bureau "strives, to the extent possible, to treat all inmates equally," it was feared that it would have to provide or pay for such services for indigent inmates and significantly expand the medical services

available to female inmates who wanted to become pregnant in prison. The U.S. Court of Appeals for the Eighth Circuit upheld the Bureau's policy, noting that if male inmates were allowed to procreate, the Bureau would "either be forced to accord some similar benefit on its female inmates or compromise its legitimate policy." The cost of providing expanded medical services to its female inmates would necessitate the diversion of large amounts of prison resources away from security and other legitimate prison objectives. (U.S. Medical Center, Springdale, Missouri)

U.S. Appeals Court
SMOKING

Grass v. Sargent, 903 F.2d 1206 (8th Cir. 1990). An inmate brought a civil rights action asserting a violation of his constitutional rights by the Arkansas Department of Correction's policy prohibiting smoking in the prison visitation area during visiting hours. The U.S. District Court dismissed the complaint, and the inmate appealed. The court of appeals, affirming the lower court decision, found that the policy prohibiting smoking in the prison visitation area during visiting hours did not violate the inmate's constitutional rights. While a state regulation instructed prison officials to establish a smoking policy, the court found that it did not contain "particularized substantive criteria to guide the officials or mandatory language requiring them to act in a certain way," and therefore did not create a liberty interest. The policy also did not violate the eighth amendment, since it did not deprive inmates of a "minimal civilized measure of life's necessities." The complaint was "nothing more than a claim of infringement of a legal interest that does not exist." (Cummins Unit, Arkansas Department of Correction)

U.S. Appeals Court
RESTRICTIONS
RULES

Hatch v. Sharp, 919 F.2d 1266 (7th Cir. 1990), cert. denied, 111 S.Ct. 1693. An inmate who was denied permission to play the state lottery brought a Section 1983 action alleging violations of due process and equal protection rights. The U.S. District Court entered judgment in favor of the lottery and prison officials, and appeal was taken. The court of appeals found that the inmate's due process rights were not violated by the prohibition against playing the lottery. Prison officials were entitled to draw a line at what personal property inmates could possess or in what financial transactions they could engage in order to further legitimate security and safety concerns. (Nottoway Corr. Center, Virginia)

U.S. District Court
MEDIA ACCESS
PUBLICATIONS

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)

State Appeals Court
VIOLATION
DISTURBANCE

Murphy v. OSCI, 790 P.2d 1179 (Or.App. 1990). A prisoner sought a review of a final order of the superintendent of a state correctional institution finding a prisoner guilty of disruptive behavior. The appeals court affirmed in an unpublished opinion, and a motion for reconsideration was allowed. The court of appeals, withdrawing the former decision and reversing, found that the finding by the hearing officer that the prisoner failed to dissociate himself from the disturbance would not support a finding of violation of a rule against disruptive behavior. No evidence was presented that the prisoner played an active role in the disturbance. The rule which he was alleged to have violated prohibited an inmate from advocating, creating, engaging in, encouraging or promoting a disturbance. (Oregon State Correctional Institution)

U.S. Appeals Court
HAIR LENGTH
GROOMING

Swift v. Lewis, 901 F.2d 730 (9th Cir. 1990). Inmates appealed from a judgment of the U.S. District Court which dismissed a civil rights action challenging a grooming policy. The appeals court, reversing and remanding, found that the Department of Corrections did not show that particular interests behind the grooming policy justified treating the plaintiff inmates differently than members of other religious groups, and the complaint stated a cause of action for damages against another inmate who had allegedly excluded one of the plaintiff inmates from a religious group. Two prisoners claimed to be Christians who as part of their religion adhere to the "Vow of the Nazarite," which prohibits, among other things, one's cutting his hair and beard. They argued that the officials had discriminated against their religion by exempting certain religious groups, such as Sikhs and American Indians, from the policy, but not exempting them. The appeals court found that the state Department of Corrections did not show that the grooming policies were actually based on the need for quick inmate identification, the prevention of sanitary problems, reducing contact between prisoners and guards during body searches, and reducing homosexual attractiveness of

inmates or that any of those interests justified treating one group of inmates who claimed a religious belief precluding them from cutting their hair differently than other religious groups who made such a claim and were not subjected to the grooming policy prohibition of long hair and beards. Prison officials are not required to prove that their policy is the least restrictive method of furthering relevant penological interests, even when it infringes on an inmate's practice of religion, but they must at least produce some evidence that their policy is based on legitimate penological justifications. (Arizona State Prison)

1991

U.S. Appeals Court
RESTRICTIONS
LOTTERY

Aiello v. Kingston, 947 F.2d 834 (7th Cir. 1991). Prisoners brought an action contending that they were constitutionally entitled to buy lottery tickets. The U.S. District Court dismissed the complaint as frivolous, and the appeals court remanded. The U.S. District Court allowed prisoners to proceed in forma pauperis but limited that statutes to their equal protection claims, and appeal was taken. The court of appeals found that, although the prisoners should have been allowed to proceed in forma pauperis as to all alternative theories in support of their claim for relief, their claim that they were entitled under either the First Amendment or equal protection theories to purchase lottery tickets was frivolous and appropriately dismissed. (Wisconsin)

U.S. District Court
RELIGIOUS
ARTICLES

Aqeel v. Seiter, 781 F.Supp. 517 (S.D.Ohio 1991), affirmed, 966 F.2d 1451. A Muslim prisoner brought a civil rights action, challenging prison officials' conduct in ordering him to remove his tarboosh in the dining hall and at proceedings before the Rules Infraction Board. The prison officials moved for summary judgment. The district court found that the officials' conduct did not violate the prisoner's constitutional rights, even if his religion directed that he wear the tarboosh at all times. The policy enforced against the prisoner was applied to religious head gear and nonreligious head gear alike, and restrictions were justified based on concerns of sanitation and courtesy. (London Corr. Institution, Ohio)

U.S. Appeals Court
RULES

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
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. Appeals Court
CLOTHING
RESTRICTIONS

Gaston v. Taylor, 946 F.2d 340 (4th Cir. 1991). An inmate brought a Section 1983 action challenging a conviction for violating a regulation against possession of contraband. The U.S. District Court entered summary judgment against the inmate, and the inmate appealed. The court of appeals, affirming the decision, found that a 15-day suspended sentence of isolation for possession of contraband deprived the prisoner of no due process liberty interest. He was found guilty of possessing contraband after he was discovered wearing pants with a concealed zipper in the crotch area and sentenced to "15-day isolation," which was suspended on the condition that he remain on good behavior for 90 days. (James River Correctional Center, Virginia)

U.S. District Court
HAIR LENGTH

Harris v. Dugger, 757 F.Supp. 1359 (S.D. Fla. 1991). A pro se civil rights action was brought by a prison inmate against various state corrections officers based on allegations that the inmate's constitutional rights were violated when he was punished with restrictive confinement and loss of gain time because of his refusal to cut his hair. The U.S. District Court found that the prison regulation requiring a Rastafarian inmate to cut his hair did not violate the First Amendment's free exercise clause since it was the least restrictive means of advancing the substantial government interest in preventing prison escape. (Glades Correctional Institution, Florida)

U.S. Appeals Court
"PUBLISHER ONLY"
RULE

Johnson v. Moore, 948 F.2d 517 (9th Cir. 1991). An inmate brought an action against the superintendent of a facility, challenging the constitutionality of prison conditions and policies. The U.S. District Court entered summary judgment in favor of the superintendent, and the inmate appealed. The court of appeals found that the superintendent was entitled to qualified immunity from a claim that a prison regulation requiring that inmates receive softcover books and magazines directly from the publisher violated the First Amendment as it could not be said "that in light of pre-existing law the unlawfulness" of denying access to softcover books from other parties is "apparent." It was also found that the inmate's challenge to prison policies was rendered moot by his transfer to another facility, absent any reasonable expectations of returning to the first facility. (Clallam Bay Corrections Center, Washington)

U.S. Appeals Court
HAIR LENGTH

Kemp v. Moore, 946 F.2d 588 (8th Cir. 1991), cert. denied, 112 S.Ct. 1958. An inmate appealed from an order of the U.S. District Court denying his request for injunctive relief seeking to prohibit prison officials from enforcing hair length regulations. The court of appeals found that the inmate who followed religious tenets and practices of the Native American religion, including the practice involving wearing of long hair, was not entitled to enjoin Missouri prison officials from enforcing regulations requiring hair to be cut to collar length. (Farmington Correctional Center, Missouri)

U.S. Appeals Court
HAIR
ACCESS TO
RELIGION

McKinney v. Maynard, 952 F.2d 350 (10th Cir. 1991). A Native American inmate filed a pro se civil rights complaint alleging violation of his First Amendment right to practice Native American religion while incarcerated. The complaint was dismissed as frivolous by the U.S. District Court and the inmate appealed. The court of appeals found that the appeal was not moot on the ground that the inmate had been transferred from prison and was currently on preparole status, and that the complaint alleging deprivation of all means of religious expression was not frivolous, given allegations that he had been deprived of all means of religious expression by being forced to comply with the grooming code, by being required to relinquish his medicine bag containing ceremonial tobacco when inmates were permitted to wear necklaces and pendants, and by having no means to practice his religion while incarcerated. (Howard McLeod Correctional Center, Farris, Oklahoma)

U.S. District Court
FACIAL HAIR

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
BOOKS

Skelton v. Pri-Cor, Inc., 963 F.2d 100 (6th Cir. 1991). An inmate brought a Section 1983 action alleging the unconstitutional refusal to deliver a hardbound Bible and to grant access to the law library. The United States District Court entered summary judgment in favor of the defendant, and the inmate appealed. The appeals court, affirming the decision, found that the refusal to deliver the hardbound Bible to the inmate was reasonably related to a legitimate penological interests and did not violate the inmate's First and Eighth Amendment rights. (Greene County Detention Center, Tennessee)

U.S. Appeals Court
HATS

Young v. Lane, 922 F.2d 370 (7th Cir. 1991). On appeal and cross appeal from an order of the U.S. District Court in Jewish inmates' federal civil rights action against state prison officials, the court of appeals found that the state prison's policy of allowing Jewish inmates to wear their yarmulkes only inside their cells and during religious services did not deprive the inmates of their right to free exercise of religion, as the prison had a strong institutional interest in limiting the effectiveness of gangs by restricting the variety of available headgear, and that the policy operated with neutrality toward the content of religious expression and did not deprive the inmates of all means thereof. (Dixon Correctional Center, Illinois)

U.S. Appeals Court
SMOKING

Addison v. Pash, 961 F.2d 731 (8th Cir. 1992). An inmate brought a civil rights action against prison officials. The U.S. District Court dismissed the action and the inmate appealed. The court of appeals found that there was no due process violation as a result of the officials' decision to confiscate property that was prohibited in disciplinary segregation following the finding of the inmate guilty of a conduct violation and the recommendation of ten days of disciplinary segregation. Although the violation was dismissed, the inmate could not state a due process claim against the defendants because they did not make their disciplinary recommendation until after they held a hearing. It was also found that the denial of cigarettes to an inmate in disciplinary segregation was not deliberate indifference to basic human needs. However, it was found that the dismissal of the action preceded services, and the claims were not frivolous. Reversal of service of process was warranted because the claims were not subject to dismissal as the Supreme Court specifically did not define, in Section 1915(d), the permissible scope of sua sponte dismissals for failure to state a claim. (Missouri Department of Corrections)

U.S. District Court
RESTRICTIONS
RULES

Akbar v. Borgen, 803 F.Supp. 1479 (E.D. Wis. 1992). A prisoner brought an action challenging regulations prohibiting unsanctioned group activity. The prisoner attempted to organize and maintain a Muslim community in the correctional facility. On the defendants' motion for summary judgment, the district court found that the prison regulation prohibiting unsanctioned group activity bore a reasonable relationship to legitimate penological objectives in preventing gang activity and maintaining order in the prison population. Moreover, the prisoner was not deprived of all means of religious expression and no alternatives were proposed to accommodate the claimed right to operate the religious community as an unsanctioned group. In the absence of any recommendations from the prisoner as to alternatives to accommodate his operation of a religious community as an unsanctioned group, the prison officials were not obligated to set up and then shoot down every conceivable alternate means of accommodating the prisoner's constitutional complaint arising from confiscation of mail containing materials relating to the unsanctioned group activity. (Waupun Correctional Institution, Wisconsin)

U.S. District Court
ARTIFICIAL
INSEMINATION

Anderson v. Vasquez, 827 F.Supp. 617 (N.D. Cal. 1992) modified 28 F.3d 104. Death row inmates filed a Section 1983 action alleging that the denial of conjugal visits and of the opportunity to preserve sperm for artificial insemination violated the Eighth Amendment. The district court found that the denial of conjugal visits for the death row inmates did not violate their equal protection rights. Although inmates sentenced for life imprisonment were allowed conjugal visits, there was no showing that the death row inmates were similarly situated. In addition, no constitutional right to have inmates' sperm preserved for artificial insemination exists. Although an inmate has a constitutionally protected right to marry, many aspects of marriage, including artificial insemination as a method of begetting a child, are superseded by the fact of confinement. Spouses and other women partners willing to procreate with death row inmates, and potential grandparents of such possible issue, had no standing to assert a claim that denial to inmates of conjugal visits and artificial insemination inflicted cruel and unusual punishment on them in violation of the Eighth Amendment, even though they had not been convicted of a crime. The Eighth Amendment prohibition does not read so far as to require the state to ensure against hardship caused to third persons as a result of incarceration of one convicted of crime. (San Quentin State Prison, California)

U.S. District Court
ITEMS PERMITTED
RULES

Arey v. Robinson, 819 F.Supp. 478 (D. Md. 1992). An inmate brought an action against prison officials, alleging his right to privacy was violated by the design of a prison bathroom and that he was wrongfully found guilty of violating disciplinary rules. On report and recommendation of a United States Magistrate Judge, the district court found that a prison regulation requiring an inmate to return medication to the prison pharmacy within twenty-four hours of the expiration date was unconstitutionally vague, violating due process. The regulation did not inform an inmate of ordinary intelligence that failure to return medication after a "stop date" constituted possession of unauthorized medication, particularly when refills of the prescription were allowed. (Jessup Pre-Release Unit, Maryland Correctional Pre-Release System)

U.S. Appeals Court
HAIR LENGTH

Campbell v. Purkett, 957 F.2d 535 (8th Cir. 1992). An inmate brought an action challenging the constitutionality of a correctional center's prohibition against prisoners wearing "long hair." The U.S. District Court dismissed the complaint, and the inmate appealed. The court of appeals found that the prohibition was reasonably related to a legitimate penological interest, and it did not violate the right of free exercise of religious beliefs or the equal protection clause. (Farmington Correctional Center, Missouri)

U.S. District Court
PUBLICATIONS
RESTRICTIONS

Cox v. Embly, 784 F.Supp. 685 (E.D. Mo. 1992). An inmate brought an action against prison officials challenging confiscation of certain sexually explicit materials. The district court found that prison mail regulations were valid. There did not appear to be any ready alternative to fully accommodate the inmates' First Amendment rights to possess and read

sexually explicit materials which advocate acts in violation of state and federal law and which threatened the security of the prison. The regulations were not an "exaggerated response" to the problem at hand and provided a reasonable compromise between the prison authorities' need to maintain order and security in the prison and the prisoners' First Amendment rights to possess and read sexually explicit materials. Although there were no alternative means for the plaintiff to read such materials, the plaintiff still possessed the means to read sexually explicit materials. The regulations permitted a broad range of publications to be sent, received, and read by the plaintiff. The court also found that the inmate was not deprived of procedural due process. The regulations at issue provide for written notice to the inmate of the confiscation of any portion of his incoming mail, review by the Censorship Committee within five working days of receipt of the prisoner's mail, and a grievance procedure for the prisoner. All parties agreed that the plaintiff received written notice of the confiscation of his books and the reasons for the confiscation. The defendants' supporting materials clearly showed that the plaintiff was allowed and did file a grievance and three successive appeals to prison officials not involved in the original censorship decision. The court concluded that the plaintiff's right to procedural due process was not violated by the prison mail regulations or their implementation. (Farmington Correctional Center, Missouri)

U.S. Appeals Court
DRUG TESTING

Koenig v. Vannelli, 971 F.2d 422 (9th Cir. 1992). An inmate brought a Section 1983 action alleging that prison officials violated due process by denying a request for a gas liquid chromatography-mass spectrometer test performed at the inmate's expense by an independent laboratory to confirm the positive results of an immunoassay test. The U.S. District Court dismissed the case, and the inmate appealed. The appeals court affirmed the decision, finding that the inmate was not entitled to the independent test and denial of the request had a legitimate penological purpose of avoiding a ripple effect among other prisoners and a significant administrative burden. (Arizona)

U.S. Appeals Court
HAIR LENGTH

Longstreth v. Maynard, 961 F.2d 895 (10th Cir. 1992), cert. denied, 114 S.Ct. 260. Inmates brought a free exercise of religion challenge to a general grooming policy of the Oklahoma Department of Corrections. Following remand of appeal of one of the inmates, the U.S. District Court denied an inmate's request for preliminary injunction. In a separate action, the U.S. District Court granted the department's motion for summary judgment. In another action, the U.S. District Court denied an inmate's request for injunction. On consolidated appeal, the court of appeals found that the inmate's appeal challenging the policy was not moot on the basis of the department's change to a grooming code policy which reinstated provisions for seeking religious exemptions. Circumstances did not afford assurance that the threatened harm would not recur, in that the inmates were denied exemptions under the last regulation which contained exemption procedures; moreover, the prison's policy had varied considerably. The court also found that genuine issues of material fact did exist as to whether one inmate was sincere in his belief in the Holy American Church of the Essene, and whether he was entitled to an exemption from the prison grooming requirements, precluding granting summary judgment. In addition, inmates established a substantial likelihood that they would prevail on the merits of their challenge and, thus, they were entitled to a preliminary injunction forbidding the department from cutting their hair. (Oklahoma Department of Corrections)

U.S. Appeals Court
HAIR

Scott v. Mississippi Dept. of Corrections, 961 F.2d 77 (5th Cir. 1992). Mississippi State Penitentiary inmates who were members of the Rastafari religion brought a suit alleging that a hair-grooming regulation was an unconstitutional violation of their free exercise of religion. The U.S. District Court entered summary judgment and the inmates appealed. The court of appeals found that the Mississippi Department of Corrections' hair-grooming regulation, which required short hair, did not violate the free exercise of religion rights of Rastafari inmates, even though religious beliefs included never cutting or combing one's hair, since the regulation was reasonably related to legitimate penological concerns of identification and security, other forms of expressing the inmate's religion remained open, and it was unlikely that penological interests could be equally well satisfied by other alternatives proposed by the inmates. (Mississippi State Penitentiary, Parchman, Mississippi)

U.S. District Court
SMOKING

Washington v. Tinsley, 809 F.Supp. 504 (S.D. Tex. 1992). Pretrial detainees challenged a city ordinance prohibiting smoking in public buildings, including the county jail. The district court found that the city ordinance did not violate the Constitution and impermissibly punish pretrial detainees without a trial; the city's ban affected all public buildings, the ordinance did not disproportionately affect the inmates, and the ban protected the health of smoking and nonsmoking workers and visitors, and eliminated a fire hazard. (Harris County Jail, Texas)

U.S. Appeals Court
FREE EXPRESSION
RULES
VIOLATION

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
HAIR
RESTRICTIONS

Betts v. McCaughtry, 827 F.Supp. 1400 (W.D. Wis. 1993), affirmed, 19 F.3d 21. Prisoners sued prison officials under Section 1983 alleging violation of constitutional rights arising from prison regulations censoring certain musical cassettes and banning carved hairstyles, long fingernails, and the wearing of sunglasses and stocking caps indoors. The district court found that the prison's practice of screening all music cassettes carrying parental advisory labels was not a pretext for censoring rap music and did not show racial discrimination. Prisoners failed to show that the audience for the music was exclusively black, and there was no direct evidence that the purpose was to discriminate against African-American inmates. In addition, evidence did not show that the prison's grooming regulations were racially motivated in violation of equal protection, although prisoners characterized prohibited styles and expressions of African-American heritage. There was no evidence that the grooming practices in question were exclusively expressions of such heritage or any evidence to suggest that prison officials adopted regulations with the purpose of discriminating against African-American inmates. Furthermore, evidence failed to support black prisoners' claims of gender discrimination based upon the denial of grooming privileges accorded to female inmates at another institution to grow their nails long and retain certain personal property with which to groom hair and fingernails. The grooming privileges were in parity and minor differences that existed were not of constitutional significance. Officials also had legitimate security concerns that carved hair designs promoted gang-related identification, that wearing sunglasses and stocking caps indoors would allow inmates to escape identification in the event they participated in a mass disturbance, and that long fingernails could be used as weapons against guards and other inmates. There was no evidence that regulations could be drawn to be less intrusive. In addition, these rules did not violate due process where the challenged regulations were reasonably related to legitimate security concerns. (Waupun Correctional Institution, Wisconsin)

U.S. Appeals Court
FREE EXPRESSION

Conner v. Sakai, 994 F.2d 1408 (9th Cir. 1993). An inmate brought a Section 1983 action against the State of Hawaii and various prison officials. The U.S. District Court entered summary judgment for the state and the inmate appealed. The appeals court, affirming in part, reversing in part and remanding, found that the due process clause prohibited the state from punishing the inmate for praying aloud in Arabic. The language of the prison rule requiring inmates to communicate in the English language only, including telephone calls, visits and letters, on its face clearly proscribed only interpersonal communication. The state's interpretation of the English only rule as proscribing praying aloud in non-English was most unexpected and highly unusual and therefore, the rule could not be constitutionally applied to punish the inmate, as the rule gave the inmate insufficient notice that he was forbidden to pray in a foreign language. The court also found that Hawaii's prison regulations created a liberty interest in the inmate remaining free from disciplinary segregation. The regulations stated that the inmate had to admit guilt or the prison disciplinary committee had to be presented with substantial evidence before the committee could make a finding of guilt. If the inmate did not admit guilt or the committee did not find substantial evidence, then freedom from disciplinary segregation had to follow. (Halawa Correctional Facility, Hawaii)

U.S. District Court
FREE EXPRESSION
VIOLATION

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)

U.S. Appeals Court
FREE EXPRESSION
RULES

Goff v. Dailey, 991 F.2d 1437 (8th Cir. 1993). An Iowa inmate brought a Section 1983 action against a prison superintendent and correctional officer, alleging they violated his constitutional rights through a prison disciplinary process. The U.S. District Court granted the inmate some relief, and both parties appealed. The appeals court, affirming in part and reversing in part, found that the inmate was not deprived of his First

Amendment rights when a disciplinary committee found that he violated a rule against verbal abuse by making crude personal statements about a correctional officer in the presence of several other prisoners. The prison had a legitimate penological interest in punishing an inmate for mocking and challenging a correctional officer. In addition, the disciplinary committee did not violate the inmate's right to due process by using "some evidence" as the standard of proof for its factual determination at the disciplinary hearing. (Clarinda Correctional Facility, Iowa)

U.S. District Court
RIGHT TO MARRY
RULES

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. District Court
EXERCISE
RULES

Hershberger v. Scaletta, 861 F.Supp. 1470 (N.D. Iowa 1993). Inmates sued prison officials, alleging that prison rules requiring inmates to keep moving while exercising and permitting officials to rescind exercise privileges without due process in response to misbehavior in the exercise area were unconstitutional. The district court found that the prison's exercise pen rules did not violate due process because those regulations were enacted for the valid penological purpose of preventing assaults in the exercise pens and were reasonably related to that purpose. (Iowa Men's Reformatory, Anamosa, Iowa)

U.S. District Court
AIDS

Marcussen v. Brandstat, 836 F.Supp. 624 (N.D. Iowa 1993). An inmate filed a Section 1983 civil rights action against a warden of a correctional facility and a lieutenant and nurse employed at the facility. He alleged that his constitutional rights were violated when prison officials assigned a HIV-positive (Human Immunodeficiency Virus) inmate to his cell and allowed that inmate to use his toiletries. The defendants filed a motion for summary judgment. The district court found that the defendants were entitled to summary judgment on the inmate's allegations that he was exposed to the risk of contracting AIDS from the use of his drinking cup and cigarette roller by the allegedly HIV-positive inmate because the possibility of transference of AIDS through these means was too remote. The defendants were granted summary judgment on the inmate's claim that simply housing him with an allegedly HIV-positive inmate violated his constitutional rights. The defendants were granted summary judgment on the inmate's claim of exposure to pervasive risk of harm from allowing other inmates to use sharp objects, such as a razor, that could cause blood-to-blood transmission of HIV, because rules were in place at the correctional facility prohibiting behavior by inmates that could result in exposure to AIDS or HIV and stating that inmates were responsible for their personal property. The defendants were granted summary judgment on the basis of qualified immunity since the officials' behavior was in line with standards stated in existing precedent, and so could not have violated the clear contours of any of the inmate's rights. (North Central Correctional Facility, Rockwell City, Iowa)

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. District Court
SMOKING

Reynolds v. Bucks, 833 F.Supp. 518 (E.D. Pa. 1993). Inmates brought an action against prison officials challenging a smoking ban. The officials moved for summary judgment. The district court found that a smoking ban for inmates is constitutional even though employees and visitors are allowed to smoke in designated areas. Eliminating health, safety, and sanitation hazards and protecting electronic equipment were legitimate governmental interests, and prison authorities were more responsible for the health of inmates than for the health of employees. The court found that the pain from the lack of nicotine was neither unnecessary nor wanton. (Berks County Prison, Pennsylvania)

U.S. Supreme Court
CUSTODY LEVEL
LIBERTY INTEREST
DUE PROCESS

Sandin v. Conner, 115 S.Ct. 2293 (1995). In a 5 to 4 decision, the Court ruled that prisoners have less claim to limited due process liberty interests than previous Court decisions have granted. An inmate sued prison officials alleging that they deprived him of procedural due process when an adjustment committee refused to allow him to present witnesses during a disciplinary hearing. The inmate was sentenced to segregation for misconduct. The U.S. District Court granted summary judgement for the prison officials, but the appeals court reversed, finding that the inmate had a liberty interest in remaining free of disciplinary segregation and ruling that there was a disputed question of fact whether the inmate had received all of the due process due under Wolff v. McDonnell. On appeal, the U.S. Supreme Court held that neither the Hawaii prison regulation nor the Due Process Clause itself afforded the inmate a protected liberty interest that would entitle him to the procedural protections set forth in Wolff. The Court found that due process liberty interests created by prison regulations will be generally limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the due process clause by its own force, nonetheless imposes atypical and significant hardship in relation to the ordinary incidents of prison life. The Court noted that the inmate's confinement in segregated confinement did not present the type of atypical significant deprivation in which a State might conceivably create a liberty interest, because at the time of his punishment, disciplinary segregation mirrored those conditions imposed upon inmates in administrative segregation and protective custody. The Court also found that the misconduct finding was not likely to affect his parole status and therefore the inmate was not entitled to the Due Process Clause's procedural guarantees that would apply when an inmate's duration of sentence is affected. The majority found that after Meachum v. Fano the Court "has strayed from the real concerns undergirding the liberty interest protected by the Due Process Clause." The Court stated that in Meachum and later cases the focus of liberty interest inquiries was impermissibly shifted from one based on the nature of the deprivation to one based on the language of a particular regulation, encouraging prisoners to comb regulations in search of mandatory language on which to base entitlements to various state-conferred privileges. (Hawaii Correctional Facility, Oahu)

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
HAIR LENGTH
RULES

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 inmate stated a free exercise claim under the First Amendment against the prison employees. The inmate alleged that he was a member of the Nubian Islamic Hebrew faith, and that he had taken a vow requiring him to refrain from cutting his hair. Prison employees forced him to cut his hair on two separate occasions, interfering with his religious practice. However, the rule was found to be constitutionally permissible as it was reasonably related to legitimate penological interests. In addition, the hair length rule did not violate the equal protection clause where the inmate offered no evidence of selective enforcement. The district court also found that the conduct of prison employees, in placing the inmate in segregated confinement for refusing to cut his hair pursuant to a prison rule and forcibly cutting his hair, did not shock the conscience so as to violate the Fourteenth Amendment's guarantee of substantive due process. Employees were implementing a lawful rule and there was no evidence to show that their method of enforcing the rule was shocking to the conscience or that it was arbitrary and capricious. (State Correctional Institution, Mansfield, Ohio)

1994

U.S. Appeals Court
SMOKING

Beauchamp v. Sullivan, 21 F.3d 789 (7th Cir. 1994). An inmate brought an action seeking damages against state prison officials claiming that the prison's policy regulating smoking by prisoners violated his constitutional rights. The U.S. District Court dismissed the suit, and the inmate appealed. The appeals court, affirming the decision, found that the inmate failed to show that he had a standing to sue, as he did not allege that he was a smoker. The action was frivolous. (Wisconsin Department of Corrections)

U.S. Appeals Court
RESTRICTIONS
VISITS

Bills v. Dahm, 32 F.3d 333 (8th Cir. 1994). An inmate brought a Section 1983 action against officials of a correctional facility, alleging violations of his right to equal protection because he was denied overnight visitation with his infant son while some female inmates of a correctional facility for women were permitted such visits. The U.S. District Court denied the defendants' motion for summary judgment and they appealed. The court of appeals, reversing and remanding, found that prison officials were entitled to qualified immunity. A reasonable official could have believed that the inmate was not similarly situated to inmates at the women's facility and could find denial of such visitation privileges to the inmate to be rationally related to a legitimate penological objective. (Lincoln Correctional Center, Nebraska)

U.S. Appeals Court
RULES
VIOLATION

Reeves v. Pettcox, 19 F.3d 1060 (5th Cir. 1994). A prisoner filed a lawsuit, pro se and in forma pauperis, complaining that a disciplinary proceeding had violated his constitutional right to due process. The U.S. District Court ruled that the prisoner had waived his rights. The prisoner appealed. The appeals court found that the defendant had a due process right to be informed in advance of conduct that would be deemed violative of regulations. The prisoner could not be subjected to discipline for violation of a solitary confinement requirement that trays be left within the confines of the cell because the prisoner had no notice of that rule in advance of committing the infraction. (Texas Department of Criminal Justice, Institutional Division)

U.S. Appeals Court
PROPERTY

Taylor v. Coughlin, 29 F.3d 39 (2nd Cir. 1994). A prison inmate brought a civil rights action against state prison officials for their alleged violation of his constitutional rights. The U.S. District Court dismissed the inmate's complaint and the inmate appealed. The appeals court, affirming the decision, found that the inmate had no constitutional right to a typewriter with a specific memory capacity as an implement of the constitutional right of access to courts. A prison directive that precluded the inmate from possessing a typewriter with a memory capacity in excess of 5,000 bytes did not unconstitutionally interfere with his right of access to courts. (Cayuga Correctional Facility, New York)

1995

U.S. District Court
HAIR LENGTH
RELIGIOUS
ARTICLES

Belgard v. State of Hawaii, 883 F.Supp. 510 (D. Hawaii 1995). A Native American prisoner brought a civil rights action against prison officials for allegedly violating his constitutional right to free exercise of religion and also requested a temporary restraining order. The district court found that, in enacting the Religious Freedom Restoration Act (RFRA), Congress did not violate a separation of powers but, rather, Congress sought to protect the free exercise rights to an extent greater than the United States Supreme Court interpreted the constitution to require. The court also found that the prisoner was not entitled to a temporary restraining order. Evidence indicated that prison officials exempted the prisoner from hair length restrictions pending the final outcome of the case and permitted the prisoner to meet with Native American religious counselors. Officials also replaced the prisoner's lost or destroyed religious articles and permitted him to use and store the replacements in the prison chapel. (Halawa Correctional Facility, Hawaii)

U.S. District Court
CROSS-DRESSING

Jones v. Warden of Stateville Correctional Center, 918 F.Supp. 1142 (N.D.Ill. 1995). Seventeen of a prison inmate's civil rights complaints were consolidated for a ruling on his petition to proceed in forma pauperis. The district court dismissed all of the cases, denied all motions, and ordered sanctions. The court found that neither the equal protection clause nor the First Amendment accorded a male inmate the right to have access to female clothing while confined in a state prison. The court found several of the inmate's suits to be frivolous and imposed a sanction precluding the inmate from submitting or filing more than three complaints or petitions in forma pauperis in any one calendar year. The court noted that this sanction was warranted by the inmate's repeated and flagrant abuse of the judicial process by inundating the courts with frivolous and repetitive lawsuits, and deliberately failing to disclose the existence of prior related suits. The court stated that the inmate has a "penchant for lingerie and litigation." Among other things, the inmate had sued for the right of access to bras and panties. (Stateville Correctional Center, Illinois)

U.S. Appeals Court
RULES
ITEMS PROHIBITED
RESTRICTIONS
FREE EXPRESSION

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
HAIR

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 district court held that a prison requirement that he undo his dreadlocks in order to facilitate a hair search did not violate the Religious Freedom Restoration Act (RFRA) or any clearly established First Amendment right, even

though the requirement did substantially burden the inmate's rights to exercise his Rastafarian religion. The court found that the prison's requirement that any inmate who was leaving or returning to the facility loosen their hair was the least restrictive means of furthering the prison's valid security interests. The court also found that confining the inmate to his cell for less than 24 hours to undo his braids in preparation for his transfer from the facility on the following day did not violate the inmate's rights. 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
HATS
RELIGIOUS ITEMS

Muslim v. Frame, 891 F.Supp. 226 (E.D.Pa. 1995). A former pretrial detainee brought a § 1983 action alleging that a county prison rule prohibiting inmates from wearing head gear in common areas unconstitutionally restricted the Muslim detainee from wearing his prayer cap in an expression of his faith. The district court granted summary judgment for the defendants in part, and denied it in part. The court found that state law did not give prisoners a liberty interest in the unrestricted wearing of religious ornamentation, and that the prison head gear rule was not the result of religious discrimination. But the court denied summary judgment on the issues of whether the ban on head gear substantially burdened the detainee's free exercise of religion, in violation of the Religious Freedom Restoration Act, and whether the head gear restrictions were the least restrictive means of achieving safe prisons. The court noted that prison officials failed to establish that allowing head gear would unduly increase their administrative costs, that allowing head gear would permit a means of expressing gang affiliation, and that allowing head gear would impede the need to visually identify prisoners during movement. (Chester County Prison, Pennsylvania)

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. The prison officials' ability to quickly identify inmates and protect prison guards and inmates from hidden contraband were matters of paramount concern sufficient to justify small intrusions on the prisoners' free exercise rights, and cutting the inmates' hair short appeared to be the only plausible way to meet those safety concerns. In addition, short hair promotes cleanliness and sanitation. It also removes tension between guards and inmates if long hair had to be searched and prevents a disguise in case of an escape. (Kentucky State Penitentiary)

U.S. District Court
RELIGIOUS ARTICLES

Sasnett v. Department of Corrections, 891 F.Supp. 1305 (W.D.Wis. 1995). Several state inmates sued a corrections department and prison officials, challenging rules that restrict inmates' rights to possess religious and legal material. The court dismissed the suit, in part, and denied the defendants' motion to dismiss in part. The court held that the inmates' claims that prison regulations improperly forced them to give up their cross necklaces and religious books were sufficient to state a claim under the Religious Freedom Restoration Act. (Columbia Correctional Institution, Wisconsin)

U.S. Appeals Court
OUTGOING MAIL

Wetherow v. Paff, 52 F.3d 264 (9th Cir. 1995). A state prison inmate brought a Section 1983 civil rights suit alleging that a prison regulation permitting inspection of outgoing inmate mail violated the inmate's First Amendment right to send mail. The U.S. District Court granted summary judgment in favor of the defendants and the inmate appealed. The appeals court, affirming the decision, found that the prison mail regulation was closely related to the legitimate penological interest of preventing prisoners from disseminating offensive or harmful materials and the regulation avoids unnecessary intrusion by requiring that an officer will not read the contents of the mailing except to verify the return address. (Nevada State Prison)

1996

U.S. District Court
HAIR LENGTH

Abordo v. State of Hawaii, 938 F.Supp. 656 (D.Hawaii 1996). A Native American inmate confined at a maximum security prison filed a civil rights action alleging that prison officials violated his equal protection rights and his rights under the Religious Freedom Restoration Act (RFRA) by requiring him to have his hair cut to conform with prison hair length regulations. The district court found that the regulations did not violate the inmate's rights. The court noted that while the regulation may have shown intentional discrimination against inmates with long hair, the regulation was reasonably related to legitimate penological interests. The court also found that the difference in hair length policies between male prisons and female prisons did not violate the equal protection clause because the disparity was due to differing security concerns between the prisons and not because of any illegitimate discrimination on the basis of gender. (Halawa Correctional Facility, Hawaii)

U.S. Appeals Court
FREE EXPRESSION

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
HAIR

Estep v. Dent, 914 F.Supp. 1462 (W.D.Ky. 1996). An inmate moved for a preliminary injunction in this suit against prison officials. The court granted the inmate's motion with regard to his claim that the prison policy which required him to cut his earlocks violated the Religious Freedom Restoration Act. The court found that the inmate established the likelihood of success on his claim that earlocks were a component of the Orthodox Hasidic Judaism faith, and that the inmate adhered to the tenets of his faith religiously. Requiring the inmate to cut his earlocks would substantially burden the inmate's faith, according to the court, and prison officials had failed to establish that the policy was the least restrictive means of furthering its interest in maintaining security, particularly in light of the fact that there was a three-month delay before the inmate's earlocks were cut. (Kentucky State Penitentiary)

U.S. Appeals Court
HAIR LENGTH
RELIGION

Hamilton v. Schriro, 74 F.3d 1545 (8th Cir. 1996). A Native American inmate filed a suit alleging prison officials violated his First Amendment right to free exercise of religion by requiring him to cut his hair and by denying him access to a sweat lodge. The district court granted injunctive relief and the prison officials appealed. The appeals court reversed, ruling that the officials did not violate the inmate's First Amendment rights or the Religious Freedom Restoration Act (RFRA). The court found that denial of access to a sweat lodge was rationally related to legitimate safety and security interests, and that alternative means remained open to the inmate for exercising his religion. The court noted that the inmate refused to accept other less restrictive alternatives and that an outright prohibition against the sweat lodge ceremony was the least restrictive means of achieving the compelling interests in safety and security. (Potosi Correctional Center, Missouri)

U.S. Appeals Court
HAIR

Harris v. Chapman, 97 F.3d 499 (11th Cir. 1996). A Rastafarian inmate brought a § 1983 action against officers of a "closed custody" facility alleging that they forcibly removed him from his cell and had his hair cut while beating him and using racial slurs. The district court jury exonerated five defendants but awarded \$500 in punitive damages against the sixth. The appeals court held that evidence supported the punitive damages award against the sixth officer. The officer allegedly kicked and beat the inmate, snapped his head back with a towel, "mugged" or slapped him twice in the face, and harassed him with several racial epithets and other taunts. The court also held that Florida's hair length rule does not violate the First Amendment or RFRA. (Martin Correctional Institution, Florida)

U.S. District Court
PUBLICATIONS

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 officials 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. District Court
PROPERTY
ITEMS PERMITTED
RESTRICTIONS

Rawls v. Sundquist, 929 F.Supp. 284 (M.D.Tenn. 1996). State death row inmates and donors who had given a satellite dish to the State of Tennessee for use by death row inmates, brought a § 1983 action against the state alleging that removal of the satellite dish violated due process and equal protection rights. The district court found that the contract clause did not create a property interest in the satellite on the part of the donors and that a prison policy governing

inmate organizations did not provide death row inmates with a liberty interest in the satellite dish. The court also found that the state did not deny the inmates' equal protection rights by denying them access to the satellite dish while allowing other inmates such access. The court noted that inmates do not have a constitutional right to satellite/cable equipment for television. (Unit Two at Riverbend Maximum Security Institution, Tennessee)

1997

U.S. Appeals Court
CONTRABAND
RELIGIOUS ARTICLES

Brock v. Carroll, 107 F.3d 241 (4th Cir. 1997). A prison inmate brought a civil rights action alleging prison officials violated his constitutional and/or statutory rights in connection with the confiscation of his prayer pipe. The district court dismissed the claim and the prisoner appealed. The appeals court affirmed, finding that the prison regulation which prohibited all "contraband" was a neutral law of general applicability which did not violate the free exercise rights of the prisoner who allegedly had possessed an unauthorized prayer pipe. According to the court, the prisoner had apparently purchased an ordinary pipe from the prison canteen and had altered it to create a "prayer pipe." (Indian Creek Correctional Center, Virginia)

U.S. Appeals Court
FREE EXPRESSION

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 "DEFLIANCE (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
RELIGIOUS ARTICLES

Combs v. Corrections Corp. of America, 977 F.Supp. 799 (W.D.La. 1997). Inmates brought a § 1983 action against the Louisiana Department of Corrections and the corporate operator of a correctional facility, arising from limitation of the inmates' participation in Native American Religion. The district court held that restricting the practice of Native American Religion to those prisoners who could demonstrate a Bureau of Indian Affairs (BIA) number or Native American ancestry violated the First Amendment free exercise clause because it effectively limited the inmates' freedom to believe. The inmates asserted that they were permitted to practice the Native American Religion until October 1995, when a new policy terminated their participation and denied the use of certain items sacred to their religion, including pipes, tobacco, kinnikinnik and other sacred herbs, saliva, artemesia, cedar, sweetgrass, sacred stones, Indian drums and rattles, medicine wheels, and a sweat lodge. The court held that inmates were entitled to practice Native American Religion with the use of sacred items not described in a prison policy restricting religious practice, when the items could be used without breaching prison security. The court found that restricting the construction of a sweat lodge was reasonably related to legitimate penological concerns. (Winn Correctional Center, Winnfield, Louisiana, operated for the Louisiana Department of Corrections by the Corrections Corporation of America)

U.S. District Court
HAIR LENGTH

Davie v. Wingard, 958 F.Supp. 1244 (S.D.Ohio 1997). An inmate filed a civil rights action challenging a prison hair length regulation, and alleging violation of his rights under the Religious Freedom Restoration Act (RFRA). The inmate claimed he was a "Nazarite" and that his religious beliefs were centered on the Nazarite vow, which appears in the Old Testament and provides that "...there shall be no razor come upon his head...and shall let the locks of the hair on his head grow." The district court granted judgment for the defendants, finding that prison officials' safety, security and discipline concerns were "compelling government interests" that justified the hair length regulations. The court accepted the officials' arguments that hair styles are used by inmates as gang identifiers, and that long hair provides hiding places for contraband such as drugs and weapons. According to the court, permitting inmates to wear long hair styles would require more thorough and frequent searches which would require increased physical contact between inmates and staff and result in increased tension and a higher potential for staff injuries. The court held that the hair regulation did not violate the inmate's equal protection rights because female inmates posed less of a security threat than male inmates. (Madison Correctional Institution, Ohio)

U.S. Appeals Court
HAIR

May v. Baldwin, 109 F.3d 557 (9th Cir. 1997). A state prison inmate filed a § 1983 action against prison officials alleging violation of his right to free exercise of religion under the Religious Freedom Restoration Act (RFRA). The district court granted summary judgment for the officials and the inmate appealed. The appeals court affirmed, finding that the prison policy requiring the inmate to unbraided his dreadlocks for searches when the inmate was transferred to and from prison was the least restrictive means of furthering the state's compelling security interest. (Eastern Oregon Correctional Institution)

U.S. Appeals Court
PUBLICATIONS

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)

1998

U.S. Appeals Court
RESTRICTIONS
ITEMS PERMITTED

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
CORRESPONDENCE

DiRose v. McClennan, 26 F.Supp.2d 550 (W.D.N.Y. 1998). An inmate challenged corrections officials' placement of a mail watch on his incoming and outgoing correspondence. The district court found that the mail watch did not violate the inmate's free speech rights because the inmate had been found to be an escape risk due to letters discovered in his cell during a routine search. The letters indicated that the inmate had carefully thought out all details of a plan of escape and was willing to urge the use of deadly force to effect his plan. The court held that prison officials had properly classified as "contraband" the inmate's incoming mail that contained a corrections officer's motor vehicle driving abstract record because the prison needed to keep such addresses confidential to avoid intimidation of corrections officers. According to the court, even though prison officials improperly opened privileged mail outside of the inmate's presence, in violation of a departmental directive, this was an insufficient basis for a federal civil rights claim. (Southport Correctional Facility, New York)

U.S. District Court
ITEMS PERMITTED
RELIGIOUS ARTICLES
PROPERTY

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. District Court
CLOTHING
RELIGIOUS ARTICLES
- Sledge v. Cummings, 995 F.Supp. 1276 (D.Kan. 1998). An inmate brought a § 1983 action against prison officials alleging violation of his right to free exercise of religion. The district court granted summary judgment in favor of the defendants, finding that a prison policy that required religious headwear to be carried, not worn, to religious services did not violate the inmate's free exercise rights. The court found that the policy sought to prevent inmates from carrying concealed contraband or weapons and displaying gang affiliation, and noted that inmates were allowed to wear their headwear in their cells and while attending religious services. The court also found that the inmate was not placed in segregation to prevent him from attending religious services. (El Dorado Correctional Facility, Kansas)
- U.S. District Court
RELIGIOUS ARTICLES
BEARDS
HATS
- Sutton v. Stewart, 22 F.Supp.2d 1097 (D.Ariz. 1998). A state prisoner sued prison officials alleging denial of his rights to free exercise of religion under the First Amendment and the Religious Freedom Restoration Act (RFRA), denial of his equal protection rights, and obstruction of his mail. The district court granted summary judgment for the officials. The court held that regulations that barred the inmate's possession of scented oils that he wanted for use in a prayer ritual did not violate his free exercise rights because they were reasonable in light of the oil's flammable nature and because possession by only Muslim inmates would pose safety and security threats. The court found that a regulation that limited where the prisoner could wear a kufi prayer cap was reasonable and did not violate his right to free exercise of religion. The regulation restricted wearing of the cap to his cell, designated living areas and during religious ceremonies, and was found reasonable by the court because the cap provided a potential symbol of group affiliation that threatened prison security. The court also found that a prohibition on inmate beards did not violate the inmate's rights because beards obscured inmates' identities and thereby presented a security risk. According to the court, failing to provide clergy of the inmate's faith did not violate equal protection; the inmate had requested that clergy representing the Sahih variant of the Muslim faith, which was not found to be a mainstream religion that would be in demand by other faiths. The court ruled that officials were not liable to the inmate for obstruction of mail due to a ten-month delay in processing a brochure sent to the inmate by his mother. According to the court, it was reasonable for officials to deny the inmate access to a vendor with which he was not permitted to transact, and the brochure was distinguishable from magazines other inmates received because it was exclusively devoted to the advertisement of unauthorized items. (Arizona State Prison Complex-Winslow)
- U.S. Appeals Court
SMOKING
- Webber v. Crabtree, 158 F.3d 460 (9th Cir. 1998). Inmates in a federal prison camp sued prison officials, seeking equitable relief from a camp ban on smoking. The district court granted summary judgment for the defendants. The appeals court held that the smoking ban did not violate inmates' equal protection rights, but that prison regulations did not grant the warden the discretion to ban all smoking at the camp. Prison regulations provided that the warden "shall identify" outdoor smoking areas. (Federal Prison Camp, Sheridan, Oregon)
- 1999
- U.S. Appeals Court
RULES-ITEMS
PERMITTED
- Cosco v. Uphoff, 195 F.3d 1221 (10th Cir. 1999). Prison inmates brought a civil rights complaint against several employees of a state corrections department claiming deprivation of property without due process and denial of access to the courts. The district court dismissed the complaint and the inmates appealed. The appeals court affirmed, finding that the *Hewitt* methodology does not apply to property and liberty interest claims arising from prison conditions. The appeals court held that the language in prison regulations governing what items inmates could keep in their cells did not create a property interest or entitlement. The court also found that new regulations limiting the amount of hobby and legal material that prisoners could keep in their cells did not create a property interest. (Wyoming State Penitentiary)
- U.S. Appeals Court
PACKAGES
PUBLICATIONS
- 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. District Court
PROTECTION
- Edney v. Karrigan, 69 F.Supp.2d 540 (S.D.N.Y. 1999). An inmate brought a § 1983 action against a prison supervisor and a correctional officer alleging they failed to protect him from an attack by another prisoner. The district court granted summary judgment for the defendants, finding that the inmate's allegations that prison officials were aware of the dangers associated with other inmates' trading of guns, drugs and other contraband in the area where the inmate was attacked did not state a claim under the Eighth Amendment, absent allegations that the officials knew of risks present on the day the inmate was attacked. (Riverview Correctional Facility, New York)
- U.S. Appeals Court
FREE EXPRESSION
PUBLICATIONS
PROPERTY
- 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. Appeals Court
RULES-ITEMS
PERMITTED

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 Courts
FREE EXPRESSION
RESTRICTIONS

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. District Court
ITEMS PERMITTED
RELIGIOUS ARTICLES

Mitchell v. Angelone, 82 F.Supp.2d 485 (E.D.Va. 1999). A non-Native American inmate sued corrections officials challenging the validity of a policy that prevented him from obtaining Native American spiritual items. The district court found that the raced-based policy violated the Equal Protection Clause and ordered an injunction preventing its application. The items requested by the inmate were abalone shells and herbs. The policy allowed Native American inmates to obtain such items by receiving an exemption from the property restrictions, which the court found to be solely based on race and did not address whether non-Native Americans had a sincere faith. The inmate was a member of a group called H.E.A.R.T. (Heritage Examined Around Redman Traditions.) But the court found that the inmate failed to prove that the policy violated his First Amendment rights because there was no evidence of the inmate's beliefs or that he sincerely held religious tenets. (Greensville Correctional Center, Virginia)

U.S. Appeals Court
AIDS

Onishea v. Hopper, 171 F.3d 1289 (11th Cir. 1999). State inmates who tested positive for the human immunodeficiency virus (HIV) brought a class action suit against prison officials challenging segregation of prison recreational, religious and educational programs based on inmates' HIV-positive status. The inmates alleged that the practices were unconstitutional and violated the Rehabilitation Act. At the male prison at which HIV-positive male inmates were housed they were excluded from participation in various prison jobs, vocational classes, inmate barber jobs, laundry jobs, gardening, and other activities and programs. The district court denied relief after a bench trial and the inmates appealed. The appeals court affirmed in part and vacated and remanded in part. On remand the district court again denied relief and the inmates again appealed. The appeals court affirmed. The appeals court held that a "significant risk" of HIV transmission existed for any prison program in which HIV-positive inmates sought participation. The appeals court affirmed the district court's finding that integrated programs would risk violence and that segregation of HIV-positive inmates was not an exaggerated response. The court also affirmed the finding that hiring additional guards to accommodate integration of programs was too costly and imposed an undue burden on the prison system. The court noted that the Rehabilitation Act did not require a state corrections department to do whatever it was legally capable of doing to accommodate HIV-positive inmates. (Limestone Correctional Facility and Julia Tutwiler Prison for Women, Alabama Department of Corrections)

U.S. District Court
WORK

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 also found that the inmate's alleged lack of access to a prison law library because a computerized research system had not been installed did not violate the First Amendment. The court held that an inmate has no liberty interest protected by the due process clause in assignment to a particular job, to a particular prison, or in freedom from segregation. 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. District Court
AIDS

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. The court held that evidence raised an issue of material fact as to whether the inmate's medical condition required that he be treated differently from other inmates in the jail, in violation of ADA. The inmate had informed jailers that he was HIV-positive upon his arrival at the jail and he was given an initial medical assessment. According to the inmate, he was told that because of "your medical condition, and you having AIDS, you're going to be locked down." He was initially housed by himself in an old shower room, which had a working shower but no flushable toilet. After five days he was moved to a solitary cell located close to the jail's command module, where there was no toilet or shower in the cell. (Allen County Jail, Indiana)

U.S. Appeals Court
JEWELRY
RELIGIOUS ARTICLES

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. Appeals Court
RELIGIOUS ARTICLES

Spies v. Voinovich, 173 F.3d 398 (6th Cir. 1999). A Zen Buddhist inmate sued prison officials alleging that various prison regulations violated his First Amendment free exercise rights. The district court granted summary judgment in favor of the prison officials. The appeals court affirmed with regard to all of the inmate's First Amendment claims. The appeals court held that a prison regulation that required five documented members of a faith to be interested in forming a faith group before such a group could be formed did not violate the inmate's free exercise rights. The court also held that a prohibition against the inmate possessing certain religious articles in his cell did not violate his free exercise rights. The court noted that a small statue of Buddha, an altar cloth, a wooden fish, a picture of Buddha, and incense could be fashioned into weapons or could be used to cover up illegal activities. The court upheld the prison's prohibition against inmate-led groups and the prison's refusal to use the inmate's religious name. The court found that the prison's refusal to provide the inmate with a vegan meal did not violate his free exercise rights inasmuch as a vegan diet was not a requirement for Zen Buddhist practice and the inmate was provided with the vegetarian meal that was required under Buddhist practice. (North Central Correctional Institution, Ohio)

U.S. District Court
WORK
VIOLATION

Weller v. Grant County Sheriff, 75 F.Supp.2d 927 (N.D.Ind. 1999). A state prisoner filed a § 1983 action challenging his removal from a temporary work release program. The district court granted summary judgment for the defendants, finding that the prisoner did not have a liberty interest in remaining in the work release program. The prisoner had been sentenced to the state corrections department but was allowed, at a sheriff's discretion, to serve his time in a work release program at a county jail. The court held that the inmate did not have a due process right to be heard prior to his removal from the program, to the extent that the removal did not have an impact on his length of incarceration. The prisoner had signed a contract agreeing to abide by all rules when he entered the program. He was terminated from the program after his third violation of the rules. (Grant County Jail, Indiana)

2000

U.S. District Court
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 Dept. of Corrections, Division of Adult Institutions)

U.S. District Court
ITEMS PERMITTED

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
ITEMS PERMITTED

Ballance v. Young, 130 F.Supp.2d 762 (W.D.Va. 2000). A state prisoner brought a pro se federal civil rights suit against prison officials, arising out of their seizure of several items of his personal property. The district court held that the prisoner had no reasonable expectation of privacy in his cell that would make seizure of a letter from his cell a Fourth Amendment violation that could be addressed in a § 1983 suit. The court found that the decision by officials to confiscate the prisoner's scrapbook and clippings, in accordance with a prison regulation that prohibited such items, was reasonable in light of security concerns that the metal parts of scrapbooks could be used as weapons and that razors and other contraband could be hidden in the clippings or scrapbooks, and in light of the time-consuming or extreme nature of other alternatives, such as x-raying cells. The court noted that the officials did not need reasonable suspicion to search prisoner cells as part of their policy of performing random searches. (Wallens Ridge State Prison, Virginia)

U.S. District Court
HAIR LENGTH

Bell v. Stalder, 111 F.Supp.2d 796 (W.D.La. 2000). An inmate sued corrections officials seeking to enjoin implementation of a hair length policy because it infringed on his religious beliefs. The district court found that the policy was constitutional because it was reasonably related to legitimate penological interests of security and inmate identification. The policy required all inmates to keep their hair cut to two or three inches in length. (Winn Correctional Center, Louisiana)

U.S. District Court
HAIR
GROOMING

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. 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 Eighth Amendment. The court also found no Eighth 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)

U.S. Appeals Court
BEARDS

Green v. Polunsky, 229 F.3d 486 (5th Cir. 2000). A prison inmate brought a civil rights action against state prison officials challenging a grooming policy that barred him from wearing a quarter-inch beard. The district court dismissed the case and the inmate appealed. The appeals court affirmed, finding that the policy of refusing to allow inmates to wear any beard, except for medical reasons, did not violate the free exercise rights of the Muslim inmate. (Texas Department of Criminal Justice)

U.S. District Court
GROOMING
HAIR LENGTH
BEARDS

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. District Court
HAIR

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 Corr'l Facility, New York)

U.S. District Court
RULES

Nicholas v. Tucker, 89 F.Supp.2d 475 (S.D.N.Y. 2000). An inmate brought a § 1983 action against a state corrections department and officials alleging that he was improperly subjected to prison discipline. The district court held that a state rule that prohibited inmates from misusing, damaging or wasting state property was not unconstitutionally vague. The inmate had been disciplined for his use of a computer in a prison administration building to which he had access as part of his prison work assignment. The inmate had used the computer for personal legal work. But the court denied summary judgment for the defendants on the issue of whether the inmate was punished in retaliation for wearing religious apparel and for preparing legal papers. (Woodbourne Correctional Facility, New York)

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)

2001

U.S. District Court
SMOKING

Brashear v. Simms, 138 F.Supp.2d 693 (D.Md. 2001). A state inmate challenged policies banning smoking and sale of tobacco products and possession of tobacco by inmates in state prisons. The district court dismissed the action as frivolous, finding it did not violate equal protection. (Maryland Department of Public Safety and Correctional Services)

U.S. District Court
MEDIA ACCESS

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
CORRESPONDENCE

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. The inmate alleged that he had been targeted by members of the "Security Threat Group," a group of state inmates who take retaliatory actions against other inmates. (Central N.M. Corr. Facility)

U.S. Appeals Court
ITEMS PERMITTED

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
ITEMS PERMITTED

Driver v. Groose, 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
HAIR

Flagner v. Wilkinson, 241 F.3d 475 (6th Cir. 2001). A prisoner brought a civil rights suit seeking damages and injunctive and declaratory relief against the enforcement of a prison grooming policy under which he was required to cut his beard and sidelocks that were required by his Hasidic Jewish faith. The district court denied summary judgment to the officials and they appealed. The appeals court reversed and remanded, finding that the officials were entitled to qualified immunity because the constitutional right alleged by the prisoner was not clearly established at the time the officials took action against him. (Ohio Department of Rehabilitation and Correction)

U.S. District Court
VISITS

Glaspy v. Malicoat, 134 F.Supp.2d 890 (W.D.Mich. 2001). A prison visitor sued a corrections officer, alleging that the officer violated his constitutional rights when the officer refused the visitor's request to use the bathroom during a visit to an inmate. The district court held that the officer violated the visitor's substantive due process rights by refusing to permit him to use the restroom, and awarded \$5,000 in compensatory damages and \$5,000 in punitive damages. The 69-year-old visitor and the inmate he was visiting had informed the officer several times that the visitor was in pain and that he needed urgently to use the restroom. The officer, who laughed at the visitor's situation, was found to have been deliberately indifferent to the visitor's due process rights. The court noted that the visitor suffered pain and discomfort for a period of time, as well as extreme humiliation when he urinated in his pants in front of others, and inconvenience in having to deal with his wet pants at the facility and on the way home. (Newberry Correctional Facility, Michigan)

U.S. Appeals Court
VISITS
RELIGION

Kikumura v. Hurley, 242 F.3d 950 (10th Cir. 2001). A federal prisoner sued for injunctive relief on the basis of violations of his First and Fifth Amendment rights and violation of the Religious Freedom Restoration Act (RFRA) because prison officials had denied him pastoral visits from a Christian minister. The district court denied a preliminary injunction and the prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the prisoner failed to show the likelihood of success on the merits of his First Amendment free exercise claim, but that the prisoner did establish his claim of irreparable injury because post-trial relief would not adequately compensate him for any violation of his religious rights. According to the court, RFRA remains constitutional as applied to federal governments and that the portions of RFRA that were found unconstitutional by the U.S. Supreme Court were severable. The court noted that the relaxed definition of "religious exercise" made applicable to RFRA through the passage of the Religious Land Use and Institutionalized Persons Act (RLUIPA), under which religious exercise need not be mandatory for it to be protected, was applicable to a suit filed prior to its passage. (United States Penitentiary, Administrative Maximum, Florence, Colorado)

U.S. Appeals Court
RELIGIOUS ARTICLES

Morrison v. Garraghty, 239 F.3d 648 (4th Cir. 2001). An inmate sued prison officials under § 1983 alleging violation of his equal protection rights because of their refusal to consider his request to obtain Native American religious items because he was not of Native American heritage. The district court enjoined officials from refusing to consider the inmate's request solely on the basis that he was not of the Native American race, and the officials appealed. The appeals court affirmed, finding that the officials' refusal violated the equal protection clause. The court noted that the inmate's claim involved the right to be treated the same as Native American inmates who requested the same items. According to the appeals court, prison officials could not measure the sincerity of an inmate's beliefs solely by his racial make-up, and the policy was not reasonably related to legitimate penological interests inasmuch as the items requested were not any less dangerous in the hands of Native American inmates. (Greensville Correctional Center, Virginia)

U.S. District Court
SMOKING

Reilly v. Grayson, 157 F.Supp.2d 762 (E.D.Mich. 2001). A prisoner brought a § 1983 action against a warden, deputy warden, and Michigan Department of Corrections physicians, alleging violation of his Eighth Amendment rights. After a bench trial, the district court ruled that the warden and

deputy wardens were deliberately indifferent to the prisoner's serious medical need to be placed in a smoke-free environment, supporting the prisoner's cruel and unusual punishment claims. The prisoner had two Individual Management Plans (IMP) which required that he be placed in a smoke-free environment, but the non-smoking regulations in the prisoner's cell block were consistently violated and the wardens were aware of the violations. After receiving notice that the IMPs were not being followed, the wardens continued to do nothing to remedy the situation. The court concluded that the three wardens "...each clearly ignored his supervisory obligations and, as a consequence, should suffer the opprobrium of punitive damages, not so much to deter each of them in the future, but to deter other officials in like positions of ignoring their responsibility." (Trustee Division, State Prison of Southern Michigan)

U.S. District Court
ITEMS PERMITTED
RELIGION

Shaheed-Muhammad v. Dipaolo, 138 F.Supp.2d 99 (D.Mass. 2001). A prisoner brought a pro se civil rights action against employees of the Massachusetts Department of Corrections for alleged violation of his right to practice his Muslim religion. The district court held that the prisoner's transfer to a correctional facility outside the jurisdiction of Massachusetts rendered his claims for injunctive relief moot, but that the Prison Litigation Reform Act (PLRA) did not bar the prisoner's claims under § 1983 for violation of his right to practice his Muslim religion. The prisoner alleged that corrections officials failed to provide him with vegetarian meals in accordance with his religious practices, denied him access to a newspaper published by followers of the Nation of Islam, confiscated a medallion of religious significance, and transferred him to another facility in retaliation for asserting his religious freedoms. (Massachusetts Department of Corrections)

U.S. District Court
HAIR LENGTH

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
DRUG TESTING

Alexander v. Gilmore, 202 F.Supp.2d 478 (E.D.Va. 2002). Two prisoners, one a current prisoner and one a former prisoner, sued a prison and officials. The district court found that a prisoner's placement in segregated housing following an institutional conviction for being under the influence of drugs, even though a confirmatory urine test was not conducted, was not sufficiently severe to support an Eighth Amendment claim. The court also held that the prisoners did not state a claim under the False Claims Act (FCA) by alleging that the prison had obtained federal funding for drug testing by falsely certifying that the requirements for testing and disposal of samples were being followed. According to the court, the prison, and employees who were acting in their official capacities, were exempt from the FCA and there was no showing that the employees were acting in their individual capacities. (Virginia Department of Corrections)

U.S. District Court
CUSTODY LEVEL

Austin v. Wilkinson, 189 F.Supp.2d 719 (N.D. Ohio 2002). A class of current and former prisoners at a high maximum security prison brought a § 1983 action seeking injunctive relief, alleging denial of due process in their placement and retention at the facility. The district court held that: (1) the inmates had a liberty interest in their conditions of confinement; (2) the inmates were entitled to due process protection in decisions to send them and retain them at the facility; (3) the inmates were denied due process in the decisions to send them to, and retain them at, the facility; and (4) new corrections policies failed to provide adequate due process safeguards. The court held that the combination of conditions faced by inmates at the high maximum security prison imposed an atypical and significant hardship, giving the inmates a liberty interest protected by due process. The court noted that inmates in the prison were subjected to lengthy stays of indefinite duration, had extremely limited contact with other individuals, were never allowed outdoor recreation, were subject to extremely intrusive restrictions when they were allowed out of their cells, and were denied parole eligibility. The court held that inmates sent to the prison were entitled to minimal due process consisting of: (1) twenty-four hour advance notice of all specific evidence relied upon to support reasons for reclassification; (2) a requirement that an inmate be allowed to appear at his reclassification hearing and present evidence, including witnesses and documents; and (3) a requirement that the reclassification committee issue a written statement specifically describing evidence relied on and reasons for its recommendation. (Ohio State Penitentiary)

U.S. Appeals Court
ENFORCEMENT

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
MEDIA ACCESS

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
RELIGIOUS ARTICLES

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 Correctional Institution, Wisconsin)

U.S. Appeals Court
SMOKING

Davis v. New York, 316 F.3d 93 (2nd Cir. 2002). A pro se state prisoner brought a § 1983 action alleging he was exposed to unreasonably high levels of second-hand smoke, in violation of the Eighth Amendment. The district court granted summary judgment in favor of the defendants and the prisoner appealed. The appeals court held that summary judgment was precluded on the issue of whether the prisoner was exposed to unreasonable levels of second-hand smoke. The court held that the prisoner's claim was not moot, even though he had been transferred to a different housing block and the prison implemented a restrictive smoking policy, because the prisoner was housed in a block without individual cell windows and in conditions similar to those he experienced prior to the transfer. The prisoner also asserted that the prison's new smoking policy was not being enforced. (Attica Correctional Facility, New York)

U.S. District Court
MAIL

Dixon v. Kirby, 210 F.Supp.2d 792 (S.D.W.Va. 2002). A state inmate filed a § 1983 action challenging a prison directive that prohibited inmates from receiving catalogs. The district court granted summary judgment in favor of the defendants, finding that the directive did not violate the First Amendment. According to the court, the directive was rationally related to the prison's legitimate and neutral administrative interests. The court noted that catalogs were available to inmates at the prison commissary, and that processing bulk mail would have reduced prison resources. (Mount Olive Correctional Complex, West Virginia)

U.S. District Court
HAIR
GROOMING
BEARDS

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 Dept. of Corr.)

U.S. Appeals Court
ARTIFICIAL
INSEMINATION

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. District Court
RULES- ITEMS
PERMITTED

Giba v. Cook, 232 F.Supp.2d 1171 (D.Or. 2002). A state prisoner brought a § 1983 action, alleging various constitutional violations. The district court granted summary judgment in favor of the defendants, finding that prison officials reasonably interpreted a rule proscribing the possession of legal materials belonging to another inmate as including both copies and originals of such materials. The court held that the prisoner was not denied access to the courts and that his First Amendment rights were not violated when prison staff seized contraband contained in a box clearly labeled "confidential- legal matters" while the prisoner was not present. The court noted that although a prison officer scanned the contents of the box, he only confiscated contraband. The prisoner alleged that he had been given permission by another inmate to use copies of his legal papers in his own lawsuit. (Two Rivers Correctional Institution, Oregon)

U.S. Appeals Court
FREE EXPRESSION

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
RULES

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 court 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
TRANSSEXUAL

Kosilek v. Maloney, 221 F.Supp.2d 156 (D.Mass. 2002). An inmate brought an action against a director of corrections, seeking an injunction that would require medical treatment for gender identity disorder. The district court held that the corrections department's medical treatment plans for the inmate were not adequate, but that the director was not deliberately indifferent to the serious medical needs of the inmate. The inmate suffered from a severe form of a rare, medically recognized, major mental illness-- gender identity disorder-- and was a transsexual. The court found that the treatment plans were not developed pursuant to any clinical decision by a doctor or social worker concerning the inmate's condition or particular needs, but were derived from an administrative decision that created a blanket policy that prohibited initiation of hormones for inmates who were not prescribed hormones prior to their incarceration. Although the inmate's treatment was found inadequate, the court declined to provide injunctive relief, reasoning that the director was no longer likely to be indifferent to the inmate's needs in the future as a result of the litigation. The court noted that "ordinarily, the Commissioner of the DOC would not be the appropriate defendant in a case involving the inmate's claim alleging denial of medical care. As Commissioner, Maloney does not usually make decisions concerning medical care...Because of Kosilek's lawsuit, Maloney, as a practical matter, has made the major decisions relating to Kosilek's medical care." After the lawsuit was filed, the Commissioner consulted with attorneys and doctors employed by the department and adopted a blanket policy that was aimed at "freezing" a transsexual in the condition he was in when incarcerated. The policy prohibited the provision of hormones to inmates such as the plaintiff who had only taken "black market" hormones previously, and categorically excluded the possibility that an inmate would receive sex reassignment surgery. The court concluded that "Because Maloney removed from the professionals employed by the DOC their usual discretion concerning Kosilek's medical needs and care, Maloney's conduct is properly the focus of this case." (Massachusetts Dept. of Corrections)

U.S. Appeals Court
RELIGION

Levitan v. Ashcroft, 281 F.3d 1313 (D.C. Cir. 2002). Catholic prison inmates challenged the constitutionality of a rule that prevented them from consuming small amounts of Communion wine. The district court granted summary judgment for the defendant prison officials and the inmates appealed. The appeals court reversed and remanded, finding that a fact issue existed as to whether the rule substantially burdened the inmates' First Amendment free exercise rights, barring summary judgment. (Federal Prison Camp, Pensacola, Florida)

U.S. Appeals Court
CUSTODY LEVEL
VISITS

Love v. McKune, 33 Fed.Appx. 369 (10th Cir. 2002). Four prison inmates brought a civil rights action challenging their forced participation in a prison incentive level system that tied inmate privileges to participation in programs and good behavior. The district court dismissed the action and the appeals court affirmed. The appeals court held that forced participation did not violate the inmates' Fourteenth Amendment due process rights. The Internal Management Policy and Procedure (IMPP) system assigned inmates to one of four levels. Each level had a corresponding level of privileges, such as television ownership, handicrafts, participation in organizations, use of outside funds, canteen expenditures, incentive pay, and visitation. The system had been previously upheld by the state supreme court, which found that none of the restrictions denied to inmates on lower levels infringed on inmates' property or liberty interests and therefore did not implicate due process protection. The appeals court noted that denying an inmate the use of certain electronic equipment does not impose a significant hardship, nor do restrictions on canteen purchases or the types of purchases and personal property allowed. (Lansing Correctional Facility, Kansas)

U.S. Appeals Court
PUBLICATIONS

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. District Court
CONFISCATION
DELAY
OUTGOING MAIL
PRIVILEGED COR-
RESPONDENCE

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 corrections officials improperly tampered with the inmate's legal mail when they opened the inmate's letter to an FBI agent and returned it to the inmate, and whether the officials opened the inmate's letter to his attorney and removed several hundred pages of documents. (Southport Correctional Facility, New York)

U.S. District Court
WORK
RELIGION

Murphy v. Carroll, 202 F.Supp.2d 421 (D.Md. 2002). A Jewish inmate brought a pro se § 1983 action against prison officials asking for injunctive relief and damages. The prisoner alleged that the officials violated his First Amendment right to the free exercise of religion by refusing to accommodate his request for an alternative cell cleanup day, other than Saturday. The district court granted summary judgment in favor of the officials, finding that while the policy violated the inmate's First Amendment right, this right was not clearly established at the time of the violation and the officials were entitled to qualified immunity. The court found no rational relationship between the Saturday-only cell cleaning policy that outweighed the inmate's right to honor the Jewish Sabbath by not working. The court was critical of the officials', finding them entitled to qualified immunity "despite the patent unreasonableness of the defendants' refusal to provide him with cleaning equipment on a day other than his Sabbath." (Maryland Corr'l Training Center)

U.S. Appeals Court
SMOKING

Reilly v. Grayson, 310 F.3d 519 (6th Cir. 2002). A prisoner brought a § 1983 action against prison officials alleging violation of his Eighth Amendment right to be free from cruel and unusual punishment. The district court entered judgment for the prisoner and awarded damages. The defendants appealed and the appeals court affirmed. The appeals court held that the prisoner had a right not to be exposed to environmental tobacco smoke that presented a serious risk to his health, and to removed from places where smoke hovered. The court affirmed the lower court findings that the prisoner's asthma was a serious medical condition and that it was exacerbated by exposure to second-hand smoke, and that the defendants repeatedly failed to respond to repeated recommendations by medical personnel that the prisoner be moved to a smoke-free setting. The appeals court affirmed the award of actual damages rather than nominal damages in the amount of \$36,500, and the award of punitive damages in the amount of \$18,250. The court found no abuse of discretion in the district court's award of \$51,786 in attorney's fees. (Michigan Department of Corrections)

U.S. District Court
ACCESS TO
ATTORNEY

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

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
RULES
NOTICE

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. Appeals Court
BOOKS
RELIGIOUS ARTICLES

Tarpley v. Allen County, Indiana, 312 F.3d 895 (7th Cir. 2002). A former inmate sued a county, alleging interference with his right to exercise his religion and denial of meaningful access to courts. The district court entered summary judgment for the county and the inmate appealed. The appeals court affirmed. The court held that the inmate's free exercise rights were not violated by the county's refusal to allow him to use his own Bible and requiring him to use the jail's Bible, even though his personal Bible had commentary that the jail Bible did not have. The court found the jail policy of not allowing inmates to keep personal books to be reasonably related to its interest in maintaining safe conditions and preventing disputes over lost or damaged items. The court noted that the inmate did not assert that the commentary in his personal Bible had become part of fundamental texts of his religion as a whole. (Allen County Jail, Indiana)

U.S. District Court
RELIGION

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)

U.S. Appeals Court
VISITS

Whitmire v. Arizona, 298 F.3d 1134 (9th Cir. 2002). The homosexual partner of a state prisoner brought an action against a state corrections department, alleging that the department's regulation prohibiting same-sex kissing and hugging among non-family members during prison visits violated the equal protection clause. The district court dismissed the action, but the appeals court reversed and remanded. The appeals court held that dismissal on the pleadings was not warranted absent corroborating evidence of a rational connection between the regulation and an asserted correctional safety interest. The appeals court held that the partner had standing to challenge the regulation. The court found no common-sense connection between the regulation and the asserted safety interest for prisoners who were open about their homosexuality. (Arizona Dept. of Corrections)

U.S. District Court
CONTAGIOUS
DISEASE

Word v. Croce, 230 F.Supp.2d 504 (S.D.N.Y. 2002). An inmate sued state corrections officials alleging violation of her constitutional rights when she was left in segregated housing after she refused to submit to a tuberculosis test for religious reasons. The district court granted summary judgment to the officials. The court held that the prison regulation that requires segregated housing of inmates who refuse to submit to a test for latent tuberculosis did not violate the First Amendment rights of the inmate, because the regulation was rationally related to a legitimate penological interest in retarding the spread of a deadly disease. (Bedford Hills Correctional Facility, New York)

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. Appeals Court
SMOKING

Atkinson v. Taylor, 316 F.3d 257 (3rd Cir. 2003). An inmate brought a suit under § 1983 claiming that prison officials violated his Eighth Amendment rights by exposing him to environmental

tobacco smoke (ETS) that created a serious medical need and posed an unreasonable risk of harm. The district court denied summary judgment for the defendants and they appealed. The appeals court held that the defendant officials were not entitled to qualified immunity on the ETS claim because the right of a prisoner not to be subject to the risk posed by ETS was clearly established, and there was evidence that the inmate was housed for over seven months with "constant" smokers and that officials knew that tobacco smoke was dangerous. The inmate alleged that he suffered numerous symptoms as a result of his exposure to ETS and that no change was made in his housing conditions after he told prison officials about his sensitivity to ETS. (Delaware Multi-Purpose Criminal Justice Facility)

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
OUTGOING 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. District Court
RELIGION
ACCESS TO RELIGION

Roberts v. Champion, 255 F.Supp.2d 1272 (N.D.Okla. 2003). An inmate brought a claim under § 1983 against prison officials, alleging multiple constitutional violations arising from the inmate's misconduct proceedings and his transfer from a correctional center to a maximum security facility. The district court granted the defendants' motion to dismiss. The court found that prison regulations, limiting Muslim inmates' attendance at weekly services to every other week, on a day other than those designated under the structures of Islam, and limiting the number of inmates attending any service to 10, were reasonably related to legitimate penological interests, including security safeguards and the orderly administration of prison activities. (Dick Conner Correctional Center, and Oklahoma State Penitentiary)

U.S. Appeals Court
RELIGIOUS ARTICLES

Sutton v. Rasheed, 323 F.3d 236 (3rd Cir. 2003). State prisoners brought a § 1983 action alleging infringement upon their rights under the free exercise clause of the First Amendment. The district court granted summary judgment for the defendants and the prisoners appealed. The appeals court affirmed, finding that although the prisoners' rights had been violated, corrections officials were entitled to qualified immunity because the law was not clearly established at the time. The court held that a state prison regulation that prohibited "books other than legal materials and a personal Bible, Holy Koran or other religious equivalent" was invalid as applied to restrictive status prisoners, who were precluded from possessing Nation of Islam texts on the basis that those documents were not religious. The court found that there was no legitimate penological interest in prison administrators' denial of those texts. (Special Management Unit, State Correctional Institution-Camp Hill, Pennsylvania)

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. Appeals Court
RELIGIOUS SERVICES

Adkins v. Kaspar, 393 F.3d 559 (5th Cir. 2004). A Texas state prisoner who was a member of the Yahweh Evangelical Assembly (YEA) filed a pro se action against the chaplaincy department of a state corrections agency. The prisoner alleged violation of his federal constitutional rights and the Religious Land Use and Institutionalized Persons Act (RLUIPA) in connection with his not being permitted to observe particular days of rest and worship. The district court dismissed the case and

the prisoner appealed. The appeals court affirmed. The appeals court held that the agency's religious accommodation policy was rationally related to legitimate government objectives and that the inability of YEA inmates to assemble on every Sabbath and holy day did not "substantially burden" the practice of their religion in violation of RLUIPA. The court held that the YEA inmates had alternative means of exercising their religion, in the form of supplemental services, materials and other accommodations, and were not required to work on their Sabbath. The court noted that the inmates were allowed to attend live services when an accredited religious volunteer was able to attend. (Coffield Unit, Texas Department of Criminal Justice, Institutional Division)

U.S. District Court
ACCESS TO RELIGION

Ahmad v. Ehrmann, 339 F.Supp.2d 1134 (D.Colo. 2004). A Muslim prisoner brought an action against prison officials asserting claims for deprivation of his constitutional rights and violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court granted summary judgment in favor of the defendants in part, and denied in part. The court held that a prison regulation that prohibited group prayer and "individual demonstrative prayer" in open areas was rationally related to the legitimate penological goal of maintaining prison security, and therefore did not violate the prisoner's First Amendment free exercise right. The court noted that the regulation was applied equally to all faiths, and that it allowed an alternative means for the prisoner to practice his religion. According to the court, the prisoner failed to establish that group prayer was a constitutionally protected activity, even though the prisoner asserted that he was forced to pray in his cell in the presence of a toilet, which his religion allegedly forbade. The court noted that the prisoner was allowed to pray his religion's mandatory group prayer every week. (Sterling Correctional Facility, Colorado)

U.S. Appeals Court
MAIL

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
RULES

Byar v. Lee, 336 F.Supp.2d 896 (W.D.Ark. 2004). A former county jail detainee filed an action against a former county sheriff, alleging violations of her constitutional rights arising out of the sheriff's promulgation of a set of detainee rules for the county jail. The district court held that the rules, which were modeled on the Ten Commandments, were excessively and impermissibly entangled with religion and constituted an endorsement or advancement of religion. The court found that a sufficient nexus existed between the requirement that the detainee read, sign, and agree to follow the rules and the imposition suffered by the detainee by having religious tenets forced upon her in the guise of secular rules of behavior. The detainee alleged that she considered it offensive to have the government direct her to obey particular religious tenets and she was fearful that she might be perceived as violating the rules and therefore be disciplined. The court denied the sheriff qualified immunity from liability, finding that he knew, or reasonably should have known, that his actions violated the Establishment Clause. The court noted that the sheriff had previously been sued about the rules and was given notice that posting the Ten Commandments in any form would violate the Establishment Clause. The court found that the use of the Ten Commandments as a model for detainee rules served no secular purpose and that the primary effect of the rules was to advance religion. (Benton County Jail, Arkansas)

U.S. District Court
FREE EXPRESSION

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
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
LIBRARY

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. District Court
RELIGIOUS SERVICES

Coronel v. Paul, 316 F.Supp.2d 868 (D.Ariz. 2004). An inmate brought an action against a private prison, alleging violations of the Religious Land Use and Institutionalized Persons Act (RLUIPA) and the Free Exercise Clause of the First Amendment. The district court denied summary judgment for all parties. The court held that issues of fact existed as to whether the prison's refusal to allow the inmate, a Dianic pagan who was not a Pasqua Yaqui or native Hawaiian, to attend Pasqua Yaqui and native Hawaiian religious ceremonies, placed a substantial burden on the inmate's religious exercise. (Florence Correctional Center, Arizona, and Corrections Corporation of America)

U.S. District Court
VOLUNTEERS

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
HAIR LENGTH

Henderson v. Terhune, 379 F.3d 709 (9th Cir. 2004). A Native American state prison inmate brought a § 1983 action against corrections officials, alleging that a regulation governing inmates' hair length infringed on his rights under the First Amendment Free Exercise Clause. The district court granted summary judgment for the officials and the inmate appealed. The appeals court affirmed, finding that the hair-length regulation was reasonably related to several legitimate penological interests, including identification of inmates and ease of control of contraband. The court noted that cutting the inmate's hair implicated a strict religious prohibition about the sanctity and purity of the body. According to the court, a clear connection existed between the regulation and the officials' desire to prevent inmates from quickly changing their appearance, hiding weapons and contraband in their hair or displaying gang related hairstyles. The court held that the American Indian Religious Freedom Act did not provide a means of legal recourse for any tribe or individual, but was merely a policy statement. (California Department of Corrections)

U.S. District Court
ITEMS PERMITTED

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. Appeals Court
MAIL
PUBLICATIONS
PROPERTY
DUE PROCESS

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. Appeals Court
MAIL
"PUBLISHER-ONLY"
RULE

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. District Court
BEARDS

Mayweathers v. Terhune, 328 F.Supp.2d 1086 (E.D.Cal. 2004). Muslim state prisoners brought a class action under the Religious Land Use and Institutionalized Persons Act (RLUIPA) and § 1983, alleging violation of their rights to free exercise of religion and equal protection. The district court granted summary judgment in favor of the prisoners and entered a permanent injunction. The injunction prohibited prison officials from disciplining the inmates for missing work assignments in order to attend an hour-long Friday Sabbath service, and allowed the inmates to wear at least a half-inch beard for religious purposes. (California State Prison- Solano)

U.S. District Court
BOOKS
PROPERTY

Neal v. Lewis, 325 F.Supp.2d 1231 (D.Kan. 2004). A Shiite Muslim prisoner filed a pro se § 1983 alleging that prison officials interfered with his religious observance in violation of his constitutional rights. The district court granted summary judgment in favor of the officials, finding they were entitled to qualified immunity. The court held that the policy of limiting prisoners to possession of twelve books, plus one dictionary and one thesaurus and the primary religious text for their declared religion, did not violate the prisoner's First Amendment or Equal Protection rights. The court also upheld the regulation requiring delivery of publications directly from the publisher. The court noted that both regulations served the internal security objective of controlling, managing and tracking property in the correctional facility, and that the regulations were applied to inmates irrespective of their religion. (El Dorado Correctional Facility, Kansas)

U.S. Appeals Court
MAIL

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. Appeals Court
MEDIA ACCESS

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.)

2005

U.S. Appeals Court
ITEMS PERMITTED

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. District Court
SMOKING

Bartlett v. Pearson, 406 F.Supp.2d 626 (E.D.Va. 2005). A state prison inmate who was a non-smoker suffering from asthma, brought a § 1983 Eighth Amendment action against corrections officials alleging that being housed in a cell and housing unit with inmates who smoked endangered his health. The district court granted summary judgment in favor of the defendants. The court held the officials were not deliberately indifferent to the inmate's request for non-smoking housing and they were not indifferent to the inmate's asthma. The court noted that an allegation that exposure to environmental tobacco smoke (ETS) posed an unreasonable risk of serious damage to future health is cognizable under the Eighth Amendment. The prison had a policy aimed at limiting, when practicable, inmates' exposure to ETS, and they twice offered the inmate the option of residing in special or segregated housing. The inmate was moved to a non-smoking area after being housed with smokers for a total of 17 weeks, which the court found to be "not unreasonable" given the level of crowding at the prison and the fact that safety concerns took precedence over smoking preferences. (Sussex II State Prison, Virginia)

U.S. Appeals Court
VISITS

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
LIBERTY INTEREST
WORK

Bussey v. Phillips, 419 F.Supp.2d 569 (S.D.N.Y. 2006). An inmate brought a civil rights action against prison officials following his removal from his prison job. The officials moved for summary judgment. The court held that the inmate did not have a constitutionally protected liberty interest in his prison job assignment at a prison shop, and thus his removal from that assignment did not violate due process. According to the court, the inmate's removal from the shop was well within the terms of confinement ordinarily contemplated by his prison sentence. The court found that the inmate's allegations that prison officials allowed white and non-Muslim inmates, but not non-white, Muslim inmates, to return to the prison industry program after rule violations, were sufficient to state an equal protection claim against the officials. (Green Haven Correctional

Facility, New York)

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. District Court
BEARDS

Gooden v. Crain, 405 F.Supp.2d 714 (E.D.Tex. 2005). A state prisoner brought a pro se action against prison officials under § 1983 and the Religious Land Use and Institutionalized Persons Act (RLUIPA), alleging that he should be permitted to grow a beard in accordance with his Muslim religious beliefs. The district court dismissed the case, finding that the policy that prohibited the inmate from growing a beard did not violate RLUIPA and the policy did not violate the inmate's equal protection rights. The court noted that although the prisoner was prohibited from growing a beard, he was permitted to practice the fundamental aspects of his religious beliefs. According to the court, the policy was the least restrictive means to further the government interest in security, given the need for accurate pictures of inmates. The court found no equal protection violation even though inmates with a skin condition were allowed to have quarter inch beards, noting that the policy was applied equally to all religious groups. (Coffield Unit, Texas Board of Criminal Justice)

U.S. District Court
PROPERTY

Howard v. Snyder, 389 F.Supp.2d 589 (D.Del. 2005). A state prison inmate brought a § 1983 action against corrections officials, alleging that legal papers were missing from a box of personal effects that were seized from his cell as contraband, when the box was returned. The inmate alleged that his access to court was hindered. The district court granted summary judgment to the officials, finding that the "two box rule" under which the materials were confiscated, served legitimate penological interests. According to the court, the regulation promoted fire safety and limited the access to contraband. The court noted that the inmate had continual access to the prison's law library and that he could have obtained approval for an extra box. (Delaware Correctional Center)

U.S. Appeals Court
FREE EXPRESSION

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
BOOKS

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. 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 ARTICLES
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
BOOKS
RELIGION

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
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
PUBLICATIONS

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
PROPERTY

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 ARTICLES
RELIGION

Rowe v. Davis, 373 F.Supp.2d 822 (N.D.Ind. 2005). A state inmate brought a pro se § 1983 action alleging that his rights under the Religious Land Use and Institutionalized Persons Act (RLUIPA) had been violated. The district court held that the inmate could proceed on his claim for injunctive relief challenging the denial of his right to receive visits from a religious leader, on his claim for injunctive relief challenging the refusal to allow him to have a Celtic Cross necklace, and on his claim seeking individual review of his case to determine his eligibility to participate in communal worship while in segregation. The court found that the alleged confiscation of the inmate's religious literature, even though it did not fall within the prohibition against gang-related literature or literature supporting or encouraging prison disturbances, substantially burdened the inmate's exercise of his religion and stated a claim under RLUIPA. The court also found a potential RLUIPA violation in the inmate's allegation that denial of his right to receive visits from a religious leader of his own faith. The court ruled that denial of the Celtic Cross necklace might place a substantial and unnecessary burden on the practice of his religion, where the inmate alleged that wearing such a necklace was part of the way in which he practiced and expressed his religious beliefs. The court found a potential RLUIPA violation in the enforcement

of a prison policy that prohibited all religious services for prisoners in administrative segregation. (Michigan Department of Corrections)

U.S. District Court
RELIGIOUS ARTICLES

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. Appeals Court
HAIR LENGTH

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. District Court
MAIL

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

Beasley v. Konteh, 433 F.Supp.2d 874 (N.D.Ohio 2006). A state prisoner brought a civil rights action against prison officials, alleging violation of his First Amendment right to practice his religion. The prisoner moved for an order to require officials to transport him to an orthodox Jewish synagogue for conversion to Judaism. The district court held that the prisoner was not entitled to a court order requiring officials to transport him to the synagogue, even if failure to transport the prisoner would frustrate his ability to convert to Judaism, where the officials claimed that the trip would create a serious security risk and disrupt the prison's normal administration. The court noted that prisoners do not have the right to leave prison to: (1) be present in court at any stage of civil proceedings they bring, (2) attend funerals of relatives, or (3) visit court to satisfy the personal appearance requirement for obtaining a marriage license. According to the court, prison officials need not affirmatively assist inmates by allowing them to leave prison temporarily to accomplish a lawful objective that implicates a constitutional right, such as the right to marry. (Toledo Correctional Institution, Ohio)

U.S. Appeals Court
BOOKS
RELIGION

Borzych 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

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
SUPERMAX

Freeman v. Berge, 441 F.3d 543 (7th Cir. 2006). An inmate brought a § 1983 action against prison officials, alleging cruel and unusual punishment. After a jury returned a verdict in favor of the inmate, the district court granted judgment as a matter of law for the defendants, and the inmate appealed. The court of appeals affirmed. The court held that the prison's feeding rule requiring that, when meals were delivered to an inmate's cell, the inmate had to be wearing trousers or gym shorts, was a reasonable condition to the receipt of food in light of security issues and respect for female security officers' privacy. The court found that prison officials' withholding of food from the inmate when he refused to put on trousers or shorts did not constitute the use of food deprivation as punishment, for the purposes of the Eighth Amendment prohibition against cruel and unusual punishment. The court found that prison officials' withholding of food from the inmate when he wore a sock on his head when meals were delivered to his cell was a reasonable condition to the receipt of the food, in light of security issues presented by the possibility that a sock could be used as a weapon if something was inside it. According to the court, withholding of food from the inmate when he refused to remove the sock from his head did not constitute the use of food deprivation as punishment. Inmates in the Supermax are fed their three meals a day in their cells. The prison's feeding rule requires that the prisoner stand in the middle of his cell, with the lights on, when the meal is delivered and that he be wearing trousers or gym shorts. If the inmate does not comply with the rule, the meal is not served to him. The inmate wanted to eat in his underwear, so on a number of occasions over a two-and-a-half-year period he refused to put on pants or gym shorts and as a result was not served. Because he skipped so many meals he lost 45 pounds. (Wisconsin Maximum Security Facility, "Supermax")

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
RELIGIOUS ARTICLES

Hastings v. Marciulionis, 434 F.Supp.2d 585 (W.D.Wis. 2006). A state inmate brought an action alleging that his First Amendment right to practice his Native American religion was violated while he was on supervised probation in an alcohol treatment program. The district court entered summary judgment in favor of the defendants. The court held that the probationer's First Amendment right to practice his Native American religion was not violated when he was not

allowed to go to church and a Native American Pow Wow during his initial 14-day restriction and evaluation period, because the restriction rule did not target a specific religion or religious practice. All new residents of alcohol treatment program must complete a 14-day restriction period, and during this period a resident may not leave the facility for any reason except for employment or emergency situations. This rule allows new residents to become acclimated to the rules and treatment programs and allows staff-time to conduct an evaluation to determine if the resident is appropriate for the program. During this period the staff is provided the opportunity to assess the resident to ensure the safety of the community. The court also held that the probationer's First Amendment right was not violated when he was not allowed to keep his eagle feather at the program, noting that the feather was illegal because the probationer did not have a required permit. (Wazee House, Wisconsin)

U.S. District Court
MAIL
PUBLICATIONS
RELIGION

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. Appeals Court
MAIL

Johnson v. Goord, 445 F.3d 532 (2nd Cir. 2006). An inmate brought a civil rights action against prison officials, challenging a regulation governing possession of stamps. The district court entered judgment in favor of the officials and inmate appealed. The appeals court held that the inmate did not have a constitutional right to unlimited free postage for non-legal mail, and the regulation was reasonably related to legitimate penological interests, and thus did not violate the inmate's First Amendment right to send outgoing non-legal mail. The prison regulation prevented certain inmates in keeplock from receiving stamps through the mail and permitted them to receive only one free stamp per month for personal use. The court noted that stamps could be used by inmates as a form of currency, and the regulation furthered the legitimate goals of reducing thefts, disputes, and unregulated prisoner transactions. (New York State Department of Correctional Services)

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. 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. (Wisc. Secure Program Facil.)

U.S. District Court
RELIGION

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. Appeals Court
FREE EXPRESSION
ACCESS TO COURT

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 held that a state regulation governing the security classification of prisoners did not give the state prisoner a liberty interest, protected by the due process clause, in the security level to which he was classified, noting that the regulation provided that prison officials retained discretion in making placement decisions. 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. According to the court, a regulation governing library services in prisons did not give the prisoner a liberty interest, protected by the due process clause, in library access hours. The court noted that while the regulation may have created a liberty interest in requiring prison officials to have a law library, the warden was vested with discretion to regulate access to library facilities. (Salinas Valley State Prison, California)

U.S. District Court
HAIR
BEARDS

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. District Court
RELIGIOUS ARTICLES

Sample v. Lappin, 424 F.Supp.2d 187 (D.D.C. 2006). An inmate brought suit for declaratory and injunctive relief, claiming that a denial of his request for wine violated the Religious Freedom Restoration Act (RFRA) and the Religious Land Use and Institutionalized Persons Act (RLUIPA), and that the Bureau of Prisons' (BOP) Director failed to train, supervise, and promulgate policies requiring his subordinates to comply with RFRA and RLUIPA. The defense moved to dismiss, and the parties cross-moved for summary judgment. The district court held that genuine issues of material fact existed as to whether an outright ban on an inmate's consumption of wine was the least restrictive means of furthering the government's compelling interest in controlling intoxicants. The inmate described himself as "an observant Jew" who "practiced Judaism before his incarceration and continues his practice of Judaism while confined," and who "sincerely believes that he must drink at least 3.5 ounces of red wine (a reviiit) while saying Kiddush, a prayer sanctifying the Sabbath, during Friday night and Saturday shabbos services." The court

found that the inmate exhausted his administrative remedies, as required by the Prison Litigation Reform Act (PLRA), with respect to his request for wine, regardless of whether he asked that a rabbi, a chaplain, or a Bureau of Prisons (BOP) staff member administer the wine to him. According to the court, the inmate's obligation to exhaust his administrative remedies did not require that he posit every conceivable alternative means by which to achieve his goal, which was the unburdened exercise of his sincere religious belief. (Federal Correctional Institution, Beaumont, Texas)

U.S. District Court
RELIGIOUS ARTICLES

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
PUBLICATIONS

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. Appeals Court
MAIL
PROPERTY

Steffey v. Orman, 461 F.3d 1218 (10th Cir. 2006). A state prisoner filed a § 1983 civil rights complaint against prison officials, alleging that they deprived him of his property in violation of his constitutional due process rights when they confiscated a money order sent to him. The district court granted summary judgment in favor of the defendants and the prisoner appealed. The appeals court affirmed, finding that the prison regulation prohibiting an inmate from receiving money from family members of any other inmate was a valid restriction on the inmate's right to receive money from certain outside sources. The court found that the prisoner did not have a legitimate claim of entitlement to the \$50 money order sent to him by the mother of another inmate mother. (Oklahoma State Penitentiary)

U.S. District Court
RELIGION
RELIGIOUS ARTICLES

Thunderhorse v. Pierce, 418 F.Supp.2d 875 (E.D.Tex. 2006). A Native American inmate brought a pro se action against state prison officials, alleging violations of his free exercise rights and of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court granted the officials' motion for summary judgment. The court held that prison officials did not violate the inmate's free exercise rights by requiring him to send a medicine bag obtained from a non-approved vendor through a unit warden's office for visual inspection. The court found that officials were not required to distinguish between those who practiced shamanism and those who did not, where only 1.66 percent of prisoners identified their religious preference as "Native American." The court noted that members of small religious groups must be afforded a reasonable opportunity to practice their faith in prisons, but need not be provided with facilities or personnel identical to those given to members of more populous denominations. The court held that the officials' denial of the inmate's access to a sacred pipe did not violate his free exercise rights, where inmates were not allowed to possess pipes, the inmate's classification in administrative segregation precluded him from attending pipe ceremonies for security reasons, and the lack of services congruent with inmate's beliefs was due to a lack of volunteers rather than a discriminatory purpose. According to the court, if the state prison policy designating holy days for Native Americans was oriented toward the Plains Indian culture, the policy did not violate the free exercise rights of the Algonquin inmate where prison officials could not reasonably be expected to differentiate between holy days for all branches of Native American religion, the inmate was in administrative segregation and so did not require lay-ins from work, and inmates were permitted to request additional holy days. The inmate explained that he is a practitioner of Native American religion and referred to himself as a "shaman." He stated that the Native American religious program existing in the corrections department gives preferential treatment to "Christian-oriented" Native American beliefs while "disfavoring and excluding" traditionalist Native American ceremonial leaders known as shamans. The officials quoted a law review article entitled *Sacred Standards: Honoring the Establishment Clause in Protecting Native American Sacred Sites*, as follows: "[I]t is difficult to describe one Native American religion, because Native Americans identify themselves by tribe, and many beliefs differ by tribe. Native American religions reflect traditions that have existed in the Americas for over 30,000 years and a rich plurality of religions have evolved." (Texas Department of Criminal Justice, Institutional Division)

U.S. District Court
LANGUAGE
WORK

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
RESTRICTIONS

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 grievance 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
FACIAL HAIR
RELIGION
RULES

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. (Ray James State Prison, Arrendale State Prison, Hancock State Prison and Spalding County Correctional Institution, Georgia)

U.S. District Court
BOOKS
MAIL

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 held that the prison's catch-all contraband rule was unconstitutionally vague as applied to the inmate's possession of the booklet. According to the court, the prison rule prohibiting "smuggling" in or out of a prison facility was unconstitutionally vague as it applied to the inmate's mailing or attempted mailing of the booklet because it did not contain explicit standards and gave prison officers unfettered discretion in interpreting what conduct was prohibited. According to the court, such unfettered discretion impermissibly permitted the viewpoint expressed by the inmate to enter into an evaluation of whether the conduct was violative of the rules. 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. Appeals Court
ITEMS PERMITTED

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
RESTRICTIONS

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 & San Juan County Jails Utah)

U.S. District Court
CORRESPONDENCE
MEDIA ACCESS

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
MAIL
PUBLICATIONS
RELIGION

Kaufman v. Schneider, 524 F.Supp.2d 1101 (W.D.Wis. 2007). A former state inmate sued prison officials for declaratory, injunctive, and monetary relief, alleging that he was subjected to retaliatory transfer and that his rights under the First and Eighth Amendments and Religious Land Use and Institutionalized Persons Act (RLUIPA) were violated. The court granted the officials' motion for summary judgment. The court held that the warden was not involved in the inmate's transfer to a maximum security institution, precluding the warden's liability on the claim alleging that he transferred the inmate in retaliation for the inmate's filing of an earlier lawsuit against him. The court found that there was no evidence that any of the prison officials sued by the inmate were personally involved in denying delivery to the inmate of the letter underlying his free speech claim, and therefore the officials could not be held liable under § 1983. According to the court, there were no facts in evidence that the former state inmate was prevented from ordering publications about his religion of atheism while incarcerated at a maximum security facility, was in the facility's step program, or was in any other way injured by the step program's no-publications policy, and therefore the former inmate lacked standing to litigate his claim that the policy violated his free exercise rights and rights under Religious Land Use and Institutionalized Persons Act (RLUIPA). The court held that the former state inmate did not show that while he was incarcerated at a maximum security facility, he ever chose to use out-of-cell time to visit the law library, as opposed to out-of-door exercise, and thus to show an injury-in-fact required for the former inmate to have standing to challenge the prison official's policy of requiring inmates to choose between out-of-cell exercise time and law library time under the Eighth Amendment. (Wisconsin Secure Program Facility)

U.S. Appeals Court
RELIGIOUS ARTICLES

Kay v. Bemis, 500 F.3d 1214 (10th Cir. 2007). A prisoner, proceeding in forma pauperis, brought a § 1983 action against prison officials claiming multiple violations of his constitutional rights arising from his imprisonment. The district court dismissed the claims and the prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that allegations made by the prisoner, who identified his religion as Wicca, that he persistently asked prison officials for permission to possess tarot cards to practice his religion and that he twice surreptitiously brought tarot cards into prison and was punished, established that he was a sincere devotee of the Wiccan faith and that he sincerely believed that use of tarot cards was required to practice his religion, as required to support his claim that prison officials violated his First Amendment right to freely exercise his religion by denying him tarot cards, incense, and religious books. The court found that it was unnecessary for the prisoner to show that the use of tarot cards and other items was necessary to the practice of the religion of Wicca if his belief in their use was sincerely held, to support his free exercise claim. The court remanded the case to address the prisoner's claim that prison officials violated RLUIPA by denying him tarot cards, incense, and religious books. (Bonneville Community Correctional Facility, Utah)

U.S. Appeals Court
HAIR LENGTH
RELIGION

Longoria v. Dretke, 507 F.3d 898 (5th Cir. 2007). A prisoner brought a *pro se* action against prison officials, claiming his right to exercise his religion was denied when they denied him permission to grow his hair. The district court dismissed the action and the prisoner appealed. The appeals court affirmed. The court held that the prison's grooming policy did not violate the Religious Land Use and Institutionalized Persons Act (RLUIPA) and did not violate equal protection. The court noted that even if the grooming policy created a substantial burden on the prisoner's religious exercise, the policy served the prison's compelling interest in maintaining order and safety in the prison, since long hair facilitated the transfer of contraband and weapons and long hair could allow escaped prisoners to more easily alter their appearance. The court held that the policy was the least restrictive means to achieve that interest. According to the court, although female prisoners were not subject to the same grooming policy, the policy applied to all prisoners incarcerated in the male prison, and the application of different grooming regulations to male and female inmates did not implicate equal protection concerns. (Robertson Unit, Texas Department of Criminal Justice-Institutional Division)

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. District Court
PUBLICATIONS

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. District Court
PROPERTY

Sanders v. Ryan, 484 F.Supp.2d 1028 (D.Ariz. 2007). A hearing-impaired inmate brought a civil rights action against a prison official and the State of Arizona, claiming his rights were violated under the Religious Land Use and Institutionalized Persons Act (RLUIPA), the First Amendment, Arizona civil rights laws, and the Americans with Disabilities Act (ADA). The district court granted summary judgment in favor of the defendants. The court held that a prison official's refusal to give the prisoner, who listened to audiotapes of Baptist church services as part of his faith, two new tapes unless he exchanged two tapes already in his possession to be destroyed, rather than stored, did not "substantially burden" the prisoner's exercise of his religion, as required to establish a violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The inmate had alleged that such conduct violated a state statute requiring the return of authorized inmate property to the inmate upon his release. The court noted that the new tapes were not authorized, as the prisoner already had the maximum number of tapes allowed, and the prisoner failed to show that he was unable to practice his religion absent receipt of the new tapes. According to the court, the state department of corrections policy of limiting property an inmate could possess in his cell or in storage did not violate the rights of prisoners under the Religious Land Use and Institutionalized Persons Act (RLUIPA), where the policy served the "compelling governmental interest" of enhancing the safety and security of prison facilities. The court found that the policy was the "least restrictive means" available to accommodate the government's compelling interests in safety and security. The inmate was able to mail excess religious tapes back to the church in exchange for new ones. (Arizona Department of Corrections)

U.S. District Court
CLOTHING
HAIR
RELIGIOUS ARTICLES

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.

The court also found that the inmate sincerely believed that he was required to possess a second Kanga, which was a Sikh religious comb, and therefore the prison's policy of limiting the inmate to a single Kanga placed a substantial burden on his religious beliefs under RLUIPA. Summary judgment was denied because of fact issues regarding the security risk posed by the Kara, which was a steel bracelet worn by Sikhs, and whether there was a compelling governmental interest to allow the Sikh inmate to only wear the Kara for 30 minutes at a time during meals. The court held that the inmate established a First Amendment free exercise claim with respect to his free exercise clause claim regarding his right to use a reading lamp at night for prayer purposes. The court concluded that the DOCS speculation that the beliefs of the inmate might not be sincere and could instead be "partly" motivated by his resistance to the prison environment was insufficient to defeat the inmate's motion for summary judgment on his free exercise clause claim. According to the court, given that the Sikh inmate would be unable to tie his turban in one of the traditional ways, in a manner sufficient to cover his head using a cloth that was merely 30 inches by 36 inches, the inmate established that the prison's policy regarding cloth length substantially burdened his religious beliefs. The court also found that because the inmate was required to shower with his turban, and to wash his turban every day, the limitation of two turbans was a substantial burden on the inmate's religious practice. The inmate also challenged several other prison policies that involved his hair, separate storage of his religious materials, and other restrictions. (Fishkill Correctional Facility, New York)

U.S. Appeals Court
RELIGION

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
PUBLICATIONS

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
PUBLICATIONS
RELIGION

Wares v. Simmons, 524 F.Supp.2d 1313 (D.Kan. 2007). A prisoner brought suit pursuant to § 1983, claiming violations of the Fifth Amendment and the free exercise clause of the First Amendment, arising from the prison defendants' prohibition on his possession of certain religious texts. The court granted summary judgment in favor of the defendants. The court held that the prisoner's exercise of his religion was not substantially burdened by prison regulations preventing him from possessing a Psalm book (which he had in another form) and a book of teachings by a particular rabbi, and therefore his rights under the free exercise clause of the First Amendment were not violated. According to the court, by virtue of the other religious materials and items that the prisoner was permitted to possess and ceremonies that he was permitted to engage in, his religious conduct or expression was not significantly inhibited or constrained, he remained able to express adherence to his faith, and he had a reasonable opportunity to exercise his sincerely-held religious beliefs. The court found that even if the prisoner's exercise of his religion was substantially burdened by the prison regulations, prison administrators did not violate the prisoner's First Amendment rights since they identified legitimate penological interests in security, safety, rehabilitation, and sound correctional management that justified the impinging conduct, and alternative means of achieving the prisoner's right to freely exercise his religion were available. (Hutchinson Correctional Facility, Kansas)

U.S. Appeals Court
BOOKS
RELIGION

Washington v. Klem, 497 F.3d 272 (3rd Cir. 2007). A prisoner filed a pro se action against a Department of Corrections (DOC), pursuant to § 1983 and the Religious Land Use and Institutionalized Persons Act (RLUIPA), alleging the DOC's policy of only allowing ten books in a prisoner's cell violated his religious exercise. The district court granted summary judgment in favor of the DOC and the prisoner appealed. The appeals court reversed and remanded. The court held that the policy "substantially burdened" the prisoner's religious exercise under RLUIPA, since the prisoner could not practice his religion in the absence of reading 4 books per day about Africa and African people and then proselytizing about what he had read. The court noted that the DOC allowed only one weekly visit to the prison library which precluded the prisoner from reading 4 books daily, or 28 books per week, that the DOC provided no evidence that the prisoner could freely trade books located inside the prison, and that the DOC forced the indigent prisoner to have outsiders continuously mail books to him which severely inhibited his ability to read 4 new books daily. The court found that the valid interests of the DOC in the safety and health of prisoners and DOC employees were not furthered by the DOC's policy of limiting the prisoner to 10 books in his cell, as required to uphold the policy against the prisoner's claim that the policy violated RLUIPA by substantially burdening his religious exercise. The court concluded that the book limitation policy did not decrease the likelihood of fire or hiding places for contraband in a cell, given the DOC's permission for the prisoner to have magazines and newspapers in addition to the 10 books. The court also held that the policy was not the least restrictive means of achieving the DOC's valid interests in safety and health, as required to uphold the policy against the prisoner's challenge, given the DOC's other policies allowing the prisoner to have 4 storage boxes of personal property in his cell and permitting more than 10 books if approved for educational purposes. According to the court, the least restrictive means would have been to allow the prisoner to choose what property he could keep in his storage units, as long as the property did not violate a prison policy for an independently legitimate reason. (State Correctional Institution-Retreat, Pennsylvania)

U.S. District Court
PROPERTY
RESTRICTIONS

Wesolowski v. Sullivan, 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). The court found that the confiscation of materials describing how someone

could conduct a political fundraising event to benefit Families Against Mandatory Minimums (FAMM) did not violate the inmate's rights under the First Amendment, considering the possibilities for abuse that would have arisen if inmates were freely allowed to engage in fundraising from fellow inmates. According to the court, the restriction and regulation of such activities by prisoners was unquestionably a legitimate penological interest, and it was uncontested that the inmate did not follow established procedures for obtaining authorization to engage in such activities. The court noted that even assuming the employees' actions in confiscating the materials violated the inmate's First Amendment rights, the employees were entitled to qualified immunity, as no authority had clearly established the inmate's First Amendment right to possess the materials in question at the time of events giving rise to lawsuit. (New York State Department of Correctional Services)

U.S. District Court
PUBLICATIONS

West v. Frank, 492 F.Supp.2d 1040 (W.D.Wis. 2007). A prisoner sued prison officials under § 1983, alleging that they violated his speech and equal protection rights by enforcing a policy prohibiting prisoners from receiving publications in the mail. The prisoner wanted to stay abreast of the nation's current events while he was incarcerated and had subscribed to *USA Today* using his own funds. Authorities at the Wisconsin Secure Program Facility where the prisoner was incarcerated refused to deliver the newspaper. The officials moved for summary judgment. The court granted the motion. The court held that the officials who had no involvement in the adoption or implementation of the policy could not be liable under § 1983 for any violation of the prisoner's speech rights that occurred when the policy was applied to him. The court held that genuine issues of material fact existed as to whether the prison violated the prisoner's free speech rights by enforcing its policy against him, instituted as part of a behavior modification program, precluding summary judgment. But the court found that the action was moot, where the state had abandoned the policy, and the prisoner had been transferred from the only prison in the state that imposed such a policy. (Wisconsin Secure Program Facility)

2008

U.S. District Court
SMOKING

Abdullah v. Washington, 530 F.Supp.2d 112 (D.D.C. 2008.) An inmate filed a § 1983 action seeking damages for violation of his Eighth Amendment rights stemming from his alleged exposure to second-hand tobacco smoke while confined at a District of Columbia detention facility. The district court granted summary judgment in favor of the defendants. The court held that the plaintiff's expert's testimony failed to demonstrate a causal relationship between environmental tobacco smoke (ETS) and the increased risk of harm to the inmate. The court noted that the expert was a biophysicist, not a medical doctor, never went to the jail, and never examined the inmate or his medical records. The court held that the officials were not deliberately indifferent to the health risks caused by environmental tobacco smoke (ETS), even if the officials inadequately enforced no-smoking rules, where a non-smoking policy was in existence during the inmate's incarceration, and the jail was undergoing extensive renovation to improve air quality, including the ventilation system. (District of Columbia Department of Corrections, Central Detention Facility)

U.S. District Court
CLOTHING
VISITS

Adeyola v. Gibon, 537 F.Supp.2d 479 (W.D.N.Y. 2008). An inmate brought a pro se action against a sheriff and correctional facility officials, alleging that they violated his constitutional rights by refusing to allow females to visit him unless they removed their head scarves for a search or presented proof that they were practicing Muslims. The district court granted summary judgment in favor of the sheriff and officials. The court held that the inmate failed to allege any injury in fact and thus lacked standing. The court held that the allegations, even if proven, did not violate any First Amendment right of the inmate to have visitors, in that it was reasonable for officials to require visitors to remove scarves to determine that they were not attempting to bring in contraband, and he was not denied visitors, given that visitors were simply required to agree to certain conditions before being allowed to see an inmate. (Erie County Holding Center, New York State Department of Correctional Services)

U.S. District Court
ACCESS TO COURT
PROPERTY
RULES-ITEMS
PERMITTED

Atwell v. Lavan, 557 F.Supp.2d 532 (M.D.Pa. 2008). A state inmate brought a pro se § 1983 action against prison employees, probation and parole board members and medical personnel, alleging he was denied access to courts in violation of the First Amendment. The district court held that the inmate's allegation that he was denied access to court because he was not provided with free photocopies and postage failed to state a claim under the First Amendment. The court found that the allegation that the inmate was denied access to the courts because he was denied access to stored legal material failed to state a claim under the First Amendment. The court noted that the inmate was allowed access to his stored materials in exchange for a like number of items from his cell, and prison staff did not care which of the inmate's items were in his cell as long as he kept within the allowed limit of items. (State Correctional Institution at Dallas, Pennsylvania)

U.S. Appeals Court
LANGUAGE
OUTGOING MAIL

Barrett v. Belleque, 544 F.3d 1060 (8th 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
BEARDS
DUE PROCESS
HAIR LENGTH

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 court held that the prison policy prohibiting male inmates from wearing hair below their collar, which prevented the inmate, who followed the Assemblies of

Yahweh, from leaving his hair untrimmed, did not violate RLUIPA. Prison officials gave examples of inmates using hair to conceal contraband and to change their appearance after escaping, and, although the officials allowed shoulder-length hair in the women's barracks, the women were housed in a single unit and thus had less opportunity to obtain and transport contraband. The court also found that the policy did not violate the inmate's free exercise rights. According to the court, the policy did not violate the inmate's equal protection rights, inasmuch as differences in security risks between male and female inmates was a valid reason for differing hair-length rules for men and women, and the policy was reasonably related to the state's legitimate, penological interests of safety and security. The court noted that the district court's finding that the corrections department director's expert testimony that male inmates presented greater security risks than female inmates was credible, and was not clearly erroneous.

The court found that a policy that generally prohibits inmates from wearing beards, which prevented the inmate from refraining from "rounding the corners" of his beard, did not violate RLUIPA, even though inmates with medical conditions were allowed to have a quarter-inch beard. The court ruled that safety and security concerns constituted a compelling penological interest, and the prohibition was the least restrictive means available to further that interest. The court found that the beard policy did not violate the inmate's free exercise or equal protection rights. 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. Appeals Court
ACCESS TO RELIGION
RELIGION

Greene v. Solano County Jail, 513 F.3d 982 (9th Cir. 2008). A former prisoner sued a county jail official asserting statutory and constitutional challenges to the county jail's policy of prohibiting maximum security prisoners from participating in group worship. The district court entered summary judgment for the official and the prisoner appealed. The appeals court reversed in part, vacated in part, and remanded. The court held that the religious exercise at issue in the prisoner's suit under the Religious Land Use and Institutionalized Persons Act (RLUIPA) was engaging in group worship, not practicing his religion as a whole. Therefore, even if the ban on group worship did not place a substantial burden on the prisoner's practice of Christianity, such fact would not ensure that ban was in compliance with RLUIPA. According to the court, the jail's policy of prohibiting the maximum security prisoner from attending group religious worship services substantially burdened the prisoner's ability to exercise his religion as required for the ban to violate RLUIPA. The court found that summary judgment was precluded by genuine issues of material fact as to whether the jail's policy was the least restrictive means of maintaining security. (Solano County Jail, Claybank Facility, California)

U.S. District Court
RELIGION

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. District Court
HAIR LENGTH
RELIGION

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
PUBLICATIONS

Jordan v. Sosa, 577 F.Supp.2d 1162 (D.Colo. 2008). A federal prisoner brought an action against a prison and officials, alleging 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. District Court
CLOTHING
RELIGIOUS ARTICLES
RESTRICTIONS

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 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. The court noted that 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
ACCESS TO RELIGION
VOLUNTEERS

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 issues 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
PROPERTY

Nevada Dept of Corrections v. Cohen, 581 F.Supp.2d 1085 (D.Nev. 2008). The Nevada Department of Corrections (DOC) brought an action against inmates, seeking declaratory judgment that its ban on the personal possession of typewriters by inmates was constitutional. The DOC moved for summary judgment and the district court granted the motion. The court held that the ban: (1) was reasonably related to legitimate penological interests; (2) did not infringe upon inmates' right of access to courts; (3) reasonably advanced legitimate correctional goals; and (4) was not an unconstitutional "taking" where the prison regulated property that prisoners could legitimately possess and offered options to dispose of the property, and prisoners were not deprived of all economically beneficial use of typewriters. The court noted that prison officials had determined that possession of typewriters aided the ability of inmates to breach safety and security due to the potential use of typewriter parts as weapons. According to the court, since inmates were not required to file typewritten documents with courts, there was no evidence of actual injury or that the ban would foreclose any meaningful opportunities for inmates to pursue arguable claims. (Nevada Department of Corrections)

U.S. Appeals Court
CORRESPONDENCE
RULES

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)

2009

U.S. Appeals Court
MAIL
PACKAGES

Bonner v. Outlaw, 552 F.3d 673 (8th Cir. 2009). An inmate filed a Bivens action against prison officials, alleging their handling of his incoming legal mail violated his constitutional rights. The district court granted the defendants' motion to dismiss. The appeals court affirmed in part and remanded in part. On remand, the district court denied the warden's motion to dismiss and his motion for summary judgment on qualified immunity grounds. The warden

appealed. The appeals court held that the inmate's allegations were sufficient to state a procedural due process claim against the warden, and that the due process right to receive notice was clearly established. The court held that the Federal Bureau of Prison's (BOP) regulation governing an inmate's notification of rejected correspondence, which distinguished between letters and other correspondence by requiring notification for rejections of the former but not for the latter, was unreasonable under procedural due process principles. The court found that there was no governmental interest advanced by the regulation, that inmates did not have an alternative means of receiving notice, and that there was no additional burden placed on prison officials by having to give notice. According to the court, the inmate's allegations that the warden had responsibility for lack of notice as to the prison's rejection of packages containing legal mail were sufficient to state a procedural due process claim against the warden. The inmate had alleged that the warden was personally involved in creating, applying, or interpreting a policy that failed to adhere to notice requirements, and that even if the warden had no role in deciding what notice procedures to follow, the inmate alleged that the warden failed to train or supervise mail room employees to follow notice requirements. (Federal Correctional Institution, Waseca, Minnesota)

U.S. District Court
RELIGIOUS ARTICLES

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. (North Dakota State Penitentiary)

U.S. District Court
MAIL

Covell v. Arpaio, 662 F.Supp.2d 1146 (D.Ariz. 2009). A prisoner brought a § 1983 action against a county sheriff, alleging that the sheriff violated his First Amendment rights by instituting a policy that banned incoming letters and restricted incoming mail to metered postcards. The prisoner alleged that the mail policy prevented him from receiving legal mail from witnesses in his criminal case. The sheriff moved for summary judgment and the district court granted the motion. The court held that the jail's non-privileged mail policy which banned incoming letters and restricted incoming mail to metered postcards was reasonably related to a legitimate penological interest in reducing contraband smuggling. The court noted that alternative means, including postcards, telephones, and jail visits, existed. According to the court, allowing stamped mails would increase the likelihood of smuggling contraband into the jail, which would in turn lead to conflicts and violence, and there was no evidence that the prisoner's suggested alternative, by having staff inspect each piece of mail and remove the stamps, would accommodate the right at a de minimis cost to the jail. (Maricopa County Lower Buckeye Jail, Arizona)

U.S. District Court
RULES-ITEMS
PERMITTED

Cox v. Ashcroft, 603 F.Supp.2d 1261 (E.D.Cal. 2009). A prisoner brought a § 1983 action against the United States Attorney General, several federal prosecutors, and the owner and employees of a privately-owned federal facility in which the prisoner was incarcerated, alleging constitutional violations arising from his arrest, prosecution, and incarceration. The district court dismissed the action. The court held that the prisoner did not have any Fourth Amendment rights to privacy in his cell, and thus did not suffer any constitutional injury as a result of the search of his cell and the confiscation of another inmate's legal materials. The court found that the prisoner did not have any liberty or property interest in employment while in prison, and thus the prisoner did not suffer any violation of his due process right related to his termination from his prison job as a result of discipline arising from the search of his cell, precluding liability on the part of facility owner and its employees under § 1983. According to the court, the prison facility's imposition of a 30-day suspension of the prisoner's telephone privileges related to a disciplinary action arising from the search of his cell and the confiscation of another inmates' legal papers, did not constitute an unreasonable limitation on the prisoner's First Amendment rights. The court noted that prisoners have a First Amendment right to telephone access, subject to reasonable limitations. The court found that regulations at a privately-owned federal prison facility prohibiting the prisoner from having the legal papers of another inmates in his cell did not chill the prisoner's exercise of his First Amendment right to provide legal assistance to fellow inmates, thus precluding liability on the part of the prison and its employees in the prisoner's § 1983 action alleging First Amendment retaliation. The court noted that the regulations reflected a legitimate penological objective in regulating when and where such assistance was provided. The court found that the prisoner lacked standing to bring a claim against the warden of a privately-owned federal prison facility, alleging that paying the prisoner at a rate below minimum wage violated the Fair Labor Standards Act (FLSA). The court noted that prisoners were not "employees" within the meaning of FLSA. (Taft Corr. Institution, Wackenhut Corrections Corporation, California)

U.S. District Court
CORRESPONDENCE
DUE PROCESS
MAIL

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 Correctional Institution, Greenville, Illinois)

U.S. District Court
RELIGIOUS ARTICLES
RULES-ITEMS
PERMITTED

Goodvine v. Swiekatowski, 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
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
VISITS

Hill v. Washington State Dept. of Corrections, 628 F.Supp.2d 1250 (W.D.Wash. 2009). An inmate and his wife brought a § 1983 action against a state department of corrections and various prison officials, alleging a prison regulation regarding extended family visits (EFV) violated their equal protection rights. The district court dismissed the action as moot. On subsequent determination, the district court held that: (1) the inmate did not have a constitutionally protected right to conjugal visits with his wife; (2) the inmate and his wife were not absolutely entitled to equal treatment under EFV policy; (3) EFV regulations were rationally related to a legitimate penological interest; (4) prison officials were entitled to summary judgment; and (5) prison officials had Eleventh Amendment immunity from the § 1983 action. The court noted that denial of prison access to a particular visitor is well within the terms of confinement ordinarily contemplated by a prison sentence, and access to a particular visitor is not independently protected by the Due Process Clause. The challenged EFV policy only allowed those spouses who were legally married to inmates prior to incarceration to participate in extended family visitation. (Washington State Department of Corrections)

U.S. District Court
CUSTODY LEVEL
RELIGION
RESTRICTIONS

Houseknecht v. Doe, 653 F.Supp.2d 547 (E.D.Pa. 2009). An inmate brought an action against current and former deputy wardens alleging they violated his right to freely exercise his religion under the First Amendment. The defendants moved for summary judgment. The court granted the motion in part and denied in part. The court held that the restriction of the inmate's religious rights due to his election to enter into protective custody, under which there were no formal religious ceremonies or formal classes similar to those provided to general population inmates, was rationally related to legitimate penological interest in maintaining security and order, and thus did not violate inmate's First Amendment right to free exercise of religion. According to the court, it was reasonable for an inmate who opted for more protective conditions to enjoy fewer amenities. The court noted that the inmate had regular communication with a chaplain who regularly brought reading materials to the inmates in protective custody, and the inmate was not prevented from sitting with other inmates and doing his own Bible study in the unit day room. The court held that it could not require the prison to permit inmates in protective custody to attend formal gatherings with other inmates, given the purpose of protective custody to segregate inmates who believed that other inmates posed a danger to them, and the provision of additional reading materials or access to additional religious media programming could likely not be accomplished without significant cost. The court found that the Inmate's religious exercise was not substantially burdened by his election to enter into protective custody, under which there were no formal religious ceremonies or formal classes similar to those provided to general population inmates, as required to establish a violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The court found that there was no suggestion that prison officials placed substantial pressure on the inmate to substantially modify his behavior or to violate his beliefs, he was not forced to choose between following the precepts of his religion and forfeiting benefits otherwise generally available to other inmates, and he acknowledged that he received and read the inmate handbook, which advised that protective custody carried with it restrictions on religious access. (Berks County Prison, Pennsylvania)

U.S. Appeals Court
OUTGOING 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. Appeals Court
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
RELIGIOUS
ARTICLES

Ortiz v. Downey, 561 F.3d 664 (7th Cir. 2009). A federal pretrial detainee brought a § 1983 action against the chief of corrections at a detention center, alleging his rights under the First Amendment's Free Exercise Clause were violated. The district court dismissed the complaint and the detainee appealed. The appeals court reversed and remanded. The court held that the detainee stated a § 1983 claim that his First Amendment free exercise rights were violated by alleging that he was denied a religious rosary and a prayer booklet solely because a jail official did not find those items vital to worship. The court also found the alleged denial stated a claim under the Religious Land Use and Institutionalized Persons Act (RLUIPA). (Jerome Combs Detention Center, Kankakee, Illinois)

U.S. District Court
CORRESPONDENCE
OUTGOING MAIL

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. According to the court, an employee's rejection of the prisoner's letters to nine state senators and representatives because the prisoner did not pay for postage and because the letters did not qualify as legal mail, as they were not addressed to a court, attorney, or a party to a lawsuit, did not implicate the prisoner's constitutional rights. (Michigan Department of Corrections)

U.S. Appeals Court
MAIL
RESTRICTIONS
VISITS

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
HATS
RELIGIOUS
ARTICLES
VOLUNTEERS

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 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; (2) the fact that Jewish inmates may have been permitted to wear religious headwear did not render the no-headwear policy unconstitutional; (3) a policy preventing inmates' use of non-breakaway prayer beads did not violate the inmate's First Amendment rights; (4) a policy banning the possession of prayer rugs by inmates did not violate the inmate's First Amendment rights; and (5) 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
RELIGIOUS
ARTICLES

Singson v. Norris, 553 F.3d 660 (8th Cir. 2009). A prisoner brought an action against a state department of corrections, alleging its policy prohibiting in-cell use of tarot cards violated the Religious Land Use and Institutionalized Persons Act (RLUIPA). The prisoner was a follower of Wiccan and asserted that tarot cards were part of his religious practices. Following a trial, the district court ruled in favor of the department of corrections. The prisoner appealed. The appeals court affirmed. The court held that the policy did not violate RLUIPA, where the potential effect of in-cell use of tarot cards on the guards and allocation of prison resources outweighed the restrictions felt by any interested inmate-users. (Arkansas Department of Correction)

U.S. Appeals Court
HAIR LENGTH
RELIGION

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)

U.S. Appeals Court
ACCESS TO
ATTORNEY
RESTRICTIONS

U.S. v. Mikhel, 552 F.3d 961 (9th Cir. 2009). An alien inmate convicted of capital offenses moved to allow attorney-client access without special administrative measures (SAM) restrictions that allegedly violated the Due Process Clause and Sixth Amendment right to effective assistance of appellate counsel. The appeals court held that modification of the SAM was warranted to permit the attorney to use a translator in a meeting with the inmate, and modification of the SAM was warranted to allow the attorney's investigators to disseminate the inmate's communications. The court also found that modification of the SAM was warranted to allow the attorney's investigator to meet with the inmate. The court found that the SAM was an exaggerated response to the prison's legitimate security interests and unacceptably burdened the inmate's due process and Sixth Amendment rights. (Central District, California)

U.S. Appeals Court
RELIGIOUS
ARTICLES

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. (South Dakota State Penitentiary)

2010

U.S. District Court
RULES-ITEMS
PERMITTED

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 found that the prisoner's allegations were factually sufficient to state a colorable § 1983 claim for a violation of his First Amendment right of access to courts, where the prisoner alleged that he was housed in segregation for several years and was repeatedly denied materials such as books, paper, pens and envelopes, as well as assistance from a law clerk. The court found that the prisoner's allegations were sufficient to state a § 1983 claim of deprivation of property without due process in violation of the Fourteenth Amendment where the prisoner alleged that prison officials confiscated various items from his cell that they deemed to be contraband, but that he had purchased them at the prison or had the items given to him by employees of the prison, and that officials told him he had no right to be made aware of rules, policies or regulations. (High Desert State Prison, Nevada)

U.S. District Court
BEARDS
RELIGION
RULES

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. District Court
ACCESS TO
RELIGION

Chappell v. Helder, 696 F.Supp.2d 1021 (W.D.Ark. 2010). An inmate brought a § 1983 suit claiming that religious presentations in a dayroom during lockout times contravened the Free Exercise Clause of the Constitution. The court held that the presentations contravened the inmate's rights under the Free Exercise Clause. The court noted that although he was not told to sit and listen, nor was he forced to participate, there was a forced inculcation in the fact that he was unable to remove himself to a place where he did not have to hear the presentations. The court found that allowing only the "Holy Bible" to be possessed by inmates during a morning lockout violated the inmate's rights under the Establishment Clause, but the inmate's right of meaningful access to the courts was not violated. (Washington County Detention Center, Arkansas)

U.S. Appeals Court
RELIGIOUS
ARTICLES
RULES

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 prisoner's First Amendment right of freedom of religion was not violated by the prison's lack of Jewish services and literature, and thus, the prisoner could not prevail in his § 1983 First Amendment claim on that basis. The court noted that the prisoner was the only inmate requesting Jewish services and literature, that prison policies reasonably required a minimum number of inmates to request religious services before they would be held, and there was no showing that the prisoner was restricted from practicing Judaism privately or that the prison prevented him from requesting religious literature. 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
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
PRETRIAL
DETAINEES
SMOKING
DUE PROCESS

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 VISITS	<i>Dunn v. Castro</i> , 621 F.3d 1196 (9 th 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. Appeals Court PUBLICATIONS RULES	<i>Farid v. Ellen</i> , 593 F.3d 233 (2 nd 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 Corr'l Facility, Clinton Corr'l Facility, New York)
U.S. Appeals Court MAIL	<i>Gee v. Pacheco</i> , 627 F.3d 1178 (10 th 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)
U.S. District Court RELIGION RESTRICTIONS	<i>Gordon v. Caruso</i> , 720 F.Supp.2d 896 (W.D.Mich. 2010). An inmate sued corrections officials under § 1983 and the Religious Land Use and Institutionalized Persons Act (RLUIPA), claiming that they violated his rights by preventing him from engaging in group worship services with other adherents of his faith. Following denial of a defense motion for summary judgment, officials moved for reconsideration. The appeals court held that summary judgment was precluded by genuine issues of material fact as to whether prison officials' ban on Asatru group worship was the least restrictive means of furthering their interest in maintaining prison security. The court found that prison officials who banned Asatru group worship had a rational basis for treating members of the Asatru faith differently from other groups that promoted racist and supremacist teachings, based on a demonstrated connection between the practice of Asatru and violence and racial conflict in the prison setting, and thus, there was no violation of the inmate's equal protection rights. The court noted that the other groups that were allowed to engage in group activity were not shown to present similar security concerns. (Michigan Department of Corrections)
U.S. District Court RELIGIOUS ARTICLES	<i>Indreland v. Yellowstone County Bd. of Comr's</i> , 693 F.Supp.2d 1230 (D.Mont. 2010). A state prisoner brought a § 1983 action against a county board of commissioners and prison officials, alleging, among other things, that the defendants' actions, including denying him access to satanic materials and holding him in maximum security, interfered with his free exercise of religion in violation of First Amendment and Religious Land Use and Institutionalized Persons Act (RLUIPA). The court held that prison officials' denial of access to his satanic medallion did not interfere with his free exercise of religion in violation of First Amendment and RLUIPA, where the officials had a legitimate penological interest in denying the prisoner a chain that the officials believed could be used to strangle another inmate. According to the court, prison officials segregated the prisoner because he was involved in fights with other inmates, and not solely on account of his alleged satanic religion, and thus the prisoner's segregation did not interfere with his free exercise of religion in violation of First Amendment and RLUIPA. The court held that the county detention facility was not required under the First Amendment or RLUIPA to purchase religious materials for the prisoner at its own expense. But the court held that summary judgment was precluded by a genuine issue of material fact as to whether the prison chaplain was working in conjunction with prison staff to deny the prisoner, who claimed to practice satanism, his free exercise of religion, and therefore, whether the chaplain was state actor. (Yellowstone County Detention Facility, Montana)
U.S. District Court ACCESS TO RELIGION RELIGIOUS ARTICLES	<i>Rouser v. White</i> , 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 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. Appeals Court
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 Corr'l Institution, Wisconsin)

U.S. Appeals Court
LIBERTY INTEREST
MAIL
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 Corr'l Facility, Michigan Department of Corrections)

2011

U.S. District Court
HATS
RELIGIOUS
ARTICLES

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. The court held that the prisoner had no constitutional right to have his grievances processed or investigated in any particular manner, as would support his § 1983 claim against prison employee who allegedly covered up an investigation into the confiscation of his purportedly religious head wear. (Southport Correctional Facility, New York)

U.S. District Court RELIGION SMOKING	<i>Cryer v. Massachusetts Dept. of Correction</i> , 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 the First 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 Corr'l Center, Massachusetts)
U.S. Appeals Court PUBLICATIONS	<i>Hrdlicka v. Reniff</i> , 631 F.3d 1044 (9 th 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 PUBLICATIONS	<i>Jordan v. Sosa</i> , 654 F.3d 1012 (10 th 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 FACIAL HAIR RELIGION	<i>Kuperman v. Wrenn</i> , 645 F.3d 69 (1 st Cir. 2011). A Jewish former state inmate brought a § 1983 action against prison officials, alleging a prison regulation prohibiting inmates from growing facial hair longer than one quarter of an inch violated his First Amendment exercise of religion rights, as well as Fourteenth Amendment equal protection and the Religious Land Use and Institutionalized Person Act (RLUIPA). The district court granted summary judgment for the officials and the inmate appealed. The appeals court affirmed, finding that the regulation was reasonably related to the penological interests of prison safety and security and did not prohibit the inmate from alternative means of exercising his rights. The court found that accommodating the inmate's desire to grow a beard would adversely impact prison resources and that there was no ready alternative to the prison regulation. According to the court, the regulation did not violate the inmate's Fourteenth Amendment equal protection rights, and the regulation furthered the compelling government interest of prison safety and security in the least restrictive means of doing so. (New Hampshire State Prison)
U.S. Appeals Court PROPERTY RESTRICTIONS	<i>Nevada Dept. of Corrections v. Greene</i> , 648 F.3d 1014 (9 th Cir. 2011). The Nevada Department of Corrections brought an action against an inmate, seeking declaratory judgment that its ban on personal possession of typewriters by inmates was constitutional. Following intervention by additional inmates, the district court granted the Department's motion for summary judgment. Several inmates appealed, and the appeals were consolidated. The appeals court affirmed. The appeals court held that: (1) the typewriter ban did not constitute First Amendment retaliation; (2) the ban did not infringe upon the inmates' First Amendment right of access to the Nevada Supreme Court; (3) the ban did not infringe upon the inmates' Fourteenth Amendment due process rights; and (4) the district court did not abuse its discretion in not affording the inmate the opportunity to conduct discovery prior to its ruling on the Department's motion for summary judgment. The court noted that the Department's ban on personal possession of typewriters by inmates reasonably advanced a legitimate correctional goal of institutional safety, and that the ban was enacted after the murder of an inmate with a weapon fashioned from the roller pin of a typewriter. (Nevada Department of Corrections)
U.S. Appeals Court CORRESPONDENCE RESTRICTIONS	<i>Perry v. Secretary, Florida Dept. of Corrections</i> , 664 F.3d 1359 (11 th 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 <i>Procunier v. Martinez</i> 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
BOOKS
CORRESPONDENCE
PUBLICATIONS
- Al-Owhali v. Holder*, 687 F.3d 1236 (10th Cir. 2012). A federal inmate brought a suit against the Attorney General, the Director of the Federal Bureau of Prisons (BOP), a prison warden, and the FBI, alleging that several special administrative measures imposed upon him violated his First and Fifth Amendment rights. The inmate had been convicted of several terrorism-related offenses stemming from the 1998 bombing of the United States embassy in Nairobi, Kenya. The district court dismissed the complaint and the inmate appealed. The appeals court affirmed. The appeals court held that: (1) the inmate failed to address whether the ban on his communications with his nieces and nephews was supported by a rational penal interest; (2) the measure preventing the inmate's subscription to two Arabic-language newspapers fell within the warden's broad discretion to limit incoming information, and was rationally related to a penal interest to prevent the inmate from acting upon contemporary information or receiving coded messages; and (3) the inmate offered only a vague allegation regarding the measure that purportedly barred him from obtaining a book authored by former President Jimmy Carter, where the inmate offered no factual context to show that the measure was unrelated to any legitimate penal interest, and instead merely implied the existence of a secret list of banned publications. (United States Penitentiary, Administrative Maximum, Florence, Colorado)
- U.S. District Court
GROOMING
HAIR LENGTH
RELIGION
- Benning v. Georgia*, 845 F.Supp.2d 1372 (M.D.Ga. 2012). An inmate, who was a Torah-Observant Jew, proceeding pro se, brought an action against a state, a board of corrections, a department of corrections (DOC) and its commissioner, seeking injunctive relief on allegations that grooming policies violated the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court held that: (1) the inmate's beliefs were sincerely held; (2) the policy requiring the inmate to remove his earlocks substantially burdened a tenet of his religion; (3) requiring the inmate to purchase or obtain from a charity a depilatory to comply with the policy did not substantially burden a tenet of the inmate's religion; and (4) summary judgment was precluded by a genuine issue of material fact as to whether the prison policy of refusing to allow the inmate to grow earlocks was the least restrictive means of protecting the prison's compelling interests. The court noted that the Religious Land Use and Institutionalized Persons Act (RLUIPA) affords to prison inmates a heightened protection from government-imposed burdens by requiring that the government demonstrate that the substantial burden on the prisoner's religious exercise is justified by a compelling, rather than merely a legitimate, governmental interest. The court noted that the inmate had changed his religion of record with the department of corrections (DOC) to Judaism 10 years previously, he had not changed his religion since, and inmate had spent much of his time grieving and litigating issues related to his Jewish faith. (Atry State Prison, Georgia)
- U.S. District Court
HAIR LENGTH
RELIGION
- Benning v. Georgia*, 864 F.Supp.2d 1358 (M.D.Ga. 2012). A Jewish inmate brought an action against the State of Georgia, the Georgia Board of Corrections, the Georgia Department of Corrections (GDC), and its Commissioner, in his official capacity, alleging that the defendants violated the Religious Land Use and Institutionalized Persons Act (RLUIPA) by refusing to allow him to grow earlocks in accordance with his religious beliefs. The court held that: (1) the inmate's religious belief that he was forbidden from shaving his earlocks was sincerely held; (2) the inmate's religious beliefs were substantially burdened by the defendants' refusal to allow him to grow earlocks; (3) uniformity was not a compelling government interest justifying the defendants' refusal to allow the inmate to grow earlocks; and (4) the defendants failed to prove that banning earlocks completely was the least restrictive means of furthering compelling governmental interests. (Atry State Prison, Georgia)
- U.S. Appeals Court
BEARDS
RELIGION
RULES
- Couch v. Jabe*, 679 F.3d 197 (4th Cir. 2012). A state inmate brought an action alleging that prison officials violated the Religious Land Use and Institutionalized Persons Act (RLUIPA) by refusing to permit him to grow a one-eighth-inch beard in compliance with the requirements of his faith. The district court entered summary judgment in the officials' favor, and the inmate appealed. The appeals court vacated and remanded. The court held that the Muslim inmate's maintenance of a beard was a qualifying "religious exercise" under RLUIPA. The court found that state prison officials failed to satisfy their burden of showing that the policy banning beards for religious purposes was the least restrictive means of furthering the prison's compelling interests in hygiene, prohibiting contraband and gang identification, and facilitating identification of prisoners, and thus officials' refusal to permit Muslim inmates to grow a one-eighth-inch beard in compliance with requirements of his faith violated RLUIPA. The court noted that the officials failed to address the feasibility of implementing a religious exemption, or to explain how the prison was able to deal with the beards of medically exempt inmates but could not similarly accommodate religious exemptions. (Augusta Correctional Center, Virginia)
- U.S. District Court
RELIGIOUS
ARTICLES
RESTRICTIONS
- 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, California)

U.S. District Court
RELIGIOUS
ARTICLES
RULES-ITEMS
PERMITTED

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 held that lack of an irreparable harm to the inmate as a result of damage to his prayer object, a turtle pendant, precluded the issuance of a preliminary injunction, where there was no imminent danger the his sacred items would be desecrated absent injunctive relief. The court noted that the inmate's possession and use of his prayer object, a kukui nut, was a "religious exercise" for purposes of the Religious Land Use and Institutionalized Persons Act (RLUIPA): the object was used in daily prayers and chants, in dances, and other individual religious protocol and communal religious activities, it provided the inmate with spiritual comfort, and it symbolized enlightenment, growth and accomplishment.

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
PUBLICATIONS
RELIGION

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.

The court held that withholding of a religious poster did not substantially burden the religious exercise of the inmate, who was a member of the Christian Identity Faith, as would violate the Religious Land Use and Institutionalized Persons Act (RLUIPA). The court also held that size restrictions which prevented the inmate from possessing the religious poster did not violate his First Amendment free exercise rights, where the regulations prevented any items, except subscription newspapers, over a certain size. 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
HAIR LENGTH
RELIGION

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. District Court
AIDS- Acquired
Immune Deficiency
Syndrome

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
RELIGION

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 (PLRA), 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. (Fed. Correctional Institution, Otisville, New York)

U.S. District Court
RELIGIOUS
ARTICLES

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
RELIGIOUS
ARTICLES

McFaul v. Valenzuela, 684 F.3d 564 (5th Cir. 2012). A prisoner brought a pro se civil rights action against prison officials who had denied his request for a religious medallion to use in Celtic Druid ceremonies. The district court entered summary judgment in favor of the defendants and the prisoner appealed. The appeals court affirmed, finding that the prison's prohibitions on nonconforming neo-Pagan medallions and medallions costing more than \$25 did not violate the prisoner's First Amendment right to free exercise of religion, and the prisoner failed to meet his burden of showing that the prohibitions substantially burdened his ability to practice his religion, in violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The appeals court also held that enforcement of the prohibitions against the prisoner did not violate equal protection. Officials had prevented the prisoner from having a black onyx pentagram for use in Celtic Druid ceremonies, and the court found that the prohibitions were reasonably related to penological interests, including safety, security, and discipline, did not discriminate against nontraditional religions, and did not prevent the prisoner from performing some religious rituals. The court noted that permitting prisoners to possess nonconforming medallions would have forced guards to determine whether the items were permitted religious medallions or contraband items. (Preston Smith Unit, Texas Department of Criminal Justice)

U.S. District Court
CORRESPONDENCE
RELIGION
VOLUNTEERS

Moorehead v. Keller, 845 F.Supp.2d 689 (W.D.N.C. 2012). A state inmate, a Messianic Jew, brought a pro se § 1983 action against North Carolina Department of Corrections (DOC) officials, alleging that the officials prevented him from writing to his "spiritual advisor" and discontinued Messianic Jewish services at the prison, in violation of his constitutional rights. The defendants moved for judgment on the pleadings. The district court granted the motion. The court held that the state prison regulation prohibiting prison volunteers from corresponding with inmates was reasonably related to the prison's legitimate penological interest in preventing volunteers from becoming unduly familiar with inmates, and thus the actions of North Carolina Department of Corrections (DOC) officials in preventing the Messianic Jewish inmate from corresponding with his "spiritual advisor," who was a volunteer at the prison, pursuant to regulation did not violate the inmate's constitutional rights. (Mountain View Correctional Institution, North Carolina)

U.S. Appeals Court BOOKS	<i>Munson v. Gaetz</i> , 673 F.3d 630 (7 th 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. (Illinois Department of Corrections)
U.S. District Court RELIGION	<i>Native American Council of Tribes v. Weber</i> , 897 F.Supp.2d 828 (D.S.D. 2012). A Native American organization and inmates brought an action against the Secretary of the South Dakota Department of Corrections, alleging the Department's policy banning all tobacco from its facilities violated the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court found that the inmates' use of tobacco was a religious exercise protected under RLUIPA, that the policy placed a substantial burden on the inmates' exercise of their religious beliefs, and the policy was not supported by a compelling governmental interest where there was little evidence that tobacco from the Native American religious ceremonies created a security or safety risk. According to the court, the Native American inmates' use of tobacco in pipes, tobacco ties, and prayer flags was a religious exercise protected under RLUIPA, notwithstanding the use of red willow bark instead of tobacco by other members of their tribe. The court noted that the inmates used tobacco prior to their incarceration as part of traditional healing and other religious ceremonies. (South Dakota Department of Corrections)
U.S. District Court RELIGIOUS ARTICLES	<i>Panayoty v. Annucci</i> , 898 F.Supp.2d 469 (N.D.N.Y. 2012). Inmates in a state prison who were affiliated with the religious group Nation of Gods and Earth filed a § 1983 action against prison officials seeking declarative and injunctive relief concerning constraints the prison placed on the practice of their religion, which allegedly violated the First Amendment and Religious Land Use and Institutionalized Persons Act (RLUIPA), as well as the equal protection clause of Fourteenth Amendment. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court found that the inmates' practice of congregating with each other and wearing crowns, as part of their affiliation with the Nation of Gods and Earth group, was religious in the inmates' scheme of beliefs, and sincerely held, as required to demonstrate a prima facie showing of First Amendment free exercise and RLUIPA violations against the prison officials who had established protocols prohibiting such practices. The court noted that one inmate had a twelve-year history of the religious practice, dating back to before he was incarcerated, another inmate's practice extended back 25 years, and both expressed that the Nation of Gods and Earth religion had helped them draw closer to a life of righteousness and had shaped their character. The court held that there was no evidence that the inmates' practice of displaying the Nation of Gods and Earth's Universal Flag, symbols, and texts in their cells, as part of their affiliation with the group, was religious in the inmates' scheme of beliefs, and sincerely held, and the inmates failed to adequately assert First Amendment free exercise and RLUIPA violations against prison officials. Although the inmates asserted that the prison's prohibition of this practice required them to live under a shroud of secrecy, members of the group were required to register with the facility deputy superintendent for programs, so their practice was well known. (New York State Department of Corrections and Community Supervision, Mid-Orange Correctional Facility, Riverview Correctional Facility)
U.S. Appeals Court BOOKS DUE PROCESS RULES- ITEMS PERMITTED	<i>Prison Legal News v. Livingston</i> , 683 F.3d 201 (5 th 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 Dept.of Criminal Justice)
U.S. District Court FREE EXPRESSION RELIGION	<i>Sweet v. Northern Neck Regional Jail</i> , 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. District Court
CUSTODY LEVEL

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. District Court
CORRESPONDENCE
MAIL

U.S. v. Ligambi, 886 F.Supp.2d 492 (E.D.Pa. 2012). A detainee who was charged with various crimes, including racketeering, moved to suppress an outgoing prison letter seized by prison officials. The district court denied the motion. The court held that the defendant, who was in prison while charged with various crimes, including racketeering, did not have a reasonable expectation of privacy in his outgoing non-privileged mail. The court noted that prison regulations permitted officials to seize correspondence when it might contain information concerning criminal activities, it was established practice to inspect non-privileged mailings to promote discipline in the institution, and the defendant had a reputation for involvement with organized crime. (South Woods State Prison, Southern State Correctional Facility, New Jersey)

U.S. District Court
DUE PROCESS
LANGUAGE

U.S. v. Maricopa County, Ariz., 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 found that allegations that the county sheriff’s office and the sheriff conducted jail operations in English and provided inadequate language assistance to the large jail population of Latino inmates who were limited English proficient (LEP) individuals, thereby denying the Latino LEP inmates meaningful access to jail programs such as sanitary needs, food, clothing, legal information, and religious services, stated a claim for disparate impact discrimination under Title VI by programs or activities receiving federal financial assistance. (Maricopa County Sheriff’s Office, Sheriff Joseph M. Arpaio, Arizona)

2013

U.S. Appeals Court
RELIGION
RELIGIOUS
ARTICLES
RESTRICTIONS

Chance v. Texas Dept. of Criminal Justice, 730 F.3d 404 (5th Cir. 2013). A state prisoner brought an action against prison officials, challenging restrictions on his Native American religious practices under the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court granted the defendants’ motion for summary judgment. The prisoner appealed. The appeals court affirmed in part, vacated in part, and remanded. The appeals court held that: (1) the prison’s complete ban on communal pipe-smoking did not violate RLUIPA; (2) the prison’s schedule of Native American religious services did not violate RLUIPA; (3) the prison policy limiting the Native American Smudging ritual to outdoor ceremonies did not violate RLUIPA; but (4) summary judgment was precluded by a genuine issue of material fact with regard to whether the prison’s refusal to allow the prisoner to possess locks of relatives’ hair in accordance with his Native American religious practice was the least restrictive means of furthering the prison’s compelling interests. (Texas Department of Criminal Justice, Michael Unit in Tennessee Colony)

U.S. District Court
ACCESS TO
RELIGION
RELIGIOUS
ARTICLES
RESTRICTIONS

Cryer v. Spencer, 934 F.Supp.2d 323 (D.Mass. 2013). A state prisoner, claiming to be partially of Native American descent, brought a pro se § 1983 action alleging that prison officials violated his First Amendment right to free exercise of his religion and the Religious Land Use and Institutionalized Persons Act (RLUIPA), as well as his rights under Massachusetts law. The defendants moved to dismiss. The district court allowed the motion in part and denied in part. The district court held that the allegations were sufficient to state claims for violations of RLUIPA, the First Amendment and of a Massachusetts statute prohibiting prisoners from being denied the free exercise of religious belief. The court held that in light of undisputed evidence concerning the importance of Native American languages in Native American religious practices, the allegation that state prison officials limited the prisoner’s access to a cassette player and Native American languages audiotapes to use during Native American religious ceremonies were sufficient to state a claim for violations of RLUIPA. According to the court, restricting the prisoner’s use of the tapes forced him to choose whether to listen to the tapes and forego participation in the ceremonies, or participate in the ceremonies and give up all opportunities to listen to the tapes. The court also found that the alleged failure of the prison to make available a Native American clergy member or volunteer, or

comparable clergy, was sufficient to state an RLUIPA claim. (Souza-Baranowski Correctional Center, Massachusetts)

U.S. Appeals Court
ACCESS TO COURT
ITEMS PERMITTED

Devbrow v. Gallegos, 735 F.3d 584 (7th Cir. 2013). A prisoner brought a § 1983 claim against two prison officials, claiming that the officials denied him access to the courts by confiscating and then destroying his legal papers in retaliation for a prior lawsuit he filed. The district court granted the prison officials' motion for summary judgment, and denied the prisoner's motion for reconsideration. The prisoner appealed. The appeals court affirmed. The appeals court held that the prisoner failed to authenticate a purported e-mail from a prison official to a law librarian supervisor, where there was no circumstantial evidence that supported the authenticity of the e-mail, and no evidence that the prisoner or anyone else saw the official actually compose or transmit the purported e-mail. The court held that the official's removal of the prisoner's excessive legal materials from his cell, to eliminate a fire hazard and to make it easier for officials to conduct searches and inventories of the prisoner's property during prison searches, was not retaliation for the prisoner's filing of a prior lawsuit. According to the court, the prisoner's speculation regarding the officials' motive could not overcome the officials' sworn statements on the motion for summary judgment. (Westville Correctional Facility, Indiana)

U.S. Appeals Court
BEARDS
RELIGION

Garner v. Kennedy, 713 F.3d 237 (5th Cir. 2013). A Muslim state prisoner brought an action against prison officials alleging the Texas Department of Criminal Justice's (TDCJ) policy of prohibiting prisoners from wearing beards for religious reasons violated the Religious Land Use and Institutionalized Persons Act (RLUIPA) and his constitutional rights. The district court granted summary judgment to the defendants, and the prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. On remand, and after a bench trial, the district court granted declaratory and injunctive relief in favor of the prisoner. The defendants appealed. The appeals court affirmed. The appeals court held that TDCJ's no-beard policy was not the least restrictive means of advancing the compelling government interest in controlling costs, and the no-beard policy was not the least restrictive means of advancing the compelling government interest in security. According to the court, although prison officials testified that there would be additional costs from allowing prisoners to wear quarter-inch beards for religious reasons due to the construction of barbershops, the purchase of barbering supplies, or the creation of new identification cards, almost all of that testimony was speculative, the officials admitted that no specific studies of costs had been done, and there was no evidence that TDCJ, which already imposed limits on hair length, would encounter greater or added difficulty if it enforced a one-quarter-inch as opposed to a clean-shaven rule. Although TDCJ presented evidence that allowing inmates to have beards hindered inmate identification, TDCJ allowed inmates to shave their heads, and there was testimony that shaved heads posed just as many identification problems as allowing prisoners to grow and shave beards. (Texas Department of Criminal Justice, McConnell Unit, Beeville, Texas)

U.S. District Court
DUE PROCESS
PUBLICATIONS

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
BOOKS
JEWELRY
RELIGIOUS
ARTICLES

Kaufman v. Pugh, 733 F.3d 692 (7th Cir. 2013). A state prisoner brought an action against prison officials, challenging their refusal to permit a weekly atheist study group, their refusal to allow the prisoner to wear a "knowledge thought ring" that he regarded as a religious symbol, and their failure to make atheist books that he donated available in the prison library. The prisoner asserted claims under the Free Exercise Clause, the Establishment Clause, and the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court granted summary judgment to the prison officials. The prisoner appealed. The appeals court affirmed in part, vacated in part, and remanded. The appeals court held that summary judgment was precluded by fact issue as to how many prisoners in the state prison would be interested in forming a weekly atheism study group.

The court found that refusal to allow the prisoner to wear a "knowledge thought ring" did not discriminate against atheism. The court noted that the prisoner conceded that the ring was an individualized symbol, thereby admitting that his inability to wear the ring did not impose a substantial burden on his ability to practice atheism. According to the court, the prison officials were entitled to draw a distinction between, on the one hand, religious emblems that were common to members of other umbrella religious groups, easy to recognize, and difficult to abuse as a gang symbol, and on the other hand, emblems that were unique to each prisoner and that posed a potential security risks. According to the court, prison officials' refusal to allow the state prisoner to form a weekly atheism study group did not violate the prisoner's rights under the Free Exercise Clause or the Religious Land Use and Institutionalized Persons Act (RLUIPA), in the absence of evidence that the prisoner would be unable to practice atheism effectively without the benefit of a weekly study group.

The court found that the alleged failure of state prison officials to make available in the prison library three used books on atheism that had been mailed to the prisoner, did not violate the prisoner's rights under the Free

Exercise Clause and the RLUIPA, absent evidence of a substantial burden on the prisoner's ability to follow his atheistic beliefs. (Stanley Correctional Facility, Wisconsin)

U.S. Appeals Court
CONTRABAND
HAIR LENGTH
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
DUE PROCESS
PACKAGES
RELIGIOUS
ARTICLES

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. The court held that the jail, the jail administrator, and the county sheriff's denial of a typewriter in the pretrial detainee's cell to accommodate his alleged handwriting disability did not violate the detainee's rights under Title II of the Americans with Disabilities Act (ADA). The court noted that the detainee was able to write by hand, although he stated he experienced pain when doing so. According to the court, if the detainee chose to avoid writing by hand he had substantial access to a typewriter in the jail's law library, there was no permanent harm from the handwriting he performed, there was no evidence the detainee was not able to adequately communicate with lawyers and jail officials without a typewriter in his cell, and the accommodation of an in-cell typewriter would impose an undue burden on jail personnel because metal and moving parts of typewriter could be used as weapons. (Gwinnett County Jail, Georgia)

U.S. Appeals Court
HAIR LENGTH
RELIGION

Lewis v. Starnes, 712 F.3d 1083 (7th Cir. 2013). A state prisoner brought an action against prison officials under § 1983 and the Religious Land Use and Institutionalized Persons Act (RLUIPA), alleging removal of his dreadlocks violated his religious rights and denied him equal protection. The district court granted the defendants' motion for summary judgment. The prisoner appealed. The appeals court affirmed. The appeals court held that there was no evidence that the prison had no need to regulate hair length or hairstyle, or that the need was not great enough to warrant interference with the inmate's religious observance. (Dixon Correctional Center, Illinois)

U.S. District Court
ENFORCEMENT
SMOKING

Mearin v. Swartz, 951 F.Supp.2d 776 (W.D.Pa. 2013). State inmates, proceeding pro se, brought an action against prison officials and employees, alleging that exposure to environmental tobacco smoke (ETS) violated the Eighth Amendment, as well as asserting First Amendment retaliation claims. The defendants moved to dismiss. The

district court granted the motion in part and denied in part. The court held that the prisoners' allegations were sufficient to plead they were exposed to unreasonably high levels of environmental tobacco smoke (ETS), as required to state a § 1983 claim for violations of the Eighth Amendment against various prison officials and employees. One prisoner alleged that he was exposed to constant smoking by cellmates, inmates in neighboring cells, and by corrections officers and staff, which resulted in his suffering from constant coughs, headaches, chest pains, shortness of breath, vomiting, and fatigue. A second prisoner alleged that he was constantly exposed to second hand smoke by other inmates and employees while in certain housing, which resulted in his suffering from constant headaches, coughs, dizziness, breathing difficulties, and burning sensations in his chest. The prisoners alleged that officials and employees had actual knowledge of their exposure to ETS and of the risks of harm to the prisoners' health, but failed to rectify conditions and to enforce the prison's zero tolerance smoking policy.

The court found that the prisoners' allegations that they had made requests to unit managers to be housed with non-smoking cellmates, that the managers had knowledge of the prisoners' need to be housed with non-smokers, that the managers denied the requests, that the prisoners suffered various health conditions from exposure to smoke, and that the prisoners submitted grievances about smoke exposure, were sufficient to state a § 1983 claim against case managers for violations of the Eighth Amendment. (State Correctional Institution at Greene, Pennsylvania)

U.S. District Court
PUBLICATIONS

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

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
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
DUE PROCESS
PRETRIAL
DETAINEES
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. (D.C. Metro. Police Department, 6th Dist. Police Station and MPD's Central Cellblock, and U.S. Marshals Service)

U.S. District Court
DRUG TESTING

Terbush v. Massachusetts ex rel. Hampden County Sheriff's Office, 987 F.Supp.2d 109 (D.Mass. 2013). An inmate brought a state court action against the Commonwealth of Massachusetts, a medical doctor, a registered nurse, and a physician assistant, alleging deliberate indifference to his serious medical needs and asserting claims under the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The inmate alleged that his inability to provide a urine sample while participating in a day reporting program, was due to an alleged "Shy Bladder Syndrome" condition as well as subsequent medical issues following his return to a correctional facility. The day reporting program provided home-based incarceration for selected inmates with the goal of transitioning them back to the community. Inmates were still "incarcerated" but were allowed to live at home under strict reporting conditions, including drug testing. When the inmate could not produce a urine sample upon his admission to the program, he was returned to jail. The defendants removed the action to federal court, and moved for summary judgment. The district court granted the motion. The court found that the inmate's alleged "Shy Bladder Syndrome" condition was not a "disability" under the ADA, and even if the condition was a disability, the inmate did not meet the essential eligibility requirements for participation in the program and, therefore, was not a "qualified individual with a disability" under the ADA. The court noted that inmate had often refused to cooperate with medical advice, he received extensive medical care on practically a daily basis, sometimes multiple times a day, the inmate failed to inform anyone at the facility of his urinary retention until two or three days after returning to the facility, the inmate was sent to a hospital when he complained about his urinary retention, and while the inmate did not see an outside urologist until approximately one month later, at that point his medical issues were resolved. (Hampden County Sheriff's Department Day Reporting Program, Hampden County Correctional Center, Massachusetts)

2014

U.S. District Court
RELIGION
VOLUNTEERS

Brown v. Livingston, 17 F.Supp.3d 616 (S.D.Tex. 2014). A prisoner brought an action, individually and on behalf of others similarly situated, alleging that various policies of the Texas Department of Criminal Justice (TDCJ) violated the Religious Land Use and Institutionalized Persons Act (RLUIPA) and the First Amendment. TDCJ moved to terminate a consent decree that prohibited it from discriminating against Muslims in the pursuit of their right to profess their religious beliefs and to exercise their religious practices. The district court denied the motion. The court held that TDCJ's volunteer policy violated the Establishment Clause of the First Amendment, the Free Exercise Clause of the First Amendment, and RLUIPA. The policy required that all religious activities not supervised by a prison chaplain or guard have an outside volunteer in attendance. According to the court, the policy meant that Muslim inmates who were in prisons near populations centers from which Muslim volunteers could not be recruited in greater numbers being able to participate in religious activities only one hour per week, while Catholic, Protestant, and Jewish inmates who could procure more outside volunteers had access to six hours or more of religious activities per week. The court noted that the policy imposed a substantial burden on Muslim inmates' practice of their religion because it substantially limited the opportunity for Muslims to engage in necessary religious aspects of their faith. Muslim inmates had no alternate way to exercise their religious rights because communal worship and instruction were integral to the practice of their faith, and there was no legitimate security interest advanced by prohibiting Muslim inmates from continuing to participate in inmate-led religious activities without an outside volunteer. (Texas Department of Criminal Justice)

U.S. District Court
MEDIA ACCESS

Brown v. Pepe, 42 F.Supp.3d 310 (D.Mass. 2014). An inmate, a convicted felon who was recaptured following escape from custody, brought an action against a correctional facility officer and a state police trooper under § 1983 and § 1985 for violations of his Fourth, Eighth, and Fourteenth Amendment rights after the officer and trooper

required him to perform a “perp walk” in front the news media to be photographed following his recapture, and after the trooper photographed himself with the inmate by taking a “selfie.” The trooper moved for judgment on the pleadings. The district court granted the motion, finding that: (1) the “perp walk” did not violate the defendant’s Fourth Amendment rights; (2) the trooper’s privately-taken “selfie” was a de minimis intrusion; (3) the walk was not cruel and unusual; and (4) the walk did not affect a tangible protectable interest. (DeKalb County Jail, Georgia)

U.S. Appeals Court
RELIGIOUS
ARTICLES
RELIGION

Native American Council of Tribes v. Weber, 750 F.3d 742 (8th Cir. 2014). A Native American organization and inmates brought an action against prison officials, claiming that the prison’s policy of prohibiting tobacco use by Native American inmates during religious activities substantially burdened the exercise of their religious beliefs in violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court found the restrictions violated RLUIPA and ordered the parties to confer. After the parties failed to agree on a new tobacco policy, the district court entered a remedial order granting injunctive relief. The prison officials appealed. The appeals court affirmed. The court held that: (1) the inmates’ use of tobacco during Native American ceremonies was a religious exercise; (2) the prison’s complete ban on tobacco use substantially burdened the exercise of the inmates’ religious beliefs; (3) a complete ban was not the least restrictive means of furthering the prison’s interest in order and security; and (4) the district court’s remedial order was narrowly tailored to remedy the violation of inmates’ rights. The court noted that Lakota inmates had been taught the importance of tobacco to the exercise of their religious beliefs from a young age and had continued to use tobacco in religious ceremonies throughout adulthood. According to the court, the prison failed to consider the feasibility of reducing the percentage of tobacco in a mixture used by Native American inmates, and other correctional facilities permitted inmates to use tobacco in religious ceremonies. (South Dakota Department of Corrections)

U.S. District Court
VOLUNTEERS
BOOKS
RELIGION

Pfeil v. Lampert, 11 F.Supp.3d 1099 (D.Wyo. 2014). A pro se prisoner brought an action against prison officials under § 1983 and the Religious Land Use and Institutionalized Persons Act (RLUIPA), alleging that the officials denied him access to religious books and priests. The parties cross-moved for summary judgment. The district court denied the prisoner’s motion and granted the officials’ motion. The court held that: (1) the fact that a religious volunteer missed a single visit to the prison did not impose a substantial burden on the prisoner’s religious exercise; (2) the prison’s policy of prohibiting inmates from possessing hardbound books did not impose a substantial burden on the prisoner’s religious exercise; (3) the hardbound book policy served to further a compelling governmental interest and was the least restrictive means to do so; (4) the prison’s requirement that each volunteer at the prison provide current contract information before being admitted to prison furthered the compelling government interest of maintaining security and safety and was least restrictive means for doing so; (5) the prison’s policies were rationally related to a legitimate penological interest; (6) any relaxation of the prison’s policies would have an adverse impact on guards, other inmates, and prison resources; (7) prison officials did not impermissibly retaliate against the prisoner for filing a lawsuit; and (8) any limitation on the prisoner’s eyesight was not substantial, and thus was not a disability for the purposes of ADA discrimination claim. (Wyoming Honor Farm, Wyoming Honor Conservation Camp)

U.S. District Court
MAIL
PUBLICATIONS

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
RELIGION

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. District Court
GROOMING
HAIR LENGTH
RELIGION

Williams v. Champagne, 13 F.Supp.3d 624 (E.D.La. 2014). A former inmate who was a practicing Rastafarian brought an action against a sheriff and prison officials under § 1983, the Religious Land Use and Institutionalized Persons Act (RLUIPA), and state law arising out of a grooming policy which he contended substantially burdened his Rastafarian religious practices, and an alleged incident of excessive force. 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: (1) issues of fact as to whether the grooming policy prohibiting dreadlocks and requiring men's hair to be no more than two inches long was the least restrictive means of serving compelling government interests on the RLUIPA claim; (2) issues of fact as to the incident in which the inmate had complied with orders to leave his cell, whether there was any basis for prison officers to use any force at all to maintain discipline after the prisoner had complied with orders to leave his cell, let alone with force sufficient to rip a dreadlock from his scalp; (3) issues of fact as to whether it was objectively unreasonable for prison officers to pull on the chain connecting the prisoner's handcuffs while he was fully restrained in the "suicide chair," and for one officer to strike the prisoner forcefully in the head after the prisoner spit on him, and, (4) issues of fact on the inmate's assault and battery claims. (Nelson Coleman Correctional Center, Louisiana)

2015

U.S. District Court
RELIGIOUS ARTI-
CLES
RELIGION

Ajala v. West, 106 F.Supp.3d 976 (W.D. Wisc. 2015). An inmate brought an action against prison officials for alleged violation of his rights under the Religious Land Use and Institutionalized Persons Act (RLUIPA), the Free Exercise Clause, the Establishment Clause, and the Equal Protection Clause. The inmate challenged a prison policy that allegedly prohibited the inmate from wearing a "kufi," a head covering worn by some Muslims, unless he was in his cell or participating in congregate services. The prison officials moved for summary judgment, and the inmate moved for an extension. The district court held that: (1) the policy imposed a substantial burden on the inmate's religious exercise; (2) the policy was not the least restrictive means of furthering the prison's interest of preventing prisoners from using a religious head covering as a potential gang identifier; (3) the policy was not the least restrictive means of furthering the prison's interest in preventing prisoners from hiding contraband; (4) the policy was not the least restrictive means of furthering the prison's interest in preventing prison violence; and (5) prison officials were entitled to qualified immunity from the inmate's constitutional claims. The court noted that the law was not clearly established that the inmate had a constitutional right to wear a kufi at all times. (Wisconsin Secure Program Facility)

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 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
RELIGIOUS ARTI-
CLES

Davila v. Gladden, 777 F.3d 1198 (11th Cir. 2015). A prisoner, a Santeria priest, brought an action against federal prison employees in their official and individual capacities, alleging their refusal to allow him to obtain his personal religious bead and shell necklaces violated the Religious Freedom Restoration Act (RFRA) and the First Amendment. The district court dismissed the prisoner's claims for money damages under RFRA and granted summary judgment to defendants on the prisoner's remaining claims. The prisoner appealed. The appeals court affirmed in part and reversed in part. The court held that the prisoner's sincerely held religious belief was substantially burdened. According to the court, summary judgment was precluded by genuine issues of material fact as to whether the prison's refusal to allow the prisoner to obtain his personal bead and shell necklaces furthered a compelling government interest, and whether the prison's policy decision constituted the least restrictive means to further that interest. The court held that refusal to allow the prisoner to obtain his personal religious necklaces did not violate the First Amendment, finding that: (1) the refusal was rationally connected to legitimate government interests in prison safety and resource allocation; (2) the prisoner had alternative means of practicing his religion even without his personal beads; (3) allowing the prisoner to receive religious items from outside the prison would have an impact on prison staff, other inmates, and the allocation of prison resources; and, (4) the only alternative that would allow the prisoner to obtain his beads and shells would be to permit prisoners to receive religious items from outside the prison, which would result in a more than de minimis cost to the prison's interests. (Federal Correctional Institution, Jesup, Georgia)

U.S. Appeals Court
SEGREGATION
RELIGION
RIOT

Incunaa 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 year 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
HAIR LENGTH

Knight v. Thompson, 796 F.3d 1289 (11th Cir. 2015). Male inmates brought an action alleging that a state prison's short-hair policy violated the dictates of their Native American religion, in violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court entered judgment in the state's favor, and the inmates appealed. The appeals court affirmed. The U.S. Supreme Court vacated and remanded. Upon remand, the appeals court reinstated the decision with modifications, affirming. The appeals court held that the district court engaged in a sufficiently focused inquiry, did not impermissibly defer to prison officials, and did not impermissibly disregard the inmates' assertion that prison systems of 39 other states would allow the accommodation they requested. (Alabama Department of Corrections)

U.S. Appeals Court
HAIR LENGTH

Knight v. Thompson, 797 F.3d 934 (11th Cir. 2015). Native American inmates brought an action against the Alabama Department of Corrections (ADOC), challenging its male short-hair policy under the Religious Land Use and Institutionalized Persons Act (RLUIPA). After a bench trial, the district court entered judgment for the Department. The inmates appealed. The appeals court affirmed. The United States Supreme Court granted certiorari, vacated the judgment, and remanded for further consideration in light of *Holt v. Hobbs*. On remand, the appeals court held that the challenged policy furthered a compelling interest and that the policy was the least restrictive means of furthering those compelling interests. According to the court, evidence established that the Alabama Department of Corrections' (ADOC) male short-hair policy substantially burdened religious exercise by Native American prisoners, as an element for violation of the RLUIPA. The prisoners' expert on Native American spirituality offered extensive, undisputed testimony that long hair had great religious significance for many Native Americans, and each prisoner confirmed that his desire to wear unshorn hair stemmed from deep religious convictions, and the prisoners' expert further gave an uncontradicted opinion that forcing Native Americans to cut their long hair would amount to an "assault on their sacredness." (Alabama Department of Corrections)

U.S. District Court
ACCESS TO RELI-
GION
ITEMS PERMITTED
RELIGIOUS ARTI-
CLES
RELIGION

LaPlante v. Massachusetts Dept. of Correction, 89 F.Supp.3d 235 (D.Mass. 2015). A state inmate brought an action against the Massachusetts Department of Correction (DOC) and its superintendent under the Religious Land Use and Institutionalized Persons Act (RLUIPA), seeking declaratory and injunctive relief from what he claimed were unlawful burdens on the practice of his Wicca faith. The parties 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 fact issues regarding the limitation on the use of ritual oils and the limitation on the use of ritual herbs. The court found that rules regarding corporate worship, that limited corporate worship to Sundays rather than around the phases of the moon as mandated by the Wiccan faith, substantially burdened the inmate's religious exercise. According to the court, refusal to provide nuts and fruits violated RLUIPA. But the court held that refusal to allow the inmate to wear ceremonial robes during corporate worship, and refusal to provide the inmate with different varieties of cake, did not substantially burden the inmate's religious exercise. (Massachusetts Correctional Institution-Norfolk)

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
PROPERTY
ITEMS PERMITTED

Sorrentino v. Godinez, 777 F.3d 410 (7th Cir. 2015). Two inmates purchased several items from a prison's commissary, but the prison later forbade the inmates to possess those items in their cells. Their property was removed, as the new rule required. They responded by filing a proposed class action in the district court, alleging that confiscation of their property was an unconstitutional taking and a breach of contract. The district court dismissed the action. The appeals court held that the district court was correct to dismiss the action, although the dismissal should have been without prejudice. One inmate had purchased a fan and signed a "personal property contract" which obligated him to follow all Department of Corrections (DOC) rules related to use, ownership, and possession of the fan. The other inmate purchased a typewriter and a fan, and he also signed a personal property contract for his fan. When a new policy banned these items from prisoners' cell, the new policy offered several options for inmates who owned the newly prohibited types of property. Inmates with typewriters could have them destroyed, give them to visitors, ship them to someone outside the prison at no cost, store them in "offender personal property" which is returned to inmates upon release from prison, or donate them to the prison library. Fans were simply placed in storage as "offender personal property." (Stateville Correctional Facility, Illinois)

U.S. District Court
RELIGIOUS ARTI-
CLES
RELIGIOUS GROUPS

Strickland v. Godinez, 104 F.Supp.3d 940 (S.D. Ill. 2015). A state inmate brought an action against prison officials alleging that a state's policies and practices interfered with his ability to practice his religion, in violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA) and the First Amendment. The inmate moved for a preliminary injunction and/or a protective order. The district court denied the motion finding that an injunction was premature. The inmate practiced Asatru (also known as Odinism). The inmate alleged that officials threatened or retaliated against him and refused to permit him and other inmates who practiced Asatru to have full participation in proper group and individual worship including the ownership of personal ritual items and medallions central to their beliefs. The inmate also sought to participate in outdoor worship and ritual feasts and further sought the "setting aside of sacred land on which blots [i.e rituals] could be conducted." (Lawrence Correctional Center, Illinois)

U.S. Appeals Court
RULES

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)

