CIVIL LITIGATION PANEL VOLUNTEER TRAINING

Tuesday, June 18, 2024
9:00 a.m. to 3:30 p.m.
Judge's Conference Room – Tucson

TRAINING MATERIALS

CIVIL LITIGATION PANEL VOLUNTEER TRAINING

Tuesday, June 18, 2024 – Tucson
9:00 a.m. to 3:30 p.m. Judge's Conference Room
U.S. District Court – District of Arizona
Federal Bar Associations, Phoenix & Tucson Chapters
Step Up to Justice & Community Legal Services

8:30 - 9:00 am	**Registration**
9:00 -9:10 am	**Welcome** Hon. Jennifer G. Zipps, U.S. District Court of Arizona Chairperson, Self-Represented Litigants (SRL) Committee
9:10 - 9:20 am	**Program Overview – Types of Pro Bono Appointments** **Step Up to Justice (SU2J) – Community Legal Services** Judge Jennifer Zipps, U.S. District Court of Arizona Jodie Brown, Senior Staff Attorney, U.S. District Court Kate Wolf, Step Up to Justice Director of Operations
9:20-10:00 am	**Prison Operations, Procedure, and Culture** Haley Brown, Deputy General Counsel, AZ Dept of Corrections Sean Malone, Assistant Director of Prison Operations, AZ DOC Loresa Purden, Legal Monitor, AZ DOC
10:00-10:30 am	**Ethics** William D. Furnish, Osborn Maledon, P.A.
BREAK 10:30 to 10:45	
10:45 - 11:30 am	**Social Security Overview** Meghan McNamara Miller, Tretschok, McNamara, & Miller & P.C.
11:30 – 12:15 pm	**Civil Rights Law Overview I** Jodie Brown, Senior Staff Attorney, U.S. District Court Jacinda Lanum, Staff Attorney-Pro Se, U.S. District Court (Tucson)
LUNCH PROVIDED 12:15 TO 12:45	
12:45 – 1:15 pm	**Lunch and Positive Experiences** Tyler Bugden, Farhang & Medcoff, Patrick Mause, The Law Office of Patrick Mause, PLLC; Lisa Anne Smith, DeConcini, McDonald, Yetwin & Lacy, P.C.
1:15 - 2:00 pm	**Employment Law Overview** Shannon Giles, Awerkamp, Bonilla & Giles, P.C.
2:00 – 2:45 pm	**Civil Rights Law Overview II** Jodie Brown, Senior Staff Attorney, U.S. District Court
2:45 - 3:15 pm	**Practice Pointers Nuts & Bolts** Christopher D. Thomas and Andrea Driggs, Perkins Coie, LLP
3:15 – 3:30 p.m.	**Wrap Up - Going Forward** - Judge Jennifer Zipps


Civil Litigation Panel Training
United States District Court · District of Arizona
Federal Bar Association · Phoenix & Tucson Chapters
Step Up to Justice
June 6, 2024 Phoenix
June 18, 2024 Tucson

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Agenda
9:00 - 9:10AM | Welcome
Honorable Michael Liburdi, U.S. District Court Judge and Self-Represented Litigants (SRL) Committee Member
9:10 - 9:20AM | Program Overview
Types of Pro Bono Appointments
Judge Michael Liburdi;
Jodie Brown, Supervisory Staff Attorney,
U.S. District Court; and Patricia Gerrich,
Community Legal Services
9:20 - 10:00AM | Prison Operations, Procedure, and Culture
Haley Brown, Deputy General Counsel
Sean Malone, ADCRR Asst. Dir. of Prison Operations
Loresa Purden, ADCRR Legal Access Monitor
10:00- 10:45AM | Civil Rights Law Overview
Jodie Brown, JoLynn Nesset, and Sara Cummings, Staff Attorneys, U.S. District Court
10:45 - 11:30AM | Social Security Overview
Robin Larkin and Sarah Fern
Larkin & Fern, PLLC
11:30 - 12:00 PM | Ethics
William Furnish,
Osborn Maledon, P.A.
12:00 - 12:45 PM | Lunch Break
12:45 – 1:15 PM | Lunch and Positive Experiences
Joshua W. Carden,
Carden Livesay, Ltd.
1:15 - 2:00 PM | Employment Law Overview
2:00 – 2:45 PM | Civil Rights Law Overview II
Jodie Brown, Supervisory Staff Attorney
U.S. District Court
2:45 - 3:15 PM | Practice Pointers Nuts & Bolts
Benjamin L. Rundall, Zwillinger Wulkan
3:15 – 3:30 PM | Wrap Up - Going Forward
Judge Michael T. Liburdi

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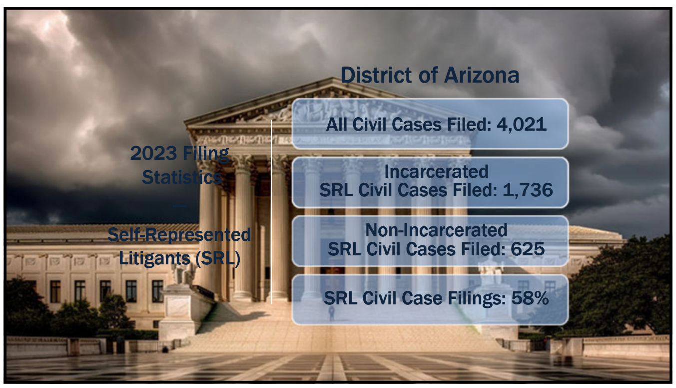
2023 Filing Statistics
Self-Represented Litigants (SRL)
District of Arizona
All Civil Cases Filed: 4,021
Incarcerated
SRL Civil Cases Filed: 1,736
Non-Incarcerated
SRL Civil Cases Filed: 625
SRL Civil Case Filings: 58%

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Self-Represented Litigant Committee
Established May 2016
Judges, court staff, law clerks, staff attorneys
Addresses issues related to both incarcerated and non-incarcerated SRL litigation

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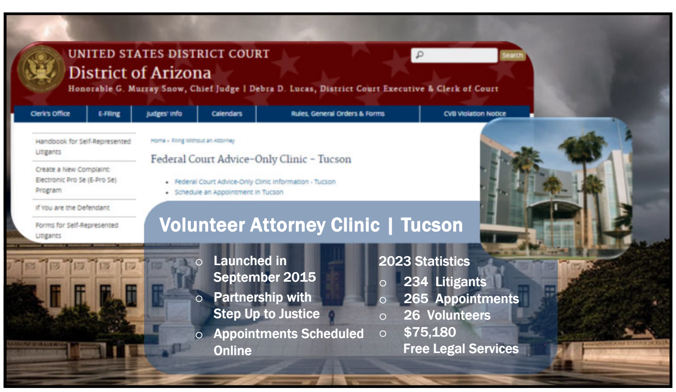
UNITED STATES DISTRICT COURT
District of Arizona
Federal Court Advice-Only Clinic - Tucson
Volunteer Attorney Clinic | Tucson
Launched in September 2015
Partnership with Step Up to Justice
Appointments Scheduled Online
2023 Statistics
234 Litigants
265 Appointments
26 Volunteers
$75,180
Free Legal Services

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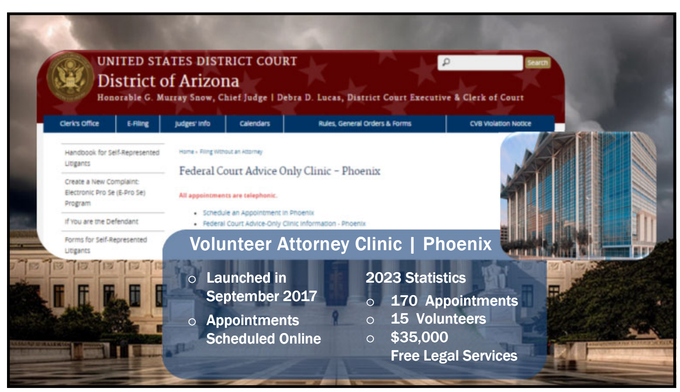
UNITED STATES DISTRICT COURT
District of Arizona
Federal Court Advice Only Clinic - Phoenix
Volunteer Attorney Clinic | Phoenix
Launched in September 2017
Appointments Scheduled Online
2023 Statistics
170 Appointments
15 Volunteers
$35,000
Free Legal Services

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
GENERAL ORDER 19-15
Civil Litigation Panel
General Order 19-15
Appointment of Attorneys for SRLs in Civil Litigation

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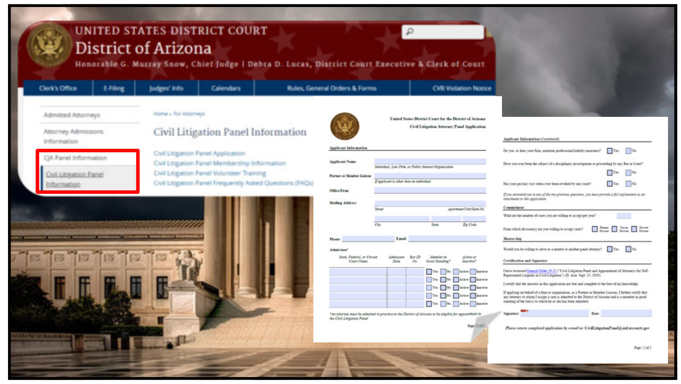
UNITED STATES DISTRICT COURT
District of Arizona
Honorable G. Murray Snow, Chief Judge | Debra D. Lucas, District Court Executive & Clerk of Court
Clerk's Office
E-Filing
Judges' Info
Calendars
Rules, General Orders & Forms
CVB Violation Notice
Civil Litigation Panel Information
Civil Litigation Panel Application
Civil Litigation Panel Membership Information
Civil Litigation Panel Volunteer Training
Civil Litigation Panel Frequently Asked Questions (FAQs)

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Pro Bono Award Recipients
Andrew Jacob
Jared Keenan
Lisa Anne Smith
Joshua Carden
Benjamin Rundall

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Federal Court

Free Civil Legal Help

at the Law Library

Wish you could talk to an attorney about your federal civil case for FREE?

Step Up To Justice (SU2J) and the United States District Court for the District of Arizona in Tucson offer a FREE Self-Service Clinic to the public. People will have the opportunity to speak one-on-one with an attorney about their federal civil case.
For appointment information, see below.

In order to attend the Federal Court Self-Service Clinic you must be:

REPRESENTING YOURSELF (do NOT have an attorney)

AND

Involved in or considering filing a CIVIL FEDERAL case (a case arising under federal law OR a case in which both parties reside in different states and the amount in controversy is $75,000 or more. The clinic cannot provide assistance in criminal cases.)

To schedule an appointment, please submit an application through SU2J's website:

stepuptojustice.org/apply-for-help

When: The clinic is held by appointment only. Thursdays from 1:30 p.m. to 3:30 p.m.

Where: The clinic currently meets remotely – either by phone or video conferencing depending on technology accessibility.

Eligibility: The clinic is open to anyone who does not have an attorney *and* has a current CIVIL federal court issue. There is no income level requirement.

PLEASE NOTE: Appointments are double-booked. Applicants may experience some delay before they are seen by a volunteer attorney. Please plan accordingly. We apologize in advance for all delays.

The Federal Court Clinic is a collaboration between Step Up To Justice and the United States District Court, District of Arizona in Tucson.

STEP UP TO JUSTICE
FEDERAL COURT CLINIC
CLIENT AGREEMENT FOR PRO BONO SERVICE
(New and Returning Clients)

I am attending the Federal Court Clinic operated by Step Up To Justice (SU2J). I have a legal issue and attending the clinic will allow me to receive free counsel and advice from a volunteer attorney.

This Clinic is conducted with the help of volunteer lawyers in private practice. I understand that SU2J and the volunteer attorney will assist me by providing legal advice and/or legal forms that will allow me to proceed with my legal issue.

I understand that I must provide income and asset information to SU2J before speaking with the volunteer attorney. If my income increases while my case is still pending, I will call SU2J and inform them.

I understand that I will receive advice and counsel from the volunteer attorney today about my legal issue, but the attorney will not represent me in court.

Important notification about case closure: I understand that, after my appointment today, SU2J will end the assistance it provides to me and will close my file in its office. I understand that, after today, I will not receive any more closing notifications about my case. If I need additional assistance with my legal matter, I understand that I must contact Step Up to Justice to schedule a new appointment.

CLIENT SIGNATURE: ________________________ DATE: ________________________

PRINT NAME: ________________________

Have you ever experienced domestic violence (physical, verbal or emotional)? ____ Yes ____No

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STEP UP TO JUSTICE
PROYECTO DEL CEONTRO DE SERVICIO DEL TRIBUNAL FEDERAL
ACUERDO DE CLIENTE PARA EL SERVICIO PRO BONO
(Clientes nuevos y recurrentes)

Yo estoy asistiendo a la Clínica del Centro de Servicio del la Corte Federal administrado por Step Up To Justice (SU2J). Yo tengo un problema legal y asistir a la clínica me permitirá recibir asesoría y servicios breves gratuitos de un abogado voluntario.

Esta clínica se lleva a cabo con la ayuda de abogados privados. Entiendo que SU2J y el abogado voluntario me ayudarán brindándome asesoría legal y / o formularios legales que me permitirán proceder con mi problema legal.

Yo entiendo que yo debo proporcionar información de ingresos y activos a SU2J antes de hablar con el abogado voluntario. Si mi ingreso aumenta mientras mi caso aún está pendiente, yo llamaré a SU2J e informaré a ellos.

Yo entiendo que recibiré consejo y asesoría del abogado voluntario hoy sobre mi problema legal, pero el abogado no me representará ante el tribunal.

Notificación Importante Sobre el Cerramiento de Casos: Entiendo que, después de mi cita de hoy, SU2J finalizara la asistencia legal que me brinda y cerrara mi caso. Entiendo que no recibiré ninguna notificación de cierre adicional a mi caso. Si necesito asistencia adicional con mi asunto legal, entiendo que debo comunicarme con Step Up To Justice y pedir que se reabra mi caso para recibir más asistencia.

FIRMA DE CLIENTE: ________________________ FECHA: ________________________

ESCRIBIR SU NOMBRE CON LETRAS DE IMPRENTA: ___________________________________

¿En algún momento, ha sido Ud. víctima de violencia domestica (física, verbal o emocional)? ___ Si ___No

APRIL 2024

INMATE PROGRAMS

ADCRR assesses recidivism risk and programming needs during intake. Assessment results, along with sentence structure are used to prioritize inmate programmatic goals and placement.
These figures represent a snapshot in time and do not include inmates who have already completed the programs.

Program Enrollment	Sub-Total	TOTAL
ADCRR Education		**4,161**
Functional Literacy	1,593	
High School Equivalency	1,324	
Special Education	56	
Career & Technical Education	1,188	
Tablet Based College		**548**
Addiction Treatment *		**439**
Sex Offender Treatment		**123**
Self-Improvement		**1,854**
Work Programs		**14,375**
Arizona Correctional Industries		
· Labor Contracts	798	
· Owned & Operated	592	
Intergovernmental Agreements	1,037	
Work Incentive Pay Program	11,948	
Total Program Enrollments **		***21,500***

**82.0% of inmates assessed at intake have significant substance abuse histories. **Inmates may be enrolled in more than one program.*

INMATE COMMUNITY RESTITUTION

AZ COMMUNITY PROJECTS	This Month	FY YTD
Fire Crew Hours	14,920	157,635
Public Sector Work Crew Hours	91,366	775,436
ADOT Crews Hours	10,826	94,084
AZ CRIME VICTIMS		
Court Ordered Restitution Collected	$139,053	$1,410,526
Victims' Compensation Collected	$10,930	$121,353
Victim Notifications of Release	70	807

INMATE HEALTH SERVICES

Hospital Admissions……………………………………………221
Inmates With: HIV…295 Active TB…0 Hepatitis C…5,866
Inmates Requiring Ongoing Mental Health Services……..4,433

INMATE CONDUCT / INMATE GRIEVANCES

Inmate / Inmate Assaults………54 Inmate Grievances……589
Inmate / Staff Assault…….......17 - (30 Pending decision)
Assaults per 1000 Inmates.….0.486 - (Closed cases only)

APRIL 2024

INMATE COMMITMENT OFFENSES

OFFENSE	US Citizens	Crim. Aliens	TOTAL	%
Arson	157	8	165	0.5%
Assault	4,776	187	4,963	14.2%
Auto Theft	1,708	33	1,741	5.0%
Burglary/Criminal Trespass	1,478	40	1,518	4.3%
Child/Adult Abuse	280	16	296	0.8%
Child Molestation	1,117	251	1,368	3.9%
Criminal Damage	117	6	123	0.4%
Domestic Violence	138	2	140	0.4%
Drug Possession	1,867	23	1,890	5.4%
Marijuana Only	*8*	*-*	*8*	*0.0%*
Drug Sales/Trafficking	3,752	584	4,336	12.4%
DUI	1,056	77	1,133	3.2%
Escape	86	1	87	0.2%
Forgery	146	4	150	0.4%
Fraud	138	3	141	0.4%
Identity Theft	191	5	196	0.6%
Kidnapping	996	146	1,142	3.3%
Manslaughter/Neg. Homicide	882	52	934	2.7%
Murder	3,098	343	3,441	9.8%
Other	1,465	44	1,509	4.3%
Rape/Sexual Assault	485	68	553	1.6%
Robbery	2,733	109	2,842	8.1%
Sex Offense	2,915	344	3,259	9.3%
Theft	549	6	555	1.6%
Trafficking in Stolen Property	306	6	312	0.9%
Weapons Offense	2,117	37	2,154	6.2%
TOTAL	32,561	2,395	34,956	100.0%
%	93.1%	6.9%		100.0%

INMATE CRIMINAL HISTORY

	US Citizens	Crim. Aliens	TOTAL	%
Violent Offenders *	23,441	1,639	25,080	71.7%
· *Current*	19,947	1,588	21,535	61.6%
· *Historical*	3,494	51	3,545	10.1%
Non-Violent Offenders	9,120	756	9,876	28.3%
TOTAL	32,561	2,395	34,956	100.0%

* Total Violent Offenders; includes offenders of a non-violent statute who have used a weapon or caused an injury

	US Citizens	Crim. Aliens	TOTAL	%
Prior ADCRR Prison Term	16,986	369	17,355	49.6%
First ADCRR Prison Term	15,575	2,026	17,601	50.4%
TOTAL	32,561	2,395	34,956	100.0%

The Arizona Department of Corrections Rehabilitation and Reentry

Ryan Thornell, Ph.D.
Director

CORRECTIONS AT A GLANCE

APRIL 2024

This report contains preliminary statistics as of the end of the month. Changes/updates will be posted on the ADCRR website. Please refe to the online reports for the most current data.

For further information, contact:
Arizona Department of Corrections
Rehabilitation and Reentry
701 East Jefferson Street
Phoenix, Arizona 85034
602-542-5497
https://corrections.az.gov

This document is available in alternative formats by contacting the Public Records office:
602-542-5886

5/8/2024

ADCRR CENSUS

*OP CAP: Operating Capacity Beds = Rated Beds + Temporary Beds

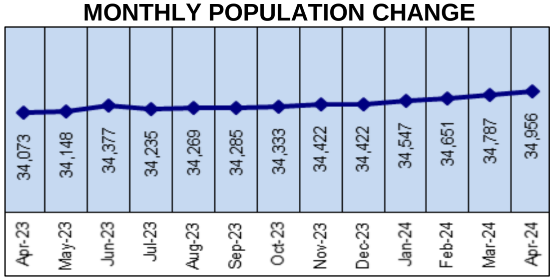
FACILITY	RATED	TEMP	OP CAP*	POP
MALE - STATE				
ASPC-Douglas	1,805	140	1,945	1,447
ASPC-Eyman	4,493	2,211	6,704	3,679
ASPC-Phoenix	552	213	765	572
ASPC-Lewis	5,093	879	5,972	3,929
ASPC-Safford	1,703	160	1,863	1,800
ASPC-Tucson	4,540	582	5,122	4,807
ASPC-Winslow	1,626	0	1,626	899
ASPC-Yuma	4,350	340	4,690	4,754
STATE TOTAL	24,162	4,525	28,687	21,887
PRIVATE TOTAL	10,606	562	11,168	9,855
MALE - TOTAL	34,768	5,087	39,855	31,742
FEMALE - STATE				
ASPC-Douglas	100	0	100	0
ASPC-Lewis	11	0	11	1
ASPC-Perryville	4,214	129	4,343	3,213
FEMALE -TOTAL	4,325	129	4,454	3,214
PRISON TOTAL	39,093	5,216	44,309	34,956
COMMUNITY SUPERVISION OFFENDERS				5,324
ADCRR TOTAL				**40,280**

INMATE BED CAPACITY & POPULATION DETAIL

CATEGORY	MALE	FEMALE	TOTAL
Operating Capacity Beds	39,855	4,454	44,309
Inmate Population	31,742	3,214	34,956
Temporary Beds	5,087	129	5,216
Actual Bed Surplus / (Deficit)	3,026	1,111	4,137
Month's Admissions	1,199	204	1,403
Month's Releases	1,041	193	1,234
Month's Growth	158	11	169

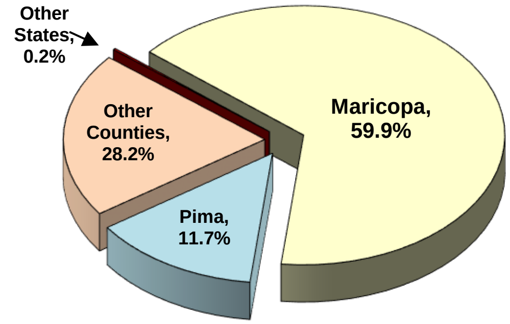
(*Releasees Served an Average of 31 months)

MONTHLY POPULATION CHANGE

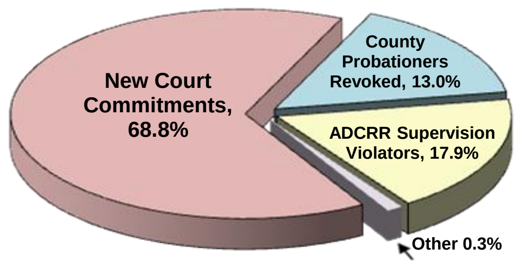


Snap-shot of Population on Last Day of Each Month

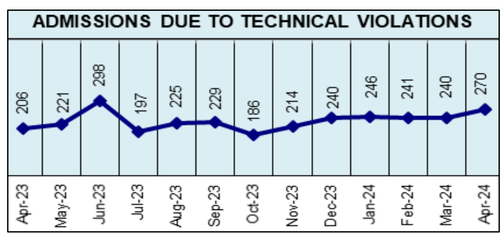
COMMITTED POPULATION BY COUNTY OF CONVICTION



ADCRR HAS ADMITTED 12,762 INMATES FY 2024 YEAR TO DATE



ADCRR HAS RELEASED 12,183 INMATES FY 2024 YEAR TO DATE



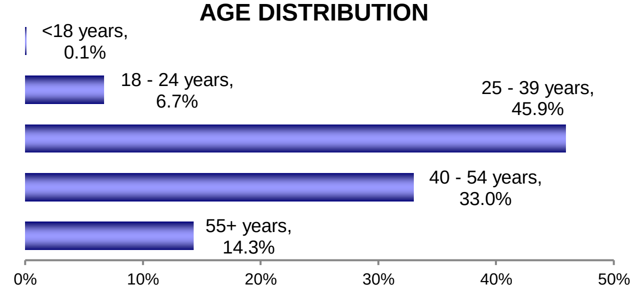
SPECIAL POPULATION GROUPS

SENTENCE TYPE	MALE	FEMALE	TOTAL
Death Row	109	3	112
Minors	48	1	49
Veterans	1,530	22	1,552

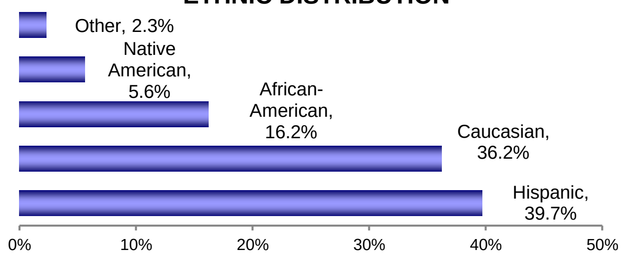
CITIZENSHIP / GENDER DISTRIBUTION

	MALE	FEMALE	TOTAL	%
US Citizens	29,408	3,153	32,561	93.1%
Crim Aliens	2,334	61	2,395	6.9%
TOTAL	31,742	3,214	34,956	100.0%
%	90.8%	9.2%		100.0%

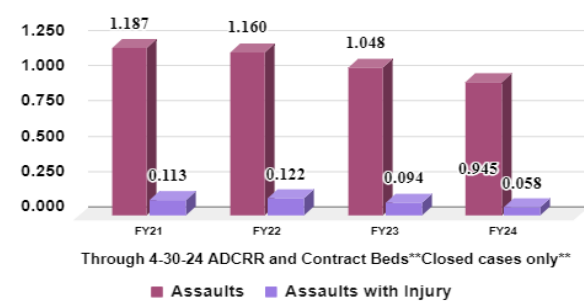
AGE DISTRIBUTION



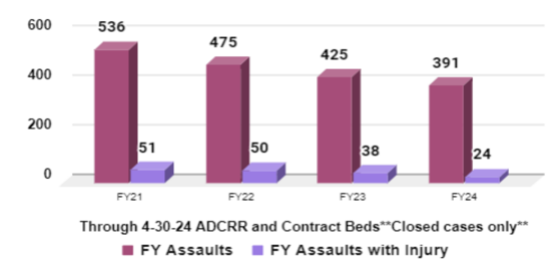
ETHNIC DISTRIBUTION



TOTAL STAFF ASSAULTED PER 1000 INMATES



TOTAL STAFF ASSAULTED



ADCRR CONSTITUENT CONTACTS	1,919
ADCRR PERSONNEL ON MILITARY LEAVE	76
ADCRR PERSONNEL ON MILITARY STANDBY	28

Social Security: Disability Benefits/ Issues Overview

Meghan Miller
Tretschok, McNamara & Miller, P.C.

1

Why You Should Consider Expanding Your Practice

- SSD applicants need representation, many are unrepresented and when they lose the record is insufficiently developed
- My estimate: typical SSD practitioner turns down at least 6 cases for each one accepted, without even screening them
- Very few Tucson attorneys practice Social Security law, only a handful do District Court work
- Maximum fee for case won at hearing effective 11/30/24 is $9000 and a COLA will be added every year-a *significant* increase in fees over the past amounts
- Mix of hearings and brief writing
- Hearings are fun: cross-examine experts blindly, think on your feet, sometimes receive a ruling on the day of hearing
- Very rewarding practice
- NOSSCR great resources, helpful listserv, and boot camp for new practitioners
- Great practice manuals walk you step by step through each stage of case (Tom Bush, Sarah Bohr)

2

Disability Insurance Benefits vs. Supplemental Security Income

DIB	SSI
Quarters of coverage	No need to pay in
Date last insured	No date last insured
Benefit based on what you've earned	Fixed benefit ($943)
No resource limit	Resource limit ($2000)
Medicare	Medicaid (AHCCCS)

- It is possible to qualify for and receive both, up to the SSI maximum
- Claimant only receives the larger benefit

3

Other Disability Benefits

- Disabled Adult Child/Child Disability Beneficiary
  - Must be disabled before age 22 (and ongoing)
  - Parent must receive Social Security retirement, disability, or deceased
  - Benefit based on parent's earnings
  - Extinguished upon marriage
  - At times need to prove disability 20 years in the past: obtaining education records, DDD records, obtaining evaluations/testing, letters from former employers/vocational rehab

4

Other Disability Benefits

- Child SSI
  - Must be disabled under special child disability rules - Listings
  - Family resource limit
  - When Child turns 18, apply for adult SSI and parents' income no longer affects the benefit amount
  - Always, always, always have parent bring a trusted adult to hearing so that child can leave the room when parent/medical expert testifies

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Definition of Disability

- Adults: The law defines disability as the inability to engage in any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment(s) which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

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Definition of Disability

- Children: A child under age 18 will be considered disabled if he or she has a medically determinable physical or mental impairment or combination of impairments that causes marked and severe functional limitations, and that can be expected to cause death or that has lasted or can be expected to last for a continuous period of not less than 12 months.

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Disability Application Process

- Initial Application
  - Online www.SSA.gov
  - By phone/online/in person at SSA office
- Request for Reconsideration
- Request for Hearing
- ALJ Hearing
- Appeals Council (relief in <15% of cases)

Inside SSA

- US District Court
- 9th Circuit
- US Supreme Court

Outside SSA

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5 Step Sequential Evaluation

- Step 1: Substantial Work
- Step 2: Severe Impairments
- Step 3: Listings
  - Rarely apply, listings adjusted over the years so very, very difficult to meet them
  - Also more likely to lose benefits in CDR
- Step 4: RFC and past work
  - Residual functional capacity: the claimant's ability to work
  - New change—past relevant work defined as work the claimant performed in past 5 years only (was 15)
- Step 5: Any other work – medical-vocational rules ("grids"), vocational testimony

9

When Do Grids Apply?

- Only when the claimant can do the full range of sedentary, light, medium, heavy or very heavy work
- ALJs often decide cases based on the grids, as they think it is less likely to be reversed on an own motion review by the Appeals Council
- When the grids direct a finding of disability, even if the claimant cannot perform the full range of the exertional level of work, it is a great argument to make to the ALJ

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Sedentary Grid

Rule	Age	Education	Previous Work Experience	Decision
201.01	Advanced Age	Limited or less	Unskilled or none	Disabled
201.02	Advanced Age	Limited or less	Skilled or semiskilled-skills not transferable	Disabled
201.03	Advanced Age	Limited or less	Skilled or semiskilled-skills transferable	Not disabled
201.04	Advanced Age	High school graduate or more-does not provide for direct entry into skilled work	Unskilled or none	Disabled
201.05	Advanced Age	High school graduate or more-provides for direct entry into skilled work	Unskilled or none	Not disabled
201.06	Advanced Age	High school graduate or more-does not provide for direct entry into skilled work	Skilled or semiskilled-skills not transferable	Disabled
201.07	Advanced Age	High school graduate or more-does not provide for direct entry into skilled work	Skilled or semiskilled-skills transferable	Not disabled
201.08	Advanced Age	High school graduate or more-provides for direct entry into skilled work	Skilled or semiskilled-skills not transferable	Not disable

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Sedentary Grid

201.09	Closely approaching advanced age	Limited or less	Unskilled or none	Disabled
201.10	Closely approaching advanced age	Limited or less	Skilled or semiskilled-skills not transferable	Disabled
201.11	Closely approaching advanced age	Limited or less	Skilled or semiskilled-skills transferable	Not disabled
201.12	Closely approaching advanced age	High school graduate or more-does not provide for direct entry into skilled work	Unskilled or none	Disabled
201.13	Closely approaching advanced age	High school graduate or more-provides for direct entry into skilled work	Unskilled or none	Not disabled
201.14	Closely approaching advanced age	High school graduate or more-does not provide for direct entry into skilled work	Skilled or semiskilled-skills not transferable	Disabled
201.15	Closely approaching advanced age	High school graduate or more-does not provide for direct entry into skilled work	Skilled or semiskilled-skills transferable	Not disabled
201.16	Closely approaching advanced age	High school graduate or more-provides for direct entry into skilled work	Skilled or semiskilled-skills not transferable	Not disabled

12

Light Grid

Rule	Age	Education	Previous Work Experience	Decision
202.01	Advanced Age	Limited or less	Unskilled or none	Disabled
202.02	Advanced Age	Limited or less	Skilled or semiskilled-skills not transferable	Disabled
202.03	Advanced Age	Limited or less	Skilled or semiskilled-skills transferable	Not disabled
202.04	Advanced Age	High school graduate or more-does not provide for direct entry into skilled work	Unskilled or none	Disabled
202.05	Advanced Age	High school graduate or more-provides for direct entry into skilled work	Unskilled or none	Not disabled
202.06	Advanced Age	High school graduate or more-does not provide for direct entry into skilled work	Skilled or semiskilled-skills not transferable	Disabled
202.07	Advanced Age	High school graduate or more-does not provide for direct entry into skilled work	Skilled or semiskilled-skills transferable	Not disabled
202.08	Advanced Age	High school graduate or more-provides for direct entry into skilled work	Skilled or semiskilled-skills not transferable	Not disabled

13

Light Grid

202.09	Closely approaching advanced age	Illiterate or unable to communicate in English	Unskilled or none	Disabled
202.10	Closely approaching advanced age	Limited or less-at least literate and able to communicate in English	Unskilled or none	Not disabled
202.11	Closely approaching advanced age	Limited or less	Skilled or semiskilled-skills not transferable	Not disabled
202.12	Closely approaching advanced age	Limited or less	Skilled or semiskilled-skills transferable	Not disabled
202.13	Closely approaching advanced age	High school graduate or more	Unskilled or none	Not disabled
202.14	Closely approaching advanced age	High school graduate or more	Skilled or semiskilled-skills not transferable	Not disabled
202.15	Closely approaching advanced age	High school graduate or more	Skilled or semiskilled-skills transferable	Not disabled
202.16	Younger individual	Illiterate or unable to communicate in English	Unskilled or none	Not disabled
202.17	Younger individual	Limited or less-at least literate and able to communicate in English	Unskilled or none	Not disabled

14

Vocational Testimony

- SSA does not require their "vocational experts" to work as a labor market consultant or in rehabilitation counseling
- At Step Five of the sequential evaluation, testimony based on the Dictionary of Occupational Titles which has not been updated since 1993
- Cross-examining VEs blind on positions such as nut sorter, ticket taker, usher, eyeglass polisher

15

Common Social Security Clinic Issues

- Overpayments
- Continuing Disability Reviews (CDRs)

16

Overpayments

- Frequent issue in clinic, few attorneys take these cases
- Request Reconsideration
  - Form SSA-561
  - Often SSA gives little to no information about the basis of the alleged overpayment
- Waiver
  - Form SSA-632
  - 1) Claimant must be without fault in incurring overpayment, but regulations direct that the disability and intellectual/language limitations can be considered when determining if person was without fault
    - If not without fault, the person must repay
    - Then negotiate amount to deduct from monthly check (if still receiving benefits)
  - 2) Unable to Pay or against equity and good conscience to require claimant to repay
    - In the clinic, you may see outrageous circumstances where SSA tells the claimant they qualify for a trial work period then years later demands repayment of all benefits paid to the person
    - Did claimant change financial position for the worse due to receipt of benefits (e.g., not qualify for AHCCCS, financial aid, etc.)

17

Continuing Disability Reviews

- Returned to work?
  - Off work/no substantial gainful activity for the first year?
  - Trial Work Period surpassed?
  - Is work SGA?
    - Earnings amount $1550/month
    - Accommodations
- Medical Improvement?
  - Ongoing treatment
  - New impairments
  - Treating Source Statements
  - Improvement often found by a 10-minute exam where examiner reviewed few/no records

18

Issue Spotting

- Sample Unfavorable ALJ Decisions

19

5. After careful consideration of the entire record, the undersigned finds that the claimant has the residual functional capacity to perform light work as defined in 20 CFR 404.1567(b) and 416.967(b) except he can occasionally climb stairs and ladders. He can frequently balance, stoop and crouch. He can also occasionally kneel, and crawl. He can do no overhead lifting with the right upper extremity, and only do lateral reaching with the right upper extremity on a frequent basis. He can have only occasional exposure to heights, moving machinery, loud noise, temperature extremities, and vibrations. He can understand, remember, and carryout simple job instructions only with only occasional interaction with the public and co-workers.

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of these factors the individual would be able to perform the requirements of the following representative occupations:

Job Title	DOT Number	Exertional level	SVP	Skill Level	Availability in the National Economy
Shipping and Receiving Weigher	222.387-074	Light	2	Unskilled	10,574
Inspector Hand Packager	559.687-074	Light	2	Unskilled	225,782
Surveillance Systems Monitor	379.367-010	Sedentary	2	Unskilled	10,280

Pursuant to SSR 00-4p, the undersigned has determined that the vocational expert's testimony is consistent with the information contained in the Dictionary of Occupational Titles. Vocational expert testified that any information not addressed by Dictionary of Occupational Titles was based on her experience and training. Specifically with regards to reaching overhead. No objections or arguments were made at or after the hearing by the claimant's attorney representative about the testimony given by the vocational expert. Therefore, the undersigned accepts her testimony and the additional information given based on her years of experience and her knowledge of the labor market.

Based on the testimony of the vocational expert, the undersigned concludes that, considering the claimant's age, education, work experience, and residual functional capacity, the claimant is capable of making a successful adjustment to other work that exists in significant numbers in the national economy. A finding of "not disabled" is therefore appropriate under the framework of the above-cited rule.

21

3. The claimant has the following severe impairments: degenerative disc disease and coronary artery disease, status-post heart surgery (20 CFR 404.1520(c) and 416.920(c)).

With regard to concentrating, persisting, or maintaining pace, the claimant has moderate limitation. The claimant reported that he has difficulty with his concentration, and in his ability to pay attention, complete tasks, and handle stress and changes in routine. However, he further reported that he is able to drive a car, manage money, and pay bills. The consultative examiner noted that the claimant was able to follow a three-step request, performed serial subtraction without difficulty, correctly reproduce a drawing of two intersecting pentagons, and recall three of three unrelated words immediately and after a brief delay. As such, the undersigned finds that the claimant has moderate limitation in concentrating, persisting, or maintaining pace. (Exs. 10E; 18F.)

The claimant has moderate limitation in adapting or managing oneself. The claimant reported that he is independent with personal care, and he is able to prepare simple meals, do laundry, sweep the floor, drive a car, shop in stores, manage money, pay bills, and attend church. The consultative examiner noted that the claimant was well groomed with normal mood, broad range affect, appropriate speech, and unremarkable thought content. As such, the undersigned finds that the claimant has moderate limitation in adapting or managing oneself. (Exs. 10E; 18F.)

Therefore, because the claimant's depression and anxiety do not cause a moderate limitation, or more, in at least one area of mental functioning, the undersigned finds that such impairments are not severe medically determinable impairments (20 CFR 404.1520a(d)(1)).

22

4. The claimant does not have an impairment or combination of impairments that meets or medically equals the severity of one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525 and 404.1526).

The severity of the claimant's mental impairments, considered singly and in combination, do not meet or medically equal the criteria of listings 12.04, and 12.06. In making this finding, the undersigned has considered whether the "paragraph B" criteria are satisfied. To satisfy the "paragraph B" criteria, the mental impairments must result in at least two of the following: marked restriction of activities of daily living; marked difficulties in maintaining social functioning; marked difficulties in maintaining concentration, persistence, or pace; or repeated episodes of decompensation, each of extended duration. A marked limitation means more than moderate but less than extreme. Repeated episodes of decompensation, each of extended duration, means three episodes within 1 year, or an average of once every 4 months, each lasting for at least 2 weeks.

In activities of daily living, the claimant has mild restriction. Claimant reported that she is able to take care of her son, perform some light cleaning and cooking, but does so very slowly. (EX 9F/2; EX 20F/9).

In social functioning, the claimant has mild difficulties. Claimant interacts daily with family members and is able to go to public places such as the library, grocery store, and prayer group, but does require assistance from family members in driving. (EX 20F/3).

With regard to concentration, persistence or pace, the claimant has marked difficulties. Claimant obtained a score of 22/30 on her mini-mental status examination and was found to be moderately impaired across most cognitive realms. (EX 11F/7; EX 20F/3).

23

5. After careful consideration of the entire record, the undersigned finds that the claimant has the residual functional capacity to perform sedentary work as defined in 20 CFR 404.1567(a) except claimant can lift/carry 20 pounds occasionally. Claimant can stand/walk for 2 hours per day and sit for about 6 hours in an 8 hour workday, alternating positions every hour. Claimant can never climb ladders/ropes/scaffolds and can occasionally climb ramps/stairs, balance, stoop, kneel, crouch and crawl. Claimant can occasionally reach bilaterally and can frequently perform gross handling, fine fingering and fine feeling bilaterally. Claimant should avoid working around unprotected heights and moving machinery. Claimant can occasionally be exposed to humidity and temperature extremes, occasionally operate a motor vehicle and frequently be exposed to dust, fumes, smoke and vibrations. Finally, claimant can occasionally understand and carry out complex, detailed instructions, with occasional interaction with co-workers and the public and occasionally respond appropriately to usual work situations and changes in the work setting.

24

for determining eligibility for disability benefits.

Claimant underwent a second vocational evaluation on March 3, 2015 at the request of Disability Assessment Research Center. (EX 15F). He put the claimant through a gamut of tests, as well as reviewed her prior vocational evaluation, and opined that given the claimant's numerous and specific limitations, she would require very special placement in a job with an understanding employer who was willing to make accommodations. (Id. at 9). Undersigned gives reduced

See Next Page

[redacted]

weight to this evaluation as Dr. Rastatter was evaluating the claimant related to vocational issues and not based upon the standards for eligibility for disability benefits.

25

5. After careful consideration of the entire record, the undersigned finds that, through the date last insured, the claimant had the residual functional capacity to perform medium work as defined in 20 CFR 404.1567(c) except the claimant could frequently climb, stoop, kneel, crouch and crawl. The claimant should avoid concentrated exposure to extreme cold, extreme heat, humidity, noise, moving machinery, unprotected heights, fumes, odors, dusts, gases and poor ventilation. The claimant could understand, remember and carry out at least simple instructions, could make simple work-related decisions and abide by a schedule, could respond appropriately to supervisors, coworkers, when interactions were occasional in frequency, duration and scope and could deal with at least minor changes, in work routines.

26

10. Through the date last insured, considering the claimant's age, education, work experience, and residual functional capacity, there were jobs that existed in significant numbers in the national economy that the claimant could have performed (20 CFR 404.1569 and 404.1569a).

In determining whether a successful adjustment to other work can be made, the undersigned must consider the claimant's residual functional capacity, age, education, and work experience in conjunction with the Medical-Vocational Guidelines, 20 CFR Part 404, Subpart P, Appendix 2. If the claimant can perform all or substantially all of the exertional demands at a given level of exertion, the medical-vocational rules direct a conclusion of either "disabled" or "not disabled" depending upon the claimant's specific vocational profile (SSR 83-11). When the claimant cannot perform substantially all of the exertional demands of work at a given level of exertion and/or has nonexertional limitations, the medical-vocational rules are used as a framework for decisionmaking unless there is a rule that directs a conclusion of "disabled" without considering the additional exertional and/or nonexertional limitations (SSRs 83-12 and 83-14). If the claimant has solely nonexertional limitations, section 204.00 in the Medical-Vocational Guidelines provides a framework for decisionmaking (SSR 85-15).

Through the date last insured, if the claimant had the residual functional capacity to perform the full range of medium work, considering the claimant's age, education, and work experience, a finding of "not disabled" would be directed by Medical-Vocational Rule 203.07. However, the additional limitations had little or no effect on the occupational base of unskilled medium work. A finding of "not disabled" is therefore appropriate under the framework of this rule.

The State agency found the claimant could perform other work at the medium exertional level with the mental limitations as noted herein. For example, they noted the claimant could perform the following jobs:

27

Questions?

MeghanM@tmpclaw.com

28

Civil Rights Law Overview

Jodie Brown, Supervisory Staff Attorney
Sara Cummings, Staff Attorney
JoLynn Nesset, Staff Attorney
United States District Court, District of Arizona
June 6, 2024

1

Agenda

2

§ 1983 Generally

- 42 U.S.C. § 1983 permits a plaintiff to seek relief from government agencies and officials for violations of their federal rights. Relief includes compensatory, nominal, and punitive damages and, declaratory, and injunctive relief.
- "To prevail in a § 1983 claim, a plaintiff must show that (1) acts by the defendants (2) under color of state law (3) deprived him of federal rights, privileges or immunities and (4) caused him damage. *Thornton v. City of St. Helens*, 425 F.3d 1158, 1163-64 (9th Cir. 2005) (quoting *Shoshone-Bannock Tribes v. Idaho Fish & Game Comm'n*, 42 F.3d 1278, 1284 (9th Cir. 1994)).
- In addition, a plaintiff must allege that he suffered a specific injury as a result of the conduct of a particular defendant and allege an affirmative link between the injury and the conduct of that defendant. *Rizzo v. Goode*, 423 U.S. 362, 371-72, 377 (1976); *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009) ("In *Bivens* and § 1983 actions, plaintiff "must plead that each Government-official defendant, through his own individual actions, has violated the Constitution.")

3

§ 1983 Generally – Persons under § 1983

Who can be sued under § 1983?

- States are not persons for purposes of § 1983. *See Arizonans for Official English v. Arizona*, 520 U.S. 43, 69 (1997); *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989).
- Government officials sued in their personal capacity are persons for purposes of § 1983. *See Hafer v. Melo*, 502 U.S. 21, 31 (1991).
- "Personal-capacity suits seek to impose personal liability upon a government official for actions [the official] takes under color of state law." *Kentucky v. Graham*, 473 U.S. 159, 165 (1985). Liability in a personal-capacity suit can be demonstrated by showing that the official caused the alleged constitutional injury. *See id.* at 166.
- "[M]unicipalities and other local government units . . . [are] among those persons to whom § 1983 applies." *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690 (1978); *see also Samson v. City of Bainbridge Island*, 683 F.3d 1051, 1057 (9th Cir. 2012) ("A government entity may be held liable under 42 U.S.C. § 1983 if an 'action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers.'" (quoting *Monell*, 436 U.S. at 690)).
- State officials sued in their official capacity for damages are not persons for purposes of § 1983. *See Arizonans for Official English v. Arizona*, 520 U.S. 43, 69 n.24 (1997).
- State officials sued in their official capacity for injunctive relief, however, are persons for purposes of § 1983. *See Will*, 491 U.S. at 71 n.10.

4

§ 1983 Generally – Under Color of State Law

- A defendant has acted under color of state law where he or she has "exercised power 'possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.'" *West v. Atkins*, 487 U.S. 42, 49 (1988) (quoting *United States v. Classic*, 313 U.S. 299, 326 (1941)).
- Even if the deprivation represents an abuse of authority or lies outside the authority of the official, if the official is acting within the scope of his or her employment, the person is still acting under color of state law. *Anderson v. Warner*, 451 F.3d 1063, 1068 (9th Cir. 2006).
- However, "[i]f a government officer does not act within [the] scope of employment or under the color of state law, then that government officer acts as a private citizen." *See Van Ort v. Estate of Stanewich*, 92 F.3d 831, 835 (9th Cir. 1996) (finding no action under color of state law where a police officer returned to a home where a search had taken place the day before, forced his way in, and tortured the two people residing in the home).
- Generally, employees of the state are acting under color of state law when acting in their official capacity. *See West v. Atkins*, 487 U.S. 42, 49 (1988); *Anderson v. Warner*, 451 F.3d 1063, 1068 (9th Cir. 2006).
- Physicians who contract with prisons to provide medical services are acting under color of state law. *See West v. Atkins*, 487 U.S. 42, 53-54 (1988).

5

Violations of State Law

- § 1983 does *not* permit a plaintiff to seek relief for violations of *state* law. *See Galen v. Cnty. of Los Angeles*, 477 F.3d 652, 662 (9th Cir. 2007).
- However, federal courts have supplemental jurisdiction over state law claims if a plaintiff also alleges claims for violations of their federal rights. 28 U.S.C. § 1367.

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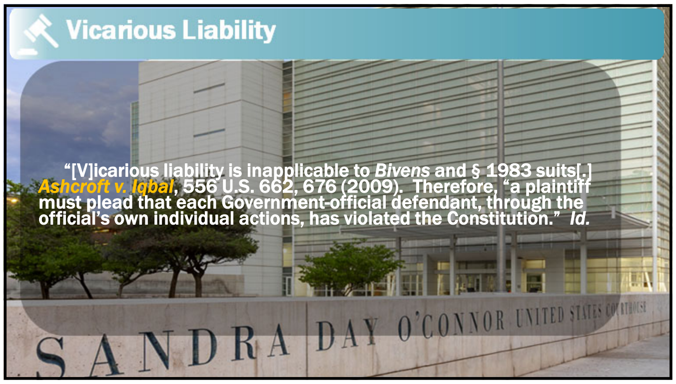
Vicarious Liability
"[V]icarious liability is inapplicable to *Bivens* and § 1983 suits[.]" *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009). Therefore, "a plaintiff must plead that each Government-official defendant, through the official's own individual actions, has violated the Constitution." *Id.*

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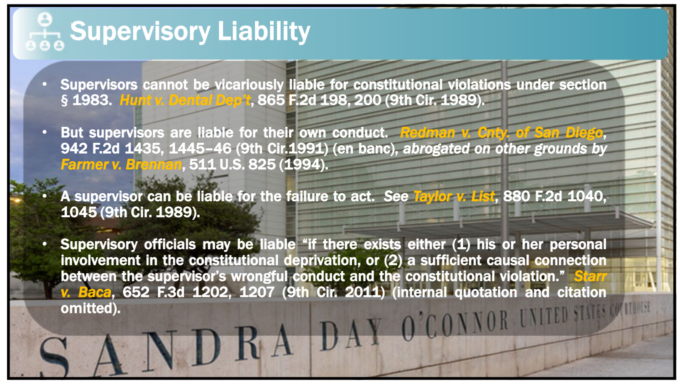
Supervisory Liability
• Supervisors cannot be vicariously liable for constitutional violations under section § 1983. *Hunt v. Dental Dep't*, 865 F.2d 198, 200 (9th Cir. 1989).
• But supervisors are liable for their own conduct. *Redman v. Cnty. of San Diego*, 942 F.2d 1435, 1445–46 (9th Cir.1991) (en banc), *abrogated on other grounds by Farmer v. Brennan*, 511 U.S. 825 (1994).
• A supervisor can be liable for the failure to act. *See Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).
• Supervisory officials may be liable "if there exists either (1) his or her personal involvement in the constitutional deprivation, or (2) a sufficient causal connection between the supervisor's wrongful conduct and the constitutional violation." *Starr v. Baca*, 652 F.3d 1202, 1207 (9th Cir. 2011) (internal quotation and citation omitted).

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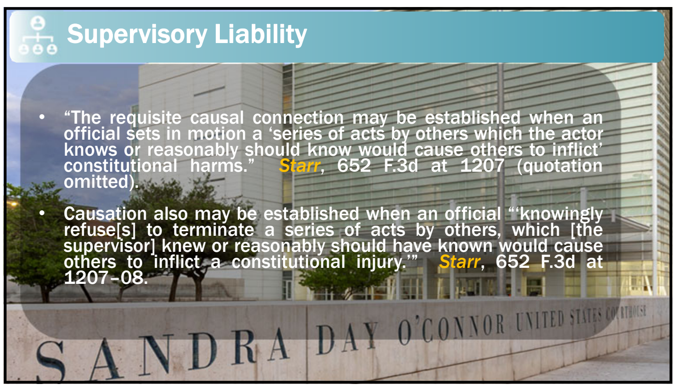
Supervisory Liability
• "The requisite causal connection may be established when an official sets in motion a 'series of acts by others which the actor knows or reasonably should know would cause others to inflict' constitutional harms." *Starr*, 652 F.3d at 1207 (quotation omitted).
• Causation also may be established when an official "'knowingly refuse[s] to terminate a series of acts by others, which [the supervisor] knew or reasonably should have known would cause others to inflict a constitutional injury.'" *Starr*, 652 F.3d at 1207–08.

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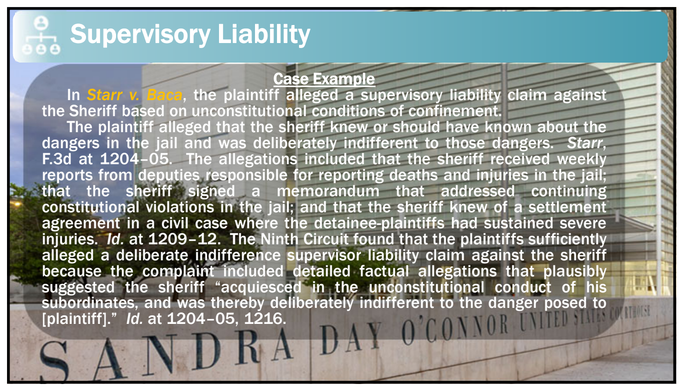
Supervisory Liability
Case Example
In *Starr v. Baca*, the plaintiff alleged a supervisory liability claim against the Sheriff based on unconstitutional conditions of confinement.
The plaintiff alleged that the sheriff knew or should have known about the dangers in the jail and was deliberately indifferent to those dangers. *Starr*, F.3d at 1204–05. The allegations included that the sheriff received weekly reports from deputies responsible for reporting deaths and injuries in the jail; that the sheriff signed a memorandum that addressed continuing constitutional violations in the jail; and that the sheriff knew of a settlement agreement in a civil case where the detainee-plaintiffs had sustained severe injuries. *Id.* at 1209–12. The Ninth Circuit found that the plaintiffs sufficiently alleged a deliberate indifference supervisor liability claim against the sheriff because the complaint included detailed factual allegations that plausibly suggested the sheriff "acquiesced in the unconstitutional conduct of his subordinates, and was thereby deliberately indifferent to the danger posed to [plaintiff]." *Id.* at 1204–05, 1216.

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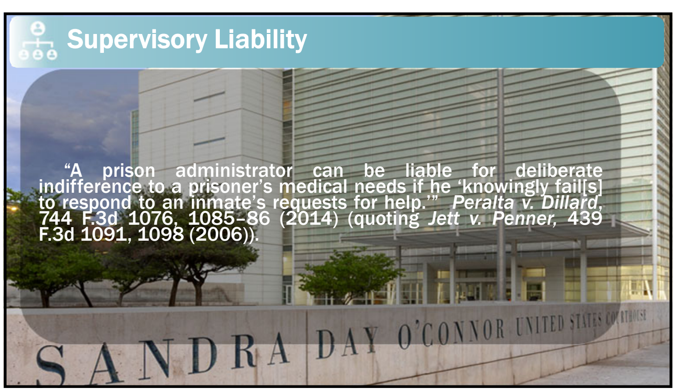
Supervisory Liability
"A prison administrator can be liable for deliberate indifference to a prisoner's medical needs if he 'knowingly fail[s] to respond to an inmate's requests for help.'" *Peralta v. Dillard*, 744 F.3d 1076, 1085–86 (2014) (quoting *Jett v. Penner*, 439 F.3d 1091, 1098 (2006)).

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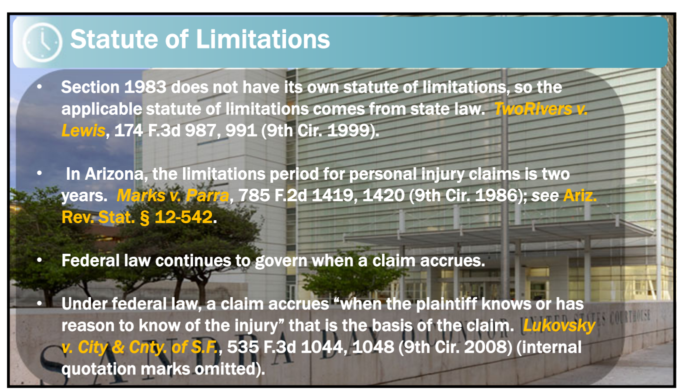
Statute of Limitations
• Section 1983 does not have its own statute of limitations, so the applicable statute of limitations comes from state law. *TwoRivers v. Lewis*, 174 F.3d 987, 991 (9th Cir. 1999).
• In Arizona, the limitations period for personal injury claims is two years. *Marks v. Parra*, 785 F.2d 1419, 1420 (9th Cir. 1986); *see* Ariz. Rev. Stat. § 12-542.
• Federal law continues to govern when a claim accrues.
• Under federal law, a claim accrues "when the plaintiff knows or has reason to know of the injury" that is the basis of the claim. *Lukovsky v. City & Cnty. of S.F.*, 535 F.3d 1044, 1048 (9th Cir. 2008) (internal quotation marks omitted).

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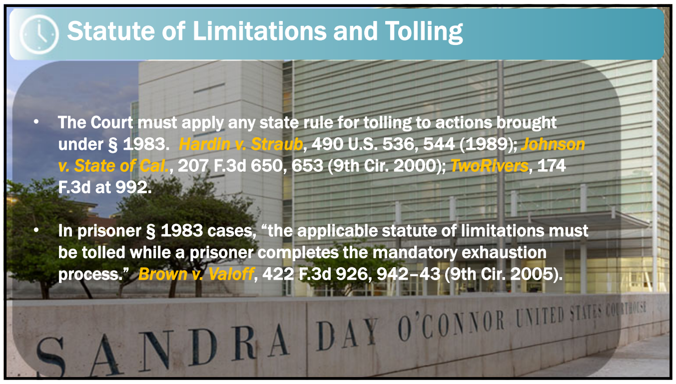

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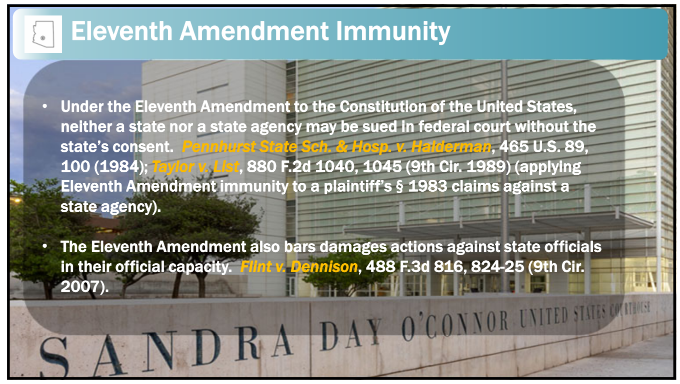

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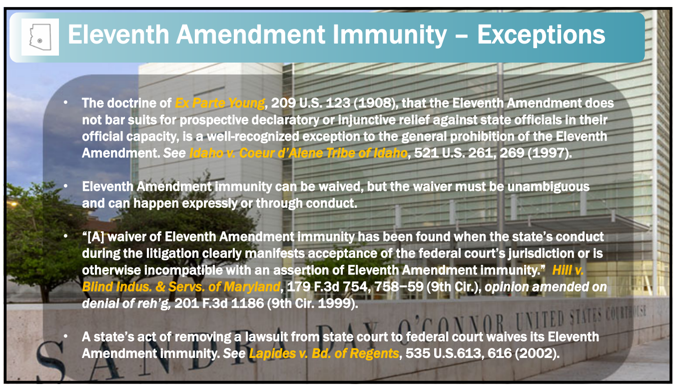

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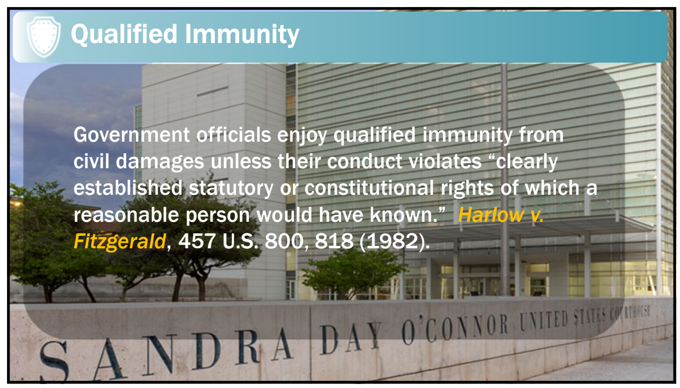

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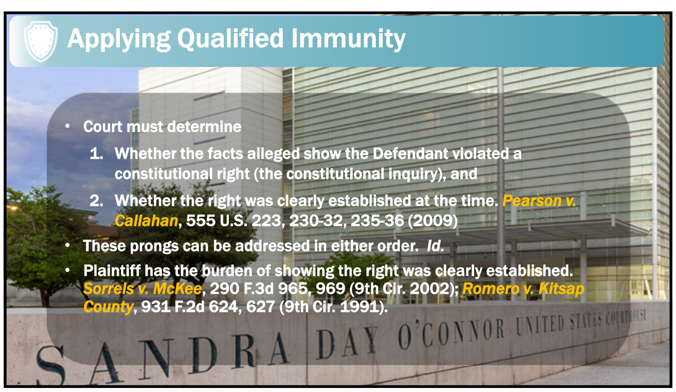

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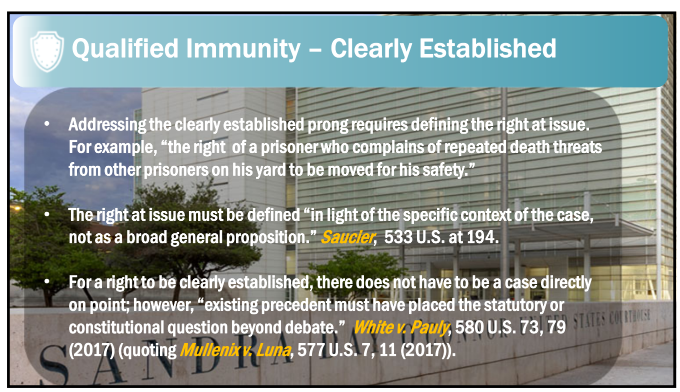

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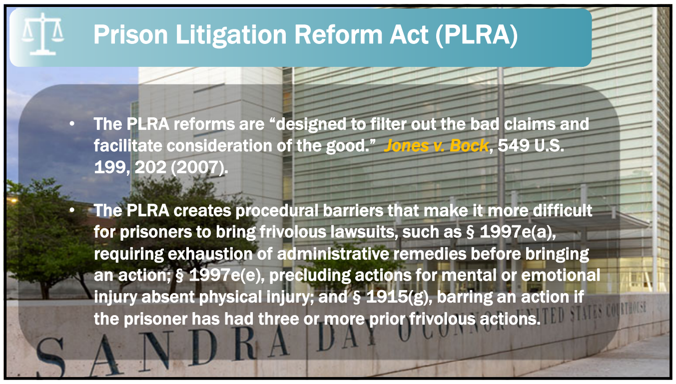

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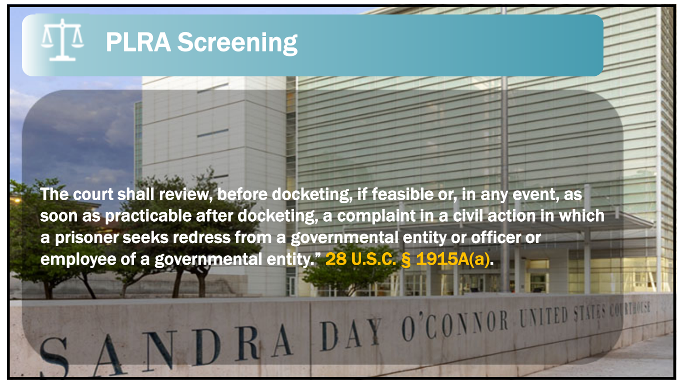

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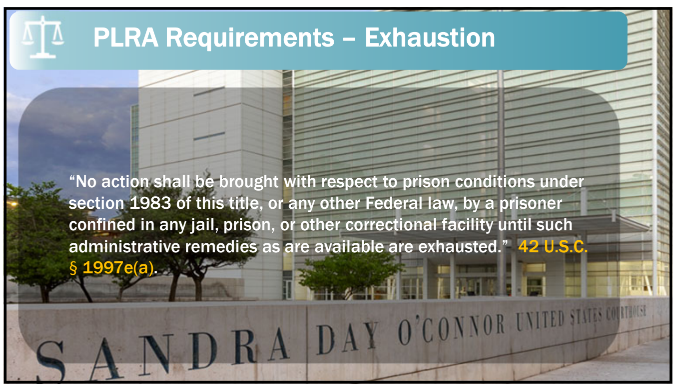

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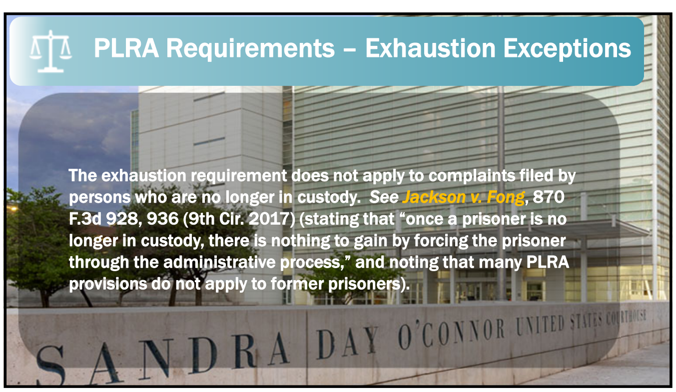

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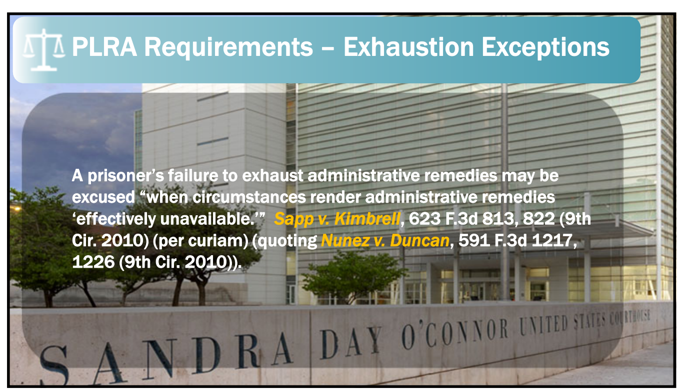

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PLRA Requirements – Exhaustion Exceptions

Remedies have been found "effectively unavailable" when:

- Prison officials improperly screen a grievance that would have sufficed to exhaust the prisoner's claim, *Sapp v. Kimbrell*, 623 F.3d 813, 828 (9th Cir. 2010);
- A prisoner does not have access to the necessary grievance forms, *Marella v. Terhune*, 568 F.3d 1024, 1027–28 (9th Cir. 2009) (per curiam);
- A prisoner has been reliably informed there no remedies are available, *Brown v. Valoff*, 422 F.3d 926, 935 (9th 2005); and
- A prisoner has an objectively reasonable belief that prison officials would retaliate against him if he filed a grievance. *McBride v. Lop*ez, 807 F.3d 982, 987 (9th Cir. 2015).

25

Damages – Compensatory

- "A plaintiff who establishes liability for deprivations of constitutional rights actionable under 42 U.S.C. § 1983 is entitled to recover compensatory damages for all injuries suffered as a consequence of those deprivations." *Borunda v. Richmond*, 885 F.2d 1384, 1389 (9th Cir. 1988).
- In § 1983 suits, "compensatory damages may include not only out-of-pocket loss and other monetary harms, but also such injuries as impairment of reputation, . . . personal humiliation, and mental anguish and suffering." *Memphis Cmty. Sch. Dist. v. Stachura*, 477 U.S. 299, 307 (1986) (internal quotation omitted).

26

Damages – Punitive

"Punitive damages are available under § 1983. *See Pc. Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 17 (1991).

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Injunctions

- "The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the federal right, and is the least intrusive means necessary to correct the violation of the Federal right. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief." 18 U.S.C. § 3626(a)(1)(A) (1997); *see Gilmore v. People of the State of Cal.*, 220 F.3d 987, 998 (9th Cir. 2000).
- Preliminary injunctive relief shall automatically expire on the date that is 90 days after its entry, unless the court makes the findings required under subsection (a)(1) for the entry of prospective relief and makes the order final before the expiration of the 90-day period." 18 U.S.C. § 3626(a)(2).

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Attorneys' Fees

- "Section 1988 authorizes the Court to award attorneys' fees to the prevailing party in a § 1983 civil rights action." 42 U.S.C. § 1988(b).
- The PLRA provides for attorneys' fees as long as they are "directly and reasonably incurred in proving an actual violation of the plaintiff's rights protected by a statute to which a fee may be awarded" under § 1988 and "proportionately related to the court ordered relief" or "directly and reasonably incurred in enforcing the relief ordered for the violation." 42 U.S.C. § 1997e(d)(1).

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Attorneys' Fees

- "Whenever a monetary judgment is awarded in an action described in paragraph (1), a portion of the judgment (not to exceed 25 percent) shall be applied to satisfy the amount of attorney's fees awarded against the defendant. If the award of attorney's fees is not greater than 150 percent of the judgment, the excess shall be paid by the defendant." 42 U.S.C. § 1997e(d)(2).
- But if the prevailing plaintiff obtains monetary relief *and* injunctive relief, the 150 percent cap does not apply. *Dannenberg v. Valadez*, 338 F.3d 1070, 1073–74 (9th Cir. 2003).
- Attorneys' fees cannot be more than 150% of the hourly rate established for court-appointed counsel by the Criminal Justice Act (CJA), 18 U.S.C.A. § 3006A. 42 U.S.C. § 1997e(d)(3). The CJA rate is $60 per hour for in-court time and $40 per hour for out-of-court time. 18 U.S.C.A. 3006A(d)(1).

30

Damages – PLRA Injury Requirement

- Section 1997e(e) of the PLRA provides that "[n]o Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury or the commission of a sexual act."
- This section does not bar a Plaintiff's claim for damages.
- In *Oliver v. Keller*, the Ninth Circuit held that the PLRA's physical injury requirement applies *only* to claims for mental and emotional injury and does not bar claims for compensatory, nominal, or punitive damages premised on constitutional violations. 289 F.3d 623, 629–30 (9th Cir. 2002) (even absent physical injury, the prisoner was entitled to seek damages premised on alleged Fourteenth Amendment violations); *see* *Grenning v. Miller-Stout*, 739 F.3d 1235, 1238 (9th Cir. 2014) (rejecting argument that the plaintiff's claim was barred by § 1997e(e)'s "physical injury" requirement and finding that because he sought declaratory judgment, injunctive relief, and compensatory damages for alleged Eighth and Fourteenth Amendment violations, the claim was not barred).

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Due Process Protections

- In analyzing a due process claim, the Court must first decide whether an inmate was entitled to any process.
- Liberty interests that entitle an inmate to due process are "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 of its own force, nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Sandin v. Conner*, 515 U.S. 472, 484 (1995).

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Due Process Protections

To determine whether the sanctions are atypical and a significant hardship, courts look to an inmate's conditions of confinement, the duration of the sanction, and whether the sanction will affect the duration of his confinement. *Keenan v. Hall*, 83 F.3d 1083, 1088-89 (9th Cir. 1996).

33

Due Process Protections – Atypicality

Conditions of confinement
- Disciplinary proceedings trigger due process protections. *Serrano v. Francis*, 345 F.3d 1071, 1077-78 (9th Cir. 2003).
- Placement in maximum security segregation implicates due process protections. *Wilkinson v. Austin*, 545 U.S. 209, 224 (2005).
- Return to maximum custody after removal from Step-Down Program implicates liberty interest. *Johnson v. Ryan*, 55 F.4th 1167, 1194 (9th Cir. 2022) .
- Loss of privileges generally DOES NOT trigger due process. *Sandin*, 515 U.S. at 485-86.

Duration of sanctions
- 30 days disciplinary segregation is not atypical and significant. *Sandin*, 515 U.S. at 472.

Effect on sentence
- Denial of 1-year sentence reduction is not an atypical and significant hardship. *Jacks v. Crabtree*, 114 F.3d 983 (9th Cir. 1997)

34

Due Process Protections – What process is due?

1. Written notice at least 24 hours prior to the hearing and an opportunity to be heard.
2. A written statement by the fact-finder as to the evidence relied on and reasons for the disciplinary action.
3. Opportunity to call witnesses and present documentary evidence when it would not be unduly hazardous to institutional safety or correctional goals to allow the inmate to do so

Wolff v. McDonnell, 418 U.S. 539, 565-566 (1974).

35

Due Process Protections – What process is due?

- "Prison disciplinary proceedings are not part of a criminal prosecution, and the full panoply of rights due a defendant in such proceedings does not apply." *Wolff*, 418 U.S. at 555-56.
- A prisoner's silence at a disciplinary hearing may be used against him. *Baxter v. Palmigiano*, 425 U.S. 308, 316-18 (1976).
- Prisoners "do not 'have a right to either retained or appointed counsel in disciplinary hearings.'" *Id.* (quoting *Wolff*, 418 U.S. at 570).

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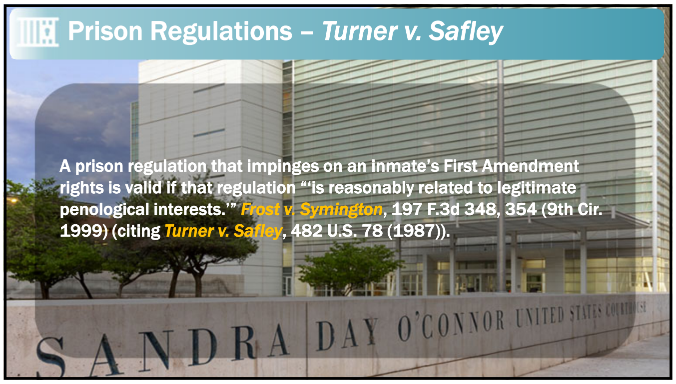

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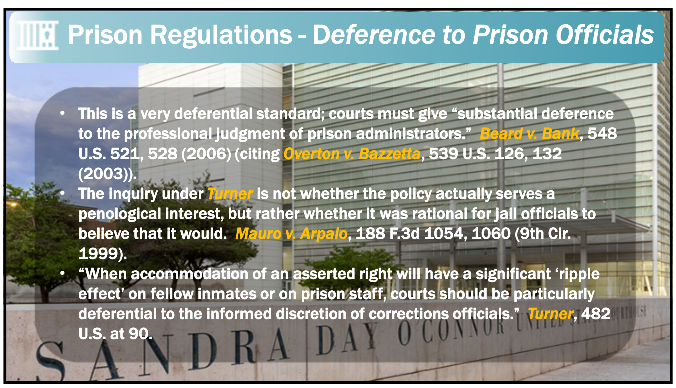

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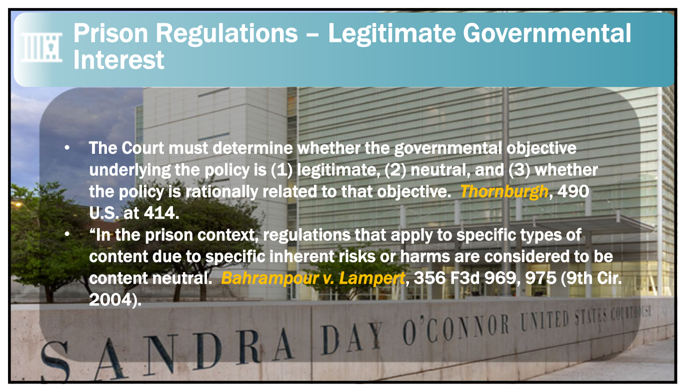

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Prison Regulations – Adverse Impact
"If accommodations for a constitutional right would cause significant changes within the prison environment, the courts should give deference to the prison officials who are responsible for safe, effective, and efficient administration of the prison system." *Bahrampour*, 356 F.3d at 975.
SANDRA DAY O'CONNOR UNITED STATES COURTHOUSE

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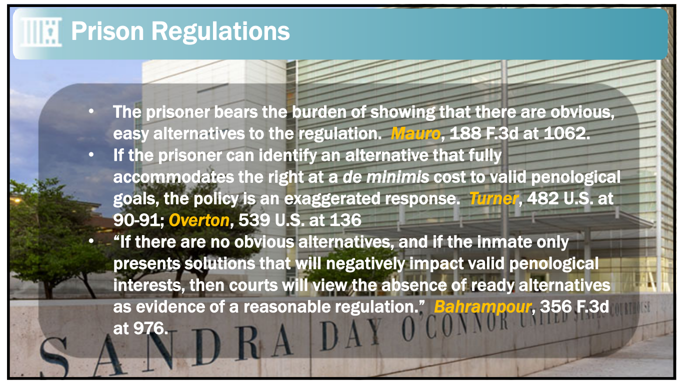
Prison Regulations
• The prisoner bears the burden of showing that there are obvious, easy alternatives to the regulation. *Mauro*, 188 F.3d at 1062.
• If the prisoner can identify an alternative that fully accommodates the right at a *de minimis* cost to valid penological goals, the policy is an exaggerated response. *Turner*, 482 U.S. at 90-91; *Overton*, 539 U.S. at 136
• "If there are no obvious alternatives, and if the inmate only presents solutions that will negatively impact valid penological interests, then courts will view the absence of ready alternatives as evidence of a reasonable regulation." *Bahrampour*, 356 F.3d at 976.
SANDRA DAY O'CONNOR

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Questions?
Jodie_Brown@azd.uscourts.gov
602.322.7280
SANDRA DAY
UNITED STATES COURTHOUSE

45

Employment Law Overview

Shannon Giles, Awerkamp, Bonilla & Giles, PLC
United States District Court, Phoenix, Arizona
June 18, 2024

1

Initial Questions to Ask

- Who is Employer
- Private or Public
- # of Employees Who Work for Employer
- How Long Has Employee Worked for Employer
- What is the Issue
- How much is Employee Paid

2

of Employees Who Work for Employer

- ACRA (sexual harassment) – 1 employee
- Title VII and ADA – 15 employees
- ADEA – 20 employees
- FMLA – private employer - 50 employees (employee worked 1,250 hours)

3

What is the Issue

- Discrimination – 180 days/300 days
- FMLA – 2 years
- FLSA Violation – 2 years/3 years intentional
- Retaliation/Whistleblowing
- Wrongful Termination
- Claim against the State based on state law, 180 days –notice of claim

4

DISCRIMINATION Protected Characteristics

Title VII– AZ Civil Rights Act

- Race
- Color
- Religion
- Genetic Information
- National Origin
- Sex -- also Equal Pay Act, Pregnancy, Sexual Harassment
- Sexual Orientation

ADEA

- Age -- 40+

Rehab. Act / ADA

- Disability -- physical / mental impairment that substantially limits a major life activity; a record of such impairment or is regarded / perceived as having such impairment
Also known association

5

Exhausting Remedies

Arizona Civil Rights Act

- File charge within 180 days
- File complaint within one year of filing charge of discrimination

Title VII, ADAA, ADEA

- File charge within 300 days of last act of discrimination
- No need to exhaust remedies **Rehab. Act (disability) and RACE**
- **Section 1981 (race discrimination)**

6

DISCRIMINATION - FEDERAL EMPLOYEES

MSPB	EEO - EEOC
An employee can file a mixed case - discrimination in connection with an action otherwise appealable to the Board.	Within 45 days of the discriminatory action, employee must contact the Agency's EEO office and file a complaint. The Agency will investigate and employee will be given options, including electing a Hearing before an EEOC Judge.

7

Merit Systems Protection Board

Federal employees may file an appeal with the MSPB within 30 days of the following adverse actions:

- Removals (terminations);
- Suspensions of more than 14 days;
- Demotions; and
- Other matters such as appeals of OPM determinations in retirement matters, among others.

8

Wrongful Termination - AEPA

- Firing in retaliation for:
  - (i) Refusing to violate the Arizona Constitution or laws of Arizona,

    (ii) Telling ER that EE believes ER violated or will violate AZ Constitution/AZ laws

    (iii) Using Arizona's workers' compensation program.

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Wrongful Termination cont.

- (iv) Serving on a jury
- (v) Voting in elections.
- (vi) Not joining a union.
- (vii) Serving in the national guard or armed forces.
- (viii) Refusing to pay fees or gratuities as a condition of employment.
- (ix) Refusing to purchase goods or supplies from any particular person as a condition of employment.
- (x) Using leave if the employee is a victim of a juvenile offense a victim of a crime.

10

How Much is Employee Paid

AMWA	**FLSA**
As of January 1, 2024, the minimum wage in Arizona is **$14.35/hr**.	Since July 24, 2009, the minimum wage under the FLSA is **$7.25/hr**.
AZ minimum wage increases every January 1 by an amount equal to the percentage increase of the Consumer Price Index.	Because the minimum wage under the AMWA is more generous, it takes precedence over the FLSA

11

COVERAGE

- The AMWA covers all employers in the private and public sectors except small businesses, the State of Arizona, and the federal government. The AMWA protects all employees of a covered employer except for a person who is employed by a parent or a sibling, or a person who is employed to perform babysitting services in the employer's home on a casual basis.
- A small business is defined as any entity that has less than $500,000 in gross annual revenue and is exempt from having to pay a minimum wage under the FLSA. This definition can cause some confusion because the FLSA does not contain any exclusion for small businesses. Rather, it asserts jurisdiction based on a defined impact upon interstate commerce. The AMWA does not require any ties to interstate commerce.
- The FLSA applies to employees based on their work activities as well as to employees of enterprises engaged in interstate commerce. Employees are covered if they engage in commerce or produce goods for commerce or if they work for an enterprise engaged in those activities. As a practical matter, the law covers almost all employees and employers in both the private and public sectors.
- An enterprise is engaged in commerce if it meets one of the following tests: (1) it has two or more employees engaged in commerce or has employees engaged in handling, selling, or otherwise working on goods that have been moved in or been produced for commerce, and it is a business whose annual gross sales are not less than $500,000; (2) it is a hospital, old-age home, or school; or (3) it is a public agency.

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OVERTIME

- Employees who work in excess of 40 hours in any 7-day work week must receive compensation at a rate not less than one and one-half times the regular rate.
- Holidays, sick time, and vacation not included when counting 40 hours.
- Exempt vs non-exempt
- Exemptions for certain industries

13

RETALIATION PROHIBITED

AMWA

- AMWA prohibits employers from retaliating against any person who asserts a claim or right under the law, who assists any other person in doing so, or who informs any person about his or her rights.
- Presumption of retaliation if ER takes adverse action within 90 days after a claim. The presumption may be rebutted by clear and convincing evidence that the action was taken for permissible reasons.

FLSA

- Prohibits discharging or discriminating against because of filing complaint , instituting a proceeding and/or engaging in other protected activity. Employee may be entitled to equitable relief, including reinstatement, as well as damages.
- Protected activity includes filing an internal complaint. In a retaliation case, the employee's remedy is one of damages, both compensatory and punitive.

14

NO WAIVER

- No verbal or written agreement or employment contract may waive any rights under the AMWA or the FLSA.

15

AZ SICK TIME LAW

- Employees earn one hour of paid **sick time** for every 30 hours worked. Employees are entitled to at least 24 hours of paid **sick time** if the employer has 14 or fewer employees. The amount increases to 40 hours of paid **sick time** for employers with 15 or more employees.
- No retaliation

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FMLA Coverage

- Birth or Placement of Child
- Serious Health Condition -- Employee's or immediate family member's (spouse, child or parent)
- Military family leave

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FMLA Employee Eligibility

- Worked for a covered employer
- Employed for at least twelve months in any capacity (full time, part time, temporary)
- Worked **1250** hours in preceding 12 month period
- Worked at a location where at least 50 employees are employed by ER within 75 miles

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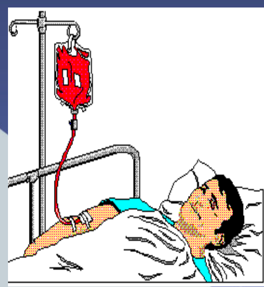
Serious Health Condition

- Inpatient Care or
- Continuing treatment by a health care provider = absence of at least 3 consecutive days and treated at least twice

*Chronic condition



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AMERICAN WITH DISABILITIES ACT

The ADA prohibits discrimination and guarantees that people with disabilities have the same opportunities as everyone else, such as to enjoy employment opportunities, to purchase goods and services, and to participate in State and local government programs and services.

Title I of the Americans with Disabilities Act of 1990 prohibits private employers, state and local governments, employment agencies and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment.

20

ADA vs. Rehabilitation Act

ADA

- Employers must have 15 or more employees;
- Need to exhaust remedies

Rehabilitation Act

- Applies to federal government and private employers that receive federal funds.
- No need to exhaust remedies.

21

An Individual with a Disability

- Has a physical or mental impairment that substantially limits one or more major life activities;
- Has a history or record of such an impairment; or
- Is regarded by others as having such an impairment.
- The ADA does not specifically name all of the impairments that are covered.

22

A qualified employee or applicant with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question.

Reasonable accommodation may include, but is not limited to:

•Making existing facilities used by employees readily accessible to and usable by persons with disabilities.

•Job restructuring, modifying work schedules, reassignment to a vacant position;

•Acquiring or modifying equipment or devices, adjusting or modifying examinations, training materials, or policies, and providing qualified readers or interpreters.

23

Undue Hardship

- An employer does not have to provide a reasonable accommodation if it imposes an "undue hardship."
- Undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as an employer's size, financial resources, and the nature and structure of its operation.

24

QUESTIONS?

THANK YOU!

25

Substantive Law in Pretrial Detainee and Prisoner Cases that Survive Summary Judgment

Jodie Brown, Supervisory Staff Attorney
United States District Court, District of Arizona
June 6, 2024 Phoenix
June 18, 2024 Tucson

1

Agenda

- Pretrial Detainee Fourteenth Amendment Claims: Medical Care, Conditions of Confinement, Excessive Force, Failure to Protect, Procedural Due Process
- Prisoner Eighth Amendment Claims: Medical Care, Conditions of Confinement, Excessive Force, Failure to Protect/Threat to Safety, Substantive and Procedural Due Process
- Religious Exercise Claims: First Amendment and RLUIPA
- Access to the Courts
- ADA/RA
- Federal Prisoners: *Bivens* and FTCA
- Questions

2

Pretrial Detainee Fourteenth Amendment Claims

- A pretrial detainee has a *substantive* due process right against restrictions that amount to punishment for a criminal offense prior to an adjudication of guilt. *Valdez v. Rosenbaum*, 302 F.3d 1039, 1045 (9th Cir. 2002); *Bell v. Wolfish*, 441 U.S. 520, 535 (1979).
- "[P]unishment can consist of actions taken with an 'expressed intent to punishment,'" but in the absence of expressed intent, a plaintiff can "nevertheless prevail by showing that the actions are not 'rationally related to a legitimate nonpunitive governmental purpose' or that the actions 'appear excessive in relation to that purpose.'" *Kingsley v. Hendrickson*, 576 U.S. 389, 398 (2015) (quoting *Bell*, 441 U.S. at 538, 561). This is an objective standard. *Id.*

3

Pretrial Detainee Fourteenth Amendment Claims

- "For a particular governmental action to constitute punishment, (1) that action must cause the detainee to suffer some harm or 'disability,' and (2) the purpose of the governmental action must be to punish the detainee." *Demery v. Arpaio*, 378 F.3d 1020, 1029 (9th Cir. 2004) (quoting *Bell*, 441 U.S. at 538).
- The harm or disability suffered must either significantly exceed, or be independent of, the inherent discomforts of confinement. *Vazquez v. Cnty. of Kern*, 949 F.3d 1153, 1163 (9th Cir. 2020).
- "Punishment" can take several forms, including inadequate medical care, unconstitutional jail conditions, and due process violations in disciplinary proceedings.

4

Pretrial Detainee Fourteenth Amendment Medical Care Claims

- A pretrial detainee's claim that he has been denied adequate medical care is evaluated under an objective deliberate indifference standard. *Gordon v. County of Orange*, 888 F.3d 1118, 1124–25 (9th Cir. 2018).
- A plaintiff must show that the denial, delay, or otherwise unreasonable course of medical care was taken in "reckless disregard" of an excessive risk to the plaintiff's health or safety. *Id.* at 1125.

5

Pretrial Detainee Fourteenth Amendment Medical Care Claims

The elements of a pretrial detainee's medical care claim against an individual defendant are:

(i) the defendant made an intentional decision with respect to the conditions under which the plaintiff was confined;
(ii) those conditions put the plaintiff at substantial risk of suffering serious harm;
(iii) the defendant did not take reasonable available measures to abate that risk, even though a reasonable official in the circumstances would have appreciated the high degree of risk involved—making the consequences of the defendant's conduct obvious; and
(iv) by not taking such measures, the defendant caused the plaintiff's injuries.

Gordon, 888 F.3d at 1125.

6

Pretrial Detainee
Fourteenth Amendment
Medical Care Claims

- The "'mere lack of due care by a state official' does not deprive an individual of life, liberty, or property under the Fourteenth Amendment." *Castro v. Cnty. of Los Angeles*, 833 F.3d 1060, 1071 (9th Cir. 2016) (quoting *Daniels v. Williams*, 474 U.S. 327, 330-31 (1986)).

7

Pretrial Detainee
Fourteenth Amendment
Conditions of Confinement Claims

- "Pretrial detainees are entitled to 'adequate food, clothing, shelter, sanitation, medical care, and personal safety.'" *Alvarez-Machain v. United States*, 107 F.3d 696, 701 (9th Cir. 1996) (quoting *Hoptowit v. Ray*, 682 F.2d 1237, 1246 (9th Cir. 1982)).
- Pre-adjudication detainees retain greater liberty protections than convicted prisoners. *Bell*, 441 U.S. at 535-56. But the Constitution does not mandate comfortable prisons, *Rhodes v. Chapman*, 452 U.S. 337, 349 (1981), and conditions of confinement may be, and often are, restrictive and harsh, *Morgan v. Morgensen*, 465 F.3d 1041, 1045 (9th Cir. 2006).

8

Pretrial Detainee
Fourteenth Amendment
Conditions of Confinement Claims

Common Complaints:
- Exercise: "[T]he Constitution requires jail officials to provide outdoor recreation opportunities, or otherwise meaningful recreation, to prison inmates." *Shorter v. Baca*, 895 F.3d 1176, 1185 (9th Cir. 2018). A prohibition on outdoor exercise of six weeks is a "sufficiently serious" deprivation to support a constitutional claim. *Thomas v. Ponder*, 611 F.3d 1144, 1151 (9th Cir. 2010).
- Food: The Fourteenth Amendment requires "only that prisoners receive food that is adequate to maintain health; it need not be tasty or aesthetically pleasing." *LeMaire v. Maass*, 12 F.3d 1444, 1456 (9th Cir. 1993). However, a detainee may state a claim where he alleges he is served meals with insufficient calories for long periods of time.

9

Pretrial Detainee
Fourteenth Amendment
Conditions of Confinement Claims

Common Complaints:
- Overcrowding: overcrowding alone does not violate the Fourteenth Amendment, but if overcrowding results in some unconstitutional condition, such as increased stress, tension, communicable diseases, and confrontations between detainees, a plaintiff might have a cognizable claim. *See Akao v. Shimoda*, 832 F.2d 119, 120 (9th Cir. 1987).
- Cleanliness/Sanitation:
- COVID-19 pandemic presented unique challenges.

10

Pretrial Detainee
Fourteenth Amendment
Excessive Force Claims

- The Fourteenth Amendment's Due Process Clause, and not the Eighth Amendment, applies to the use of excessive force against pretrial detainees. *Kingsley v. Hendrickson*, 576 U.S. 389, 397 (2015).
- In this context, force is considered excessive if the officers' use of force was "objectively unreasonable" in light of the facts and circumstances confronting them, without regard to their mental state. *Id.*

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Pretrial Detainee
Fourteenth Amendment
Excessive Force Claims

Factors for Reasonableness of Force

In determining whether the use of force was reasonable, a court should consider factors including, but not limited to:

the relationship between the need for the use of force and the amount of force used; the extent of the plaintiff's injury; any effort made by the officer to temper or to limit the amount of force; the severity of the security problem at issue; the threat reasonably perceived by the officer; and whether the plaintiff was actively resisting.

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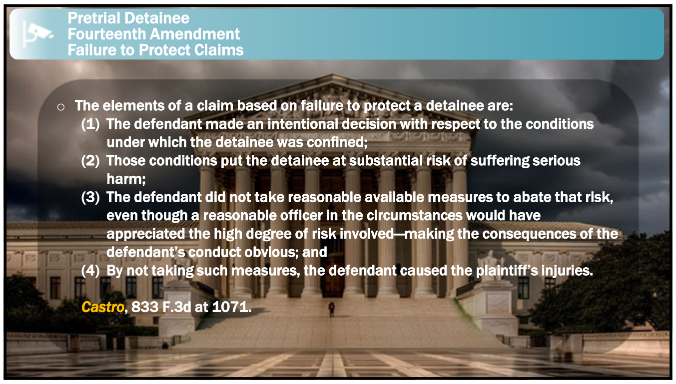

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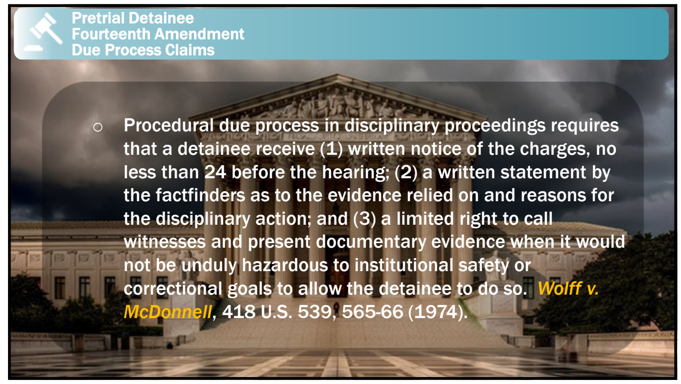

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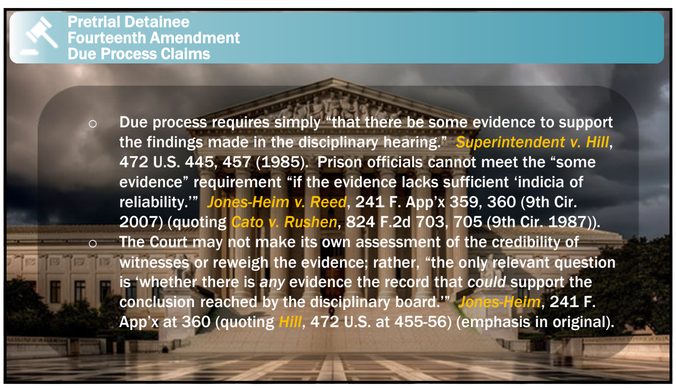

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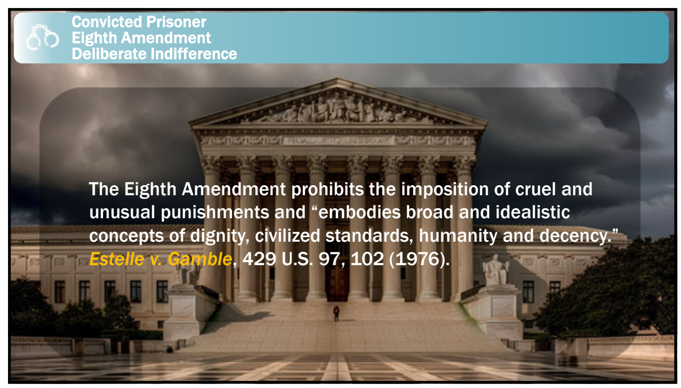

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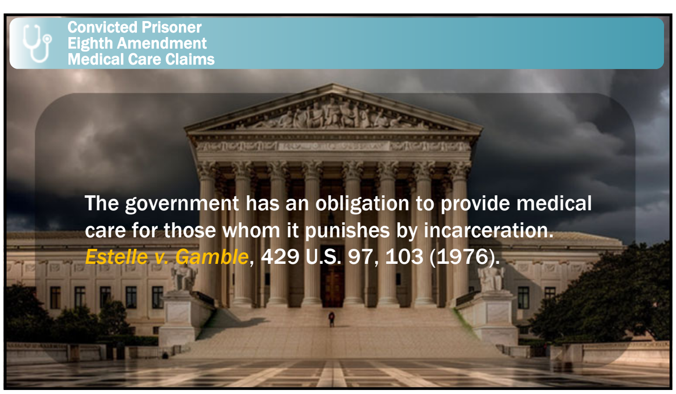

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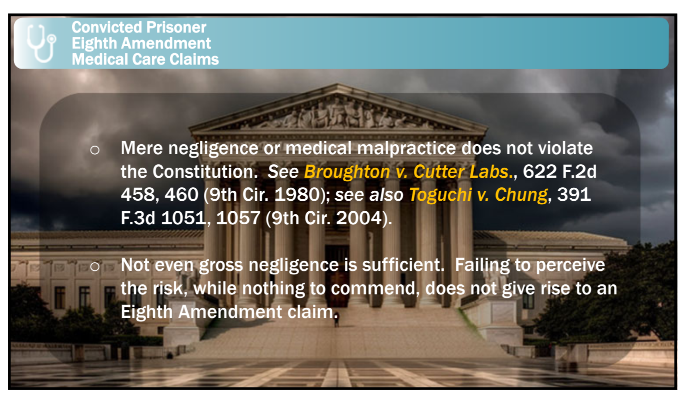

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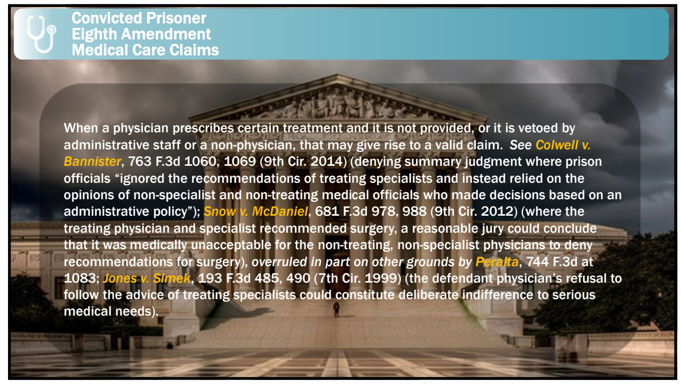

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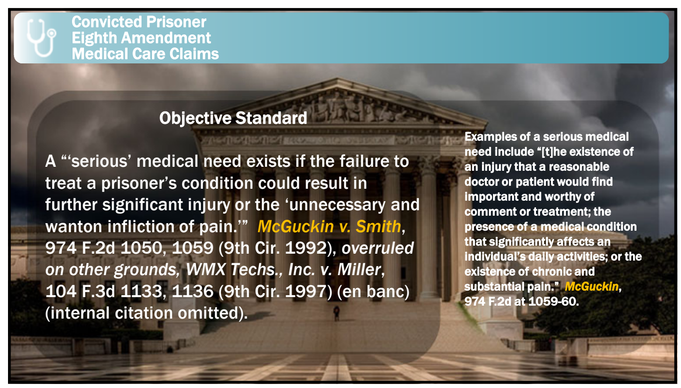

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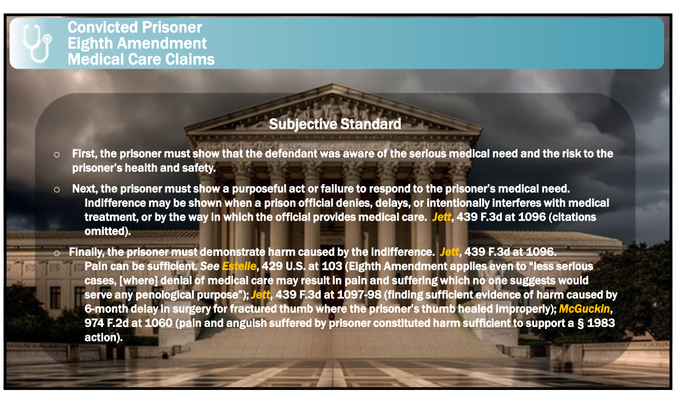

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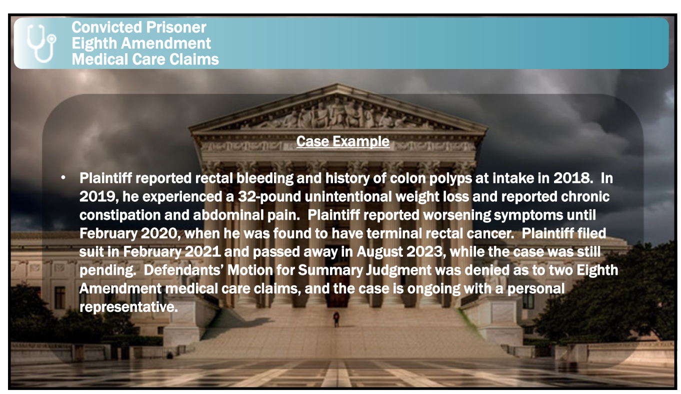

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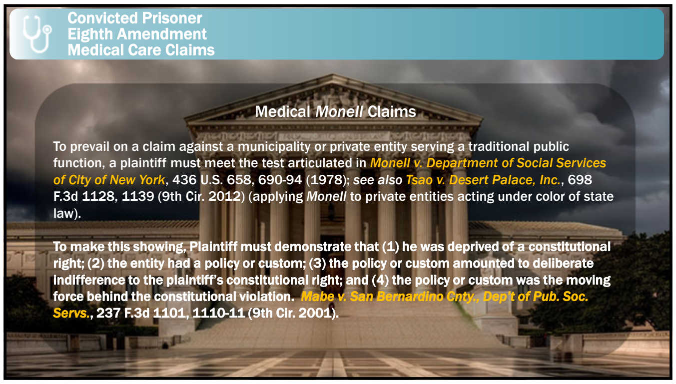

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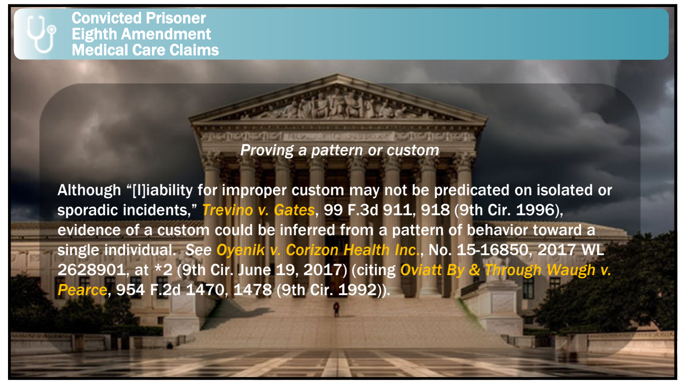

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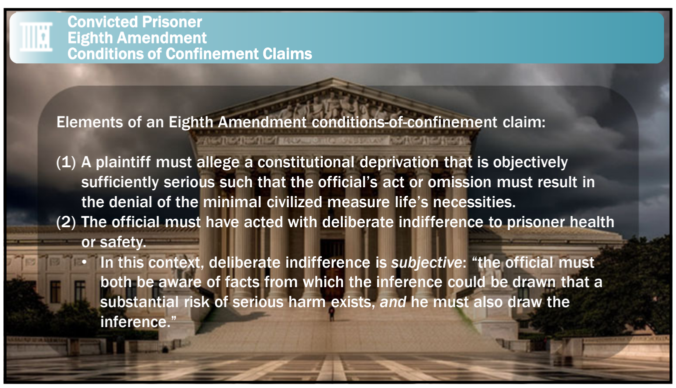

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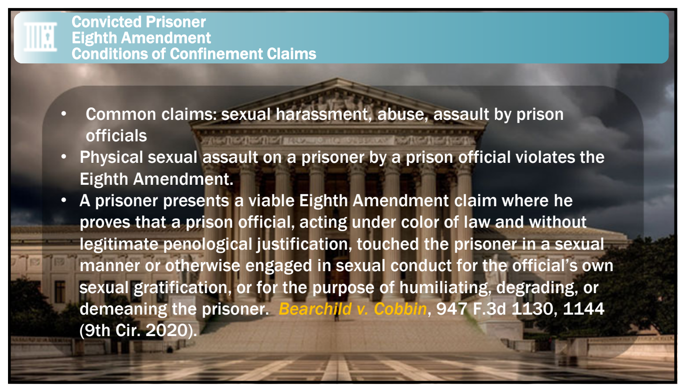

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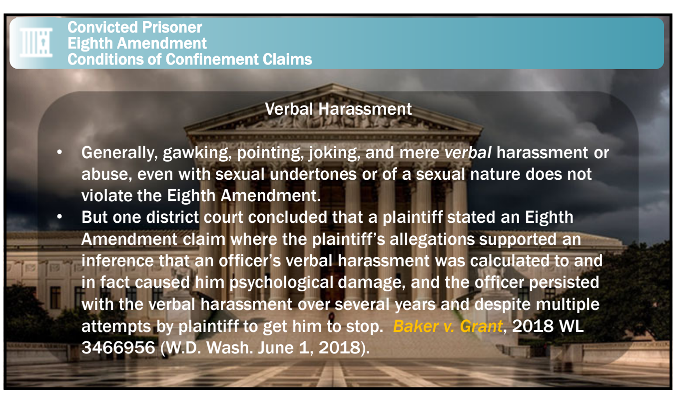

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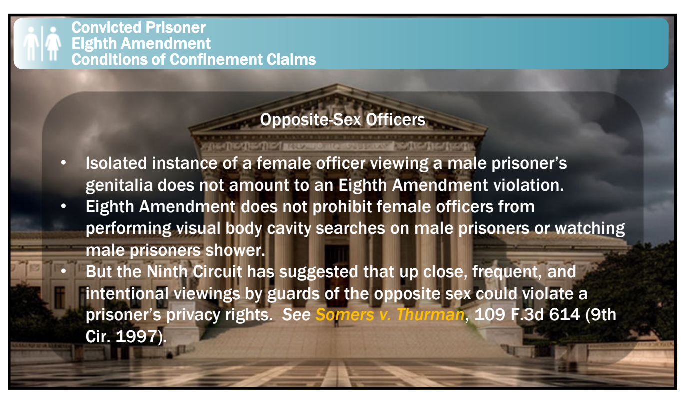

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Convicted Prisoner
Eighth Amendment
Excessive Force Claims

- When a prisoner claims that prison officials violated his Eighth Amendment rights by using excessive physical force, the relevant inquiry is "whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm." *Hudson v. McMillian*, 503 U.S. 1, 7 (1992).
- "The use of excessive force against a prisoner may constitute cruel and unusual punishment [even] when the inmate does not suffer serious injury." *Id.* at 8-9.
- However, the Eighth Amendment does not recognize claims based on a de minimis use of force unless the force is "of a sort repugnant to the conscience of mankind." *Id.* at 9-10.

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Convicted Prisoner
Fourteenth Amendment
Due Process Claims

Two step analysis for due process claims:

(1) Whether the prisoner was deprived of a protected liberty or property interest.

(2) Whether that deprivation was accompanied by sufficient procedural protections.

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Convicted Prisoner
Fourteenth Amendment
Due Process Claims

Protected Liberty or Property Interest

(1) A liberty interest may arise from the Constitution itself, or it may arise from an expectation or interest created by state laws or policies.
(2) The Constitution does not give rise to a liberty interest in avoiding transfer to more adverse conditions of confinement, but such an interest may arise from state policies or regulations.
(3) An interest in avoiding certain conditions of confinement will generally be limited to freedom from restraint that imposes an atypical and significant hardship on the prisoner in relation to the ordinary incidents of prison life.

33

Convicted Prisoner
Fourteenth Amendment
Due Process Claims

Protected Liberty or Property Interest

(1) In the disciplinary context, the Court looks to the sanctions imposed to determine if there is a protected liberty interest that implicates due process.

(2) Temporary solitary confinement; loss of privileges, such as telephone, commissary, recreation, and visitation; and extra duty do not implicate due process.

(3) Loss of good-time credits might implicate due process if they impact the duration of a prisoner's sentence. If a prisoner is serving a natural life sentence, loss of good-time credits does not implicate a liberty interest.

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Convicted Prisoner
Fourteenth Amendment
Due Process Claims

Procedural protections: *Mathews v. Eldridge*

Three-step analysis:

(1) The private interest affected;

(2) The risk of an erroneous deprivation and the probable value of any additional or substitute procedural safeguards; and

(3) The government's interest.

The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.

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Convicted Prisoner
Fourteenth Amendment
Due Process Claims

Disciplinary Proceedings

- Prisoner must receive notice that is sufficient to enable him to marshal the facts and prepare a defense, including the conduct alleged, an approximate date of the alleged conduct, and the specific charge against him.
- Notice satisfying due process need not painstakingly detail all facts relevant to the date, place, and manner of the charged inmate misconduct; it must simply permit a reasonable person to understand what conduct is at issue so that he may identify relevant evidence and present a defense. *Ashker v. Newsom*, 81 F.4th 863, 879 (9th Cir. 2023).

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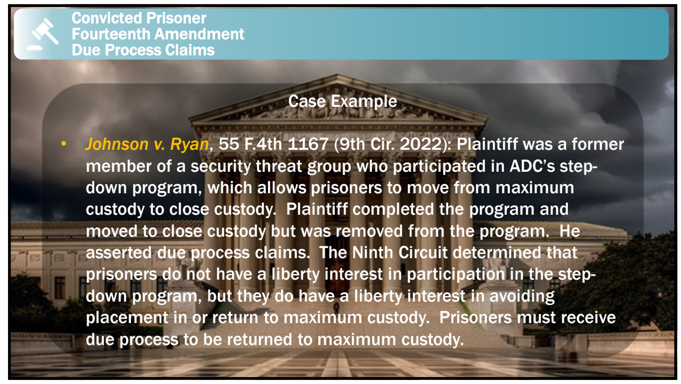

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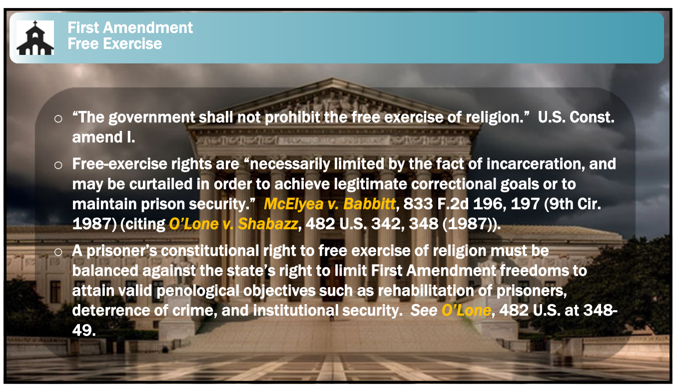

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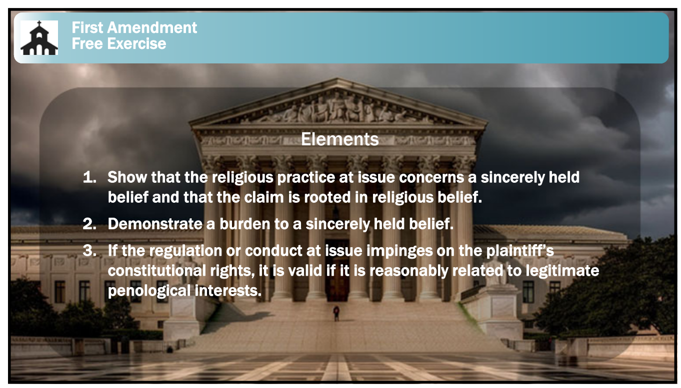

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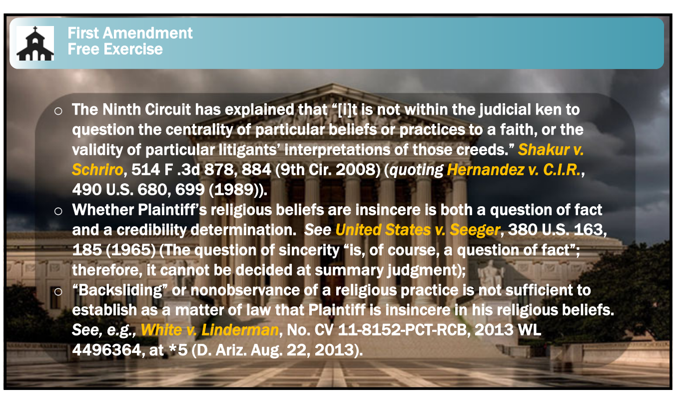

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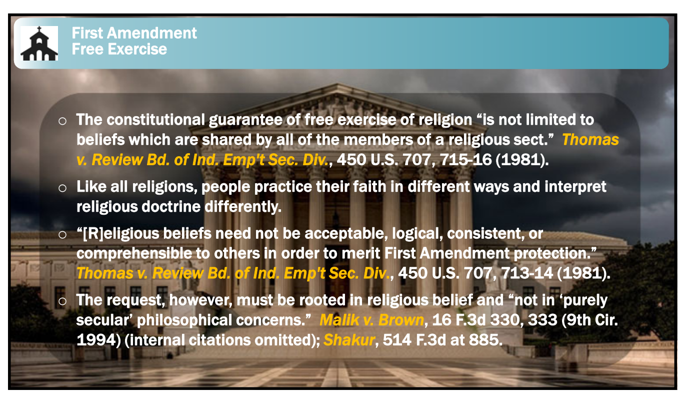

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First Amendment
Free Exercise

To substantially burden the practice of an individual's religion, the interference must be more than an isolated incident or short-term occurrence. *See Canell v. Lightner*, 143 F.3d 1210, 1215 (9th Cir. 1998). Prison officials' negligent or accidental actions that impinge on an inmate's religious practice are insufficient to support a First Amendment claim. *See Lovelace v. Lee*, 472 F.3d 174, 194 (4th Cir. 2006).

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First Amendment
Free Exercise

If a substantial burden exists, the policy is scrutinized using the *Turner v. Safely* test:

1. whether there exists a valid, rational connection between the prison regulation and the legitimate governmental interest put forth to justify it;
2. whether there are alternative means of exercising the regulated right that remain open to the inmate (not narrow);
3. the impact that accommodation of the asserted constitutional right will have upon guards, other inmates, and prison resources; and
4. whether there exist ready alternatives that fully meet the inmate's demands at a *de minimis* cost to valid penological interests.

(burden is on the prisoner)

44

First Amendment
Free Exercise

Case Examples

- First Amendment claim brought by Native American prisoner alleging the denial of a religious diet. Plaintiff, a Native American Pascua Yaqui, believed the spirit of any animal he consumes must be honored with a "Deer Dancer Ceremony," and because that cannot be done for the meat he consumes in prison, he requested a vegetarian diet so that he can avoid eating meat that has not been properly honored through the Yaqui Deer Ceremony.
- Defendant denied the diet request on the ground that Plaintiff did not have a sincerely held religious belief to support his desire to eat a vegetarian diet, meaning that Plaintiff's religion did not require him to consume a vegetarian diet. But that is not what the Ninth Circuit looks at when determining whether an inmate's religious accommodation request is sincerely held. Just before trial was set to begin, parties entered into a settlement.
- Plaintiff sought relief from repeated disciplinary tickets for sharing kosher meal with other inmates. He alleged that Defendants' actions burdened his free exercise rights. But Plaintiff never alleged that sharing food was a tenet of his religious practice. Rather, it was a moral belief that motivated his practice, which brought his actions outside the ambit of Free Exercise protection.

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RLUIPA

Religious Land Use and Institutionalized Persons Act of 2000
42 U.S.C. § 2000cc-1(a)(1)-(2) ("RLUIPA")

- Only applies to injunctive relief; cannot seek damages
- Qualified Immunity is not available as defense to a request for injunctive relief

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RLUIPA

Government may not impose a substantial burden on the religious exercise of a confined person unless:

1. Burden furthers a "compelling governmental interest" and
2. does so by "the least restrictive means"

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RLUIPA

Elements

1. Plaintiff must show that the exercise of his religion is at issue.
2. Plaintiff bears the burden of establishing a prima facie claim that the defendant's conduct substantially burdened his religious exercise.
3. If the plaintiff meets the prima facie burden, then the burden shifts to the defendant to prove that the substantial burden on the inmate's religious practice both furthers a compelling governmental interest and is the least restrictive means of doing so.

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RLUIPA

- A substantial burden on religious exercise must impose a significantly great onus upon such exercise. *Warsoldier v. Woodford*, 418 F.3d 989, 995 (9th Cir. 2005).
- An institutionalized person's religious exercise is substantially burdened where the state denies an important benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his belief. *Id.*

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RLUIPA

Compelling Governmental Interest:

- This is a strict scrutiny standard and it difficult for defendants to meet on summary judgment.

Least Restrictive Alternative:

- Defendants must come forward with more than assertions of generic security concerns. They must demonstrate with **evidence** that accommodation of a particular religious request impacts a compelling interest and that they have pursued lesser restrictive means of accommodating the right without success.

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RLUIPA

"[I]n light of RLUIPA, no longer can prison officials justify restrictions on religious exercise by simply citing to the need to maintain order and security in a prison. RLUIPA requires more." *Greene v. Solano County Jail*, 513 F.3d 982, 989-90 (9th Cir. 2008). Prison officials must show that they "actually considered and rejected the efficacy of less restrictive measures before adopting the challenged practice." *Id.* at 990.

51

RLUIPA

The Ninth Circuit has specifically rejected the idea that courts must "completely defer to [prison officials'] judgment." *Warsoldier v. Woodford*, 418 F.3d 989, 1001 (9th Cir. 2005)

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RLUIPA

Case Example

RLUIPA claim brought by Muslim alleging that the ADC grooming policy that restricted his beard length violated his rights. Because Plaintiff did not cut his beard, he was reclassified from Level III to Level IV, which resulted in a transfer, and he was subject to numerous disciplinary actions. The Court granted Plaintiff's Motion for a TRO and PI on the basis that Defendants had not established that particular security concerns supported their grooming policy.

The parties settled the case, but this issue persists.

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Access to the Courts

- Prisoners do not have a right to access the courts in an "abstract, freestanding" form. *Lewis v. Casey*, 518 U.S. 343, 367 (1996).
- But prisoners do have a right to litigate without active interference by prison officials. *Blaisdell v. Frappiea*, 729 F.3d 1237, 1243 (9th Cir. 2005).
- The State may not erect barriers that impede the right of access of incarcerated persons. Prisoners have a First Amendment and a Fourteenth Amendment right to pursue legal redress for claims that have a reasonable basis in fact or law.

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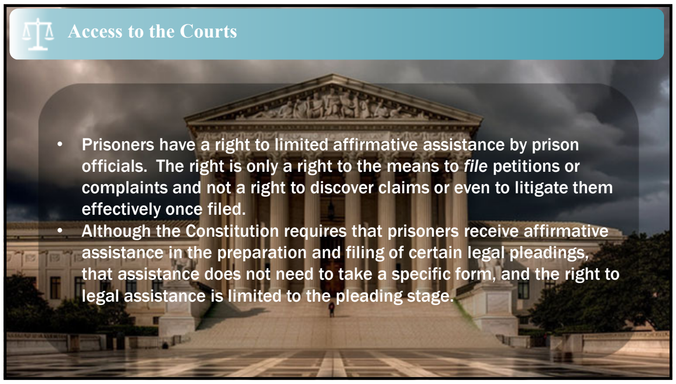

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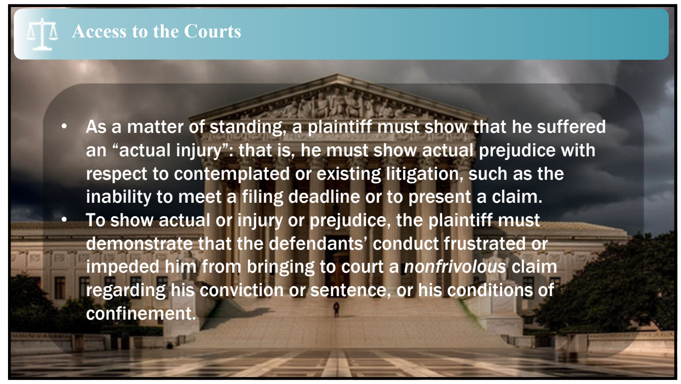

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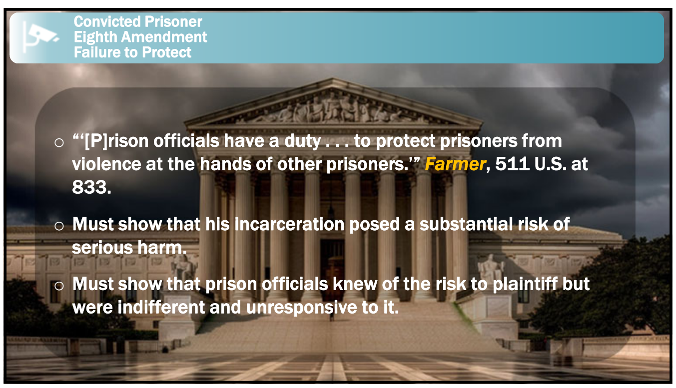

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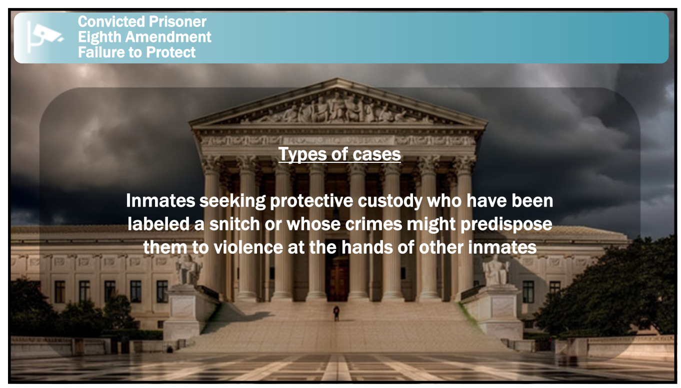

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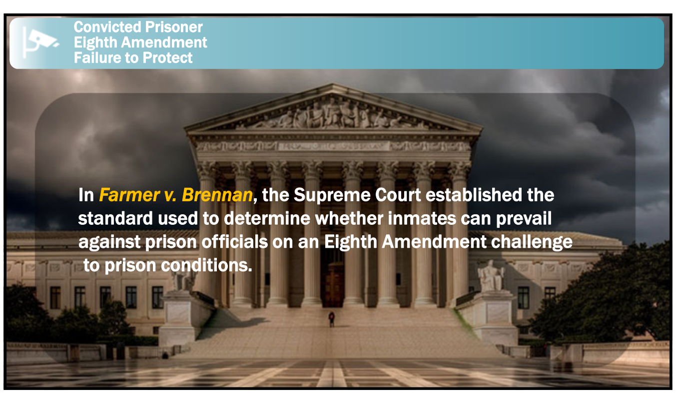

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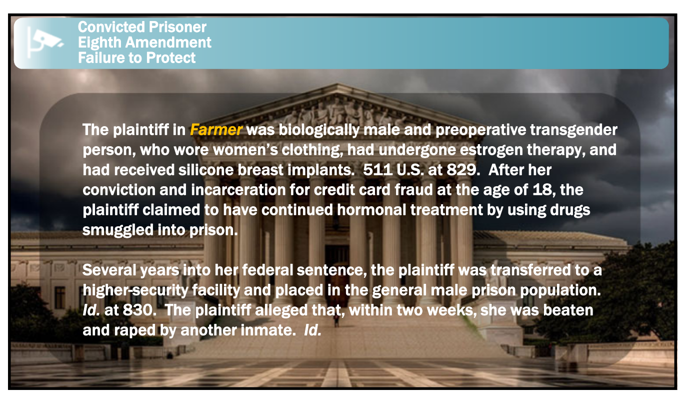

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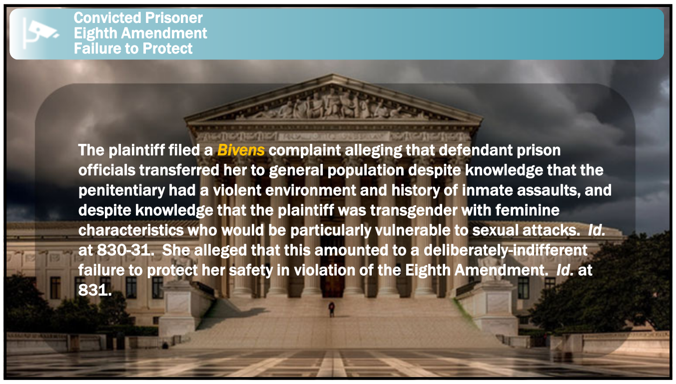

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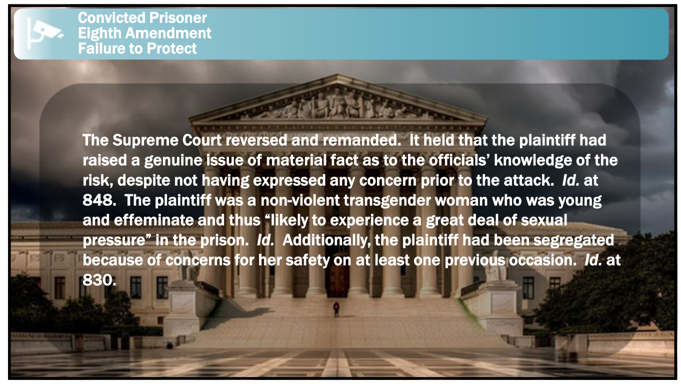

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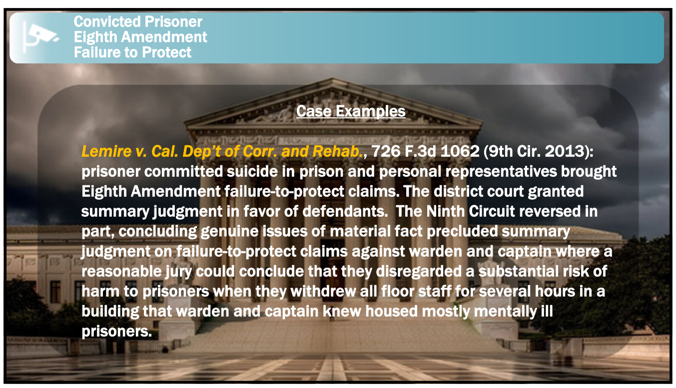

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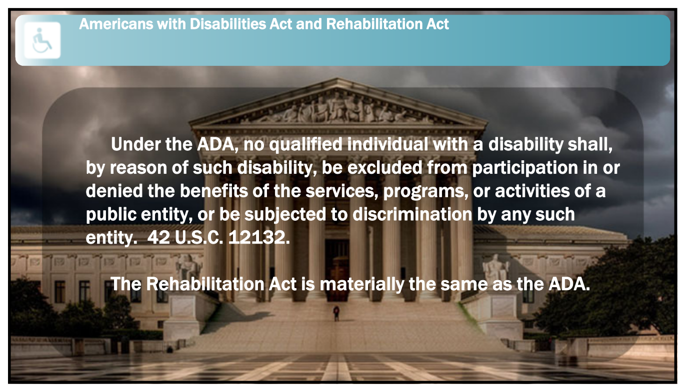

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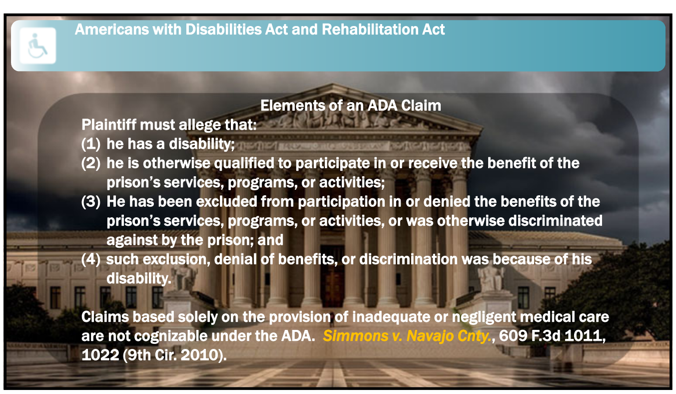

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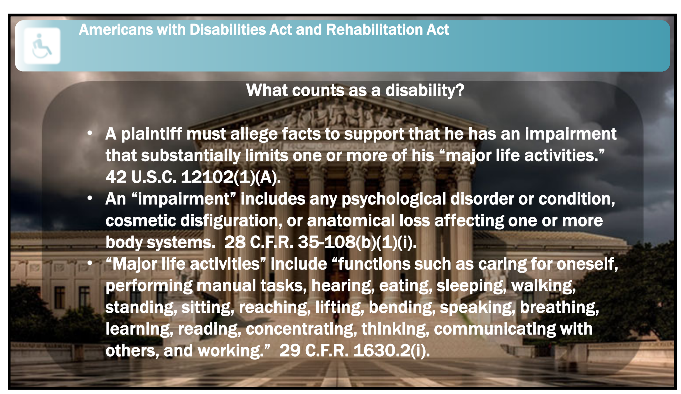

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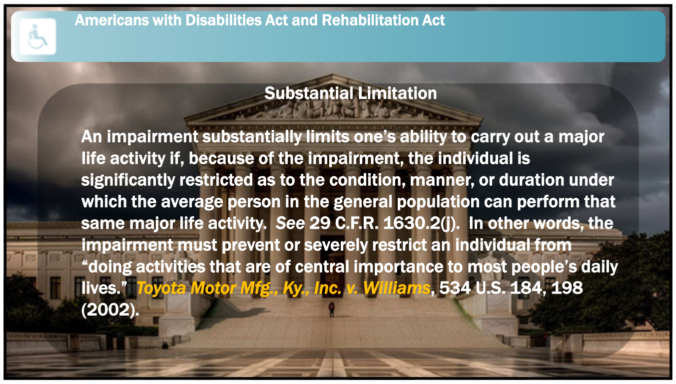

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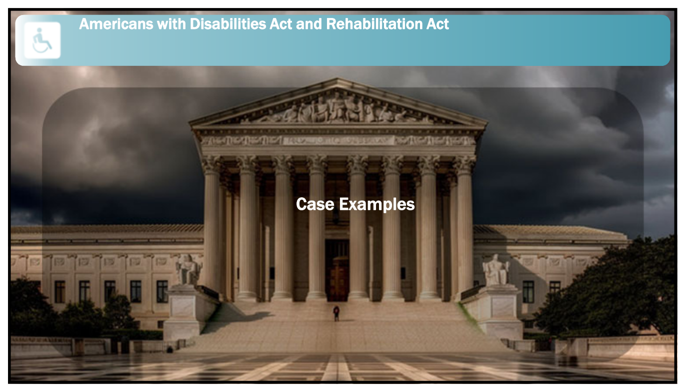

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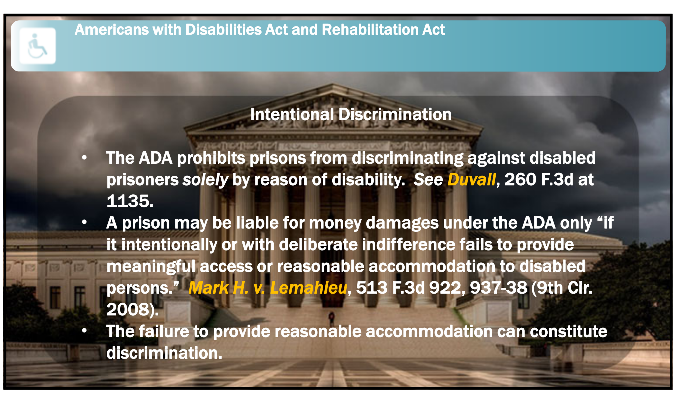

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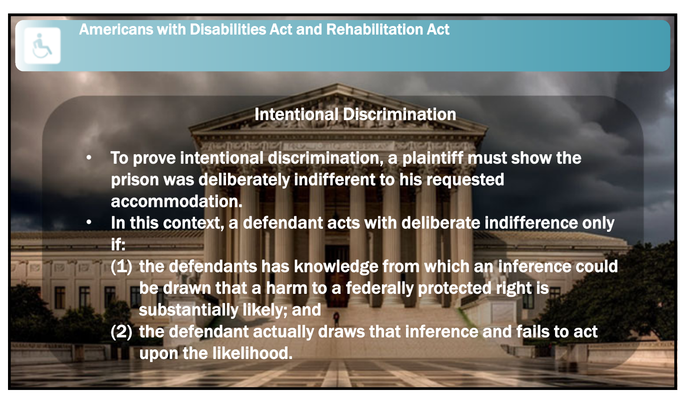

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Americans with Disabilities Act and Rehabilitation Act

Intentional Discrimination

- If the prison is on notice that an accommodation is required, the plaintiff has satisfied the first prong of the deliberate indifference test. The plaintiff may put the prison on notice by alerting the prison to his need for accommodation; the need for accommodation may be obvious; or the accommodation may be required by statute or regulation.
- To meet the second prong of the test, the prison's failure to act "must be a result of conduct that is more than negligent, and involves an element of deliberateness."

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Bivens Claims After *Egbert*

Egbert v. Boule, 596 U.S. 482 (2022): The Supreme Court essentially eviscerated what was left of the *Bivens* remedy, except for the claims that the Court had already recognized:
Bivens: Fourth Amendment excessive force by federal agents.
Carlson v. Green, 446 U.S. 14 (1980) – Eighth Amendment medical care claim by estate of prisoner who died due to inadequate medical care.
Davis v. Passman, 442 U.S. 228 (1979) – Fifth Amendment sex-discrimination claim by former congressional staffer against congressman.

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Bivens Claims After *Egbert*

Eighth Amendment Medical Care Claims:

- The Ninth Circuit has held that an Eighth Amendment medical care claim *did not* extend *Bivens* in a new context. *Stanard v. Dy*, 88 F.4th 811, 815 (9th Cir. 2023).
- *Egbert* suggests the availability of the BOP Administrative Remedy Program (ARP) *alone* forecloses any extension of *Bivens*, even if prisoners cannot get money damages through the ARP.

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Federal Tort Claims Act

The FTCA provides a waiver of sovereign immunity for tortious acts of a federal agency's employees if the same torts committed by that person in the employ of private party would have given rise to liability under state law. 28 U.S.C. 1346(b).

The only proper Defendant is the United States.

The substantive law of the place where the allegedly negligent act or omission occurred governs FTCA claims.

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Federal Tort Claims Act

Federal courts have jurisdiction over an FTCA claim if it is:

(1) against the United States
(2) for money damages
(3) for injury or loss of property, or personal injury or death
(4) caused by the negligent or wrongful act or omission of any employee of the Government
(5) While acting within the scope of his office or employment
(6) under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

Brownback v. King, 592 U.S. 209 (2021).

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Federal Tort Claims Act

Case Examples

- *Pacheco v. U.S.*, 48 F.4th 976 (9th Cir. 2022): plaintiffs alleged an employee of a federally qualified community health center that provided birth control services negligently gave the plaintiff a flu shot instead of a birth control shot. One plaintiff was unaware she received the wrong shot, became pregnant, and her baby was born with epilepsy and lateral perisylvian polymicrogyria. After a bench trial, the district court awarded plaintiffs more than $20 million in damages. The Government appealed only the special damages verdict.
- *Limone v. U.S.*, 579 F.3d 79 (1st Cir. 2009): former prisoners whose murder convictions were overturned asserted FTCA claims arising from Government involvement in framing the prisoners. Following a bench trial, the district court awarded plaintiffs more than $100,000,000 in damages. The First Circuit affirmed.

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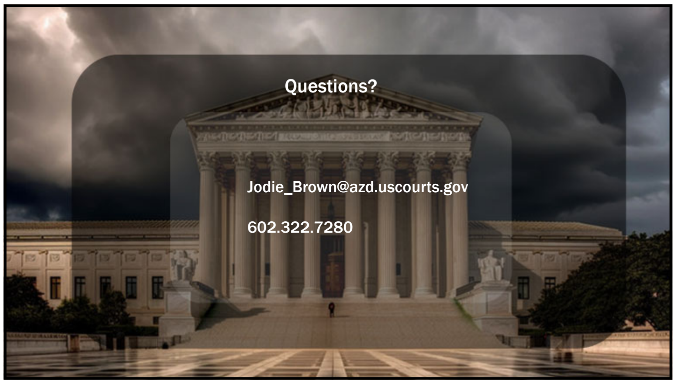

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Chris Thomas and
Andrea Driggs

Perkins Coie

Nuts & Bolts: Practice Pointers

1

What documents should you look for first?

- Complaint/Amended Complaint
- Case Management Order/Rule 26 Joint Report
- Dispositive Motions
  - Motion to Dismiss
  - Motions for Summary Judgments
- Orders from the Court
  - On Dispositve Motions
  - Discovery Disputes

2

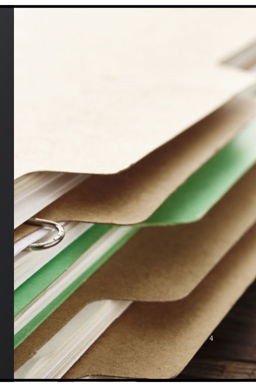
Once you have reviewed and pulled documents from ECF/Pacer, consider the following:

- Are there any upcoming deadlines that you need to be aware of?
- Are there any outstanding requests from the Court to the parties about things that need to be done?
  - E.g., Meet and Confer, Exchange Certain Discovery
- What is the next thing you need to prepare for?

3

Talk to the Client

- Once you have some initial information and have determined what phase you are in, talk to/visit the client to discuss the case. Request:
  - Any Disclosure Statements they have sent or received in the case;
  - And written discovery they sent or received in the case;
  - Any documents/evidence/witnesses that they think are important for their case that have not been disclosed.



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Visiting Your Client

- Background checks required in advance.
- Restrictions on clothing (e.g., no tan pants).
- Rules can be applied inconsistently.
- Always print out a copy of your appointment (by the Court and date/time).
- No cell phones/computers/smart watches.
- Always mark legal materials appropriately.

5

Trauma-Informed Practice

- Recognize the presence of trauma symptoms and the role that trauma may play in a client's life.
- Ensure physical and emotional safety for clients.
- Create a welcoming and non-threatening environment.
- Foster trust by being transparent about the legal process, set clear expectations, and follow through on commitments.
- Work collaboratively with clients and keep them informed.
- Be aware of and sensitive to cultural, historical, and gender-related issues that may affect your client's experiences and perspectives.

6

Trauma-Informed Practice

- Be mindful of actions or words that might trigger memories of the trauma and tread lightly until trust is established.
- Focus on the client's needs, preferences, and strengths. Tailor your approach to each client's unique situation.
- Use plain language and check for understanding. Avoid legal jargon that might confuse or overwhelm the client.
- Be patient and adaptable. Trauma survivors may need more time to process information and make decisions.

7

7

Strategic Considerations

- Should you move to re-open discovery? Amend the complaint?
- Prison Litigation Reform Act: exhaustion of remedies?
- Settlement conferences/mediation?
- Trial date?
- Potential Fifth Amendment issues?
- Opposing counsel?
- Motion for client to appear in person at trial?
- Does the client want injunctive relief? Monetary damages?

8

8

Contact Opposing Counsel

- Sometimes after talking to your client, you will learn they do not have certain discovery items that were sent to them by the other side.
- If that happens, contact opposing counsel and simply ask them if they will send them to you.
- Check with opposing counsel to make sure your analysis of upcoming deadlines mirrors the deadlines they have calendared.

9

9

Explaining Legal Issues to Clients: MSJs

- If the judge grants the MSJ, the case or the part of the case that the MSJ addresses is resolved without a trial. This could mean a complete end to the litigation if the MSJ is granted in full, or it could resolve key issues that would narrow the scope of the trial if only granted in part.
- If the MSJ is denied, the issues it addressed will proceed to trial. The ruling on an MSJ can significantly affect the strategy for trial, as it may clarify which facts are considered established and which legal standards will apply. It can also impact the settlement dynamics, as a party who is unsuccessful in an MSJ may reassess the strength of their case and their likelihood of success at trial.

10

10

Settlement Conferences

- **Educate the Client**: It is crucial to ensure that the client understands the legal process, the strengths and weaknesses of their case, and the implications of the MSJ Order. This includes discussing the potential risks and benefits of proceeding to trial versus settling.
- **Assess the Case**: Evaluate the case thoroughly, taking into account the MSJ Order, to determine a realistic settlement range. This involves analyzing the evidence, the law, and the damages or relief sought.
- **Prepare the Client**: Discuss the settlement process with the client, including what to expect during the settlement conference and the role of the mediator or judge overseeing the settlement discussions.
- **Set Goals and Limits**: Work with the client to set clear goals and bottom lines for the settlement. It is important to have a flexible strategy but also to know the client's minimum acceptable terms.

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11

Settlement Conferences

- **Advocate and Negotiate**: Represent the client's interests vigorously while remaining open to compromise. Effective negotiation involves a balance between assertiveness and flexibility.
- **Communicate Clearly**: Keep the client informed throughout the process, explaining the developments and advising on the implications of any offers made.
- **Manage Expectations**: Help the client maintain realistic expectations and remain patient, as settlement negotiations can be lengthy and may require multiple rounds of discussion.

12

12

Informing the Judge of Issues/Concerns

- **Written Submissions**: If there are pre-conference briefs or other opportunities to submit written materials to the judge, use these to outline any issues or concerns without disclosing confidential client communications.
- **In-Court Statements**: During the settlement conference, make statements on the record that tactfully present any issues or concerns. This should be done in a way that is respectful to all parties and the court.
- **Private Discussions**: If the settlement conference allows for private caucuses, use this time to discuss any sensitive issues candidly, ensuring that the client's interests are represented without revealing privileged information.

13

13

Know Your Claims

After talking with your client and reviewing the Complaint, you should make sure you understand the elements of your clients' claims.

The Ninth Circuit offers Model Civil Jury Instructions, which is a comprehensive (though non-exhaustive) list of the elements required to prove most civil claims in Federal Court. https://www.azd.uscourts.gov/judges/judges-orders

For civil rights claims, the Ninth Circuit also offers a handbook. https://www.ca9.uscourts.gov/guides/section-1983-outline/

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Jury Instructions

Elements Instructions		
Type of Claim	Elements	Instruction No.
Against Individuals	Individual Capacity	9.3
	Supervisory Defendant in Individual Capacity	9.4
Against Local Governing Body	Based on Official Policy, Practice, or Custom	9.5
	Based on Act of Final Policymaker	9.6
	Based on Ratification	9.7
	Based on Policy that Fails to Prevent Violations of Law or Policy of Failure to Train	9.8

15

15

Jury Instructions

9.3 Section 1983 Claim Against Defendant in Individual Capacity —Elements and Burden of Proof

In order to prevail on a § 1983 claim against the defendant [*name of individual defendant*], the plaintiff must prove each of the following elements by a preponderance of the evidence:

1. the defendant acted under color of state law; and
2. the [act[s]] [failure to act] of the defendant deprived the plaintiff of particular rights under [the laws of the United States] [the United States Constitution] as explained in later instructions; and
3. The defendant's conduct was an actual cause of the claimed injury.

A person acts "under color of state law" when the person acts or purports to act in the performance of official duties under any state, county, or municipal law, ordinance or regulation. [[The parties have stipulated] [I instruct you] that the defendant acted under color of state law.]

The defendant's conduct is an actual cause of a plaintiff's injury only if the injury would not have occurred 'but for' that conduct, and the conduct has a sufficient connection to the result.

If you find the plaintiff has proved each of these elements, and if you find that the plaintiff has proved all the elements the plaintiff is required to prove under Instruction[s] [*specify the instruction[s] that deal with the particular right[s]*], your verdict should be for the plaintiff. If, on the other hand, you find that the plaintiff has failed to prove any one or more of these elements, your verdict should be for the defendant.

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Ninth Circuit Litigation Guide: Example

A. Elements of a § 1983 Action

"Traditionally, the requirements for relief under [§] 1983 have been articulated as: (1) a violation of rights protected by the Constitution or created by federal statute, (2) proximately caused (3) by conduct of a 'person' (4) acting under color of state law." *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). Or, more simply, courts have required plaintiffs to "plead that (1) the defendants acting under color of state law (2) deprived plaintiffs of rights secured by the Constitution or federal statutes." *Gibson v. United States*, 781 F.2d 1334, 1338 (9th Cir. 1986); *see also Benavidez v. Cnty. of San Diego*, 993 F.3d 1134, 1144 (9th Cir. 2021); *Pistor v. Garcia*, 791 F. 3d 1104, 1114 (9th Cir. 2015); *Long v. Cnty. of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006); *WMX Techs., Inc. v. Miller*, 197 F.3d 367, 372 (9th Cir. 1999) (en banc).

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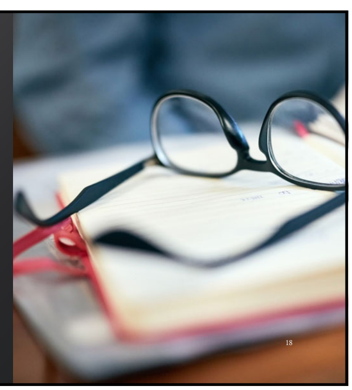
Practice Pointers – Pretrial Work

- Motions in Limine
- Joint Pre-Trial Statement
  - Witnesses for trial
  - All documents for trial
  - Jury Instructions
- Trial Subpoenas
- Usually, you have to work with the other party
- Give yourself at least a month or two to work on these issues.



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Trial

Plaintiff's Position: Typically, in the courtroom, the plaintiff sits closest to the jury. This is a traditional setup that is followed in many courtrooms across the United States.

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Trial

- **Opening Statements**: The plaintiff, having the burden of proof, generally presents their opening statement first. This is followed by the defendant's opening statement.
- **Presentation of Evidence**: After opening statements, the plaintiff presents their case-in-chief, which includes calling witnesses and presenting evidence. Once the plaintiff rests their case, the defendant will then present their defense.
- **Closing Arguments**: Similar to opening statements, the plaintiff delivers the first closing argument, followed by the defendant's closing argument.

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Trial

- **Opening Statement**: During your opening statement, provide an overview of the evidence that will be presented, without going into detail or arguing its significance.
- Consider a mock trial to evaluate witnesses and trial themes.

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Trial

- **Direct Examination**: When you call a witness to testify, begin with direct examination. This is where you will lay the foundation for introducing your exhibits.
- **Laying the Foundation**: For each piece of evidence, you must establish its relevance and authenticity. Ask the witness questions that show the evidence is what you claim it is.
- **Move the Exhibit into Evidence**: After laying the foundation, formally move the exhibit into evidence by asking the court to admit it. For example, "Your Honor, I move to admit Exhibit A into evidence."

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Trial

- **Handling Objections**: Be prepared for the opposing counsel to object to the introduction of evidence. If an objection is made, the judge will rule on whether the evidence is admissible.
- **Publishing Evidence to the Jury**: Once an exhibit is admitted, you may "publish" the evidence to the jury, meaning you can show it to them or read it aloud.

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Trial

- **Cross-Examination**: The opposing counsel will have the opportunity to cross-examine your witness and challenge the evidence presented.
- **Re-Direct and Re-Cross Examination**: You may have the opportunity to clarify points through re-direct examination, and the opposing counsel may follow up with re-cross examination.

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Trial

- **Summarize the Evidence**: In your closing argument, summarize the evidence presented and argue how it supports your case.
- **Jury Instructions**: The judge will instruct the jury on how to consider the evidence during their deliberations.

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Post-Trial

- **Objections and Appeals**: If evidence was admitted over objection, or if there were disputes about the evidence, these issues may be raised on appeal.
- **Preservation of the Record**: Ensure that the trial record accurately reflects all evidence presented, as this will be important for any potential appeals.

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Costs – General Order 10-10

(9) In the discretion of the trial judge, reimbursement of actual and reasonable out-of-pocket expenses necessarily incurred by court appointed attorneys representing indigents in civil cases not covered by the Criminal Justice Act. Reimbursements are

limited to $3,000. Generally, the court will not reimburse expert witness fees in such cases

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Questions?

Chris Thomas
cthomas@perkinscoie.com

Andrea Driggs
adriggs@perkinscoie.com

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SPEAKER BIOGRAPHIES
CIVIL LITIGATION PANEL VOLUNTEER TRAINING

Tuesday, June 18, 2024 – Tucson
9:00 a.m. to 3:30 p.m. 3rd Floor, Judge's Conference Room
U.S. District Court – District of Arizona
Federal Bar Associations, Phoenix & Tucson Chapters
Step Up to Justice & Community Legal Services

Jennifer G. Zipps
United States District Judge
District of Arizona

Judge Zipps earned her undergraduate degree from the University of Arizona in 1986 and her law degree from Georgetown University Law Center in 1990. After graduation, she clerked for Judge William Canby of the Ninth Circuit Court of Appeals, then practiced civil litigation and bankruptcy at Molloy, Jones and Donahue in Tucson, Arizona, from 1991 to 1995. From 1995 to 2005, she worked as an Assistant United States Attorney at the U.S. Attorney's Office in Tucson. During her employment with the U.S. Attorney's office, she held the positions of Civil Chief and Chief Assistant. She has taught Legal Research and Writing at the James E. Rogers University of Arizona College of Law. Judge Zipps was appointed to serve as a United States Magistrate for the United States District Court in Tucson, Arizona on April 4, 2005. She received her commission as a United States District Judge on October 5, 2011.

Jodie W. Brown
Supervisory Staff Attorney
United States District Court, District of Arizona

Jodie W. Brown is the Supervisory Staff Attorney for the United States District Court for the District of Arizona. She graduated from the Sandra Day O'Connor College of Law at Arizona State University in 2005. During law school, Jodie served as a legal extern to Judge Lawrence O. Anderson for the United States District Court and Judge Michael Daly Hawkins for the United States Court of Appeals for the Ninth Circuit. Following graduation, Jodie served as a law clerk to Judge Morton Sitver before joining the Staff Attorneys' office in May 2006.

Kate Wolf
Director of Operations

Kate is a dedicated Tucson native, committed to narrowing the gap in accessible legal services within her community. Following her military service, Kate graduated magna cum laude with a BA in Law from the University of Arizona. Kate's active involvement within the community and desire to go to law school is fueled by her life-long commitment to making Tucson a happier and healthier place for everyone

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Loresa Purden
Arizona Department of Corrections
Legal Monitor

Loresa Purden has worked with law enforcement for over 20 years. She is currently the Legal Access Monitor for the Arizona Department of Corrections, Rehabilitation and Reentry. She ensures that inmates have adequate and constitutional access to the courts. Using case law, such as Lewis v. Casey, 518 U.S. 343, 116 S.Ct 2174 (1996), relevant statues, and agency policy as her guides, Ms. Purden is responsible for establishing appropriate measures for inmates to proceed with habeas corpus cases and other matters, unencumbered. She also supervises the contract paralegal responsible for assisting inmates in a limited capacity, on qualified legal claims as outlined by policy.

Meghan McNamara Miller
Tretschok, McNamara & Miller P.C.

Meghan M. Miller limits her practice to representing disabled and injured clients in Social Security Disability, Supplemental Security Income, and Workers' Compensation cases. She joined the firm Tretschok, McNamara & Miller, P.C. in 2001 as a law clerk and was admitted to the bar in 2003.

William Furnish
Osborn Maledon
Attorneys at Law

William Furnish is a member of Osborn Maledon, PA, where his practice focuses on ethics and professional liability as well as data security and general commercial litigation. Mr. Furnish's pro bono practice includes representing homeless youth and asylum applicants. Prior to entering law school, Mr. Furnish was a Peace Corps volunteer in Armenia.

Tyler Bugden
Civil Litigator
Farhang and Medcoff PLLC

Tyler Bugden is a civil litigator at Farhang and Medcoff PLLC, where his practice focuses complex commercial litigation, civil rights, and appeals. Tyler recently joined the District Court's Civil Litigation Panel, taking up two cases – one of which has settled, and the other is scheduled for trial in October. Before moving to Tucson in October 2022, Tyler spent two years clerking in federal courts, first for Chief Judge Robert J. Shelby on the District of Utah, and then for Magistrate Judge Thérèse Wiley Dancks on the Northern District of New York. Between the two clerkships, Tyler represented criminal defendants on appeal in New York, where his work resulted in the reversal of three convictions. As the trailing spouse to an academic, Tyler has collected six bar licenses, and is relieved to have finally settled in Tucson, Arizona.

Patrick Mause
Law Office of Patrick Mause, PLLC

Pat Mause represents claimants in bad faith and ERISA-governed disability insurance claims. He has been volunteering with the SU2J *pro se* litigant clinic since 2017. He currently has a *pro bono* prisoner case that should be going to trial later this summer or fall (so wish him luck!)

Lisa Anne Smith
Managing Shareholder
DeConcini McDonald Yetwin & Lacy

Lisa Anne Smith is the Managing Shareholder of DeConcini McDonald Yetwin and Lacy, where she has been practicing education law, employment law and civil litigation for over twenty-eight years. Ms. Smith works with school districts, charter schools, community colleges and the University of Arizona on a wide range of issues including student discipline, Title IX issues, and special education. She also advises schools and other public, private, and non-profit entitles on employment issues and defends them in administrative and court proceedings when employees bring claims against them. Ms. Smith has three adult children and loves riding her bike around Tucson.

Shannon Giles
Awerkamp, Bonilla & Giles PLC

Shannon Giles is a partner with Awerkamp, Bonilla & Giles, PLC practicing almost exclusively in employment law and litigation. Shannon's practice is heavily focused on the representation of employees. Shannon provides representation for both private and government employees in most forums, including courts and administrative agencies and has an extensive background in litigation. She has actively litigated numerous employment cases including wrongful discharge, discrimination on all bases, retaliation, breach of contract and violation of due process.

Shannon has earned a Bachelor of Laws degree from the University of Alberta and a Master of Laws in International Trade Law from the University of Arizona. She is recognized by *The Best Lawyers in America®* for employment law and litigation and is listed in Super Lawyers for employment litigation. She is admitted to practice in the Supreme Court of the United States, the U.S. District Court for the Ninth Circuit, the U.S. District Court for Arizona, adn the Supreme Court of Arizona.

Shannon is a member of the Executive Council of the Employment and Labor Law Section of the State Bar of Arizona. Shannon is a Board Member and volunteer for Step Up to Justice and has received the award for Outstanding Pro Bono Attorney of the Month on four occasions between 2006 and 2018. She is also a member of the Federal Bar Association, the Arizona Employment Lawyers Association, the Pima County Bar Association and previously served for a number of years on the executive committee of the Southern Arizona Chapter of the Arizona Women Lawyer's Association.

Christopher D. Thomas
Perkins Coie LLP

Environmental and natural resource lawyer Christopher Thomas has advised industrial and municipal clients across the country on litigated and nonlitigated issues for more than 35 years. He focuses on complex infrastructure permitting, natural resource and hazardous substance litigation, enforcement defense, and site remediation.

Chris' regulatory work has included obtaining necessary state and federal approvals for clients in the mining, manufacturing, renewable energy, and technology sectors. He has advised clients on remediation of impacted soil and sediment, groundwater, surface water, and indoor air at dozens of sites nationwide. His federal and state litigation practice has included trial-level and appellate cases throughout the country.

Chris is an elected fellow of the American College of Environmental Lawyers, a frequent (and occasionally engaging) writer and speaker on environmental and natural resource law topics, and an enthusiastic supporter of Arizona nonprofits in the areas of disability and child welfare. Chris and has colleagues were named 2022 pro bono attorneys of the year by the U.S. District Court for the District of Arizona for their work on the *Crago v. Pitz* civil rights litigation.

Andrea Driggs
Perkins Coie LLP

Andrea Driggs represents industrial, commercial, and municipal clients on environmental litigation and regulatory matters. These focus on mining, renewables, groundwater contamination, complex infrastructure siting, and remediation of contaminated sites. Andrea is licensed to practice in Arizona, California, Nevada, and New Mexico, enabling her to assist clients with cross-jurisdictional issues.

Mining. Andrea assists clients in obtaining and litigating key permits, including water quality permits, and regularly conducts due diligence for large mining transactions. She advises clients on National Environmental Policy Act (NEPA) review for exploration and mine plans of operation, National Historic Preservation Act (NHPA) review, and other use authorizations. Andrea also provides guidance on related matters, including royalties, water rights, compliance, and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) liability.

Renewables. Andrea works with renewable developers to obtain essential permits for solar, wind, and battery storage projects, including Certificates of Environmental Compatibility from Arizona's Corporation Commission. For example, she represented clients constructing Arizona's largest standalone battery storage project, helping to stabilize the electrical grid. She frequently conducts due diligence for projects and is experienced in matters ranging from site control and lease reviews to decommissioning.

Regulatory/Litigation. Andrea advises clients on a range of issues associated with regulatory compliance and permitting, from prelitigation investigations and negotiations through administrative procedures and appeals. She regularly collaborates with clients to resolve issues arising under a range of state and federal environmental laws (Clean Water Act, NEPA, CERCLA, Federal Land Policy and Management Act of 1976 (FLPMA), NHPA, Endangered Species Act (ESA), Mining Law of 1872, etc.), in addition to regulatory compliance issues related to emerging contaminants like per- and polyfluoroalkyl substances (PFAS).

Andrea holds a master's degree in environmental epidemiology and policy from the University of London, which she completed as a Marshall scholar. She focused her master's project on air pollution. Before attending law school at UCLA, Andrea worked as an epidemiologist for Los Angeles County.

The U.S. District Court for the District of Arizona
in conjunction with
Federal Bar Association Phoenix & Tucson Chapters
and
Step Up to Justice & Community Legal Services

Free Training for Volunteer Attorneys

Certificate of Attendance

Date of Program: June 18, 2024

Location: Evo A. DeConcini U.S. Courthouse

By signing below, I certify that I attended the Free Training for Volunteer Attorneys and am entitled to claim up to 5.5 (.5 of ethics) hours of Continuing Legal Education credit.

____
Date

____
Signature

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Attorney Name and Bar Number (Please Print)

In its entirety, this program provides 5.5 CLE credit hour(s) based on a 60-minute hour. Of this total, .5 hour(s) was devoted to instruction in ethics.

KEEP THIS CERTIFICATE IN YOUR FILE