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

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Agenda

- Pretrial Detainee Fourteenth Amendment Claims
- Prisoner Eight Amendment Claims
- First Amendment Free Exercise Claims
- RLUIPA Claims
- Pretrial Detainee Excessive Force Claims
- Prisoner Excessive Force Claims
- Prisoner Failure to Protect Claims
- Questions

Pretrial Detainee
Fourteenth Amendment
Conditions of Confinement Claims

- A pretrial detainee has a right under the Due Process Clause of the Fourteenth Amendment to be free from punishment prior to an adjudication of guilt. *Bell v. Wolfish*, 441 U.S. 520, 535 (1979).

- "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)).

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.

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.

Pretrial Detainee Fourteenth Amendment Medical Care Claims

- Whether the conditions and conduct rise to the level of a constitutional violation is an objective assessment that turns on the facts and circumstances of each particular case.
- 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)).

Convicted Prisoner
Eighth Amendment
Deliberate Indifference

The Eighth Amendment prohibits the imposition of cruel and unusual punishments and "embodies broad and idealistic concepts of dignity, civilized standards, humanity and decency." *Estelle v. Gamble*, 429 U.S. 97, 102 (1976).

Convicted Prisoner Eighth Amendment Medical Care Claims

The government has an obligation to provide medical care for those whom it punishes by incarceration. *Estelle v. Gamble*, 429 U.S. 97, 103 (1976).

Convicted Prisoner Eighth Amendment Medical Care Claims

- Mere negligence or medical malpractice does not violate the Constitution. *See Broughton v. Cutter Labs.*, 622 F.2d 458, 460 (9th Cir. 1980); *see also Toguchi v. Chung*, 391 F.3d 1051, 1057 (9th Cir. 2004).

- Not even gross negligence is sufficient. Failing to perceive the risk, while nothing to commend, does not give rise to an Eighth Amendment claim.

Convicted Prisoner Eighth Amendment Medical Care Claims

- A difference of opinion as to the appropriate medical treatment does not establish deliberate indifference. *See Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989).

- Thus, when an inmate disagrees with a treatment plan, or even when two physicians disagree, there is no deliberate indifference claim.

Convicted Prisoner Eighth Amendment Medical Care Claims

When a physician prescribes certain treatment and it isn't provided, or it's vetoed by administrative staff or a non-physician, that may give rise to a valid claim. *See Colwell v. Bannister*, 763 F.3d 1060, 1069 (9th Cir. 2014) (denying summary judgment where prison officials "ignored the recommendations of treating specialists and instead relied on the opinions of non-specialist and non-treating medical officials who made decisions based on an administrative policy"); *Snow v. McDaniel*, 681 F.3d 978, 988 (9th Cir. 2012) (where the treating physician and specialist recommended surgery, a reasonable jury could conclude that it was medically unacceptable for the non-treating, non-specialist physicians to deny recommendations for surgery), *overruled in part on other grounds by Peralta*, 744 F.3d at 1083; *Jones v. Simek*, 193 F.3d 485, 490 (7th Cir. 1999) (the defendant physician's refusal to follow the advice of treating specialists could constitute deliberate indifference to serious medical needs).

Convicted Prisoner Eighth Amendment Medical Care Claims

Elements

Objective Standard:
A prisoner must show a “serious medical need”.

Subjective Standard:
Must show that the defendant’s response to that need was deliberately indifferent.

Convicted Prisoner Eighth Amendment Medical Care Claims

Objective Standard

A "'serious' medical need exists if the failure to treat a prisoner's condition could result in further significant injury or the 'unnecessary and wanton infliction of pain.'" *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), *overruled on other grounds, WMX Techs., Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc) (internal citation omitted).

Examples of a serious medical need include "[t]he existence of an injury that a reasonable doctor or patient would find important and worthy of comment or treatment; the presence of a medical condition that significantly affects an individual's daily activities; or the existence of chronic and substantial pain." *McGuckin*, 974 F.2d at 1059-60.

Convicted Prisoner Eighth Amendment Medical Care Claims

Subjective Standard

- First, the prisoner must show that the defendant was aware of the serious medical need and the risk to the prisoner's health and safety.
- Next, the prisoner must show a purposeful act or failure to respond to the prisoner's medical need. Indifference may be shown when a prison official denies, delays, or intentionally interferes with medical treatment, or by the way in which the official provides medical care. *Jett*, 439 F.3d at 1096 (citations omitted).
- Finally, the prisoner must demonstrate harm caused by the indifference. Jett, 439 F.3d at 1096. Pain can be sufficient. *See Estelle*, 429 U.S. at 103 (Eighth Amendment applies even to "less serious cases, [where] denial of medical care may result in pain and suffering which no one suggests would serve any penological purpose"); *Jett*, 439 F.3d at 1097-98 (finding sufficient evidence of harm caused by 6-month delay in surgery for fractured thumb where the prisoner's thumb healed improperly); McGuckin, 974 F.2d at 1060 (pain and anguish suffered by prisoner constituted harm sufficient to support a § 1983 action).

Convicted Prisoner Eighth Amendment Medical Care Claims

Case Examples

- Eighth Amendment claim brought by a jail inmate who was diagnosed many years ago with Multiple Sclerosis. There was no dispute that the jail physician did not provide medication for Plaintiff's MS for over six months, despite a recommendation from an outside physician and Plaintiff experiencing significant pain and debilitating symptoms that interfered with his ability to participate in his criminal trial. Summary judgment denied and defense verdict at trial.

- Plaintiff suffered from Benign Prostatic Hyperplasia and his symptoms worsened from frequent urination (8-12 times per night) to an inability to urinate without a catheter. In July 2009, the Plaintiff was referred to see an outside urologist and he filed his lawsuit when he still had not seen a urologist by October 2010. He saw a urologist shortly thereafter and surgery was recommended and received. Plaintiff was awarded damages at trial.

Convicted Prisoner Eighth Amendment Medical Care Claims

Medical *Monell* Claims

To prevail on a claim against a municipality or private entity serving a traditional public function, a plaintiff must meet the test articulated in *Monell v. Department of Social Services of City of New York*, 436 U.S. 658, 690-94 (1978). *Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1139 (9th Cir. 2012) (applying Monell to private entities acting under color of state law).

To make this showing, Plaintiff must demonstrate that (1) he was deprived of a constitutional right; (2) the entity had a policy or custom; (3) the policy or custom amounted to deliberate indifference to the plaintiff's constitutional right; and (4) the policy or custom was the moving force behind the constitutional violation. *Mabe v. San Bernardino Cnty., Dep't of Pub. Soc. Servs.*, 237 F.3d 1101, 1110-11 (9th Cir. 2001).

Convicted Prisoner Eighth Amendment Medical Care Claims

Proving a pattern or custom

Although "[l]iability for improper custom may not be predicated on isolated or sporadic incidents," Trevino v. Gates, 99 F.3d 911, 918 (9th Cir. 1996), evidence of a custom could be inferred from a pattern of behavior toward a single individual. *See Oyenik v. Corizon Health Inc.*, No. 15-16850, 2017 WL 2628901, at *2 (9th Cir. June 19, 2017) (citing *Oviatt By & Through Waugh v. Pearce*, 954 F.2d 1470, 1478 (9th Cir. 1992)).

First Amendment
Free Exercise

- "The government shall not prohibit the free exercise of religion." U.S. Const. amend I.
- Free-exercise rights are "necessarily limited by the fact of incarceration, and may be curtailed in order to achieve legitimate correctional goals or to maintain prison security." *McElyea v. Babbitt*, 833 F.2d 196, 197 (9th Cir. 1987), citing *O'Lone v. Shabazz*, 482 U.S. 342, 348 (1987)
- A prisoner's constitutional right to free exercise of religion must be balanced against the state's right to limit First Amendment freedoms to attain valid penological objectives such as rehabilitation of prisoners, deterrence of crime, and institutional security. *See O'Lone*, 482 U.S. at 348-49.

First Amendment
Free Exercise

Elements

1. Show that the religious practice at issue concerns a sincerely held belief and that the claim is rooted in religious belief.
2. Demonstrate a burden to a sincerely held belief.
3. If the regulation or conduct at issue impinges on the plaintiff's constitutional rights, it is valid if it is reasonably related to legitimate penological interests.

First Amendment
Free Exercise

- The Ninth Circuit has explained that "[i]t is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations of those creeds." *Shakur v. Schriro*, 514 F .3d 878, 884 (9th Cir. 2008) (*quoting Hernandez v. C.I.R.*, 490 U.S. 680, 699 (1989)).

- Monts — Backsliding is okay

First Amendment
Free Exercise

- The constitutional guarantee of free exercise of religion "is not limited to beliefs which are shared by all of the members of a religious sect." *Thomas v. Review Bd. of Ind. Emp't Sec. Div.*, 450 U.S. 707, 715-16 (1981).
- Like all religions, people practice their faith in different ways and interpret religious doctrine differently.
- "[R]eligious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Thomas v. Review Bd. of Ind. Emp't Sec. Div.*, 450 U.S. 707, 713-14 (1981).
- The request, however, must be rooted in religious belief and "not in 'purely secular' philosophical concerns." *Malik v. Brown*, 16 F.3d 330, 333 (9th Cir. 1994) (internal citations omitted); *Shakur*, 514 F.3d at 885.

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).

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 inmate)

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.

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

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"

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.

RLUIPA

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

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.

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.

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)

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.

Pretrial Detainee Excessive Force

- 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.*

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.

Pretrial Detainee Excessive Force

- 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.

Convicted Prisoner
Eighth Amendment
Failure to Protect

- "'[P]rison officials have a duty . . . to protect prisoners from violence at the hands of other prisoners.'" *Farmer*, 511 U.S. at 833.
- Must show that his incarceration posed a substantial risk of serious harm.
- Must show that prison officials knew of the risk to plaintiff but were indifferent and unresponsive to it.

Types of cases

Inmates seeking protective custody who have been labeled a snitch or whose crimes might predispose them to violence at the hands of other inmates

Convicted Prisoner
Eighth Amendment
Failure to Protect

In *Farmer v. Brennan*, the Supreme Court established the standard used to determine whether inmates can prevail against prison officials on an Eighth Amendment challenge to prison conditions.

Convicted Prisoner
Eighth Amendment
Failure to Protect

The plaintiff in *Farmer* was a biologically male, preoperative transsexual who wore women's clothing, had undergone estrogen therapy, and had received silicone breast implants. 511 U.S. at 829. After her conviction and incarceration for credit card fraud at the age of 18, the plaintiff claimed to have continued hormonal treatment by using drugs smuggled into prison.

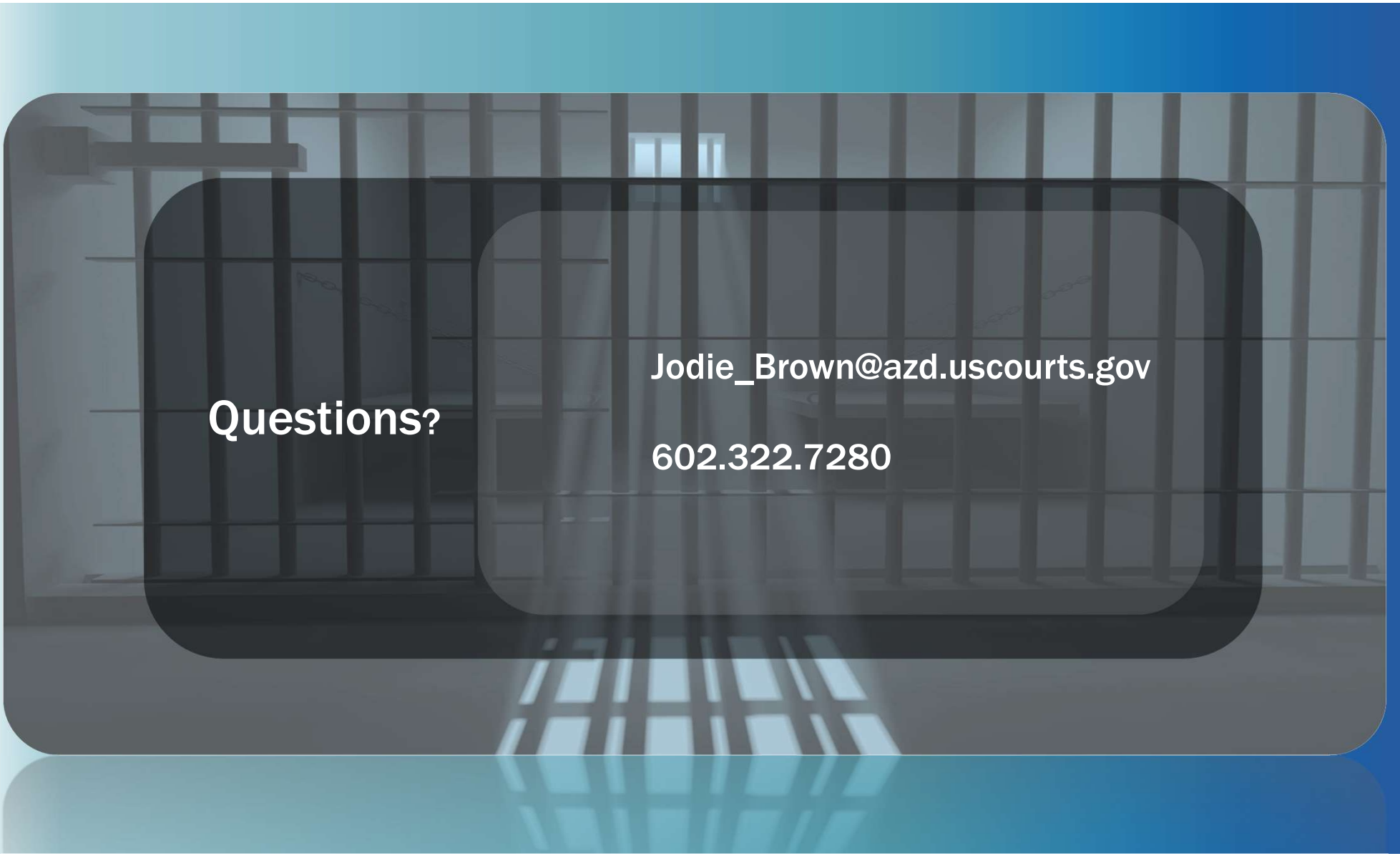
Several years into her federal sentence, the plaintiff was transferred to a higher-security facility and placed in the general male prison population. *Id.* at 830. The plaintiff alleged that, within two weeks, she was beaten and raped by another inmate. *Id.*

Convicted Prisoner Eighth Amendment Failure to Protect

The plaintiff filed a *Bivens* complaint alleging that defendant prison officials transferred her to general population despite knowledge that the penitentiary had a violent environment and history of inmate assaults, and despite knowledge that the plaintiff was a transsexual with feminine characteristics who would be particularly vulnerable to sexual attacks. *Id.* at 830-31. She alleged that this amounted to a deliberately-indifferent failure to protect her safety in violation of the Eighth Amendment. *Id.* at 831.

Convicted Prisoner
Eighth Amendment
Failure to Protect

The Supreme Court reversed and remanded. It held that the plaintiff had raised a genuine issue of material fact as to the officials' knowledge of the risk, despite not having expressed any concern prior to the attack. *Id.* at 848. The plaintiff was a non-violent transsexual who was young and effeminate and thus "likely to experience a great deal of sexual pressure" in the prison. *Id.* Additionally, the plaintiff had been segregated because of concerns for her safety on at least one previous occasion. *Id.* at 830.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