19-7508
Docket No._____

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

Jeffrey D. Leiser,
Petitioner,

-against-

Karen Kloth, et al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Jeffrey D. Leiser
Inmate No. 330229
Redgranite Correctional Institution
Post Office Box 925
Redgranite, WI 54970-0925

QUESTIONS PRESENTED

1. Does the *intentional* infliction of severe emotional distress, by triggering PTSD symptoms, that caused psychological harm, rise to a level that is cognizable under the *Eighth Amendment*?
2. Did the United States Court of Appeals for the Seventh Circuit have jurisdiction on the question of *Qualified Immunity* as a matter of law when the liability of the actor's *intent* is a qualifying element of the cause giving rise to the Constitutional Violation?
3. Is it *well-established* law that a correctional officer violates the rights of an inmate when carrying out their duties in a way that goes beyond what would otherwise be penologically justified and to *intentionally* inflict severe emotional distress causing psychological harm?
4. Does a correctional officer have a duty to respond to the *self-reported* medical or psychological symptoms of an inmate in their care as they relate to the inmate's safety?
5. Does Qualified Immunity protect non-medical staff from the *wanton* infliction of psychological pain when the prohibition is not stated in an inmate's medical treatment plan?

PARTIES

1. Jeffrey Leiser (Leiser) is an inmate in the custody of the Wisconsin Department of Corrections ("WDOC") housed at the Stanley Correctional Institution ("SCI") at the time relevant to the claims in this matter. (*Complaint,* R1[1]:1)

2. At all times relevant to this matter, Karen Kloth (Kloth) was employed by WDOC as a Correctional Sergeant at SCI, whose responsibilities included, but were not limited to, supporting unit staff, maintaining security of the institution, safety of inmates on the unit and performing general tasks within the various housing units. (*Kloth Declaration,* R1:24 at ¶¶ 2-3.)

3. At all times relevant to this matter, Paula Stoudt (Stoudt) was employed by WDOC as a Corrections Unit Supervisor (Unit Manager) at SCI in Unit 1 with the responsibilities, under the general supervision of the warden/deputy warden, for the security, treatment, and general living conditions of all inmates assigned to the units. (*Stoudt Declaration,* R1:25 at ¶¶2 -3.)

4. At the times relevant to this complaint, Reed Richardson (Richardson) was employed by WDOC as the Warden at SCI and is responsible for the overall administration and operation of SCI. (Richardson Declaration, R1:26 at ¶¶2-3.)

[1] References to the United States District Court for the Western District of Wisconsin Record identified as "R1"; references to the United States Court of Appeals for the Seventh Circuit identified as "R2."

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DECISIONS BELOW

I filed a *42 U.S.C. §1983* complaint with the U.S. District Court for the Western District of Wisconsin on November 30, 2015 and I was granted leave to proceed against the Defendants' on May 10, 2016. Defendants' filed a motion for summary judgment on May 12, 2017, which was followed by my (plaintiff's) motion for summary judgment on June 13, 2017. The court denied the Defendants' motion for summary judgment on October 19, 2017.

The Defendants' filed a notice of appeal on November 17, 2017. The court of appeals reversed and ordered summary judgment to be granted in favor to the Defendants' on October 2, 2019. I filed a motion for rehearing *en banc* that was denied on September 24, 2019.

The District Court granted summary judgment in favor of the Defendants' on October 4, 2019 as instructed by the Seventh Circuit Court of Appeals.

JURISDICTION

The Court of Appeals for the Seventh Circuit entered its judgment on August 1, 2019. (App. A.) A petition for rehearing *en banc* was denied on September 24, 2019. (App. B.) The Jurisdiction of this Court rest on 28 *U.S.C. §1254(1).*

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the *Eighth Amendment* of the United States Constitution and *42 U.S.C. §1983* Civil Action for Deprivation of Rights

Eighth Amendment:

> "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments."

42 U.S.C. §1983 Civil Action for Deprivation of Rights:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State of Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any

rights, privileges, or immunities secured by the constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable to the District of Columbia shall be considered to be a statute of the District of Columbia."

STATEMENT OF THE CASE

A. Factual Background

I was an inmate at the Stanley Correctional Institution in Stanley ("SCI"), Wisconsin beginning in 2010. (R12:29 at ¶¶1, 9.) During that period, the Wisconsin Department of Corrections ("WDOC") chose to house me in Unit 1-A—a mental health unit. (R1:29 at ¶¶7, 9.) Since at least October 2, 2014, I was diagnosed with "Adjustment Disorder with Mixed Emotional Mood" and "Antisocial Personality Disorder." (R1:27 at ¶7.) My medical records indicate a history of "suicidal ideation." (R1:27 at ¶20) (noting Leiser's plan to "hang himself by the light fixture in his cell.") In 2015, psychological services staff at Stanley assigned the new diagnosis of PTSD to me. (R1:27 at ¶15.) This diagnosis came following treatment I received primarily from two psychiatrists at SCI: Dr. Luxford and Dr. Kaeppeler. (R1:30 at ¶23, App. D; *see generally* R1:27 at ¶¶7-50.)

B. PTSD Diagnosis and Symptoms

My PTSD stems from a brutal childhood sexual assault. (R1:30 at ¶¶3-6, App. D.) At the age of eight, I was rendered unconscious by multiple persons who snuck up behind me, and then beat and raped me. (R1:30 at ¶3, App. D.) The perpetrators then left me in a park unconscious and badly injured.

Because of these events, when people stand directly behind me, I experience PTSD symptoms. (R1:30 at ¶¶5-7, 17, App. D; R1:31 at ¶6, App. E.) Those

[2] References to the United States District Court for the Western District of Wisconsin Record identified as "R1"; references to the United States Court of Appeals for the Seventh Circuit identified as "R2."

symptoms include flashbacks, which cause me to "see[] and feel[] the pain inflicted and the torture" I endured. (R1:30 at ¶17, App. D.) This, in turn, causes me to suffer from nightmares, cold sweats, to have violent thoughts of hurting others, and to bang my head against walls. (R1:30, App. D; R1:31 at ¶7, App. E.), My brother, Loren L. Leiser, and former resident of SCI's Unit 1-A, testified that my initial response to a PTSD trigger, which he describes as a "level-one situation," includes fidgeting, sweating, darting eyes, and withdrawal from the situation, "sometimes yelling" (R1:37 ¶¶5, 15, App. H.) A "level-two situation" for me includes shaky hands, twitchy leg movements, elevated respiratory rate, and pursed lipped breathing. (R1:37 at ¶15, App. H.)

I received regular treatment related to these symptoms from Dr. Kaeppeler beginning around October 2, 2014, and the record reflects fifty psychological services contacts with the Psychological Services Unit (PSU) between October 2, 2014 and November 8, 2016. (*See* R1:27 at ¶¶7-50.) Dr. Kaeppeler's "Psychological Services Clinical Contact" forms and "Mental Health Brief Notes" show that PTSD was a regular topic of my therapy sessions. (R1:27, R1:31 Exhibits, App. J, App. K.) Dr. Kaeppeler's notes also reflect that I experienced PTSD flashbacks because of my interactions with staff. (*See, e.g.,* R1:27 at ¶7.) For example, on October 2, 2014, Dr. Kaeppeler noted that I "discussed his feelings ... towards certain staff ... making references to PTSD and how staff interactions occasionally invoke flashbacks." (R1:27.)

On December 18, 2014, I explained to Dr. Kaeppeler how having people stand at my back triggered PTSD symptoms (*see* R1:27 at ¶9), and on February 5, 2015, I reported being in "a lot of pain" and that I had recently decided to cease regular communications with unit staff (R1:27 at ¶12.) Dr. Kaeppeler continued her work with me regarding the flashbacks during our March 12, 2015 meeting. (R1:27 at ¶14.) On March 30, 2015, I informed Dr. Kaeppeler that my PTSD triggered visual flashbacks, feelings of sadness, anger, fear, and nightmares. (R1:27 at ¶15.) In light of these sessions, Dr. Kaeppeler recommended assigning me a formal PTSD

diagnosis, which her supervisor, Dr. Jeffrey Frey, agreed to implement on April 13, 2015. (R1:27 at ¶¶15-16.) Over the next nine months, I continued to report problematic interactions with unit staff to Dr. Kaeppeler. (R1:27 at ¶17) ("[M]uch of [Leiser's] frustration ... stems from interactions with staff"); (R1:27 at ¶19) ("Question about staff ethics & professionalism"); (R1:27 at ¶22) ("Discussed ongoing climate issues on his Unit.")

In addition to consultation with Dr. Kaeppeler and my formal diagnosis of PTSD, I received psychological services from Dr. Luxford. (R1:29 at ¶¶8-9, 15.) On or about March of 2015, I experienced a trigger of my PTSD symptoms by being forced to stand in a single-file line to receive my medications. ((R1:29; R1:30 at ¶18, App. D; *see also* R1:27 at ¶15 (noting that on 3/30/2015 Leiser "referenced his ... belief that his anxiety would overpower him when waiting in line for the meds ... [Leiser] was encouraged to discuss further with Dr. Luxford").) After learning of this episode of PTSD, Dr. Luxford accommodated me by ordering that I receive my medications directly from nursing staff outside of the standard HSU line. (R1:29 at ¶¶8-9, 15; R1:30 at ¶18, App. D.) At summary judgment, Defendants submitted an affidavit from Dr. Frey stating that the psychological services team at SCI implements accommodations for inmates that emphasize "internal" rather than "external" changes. (R1:27 at ¶15.) Defendants therefore claim, "[it] is undisputed that, from a clinical perspective, Leiser did not need ... an accommodation" for his PTSD. (*Defendant's Opposing Brief*, R2:30 page 7.) However, Dr. Frey does not address my 2015 Health Services Unit ("HSU") accommodation from Dr. Luxford or explain how that accommodation fit within the population constraints and the "internal" or "external" change framework described.

C. Witnesses Corroborate Kloth Knew That Leiser Had PTSD And That Kloth Caused Leiser To Experience PTSD Attacks

Kloth held various positions at SCI from 2007 until 2017, including correctional officer and sergeant. (R1:17 at ¶¶9-10.) In 2017, the WDOC fired Kloth for "enforce[ing] rules on inmates in a manner that created safety risks for fellow

employees and inmates." *See* Decision and Order at ¶2, *Kloth v. Wisconsin Dep't of Corr's*, Case ID: 1.0208, Decision No. 36976 (September 12, 2017), *available at* http://werc.wi.gov/personnel_appeals/werc_2003_on/pa36976.pdf.[3]

The record lists various complaints against Kloth dating back to 2005, and notes "harass[ment]," "abuse," or "verbal and physical altercation" claims made in 2006, 2008, 2009, 2010, 2012, 2013, 2014, and 2015. (R1:17 at ¶¶14-17.)

Three inmates who directly observed Kloth's interactions with me filed affidavits with the district court. (R1:35, App. F.; R1:36, App. G; R1:37, App. H.) The first affidavit came from Terry Gorichs, my SCI Unit 1-A cellmate, who testified that "everytime" Kloth worked in Unit 1-A, Kloth would stand behind Leiser. (R1:35 at ¶¶1-3, 8, App. E.) Gorichs also testified that Kloth responded to Leiser's pleas by exclaiming: "I can stand wherever [sic] I want to!" (R1:35 at ¶3, App. F.) Gorichs also described how Leiser would "dump" his tray and retreat to his cell where he would shake, sweat, and talk to himself in response to Kloth's behavior. (R1:35 at ¶¶4-5, App. E.) Gorichs further reported that Leiser would deliberately skip meals when Kloth worked in the dayroom to avoid having Kloth trigger Leiser's PTSD. (R1:35 at ¶8, App. F.)

The second affidavit came from Loren L. Leiser ("Loren"), my brother, who observed Kloth's interactions with me prior to being transferred out of SCI in 2013. (R1:37 at ¶¶2, 13, 15-19, App. H.) Loren, also a resident of Unit 1-A and my cellmate, informed Kloth "on more th[a]n one occasion" that she should not stand

[3] Although the decision denying Kloth's appeal of her dismissal was not before the district court during Defendants' summary judgment briefing, this Court may nonetheless take judicial notice of publicly available agency records showing that: (1) Kloth was discharged from the Wisconsin Department of Corrections ("WDOC") and appealed that discharge with the Wisconsin Employment Relations Commission ("the Commission"); (2) that the Commission made a factual finding that, "[w]hen working at the Stanley correctional Institution ("SCI"), Kloth enforced rules on inmates in a manner that created safety risks for fellow employees and inmates." Decision and order at ¶2, *Kloth*, Case ID: 1.0208, Decision No. 36976. "'The most frequent use of judicial notice of ascertainable facts is in noticing the contents of court records.'" *General Elec. Capital Corp. v. Lease Resolution Corp.*, 128 F.3d 1074, 1081 (7th Cir. 1997) (citations omitted.) Notably, in its decision denying Defendants' summary judgment motion, the district court ordered Defendants to produce documents related to Kloth's termination for *in camera* review in response to a motion to compel filed by me. (R1:52 at ¶¶15-17.) The *in camera* review did not happen as a result of the decision from the Seventh Circuit Court of Appeals granting Defendant's Summary Judgment.

directly behind Leiser while Leiser was eating and that her "behavior was very, very disturbing to Jeffrey D. Leiser." (R1:37 at ¶¶5, 15-19, App. H.) When Loren asked Kloth not to trigger his brother's PTSD, Kloth "just smirked" and said, "your brother will have to deal with it." (R1:37 at ¶¶16-17, App. H.) Loren also stated that he heard his brother warn Kloth that her actions were triggering his PTSD. (R1:37 at ¶19, App. H.) Kloth responded to Leiser's requests by telling everyone in the dayroom table that she would "stand wherever she wants." (R1:37 at ¶17, App. H.)

The third affiant is Robert Sekola, an SCI inmate also housed in Unit 1-A, who "observed first-hand the harassment by Sgt. Kloth to Leiser." (R1:36 at ¶1, App. G.) Sekola reported that he observed and heard Leiser ask Kloth not to stand behind him "several times." ((R1:36 at ¶2, App. G.) Sekola also heard Kloth "laugh[]" and respond that she could "stand where ever [she] want[ed] to" in response to Leiser's requests. (R1:36 at ¶3, App. G.) Following these interactions with Kloth, Leiser would become angry, start shaking and sweating, and would leave the table. (R1:36 at ¶4, App. G.) Sekola observed that the "[n]ext time Kloth worked[,] she continued to stand behind Leiser." (R1:36 at ¶7, App. G.)

Accordingly, the record shows that from at least 2013 through 2016, Kloth repeatedly stood behind me while supervising me in the Unit 1-A dayroom. (R1:30; R1:35; R1:36; R1:37.) These actions triggered my PTSD. (R1:1 at ¶21; R1:31 at ¶¶5-8, App. E.) The record also shows that both Loren and I informed Kloth, on multiple occasions, that I suffered from PTSD and that my condition was triggered by people standing behind me. (R1:11 at ¶8; R1:37 at ¶¶15-19, App. H.) According to several witnesses, Kloth responded to requests that she not stand behind me by saying, "I can stand where ever I want to" and "learn to deal with it." (R1:30 at ¶¶2, 9, App. D; *see also* R1:35 at ¶3, App. F; R1:36 at ¶3, App. G; R1:37 at ¶¶16-17, App. H.)

D. Harassment by Sgt. Kloth reported to Stoudt and Richardson

Stoudt and Richardson were Kloth's supervisors. Specifically, at all relevant times, Stoudt was unit manager at SCI, where she supervised the "security,

treatment, and general living conditions" of the inmates. (R1:25 at ¶¶2-3.) Richardson was the warden at SCI, making him responsible for the overall operation of the institution. (R1:26 at ¶¶2-3.)

I reported Kloth's conduct directly to both Stoudt and Richardson. (R1:30 at ¶¶30-34, App. D.) I informed Stoudt that Kloth was harassing me and triggering my PTSD on at least two occasions, once in Stoudt's office and once in the prison social worker's office. (R1:31 at ¶56, App. E.) With respect to Richardson, I submitted a letter to the warden on October 4, 2014 stating, "I suffer from PTSD and I have asked Sgt. Kloth not to stand behind me, because it triggers my PTSD. Kloth's [*sic*] response was I can stand anywhere I want too. Kloth has done this several times." (R1:31 at ¶16, App. E.); *see also* R1:30 at ¶32, App. D.) I also discussed Kloth's conduct with Richardson "on a number of occa[s]ions" while Richardson conducted rounds in the institution's courtyard. (R1:31 at ¶32, App. E.; *see also* R1:33.)

E. Litigation History

I filed a *42 U.S.C. §1983* claim November 30, 2015. (R1:1.) Following the mandatory screening pursuant to *28 U.S.C. §1915A,* the district court allowed me to proceed on an *Eighth Amendment* claim against Kloth because my allegations "allow[ed] the inference ...that [Kloth] may have been deliberately attempting to trigger [Leiser's] PTSD." (R1:8 at ¶7.) In addition, the court allowed me to proceed on my failure to protect claim against Stoudt and Richardson for their failure to address Kloth's behavior. (R1:8 at ¶¶8-9.)

Defendants moved for summary judgment, arguing that they were entitled to qualified immunity. (R1:21; R1:22.) They contended both that I had not adduced evidence sufficient to establish an *Eighth Amendment* violation and that it was not clearly established that "federal law prohibited Kloth from standing or moving behind Leiser while supervising inmates during mealtimes, despite no directive from psychological services staff or treatment plan forbidding it." (R1:22 at ¶¶5-13.) The district court denied Defendants' motion. (R1:52.) Construing the facts in light

most favorable to me, the district court held that there were genuine issues of fact regarding Kloth's knowledge of my PTSD and whether Kloth's conduct amounted to the "unnecessary and wanton infliction of pain" prohibited by the *Eighth Amendment.* (R1:52 at ¶¶12-13) (Citations omitted.) The district court further held that because my "factual submissions" allowed me to survive Kloth's summary judgment motion, my claims against Stoudt and Richardson likewise should be tried. (R1:52 at ¶¶13-14.) Defendants appealed. (R1:61.)

The Seventh Circuit Court of Appeals reversed granting judgment to defendants on qualified immunity grounds. (R2:30.)

REASONS FOR GRANTING THE WRIT

This case involves the *wanton* infliction of pain through the intentional triggering of PTSD symptoms causing me to have flashbacks and re-experience the violent, life-threatening, sexual assault I suffered as a child.

While a prisoner at the Stanley Correctional Institution ("SCI") in Wisconsin I was victimized repeatedly by a corrections officer, Karen Kloth, who would use the guise of penologically justified security monitoring to intentionally stand directly behind me, repeatedly, in a manner that would trigger my PTSD symptoms causing me to have flashbacks to the extremely violent sexual assault I suffered as a child. This was not just the occasional routine movement for security purposes, as the correctional officer would go out of her way to stand directly behind me, repeatedly, during her shift; especially after being informed of my PTSD and the severe emotional distress it was causing me. This became torture I would endure day-after-day. Whenever officer Kloth worked the unit, I knew I would relive the trauma, pain, humiliation, and fear of death every time she would repeatedly move to stand directly behind me until I would have to leave being overcome by the situation.

If the ruling of the United States Court of Appeals for the Seventh Circuit is allowed to stand as it is then prisoners across the United States will be powerless to stop the cruel and wanton infliction of psychological pain every time a correctional

officer goes out of their way to trigger PTSD symptoms by abusing what would otherwise be considered a penologically justified security concern. The safety of all mentally ill prisoners will be affected by this ruling.

A. What is the definition of PTSD

Post-Traumatic Stress Disorder:

> "Intense psychological distress; marked by horrifying memories, recurring fears, and feelings of helplessness that develop after a psychologically traumatic event, such as the experience of combat, criminal assault, life-threatening accidents, natural disasters, or rape. The symptoms of PTSD may include re-experiencing the traumatic event (a phenomenon called "flash-back"); avoiding stimuli associated with the trauma; memory disturbances; psychological or social withdrawal; or increased aggressiveness, irritability, insomnia, startle responses, and vigilance. The symptoms may last for years after the event, but often can be managed with supportive psychotherapy or medications such as antidepressants."
> (Taber, Clarence Wilber, 1870-1968, *Taber's Cyclopedia Medical Dictionary,* 20th Edition. p. 1742.)

B. Errors in the Seventh Circuit Analysis

The Seventh Circuit analyses of the facts of my case were put in the following framework:

> "As we see the case, the issue is whether it was clearly established that Kloth was constitutionally required to accommodate Leiser's specific and unique mental health need based solely on his self-reporting and demands of other inmates, absent instructions from the medical staff."
> (R2:30, Page 10, ¶2, App. A)

> "At the time of Kloth's conduct here, it was not clearly established that she was constitutionally required to avoid standing behind Leiser as a result of his self-reporting of a pending (albeit eventual) diagnosis. Such conduct, if intended to provoke a negative response from Leiser, may have been unprofessional and unjustified, but the law did not make clear that it amounted to cruel and unusual punishment. Leiser's claim here implies that prison staff have a constitutional obligation to modify the way they do their jobs based solely on an inmate's assertion that their actions elicit extreme psychological responses. We must recognize the risk that such a rule of law, which would apply without

> orders from prison medical staff, could create a real danger of inmates manipulating correctional officers for purposes unrelated to their mental health.
>
> (R2:30, Page 13-14, ¶2, App. A)

> "Kloth is entitled to summary judgment because Leiser did not establish that he had a clearly established constitutional right to an accommodation of a self-reported mental diagnosis without confirmation from medical staff or existence of a treatment plan."
>
> (R2:30, Page 15, ¶2, App. A)

The Court's analysis is flawed in several respects. It is unreasonable and untenable to expect inmates to obtain a medical treatment plan that provides for correctional officers to *"not intentionally harass and torture"* a mentally ill inmate by intentionally and physically standing directly behind them repeatedly to the point of inflecting severe emotional distress causing psychological harm as a result of their mental illness.

The Court's analysis as to what I was claiming and requesting is in error. I was requesting that officer Kloth be prevented from harassing and torturing me intentionally by repeatedly standing directly behind me in a way that was without any penological justification causing me severe emotional distress leading to psychological harm and not some form of accommodation under a treatment plan.

The Court's analysis failed to look at the facts of this case in favor of the non-moving party and failed to address the factual dispute of Kloth's intent in harassing me. It is Kloth's intent, which is subjective and can be shown through inference from the affidavits and declarations filed in support of petitioner.

This case involves the *"deliberate indifference"* to my *"safety"* by the *wanton* infliction of psychological pain and suffering that is *"without any penological justification."*

The Court of Appeals for the Seventh Circuit has contradicted their own holdings that are often cited in other circuits. The court adopted the argument of the defendants' in their brief and disregarded the entire argument of the plaintiff

and the facts in this case. Given the totality of the circumstances surrounding the facts put forward by the plaintiff it is clear that this case is one of psychological harassment under the guise of penologically justified security concerns which have been held to violate the *Eighth Amendment.*

C. Importance of the Questions Presented

The questions presented will set the framework for how courts are to analyze condition of confinement cases involving psychological harm caused by the deliberate indifference of prison officials involving mentally ill prisoners.

At present, it appears that the courts are divided in how to determine what standard is appropriate. Conditions of confinement cases are difficult to assess with the evolving changes in society as to what is considered inhuman treatment.

My case was analyzed under the guise of deliberate indifference to medical treatment; however, the correct analysis should assess the conditions of confinement as they relate to my safety from harm and the level and severity of the cruel and unusual punishment I suffered at the hands of correctional officer Kloth and the subjective element of her intent, which is the factual dispute in this case.

The steps involved in the analysis of the facts in my case provide a clear path to a reasonable decision using existing case law.

The *Eighth Amendment* prohibits cruel and unusual punishment. The Amendment embodies broad and idealistic concepts of dignity, civilized standards, humanity, and decency. Among other things, the *Eighth Amendment* does not permit the unnecessary infliction of pain on a prisoner, either intentionally or because of the *deliberate indifference* of the responsible prison official. Any such infliction of pain is deemed *"wanton."* The *wanton* infliction of pain violates the *Eighth Amendment. Estelle v. Gambele,* 429 U.S. 97, 102, 50 L.Ed.2d 251, 97 S.Ct. 285 (1976.)

The *Eighth Amendment* prohibits the unnecessary and *wanton* infliction of pain, thus forbidding punishment that is *"so totally without penological justification that*

results in the gratuitous infliction of suffering." Gregg v. Georgia, 428 U.S. 153, 173, 183, 49 L.Ed.2d 859, 96 S.Ct. 2909 (1976.) Such gratuitous infliction of pain always violates contemporary standards of decency and need not produce serious injury in order to violate the *Eighth Amendment. See Hudson v. McMillian,* 503 U.S. 1, 9, 117 L.Ed.2d 156, 112 S.Ct. 995 (1992.) Moreover, physical injury need not result for the punishment to state a cause of action, for the wanton infliction of psychological pain is also prohibited. *See Id.* at 16.

Prisoners have long had a *clearly established right* to be free from *intentionally* inflicted psychological torment and humiliation unrelated to penological interests. *Hudson v. Palmer,* 468 U.S. 517, 530 (1984); *King v. McCarty,* 781 F.3d 889, 892 (7th Cir. 2015); *Beal v. Foster,* 803 F.3d 356, 359 (7th Cir. 2015); *Mays v. Springborn,* 575 F.3d 643, 649 (7th Cir. 2009). However, "not every psychological discomfort a prisoner endures amounts to a constitutional violation." *Calhoun v. DeTella,* 319 F.3d 936, 939 (7th Cir. 2003).

The *Eighth Amendment* forbids the state to punish people for a physical condition, as distinct from acts. Further, the infliction of psychological pain can violate the *Eighth Amendment Perkins v. Kansas Dept't of Corrections,* 165 F.3d 803, 810 (10th Cir. 1999) (*citing Anderson v. Romero,* 72 F.3d 518, 523, 526 (7th Cir. 1995.).)

The *Eighth Amendment* also protects psychologically vulnerable inmates against psychological pain deliberately inflicted by correctional officers. *See Lisle v. Welborn,* 933 F.3d 705, 718 (7th Cir. 2019.)

When intent is one of the substantive elements of a constitutional wrong,[5] the plaintiff is entitled to an adequate opportunity to establish that the defendant acted with the proscribed intent. Whether the defendant knew of and defied the governing legal standards — that is, whether the defendant exhibited "good faith" — is irrelevant under *Harlow v. Fitzgerald,* 457 U.S. 800, 73 L.Ed.2d 396, 102 S.Ct. 2727 (1982), and amplified in *Anderson v. Creighton,* 483 U.S. 635, 97 L.Ed.2d 523, 107 S.Ct. 3034 (1987) *See also Rakovich v. Wade,* 850 F.2d 1180, 1210 (7th Cir. 1988)

(en Banc); *see also Hansen v. Bennett,* 948 F.2d 397, 399 n.4 (7th Cir. 1991); *Elliot v. Thomas,* 937 F.2d 338, 344 (7th Cir. 1991.)

A prison official's "deliberate indifference" to a substantial risk of harm to an inmate violates the *Eight Amendment. See Helling v. Mckenny,* 509 U.S. 25, 125 L.Ed.2d 22, 113 S.Ct. 2475 (1993); *Wilson v. Seiter,* 501 U.S. 294, 115 L.Ed.2d 271, 111 S.Ct. 2321 (1991); *Estelle,* at 97.

A prison official's duty under the *Eighth Amendment* is to ensure "reasonable safety." *Helling,* supra, at 33; *see also Washington v. Harper,* 494 U.S. 210, 225, 108 L.Ed.2d 178, 110 S.Ct. 1028.

A prison official cannot be found liable under the *Eighth Amendment* for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of harm exists, and they must also draw the inference. *Dyer v. Fyall,* 322 F.Supp.3d 725, 847. *See Farmer v. Brennan,* 511 U.S. 825, 834, 128 L.Ed.2d 811, 114 S.Ct. 1970 (1994.)

A prison official's knowledge of prison conditions learned from an inmate's communication can ... require the officer to exercise his or her authority and to take the needed action to investigate, and if necessary, to rectify the offending condition. *Vance v. Peters,* 97 F.3d 987, 983 (7th Cir. 1996.)

To state an *Eighth Amendment* claim, I must show that correctional officer Kloth repeatedly stood directly behind me in a harassing manner intended to inflict severe emotional distress causing psychological pain. *See Peckham v. Wis. Dep't of Corr.,* 141 F.3d 694, 697 (7th Cir. 1998); *Johnson v. Phelan,* 69 F.3d 144, 147 (7th Cir. 1995.)

CONCLUSION

The Seventh Circuit Court of Appeals framed the question as argued by the Defendants' and not as stated in my claim. The issue is not about whether there

was clearly established law concerning treatment accommodations for a medical condition. This case is about the *"wanton"* infliction of psychological pain that is without any penological justification. Contrary to the Seventh Circuit Court of Appeals statement, the intentional infliction of psychological torment is well established under current and past case law as cruel and unusual punishment. The Courts decision is in direct conflict with established case law. For all the forgoing reasons I respectfully request the court grant this petition.

Dated this 23 day of December, 2019.

Respectfully submitted,

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APPENDIX

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