

No.

IN THE
Supreme Court of the United States

MARIANNE BAPTISTE, INDIVIDUALLY AND AS
LEGAL GUARDIAN AND NEXT FRIEND TO
GREGORY WILLIAMS, JR. AND GREGORY WILLIAMS, SR.,
Petitioners,

v.

MASSACHUSETTS EXECUTIVE OFFICE OF
HEALTH AND HUMAN SERVICES, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE MASSACHUSETTS SUPREME JUDICIAL COURT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

1. Whether a juvenile committed to the custody of the State enjoys the protection of the Fourteenth Amendment's Due Process clause when evaluating the juvenile's right to adequate medical treatment in an action under 42 U.S.C. § 1983 or whether the juvenile is relegated to the lesser protection of the Eighth Amendment?

PARTIES TO THE PROCEEDINGS

In addition to the parties listed in the caption, the following entities and individuals are parties to the action:

As Respondents: Marylou Sudders, as Secretary of the Massachusetts Executive Office of Health and Human Services; Department of Youth Services; Peter Forbes, personally and as Commissioner of the Department of Youth Services; John Hughes, personally and as Regional Director of Department of Youth Services; Certain Unknown Individual Employees of Department of Youth Services are named in the complaint, but, without further discovery, Petitioners were unable to identify these individuals by name.

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Petitioners, Marianne Baptiste, Individually and as Legal Guardian and Next Friend to Gregory Williams, Jr. and Gregory Williams, Sr., (hereinafter “Petitioners”) respectfully request that a *Writ of Certiorari* issue to review the decision entered by the Massachusetts Supreme Judicial Court, dated September 30, 2020, denying further appellate review of the decision and judgment of the Massachusetts Appeals Court dated February 28, 2020, thereby leaving the Appeals Court’s judgment in place. (App. 34a-35a).

OPINIONS BELOW

The decision of the Massachusetts Supreme Judicial Court (App. 34a-35a) denying discretionary review, dated September 30, 2020, is reported at 485 Mass. 1107, 157 N.E.3d 566. The Court denied a motion for reconsideration without opinion on November 23, 2020. (App. 36a). The decision of the Massachusetts Appeals Court (App. 16a-33a) dated February 28, 2020 is reported at 97 Mass. App. Ct. 110, 143 N.E. 3d 1052. The decision of the Superior Court dated October 4, 2017 is reproduced at App. 1a-15a.

BASIS OF JURISDICTION

The Massachusetts Supreme Judicial Court’s decision denying further appellate review was entered on September 30, 2020. A motion for reconsideration was denied without opinion on November 23, 2020. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a). This petition is being filed within the time period allowed by the Orders of this Court, dated March 19, 2020 and November 13, 2020.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eighth Amendment to the Constitution of the United States reads that, “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. CONST. amend. VIII.

The Due Process Clause of the Fourteenth Amendment to the Constitution of the United States reads in relevant part, “nor shall any State deprive any person of life, liberty, or property without due process of law . . .” U.S. CONST. amend. XIV.

42 U.S.C. § 1983 prohibits any person who acts under color of state law from depriving an individual of “any rights, privileges or immunities secured by the Constitution and laws” of the United States.

Mass. Gen. Laws c. 119, § 53 provides, in relevant part, that the purpose of the juvenile justice system “shall be liberally construed so that the care, custody and discipline of the children . . . shall be treated, not as criminals, but as children in need of aid, encouragement and guidance. Proceedings against children under said sections shall not be deemed criminal proceedings.”

The relevant provisions of 42 U.S.C. § 1983 is reproduced beginning at App. 37a, and Mass. Gen. Laws c. 119, § 53 is reproduced beginning at App. 38a.

STATEMENT OF THE CASE

I. Factual Background

This case concerns the failure to provide a medical assessment or treatment to Gregory Williams, Jr. (“Williams”), a juvenile who was adjudged a Youthful Offender pursuant to Mass. Gen. Laws c. 119, § 58(c), and committed to state custody and care. In April 2013, Williams was in Department of Youth Services (“DYS”)¹ custody at the Casa Isla Short-Term Treatment and Revocation Center (“Casa Isla”), a placement center for juveniles operated by the Volunteers of America, Inc. (“VOAMA”) through a support contract vendor agreement with DYS and the Massachusetts Executive Office of Health and Human Services (“EOHHS”).

Shortly after noon on April 19, 2013, Douglas Chin (“Chin”), a resident of another DYS program for juveniles operated at the same location as the Casa Isla program, struck Williams with a closed fist on the left side of the throat and jaw causing Williams to collapse to the ground. Immediately after the

¹ DYS is a state agency that operates the Commonwealth’s juvenile justice system. DYS serves youth committed as juvenile delinquents or youthful offenders, and detained youth awaiting judicial action. The DYS juvenile correctional system was traditionally under the exclusive control of the Commonwealth of Massachusetts. At the time of the assault on Williams, Defendant Peter Forbes was the Commissioner of the DYS, and Defendant John Hughes was the Regional Director for DYS. DYS is a separate agency from the Executive Office of Health and Human Services (“EOHHS”) which is responsible for providing access to medical and behavioral health care, medical services and support, and financial benefits to those with low incomes. At the time of the assault on Williams, Defendant Marylou Sudders was the Secretary of the EOHHS.

assault, Williams reported that he had a headache to Casa Isla staff. The staff members essentially ignored Williams' complaints. The Casa Isla staff provided no medical assessment or any medical treatment following the attack.

After lunch, Williams returned to his unit, and as the afternoon progressed, Williams continued to complain to Casa Isla staff concerning his ongoing and persistent headache. Despite having two nurses on staff and a contract for hospital services with Boston Medical Center ("BMC"), Williams was not provided with any medical assessment or any medical treatment. Following three separate complaints about a headache by Williams, one staffer asked a non-medical professional at the facility to give Williams an over-the-counter dosage of ibuprofen² and another medication.³ Prior to providing the ibuprofen and the other medication, Williams was not medically assessed to determine if he had suffered a concussion, or other brain injury, and no medical professional had made a determination that the administration of the

² Since 2005, it has been documented in peer reviewed medical literature that non-steroidal anti-inflammatory drugs, such as ibuprofen, increase the risk of stroke and intracranial hemorrhage after minor head injuries.

³ Prior to the commencement of this litigation, Petitioners received and reviewed some records from Casa Isla pursuant to a Freedom of Information Act request. The provision of ibuprofen to Williams was documented in a log book stating: "Res. G. Williams was hurting was given ____ and Ibuprofen by Sup. J.A. @ 2:15p.m.". The identification of this medication was redacted from the records prior to Petitioners having the opportunity to review the records. Because this matter is on appeal from the grant of a motion to dismiss, Petitioners did not have access to any discovery tools to determine the redacted, unidentified substance that was provided to Williams.

medication was necessary or appropriate for Williams. Even after taking the medications, Williams continued to complain about his ongoing headache.

Approximately five hours after the attack, Williams started complaining that he could not feel his legs. Williams again requested to see a staff member after having received no meaningful response to his complaints over the previous five hours. At approximately 5:00p.m., roughly five hours after the assault by Chin against Williams, a Casa Isla staff member noted that Williams was experiencing facial asymmetry, right sided weakness, and had trouble speaking. For the first time following the assault on Williams, a staff member reached out for medical assistance by contacting Boston Emergency Medical Services (“EMS”). By the time EMS arrived at Casa Isla, Williams was exhibiting even more acute symptoms of a stroke, including an inability to understand or say rational words.

Williams was transported by ambulance to BMC approximately 8.5 miles away from Casa Isla. EMS arrived with Williams at BMC at 5:58p.m., one hour after the onset of his more severe symptoms, where he was met and treated by BMC’s emergency acute stroke team. According to medical records, Williams had already experienced loss of brain function. Over the course of the evening, Williams’ condition worsened and he experienced acute respiratory failure and increased edema, or accumulation of watery fluid, in the brain. In short, Williams suffered life-altering injuries including a middle cerebral artery (MCA) stroke, several grand mal seizures, and cerebral edema. Williams

eventually regained consciousness on or about May 12, 2013, almost one month after the attack.

Two months prior to the injuries suffered by Williams, DYS performed a program review of Casa Isla and determined that Casa Isla's director and assistant director were not in compliance with required first-aid trainings and certifications. This same non-compliance was also documented by DYS audits in 2010 and 2012. Casa Isla's log of trainings and certifications did not indicate that "OTC Medication Training" or that equivalent training was provided to staff. Notwithstanding the repeated failures of Casa Isla to be compliant with state regulations, and the State personnel's full awareness of the deficiencies, neither DYS nor EOHHS took any disciplinary action against Casa Isla. With respect to the administration of medicine, Casa Isla and its staff had no written plans and procedures for the controlled administration of medications. Similarly, DYS and EOHHS had no rules, regulations or protocols to deal with the assessment and treatment of head or neck injuries. The failure of Casa Isla staff to recognize that Williams had suffered a serious injury and take immediate action was the foreseeable result of DYS and EOHHS's failure to provide proper supervision and training to the program and ultimately caused Williams to suffer permanent, life changing harm.⁴

⁴ Approximately sixteen months after the injuries suffered by Williams, eight Casa Isla staff members were accused of physical abuse of committed male residents, resulting in multiple criminal charges. After the charges were brought, DYS shut down the Casa Isla program and the vendor contract between EOHHS and VOAMA was terminated in September 2014.

II. Procedural Background and Rule 14.1(g)(i) Statement.

As a result of the injuries suffered by Williams, Petitioners brought this civil rights action under 42 U.S.C. § 1983 against the EOHHS, including its Secretary Marylou Sudders, and DYS, including its Commissioner Peter Forbes and Regional Director John Hughes (collectively the “Commonwealth Defendants”) for their failure to ensure that Williams was provided with adequate medical care while in their custody in violation of the Eighth and Fourteenth Amendments to the Constitution. Petitioners commenced this suit in the Massachusetts Superior Court, the Commonwealth’s principal trial court. In their complaint, Petitioners alleged that DYS committed youth had a constitutional right to adequate medical care under both the Eighth and Fourteenth Amendment. The Commonwealth Defendants brought a motion to dismiss the complaint for the failure to state a claim pursuant to Mass. R. Civ. P. 12(b)(6) which was allowed by the Superior Court.⁵ In its decision granting the Commonwealth Defendants’ motion to dismiss, the Superior Court did not rely upon, or even address, the underlying constitutional standard as a basis for dismissal. (App. 1a-15a).

Petitioners then appealed the Superior Court’s decision allowing the Commonwealth Defendants’ motion to dismiss to the Massachusetts Appeals Court, the intermediate appellate court for the Commonwealth. For the first time in these

⁵ Mass. R. Civ. P. 12(b)(6) is based directly on and is analogous to its Federal counterpart, Fed. R. Civ. P. 12(b)(6). See *Rollins Env'l. Servs., Inc. v. Superior Court*, 368 Mass. 174, 179-180, 330 N.E.2d 814, 818 (1975).

proceedings, during oral argument, the Appeals Court panel raised the issue, *sua sponte*, of the constitutional standard to be applied to Petitioners' claim under 42 U.S.C. § 1983. In response, Counsel for Petitioners said that the standard under the Due Process Clause of the Fourteenth Amendment should be applied in this case. In its decision, the Appeals Court instead applied the stringent Eighth Amendment deliberate indifference standard to the care of Williams, as a juvenile detainee in state custody. (App. 24a). ("[T]he Eighth Amendment does not protect against merely inadequate medical care. Rather, it protects against deliberate indifference to a serious medical need, constituting an 'unnecessary and wanton infliction of pain.'"). The Appeals Court did not discuss the Fourteenth Amendment or any due process rights of Williams in its decision. (App. 16a-33a). The Appeals Court affirmed the Superior Court's decision dismissing Petitioners' § 1983 claim.

Petitioners sought further appellate review to the Massachusetts Supreme Judicial Court (the "SJC"), arguing that the appropriate constitutional standard to apply to Petitioners' civil rights claim was the Fourteenth Amendment Due Process standard. Since the issue of the proper constitutional standard was raised by the Appeals Court panel for the first time and decided by the Appeals Court, the request for further review was Petitioners' first opportunity to argue this issue on appeal. Nevertheless, the SJC denied Petitioners' Application for Further Appellate Review in part, because the constitutional issue, "was neither raised

in nor decided by the Appeals Court.”⁶ (App. 34a-35a). Petitioners’ motion for reconsideration, raising

⁶ The Commonwealth Defendants argued to the SJC in their response to Petitioners’ Petition for Further Appellate Review that Petitioners waived their right to advocate that the application of the Fourteenth Amendment Due Process standard should apply in civil rights medical treatment cases. However, as set forth above, there was no waiver by the Petitioners. *See Moss v. Old Colony Trust Co.*, 246 Mass. 139, 150, 140 N.E. 803, 807 (1923) (“Waiver is the intentional relinquishment of a known right.”). *See also Johnson v. Zerbst*, 304 U.S. 458, 464 (1938). Petitioners alleged in their Complaint that Williams had a right under the Eighth Amendment and Fourteenth Amendment to adequate medical care. In its decision on the Commonwealth Defendants’ motion to dismiss, the Superior Court did not address this issue (App. 1a-15a), and subsequently, the Appeals Court raised this question for the first time, *sua sponte*, at the appellate hearing. After the Appeals Court applied the more stringent Eighth Amendment standard, Petitioners took the appropriate next step and raised the issue in their Petition for Further Appellate Review before the SJC. The SJC, in denying Petitioners’ application for further appellate review, suggested that Petitioners had waived the issue, stating that the “issue was neither raised in nor decided by the Appeals Court.” (App. 34a-35a). However, Massachusetts courts have routinely reversed judgments where judges raise issues *sua sponte* without providing the parties an opportunity to address the question. *See, e.g., City of Quincy v. Massachusetts Water Resources Authy.*, 421 Mass. 463, 471, 658 N.E.2d 145, 149 (1995); *Monaco v. Lombard Bros., Inc.*, 24 Mass. App. Ct. 941, 941-42, 509 N.E.2d 28, 29 (1987) (reversing judgment where judge granted motion on ground not raised by either party, without giving parties opportunity address question); *Gamache v. Mayer of N. Adams*, 17 Mass. App. Ct. 291, 295, 458 N.E.2d 334, 337 (1983) (“[W]e assume that the judge had the power, *sua sponte*, to enter summary judgment . . . , provided that the parties had . . . a right to be heard on the matter.”) Because Petitioners first opportunity to be heard on this issue was in their Petition for Further Appellate Review before the SJC,

the patent unfairness of treating an issue as waived when the Appeals Court raised the issue, *sua sponte*, at oral argument, was denied without further explanation. (App. 36a).

This Court has jurisdiction to review the judgment on Petitioners' writ of certiorari. The argument was properly preserved. Petitioners have alleged and consistently argued that the 42 U.S.C. § 1983 claim was based, at least in part, on the Due Process clause of the Fourteenth Amendment. *See Adams v. Robertson*, 520 U.S. 83, 88-89 & n.3 (1997) (to obtain review of a state court decision, the petitioner must "specifically set up or clai[m]" a federal right, in a proper manner, in accordance with the applicable state procedural law . . .").⁷ The issue

Petitioners did not waive their right on the issue presented in the writ to be decided by this Court.

⁷ Petitioners were appealing the allowance of a motion to dismiss their complaint for failure to state a claim, essentially at the commencement of the action. Massachusetts largely follows the federal rules and has followed this Court's jurisprudence with respect to pleading requirements. *See and compare Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007) and *Iannacchino v. Ford Motor Company*, 451 Mass. 623, 888 N.E.2d 879 (2008). Under Massachusetts practice, "[a] complaint is sufficient on a motion to dismiss if it appears that the plaintiff may be entitled to any form of relief, even though . . . the theory which he seems to rely may not be appropriate." *Lichoulas v. City of Lowell*, 78 Mass. App. Ct. 271, 275, 937 N.E.2d 65, 69 (2010); *see also Gallant v. City of Worcester*, 383 Mass. 707, 709-10, 421 N.E.2d 1196, 1198 (1981) (holding that any legal theory the plaintiff does state is not required to be correct) (internal citations omitted). Therefore, even if the legal theory which Petitioners originally alleged in their Complaint is in error, this is not dispositive on a motion to dismiss and the fact that Petitioners mentioned the Eighth Amendment as well as the Fourteenth Amendment as the source of the claim is not

of the proper constitutional standard to be applied to juveniles in state custody was presented and considered by the Supreme Judicial Court. *See Cohen v. Cowles Media Co.*, 501 U.S. 663, 667 (1991) (“It is irrelevant to this Court’s jurisdiction whether a party raised below and argued a federal-law issue that the state supreme court *actually considered and denied.*”) (emphasis supplied). Accordingly, the federal question to be reviewed was properly presented in the state court proceedings below, and this Court has jurisdiction to review the judgment on a writ of certiorari.

REASONS WHY THE WRIT SHOULD BE GRANTED

This Court has yet to decide which constitutional provision should be applied to juveniles held in state custody in medical treatment cases. However, this Court has decided that the Fourteenth Amendment’s Due Process clause should apply to individuals held by the state in similar circumstances. *See, e.g., Ingraham v. Wright*, 430 U.S. 651 (1977) (students disciplined at school); *Bell v. Wolfish*, 441 U.S. 520 (1979) (adult pretrial detainees); *Youngberg v. Romeo*, 457 U.S. 307 (1982) (involuntarily committed to a state institution); *DeShaney v. Winnebago Cty. DSS*, 489 U.S. 189 (1989) (foster child held in the care of the Department of Social Services). The decision of the Appeals Court to apply the Eighth Amendment’s deliberate indifference standard represents a dramatic departure from these cases.

material and does not prevent this Court from considering the issue.

Moreover, the juvenile justice system in Massachusetts specifically excludes juveniles from being treated akin to prisoners in the criminal justice system. *See Mass. Gen. Laws c. 119, § 53* (the purpose of the juvenile justice system “shall be liberally construed so that the care, custody and discipline of the children . . . *shall be treated, not as criminals, but as children in need of aid, encouragement and guidance. Proceedings against children under said sections shall not be deemed criminal proceedings* (emphasis added)). This Court has long recognized that children are psychologically and developmentally different from adults, so much so that in the context of sentencing, “children are constitutionally different.” *Miller v. Alabama*, 567 U.S. 460, 471 (2012). The application of the Eighth Amendment standard not only impacts the rights of Williams in this litigation, but impacts the deprivation of the protection of “life, liberty and property” of over 54,000 juveniles in residential placements across the country.⁸ Accordingly, this Court should grant this writ to provide clear guidance to federal and state courts that the Due Process Clause is the proper constitutional standard to apply to a juvenile’s rights to adequate medical treatment while in state custody.

⁸ In 2017, 43,580 juveniles were placed in residential placements, such as Casa Isla where Williams was placed in April 2013. *See* “Easy Access to Census of Juveniles in Residential Placement: 1997-2017,” National Center for Juvenile Justice, Office of Juvenile Justice and Delinquency Protection, a part of the Department of Justice, available at https://www.ojjdp.gov/ojstatbb/ezacjrp/asp/Age_Sex.asp.

A. The application of the Eighth Amendment standard is contrary to the logic of this Court’s decision in *Youngberg v. Romeo*.

Juvenile detainees in state custody are in a similar position to the involuntarily committed as considered in this Court’s decision in *Youngberg v. Romeo*, 457 U.S. 307 (1982). In *Youngberg*, this Court held that there was an affirmative duty upon the state to ensure the “reasonable safety” of involuntarily committed mental patients. *Id.* at 324 (the state is obligated to provide an individual in its care with “adequate . . . medical care . . . and such [medical] training as an appropriate professional would consider reasonable to ensure his safety and to facilitate his ability to function free from bodily restraints.”). *Youngberg* unequivocally established that liability attaches when the professionals’ decision is “a substantial departure from accepted professional judgment, practice, or standards as to demonstrate that the person[s] responsible actually did not base the decision on such a judgment.” *Id.*; *City of Revere v. Massachusetts General Hospital*, 463 U.S. 239, 244 (1983) (holding that the Due Process Clause requires the responsible government or governmental agency to provide medical care to suspects in police custody who have been injured while being apprehended by the police); *see also Hopper v. Callahan*, 408 Mass. 621, 624-25, 562 N.E.2d 822, 825-26 (1990) (concluding that an involuntarily committed psychiatric patient had a clearly established due process right to essential medical care).

This Court has also explicitly concluded that people who are not serving sentences of conviction are entitled to objectively reasonable care. *See*

Kingsley v. Hendrickson, 576 U.S. 389, 395-97 (2015). Consistent with this Court’s holding in *Youngberg* and the Court’s application of due process rights to involuntarily committed psychiatric patients, a juvenile in state custody should similarly be entitled to adequate medical treatment. *Youngberg*, 457 U.S. at 322-23 (concluding that the proper standard for determining whether the state has adequately protected the rights of an individual involuntarily committed to a state institution for the mentally retarded is whether professional judgment in fact was exercised.). The *Youngberg* analysis has been expanded by several courts of appeals to also conclude that foster children have a substantive due process right to be free from harm at the hands of state-regulated foster parents. *See, e.g., Lintz v. Skipski*, 25 F.3d 304, 305 (6th Cir. 1994); *Norfleet By and Through Norfleet v. Arkansas Dep’t of Human Servs.*, 989 F.2d 289, 293 (8th Cir. 1993); *Yvonne L. By and Through Lewis v. New Mexico Dep’t of Human Servs.*, 959 F.2d 883, 891-93 (10th Cir. 1992); *K.H. through Murphy v. Morgan*, 914 F.2d 846, 848-49 (7th Cir. 1990) (“Once the state assumes custody of a person, it owes him a rudimentary duty of safekeeping ...”). These same duties of safekeeping should be expanded to the detention of juveniles in state-run facilities. Following Williams adjudication as a youthful offender, he instantly became part of the state-run system upon which he relied upon for care and attention. Because of the non-criminal nature of the juvenile system, he should not be subjected to the same standard as incarcerated individuals, but rather should be treated akin to an involuntarily committed individual, *see Youngberg supra*, or a child in foster care. *See DeShaney, supra*. Juveniles,

like the involuntarily committed or those in foster care, cannot care for their own needs, must rely on the state for their needs and do not have independent access to medical care. Accordingly, Petitioners respectfully submit that based on this Court’s decision in *Youngberg* and its progeny, that this Court should grant this writ to settle the open issue that the “duty to provide certain services and care” extends to juveniles held in state custody. *Youngberg*, 457 U.S. at 317.

B. The Massachusetts Appeals Court application of the Eighth Amendment “deliberate indifference” standard to juvenile detainees is in direct conflict with decisions of other Circuit Courts.

The decision of the Massachusetts Appeals Court, and its application of the Eighth Amendment to a medical treatment claim directly conflicts with a recent decision of the Fourth Circuit, and earlier decisions of the First Circuit, Ninth Circuit and Tenth Circuit concerning the constitutional standard to apply to juveniles in state custody. People who are in custody for reasons other than a criminal conviction may not be punished at all, and are therefore entitled to a greater degree of protection under Due Process principles. Because a conflict exists amongst the circuit courts and the underlying decisions in this case, this Court should grant this writ to take the opportunity to hold directly that the right to medical treatment for juveniles in state custody derives from the protections of the Due Process clause.

Recently, the Fourth Circuit considered the issue of the proper standard for determining whether the state adequately protected the rights of

immigrant children detained in juvenile detention centers. *Doe by and through Lopez v. Shenandoah Valley Juvenile Center Commission*, 985 F.3d 327 (4th Cir. 2021). The Fourth Circuit held that this Court’s standard enunciated in *Youngberg v. Romeo* applied to children detained in state secure juvenile detention facilities, and that the proper standard was whether the decision of professionals responsible for care represented a substantial departure of professional judgment, not whether professionals acted with deliberate indifference. *Id.* at 339. The Fourth Circuit reasoned that because juvenile detention centers provide facility housing to unaccompanied children, and even though it is not a hospital or therapeutic setting, the “nature of the facility is not dispositive” and “is secondary to the reason a person is confined in it.” *Id.* at 341. Finally, the Fourth Circuit explicitly rejected the application of the deliberate indifference standard to the claims of immigrant children in these circumstances. *Id.* at 346.

Earlier, in *Santana v. Collazo*, 714 F.2d 1172 (1st Cir. 1983), the First Circuit examined eight juvenile residents claim for medical treatment under 42 U.S.C. § 1983. *Id.* Acknowledging that juveniles have due process rights, the First Circuit stated that,

“Even more important than Eighth Amendment concerns for our purposes, juveniles like plaintiffs, who have not been convicted of crimes, have a due process interest in freedom from unnecessary bodily restraint which entitles them to closer scrutiny of their conditions of confinement than that

accorded convicted criminals.” *Id.* at 1181.

The First Circuit also commented that, “courts have reasoned that because the state’s authority over delinquent juveniles derives from its parents patriae interest in [the juveniles] welfare . . . due process requires that juveniles confined under that authority be given treatment consistent with the beneficent purpose of their confinement.” *Id.* at 1176 (citations omitted). The Ninth Circuit has similarly held, that because the Oregon juvenile justice system is noncriminal and nonpenal (like Massachusetts), that the Fourteenth Amendment applies to conditions of confinement at a juvenile detention center. *See Gary H. v. Hegstrom*, 831 F.2d 1430, 1432 (9th Cir. 1987) (concluding that the Eighth Amendment applies to those who have been convicted of crimes, while the Due Process standard applies to detainees who have not been convicted of crimes); *see also A.J. ex rel. L.B. v. Kierst*, 56 F.3d 849, 854 (8th Cir. 1995) (applying Due Process clause to juvenile pretrial detainees); *Milonas v. Williams*, 691 F.2d 931, 942 & n.10 (10th Cir. 1982) (applying Due Process clause to private school for juvenile boys with behavioral and mental health problems).

The decision of the Massachusetts Appeals Court, and subsequently, the Supreme Judicial Court, is in direct conflict with the decisions cited above from the First, Fourth, Ninth and Tenth Circuits. In its decision affirming dismissal of Williams’ suit, the Appeals Court solely focused its analysis under the stringent Eighth Amendment standards, rather than the more generous Fourteenth Amendment objective standard. The Appeals Court required that Williams show that the Casa Isla employees subjectively had a “deliberate

indifference to [Williams's] health or safety." (App. 24a). However, as this Court instructed in *DeShaney*, an affirmative duty to protect may arise out of certain "special relationships" between the state and particular individuals. *See DeShaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 U.S. 189, 197-98 (1989). "[W]hen the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being." *Id.* at 199-200. This includes the responsibility to provide for a person's "basic human needs – e.g., food, clothing, shelter, medical care, and reasonable safety." *Id.* at 200.

In this case, the Appeals Court should have applied the *Youngberg* standard of whether the Casa Isla employees failed to exercise professional judgment and whether this failure arose because of the State Defendants' failure to provide for proper training and supervision of the Casa Isla program. Given that this case is before the Court after allowance of a motion to dismiss filed at the commencement of the action, Petitioners' claims are worthy of judicial consideration. Since there is a direct conflict between the Appeals Court decision applying the stringent Eighth Amendment standard and decisions in the First Circuit, Fourth Circuit, Ninth Circuit and Tenth Circuit, the writ of certiorari should be granted.

CONCLUSION

Although this Court has yet to declare that juveniles in state custody are entitled to the protections of the Fourteenth Amendment Due Process clause, the force and logic of this Court's decision in *Youngberg* supports this position. Other

Circuit Court decisions have so held. The decision of the Massachusetts Appeals Court in this case, left undisturbed by the Supreme Judicial Court, is not in conformity with the majority view. This Court should grant the writ to eliminate the conflict and decide for the benefit of all juveniles that, while in state custody, they are entitled to the benefits and protections of the Due Process Clause, including adequate and appropriate medical care. For these reasons, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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