

20-5101

No. USCA11 NO.

ORIGINAL

19-11017

Supreme Court, U.S.
FILED

JUN 01 2020

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

TIMOTHY VISAGE — PETITIONER
(Your Name)

vs.

R.E. WOODALL et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Eleventh Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Timothy Visage

(Your Name)

Apalachee Corr. Inst.

35 Apalachee Dr. E/4

(Address)

SENADES, Florida 32460

(City, State, Zip Code)

NA

(Phone Number)

RECEIVED

JUL 15 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

A IV QUESTION PRESENTED

"Whether the language in DeShaney v. Winnebago Co. Dept of Social Serv., 489 U.S. 189, 197 (1989)

"while the state may have been aware of the dangers that Joshua faced in the free world, it played no part in their creation, nor did it do anything to render him any more vulnerable to them". Imposes upon a government's affirmative action through its policymaking officials, possessing final authority establishes a custom or practice that's conduct is arbitrary and oppressive in a custodial setting though not authorized by law, that is so well settled as to virtually constitute law subjects or causes to be subjected a person to be injured in course in effect of that arbitrary custom or practice supports a viable mechanism for establishing a constitutional claim under an affirmatively created state danger pursuant to 42 U.S.C. § 1983?"

IV IMPORTANCE OF QUESTION
PRESENTED
B,

The instant case presents this Court with unique and factual background to settle disputes among the circuits, and decisions in other similarly situated appellate court decisions in a critical respect to state-created dangers and its establishing standards from an evolving requirements to establish a viable mechanism for establishing a constitutional claim pursuant to 42 U.S.C. § 1983.

IV

Question presented

Whether the due process clause of the fourteenth Amendment imposed upon the State an Affirmative duty of care and protection to convicted persons in State custody from execution of Arbitrary and Abusive government policy or custom through Acquiescence to a course of conduct by its policy maker though not authorized by law or state or federal regulations are so well settled as to virtually constitute law which was cause-in-fact of convicted persons serious injury.

IV

QUESTION PRESENTED

Whether actual knowledge is required to an affirmatively created danger by government state actor in acquiescence to arbitrary, oppressive custom or practice that is attributed to a policy maker, that causes a institutionalized person serious injury that's cause in effect it is the policy not authorized by law but so well settled as to constitute law.

IV LIST OF PARTIES

TIMOTHY C. VISAGE Plaintiff -
Appellant

R. E. WOODALL,

C. FISHER,

C. O. I. M. JONES,

E. CREWS,

Defendants -

Appellees

VII

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- M. PHOTOS OF ALTERED WINDOW CAUSED
INJURY
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claim excerpt plaintiff's response
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S. Florida Statute 110.605.(2)(3)
FA. Admin Code 602-31.001, 602-31.002,
602-31.003 Position Descriptions
Authority Florida Statute 110.1055
CH. 33-208.002 F.A.C.

T. Defendant E. Crews Position
Description Job Description

IX

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☒ reported at 3:16-cv-1077-J-34 PDB; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

X

JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was JAN 02 2020.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including JUNE 1 2020 (date) on MARCH 19 2020 (date) in Application No. A.

COVID-19 ORDER 1157 589 US

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

S. Justice
JUNE 1 2020

☐ For cases from state courts:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

XI

Constitutional And Statutory Provisions Involved

This case involves Amendment Fourteen to the United States Constitution, which provides:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Amendment is enforced by Title 42 § 1983, United State Code:

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

This case involves provisions to the Fourteenth Amendment to the United States Constitution provides:

Substantive Due Process guarantee protects against government power arbitrarily and oppressively exercised.

Procedural Due Process guarantee protects against "arbitrary takings" or in the exercise of power without any reasonable justification in service of a legitimate governmental objective.

This case involves provisions from Graham v. Connor 490 US 386 The "more-specific-provision" rule

This case involves Deliberate indifference in due process setting requiring actual deliberation and in the custodial situation, "When the state takes a person into custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assure some responsibility for his safety and general well being."

This case involves the Eighth Amendment to the United States Constitution which provides:

Prohibition on Cruel and Unusual Punishment, and provisions on Substantive Deliberate indifference Standard.

This case involves Florida Administrative Code ("F.A.C.")

60L-31.003 (1)(2), 60L-31.001 (6)(A)(B), 33-208.002 (1), (6), (19)(22), 60L-36

Florida Statutes § 110.605 (c), (2), (3)

944.09, 110, 105 (5), 20.315

FLORIDA DEPT. OF CORRECTION Procedure AND Regulations

108.014 TITLE ENVIRONMENTAL HEALTH AND SAFETY PROGRAM

FEDERAL REGULATIONS

29 Code Federal Regulation Part 1910

XI) STATEMENT OF CASE AND FACTS

This is a §1983 Cause of Action filed Plaintiff Timothy Visage on August 24, 2016, naming four defendants R.E. WOODALL, C. Fisher, COT M. Jones, And E. Crews. ("Defendants")

Plaintiff has asserted through out the entire litigation proceedings from, PLRA 1976(E) Exhaustion of Administrative Remedies, §1983 complaint, Interrogatories, Admissions, Request for documents, Motion to Compel, Motion for Summary Judgment, opposition to defendants Summary Judgment, Motion to Alter or Amend, Plaintiffs Initial Brief to the 11th circuit

That it is the Unconstitutional policy of establishing a policy of acquiescence to that policy.

Declaration of Emery Crews Appendix I

Declaration of Ronnie Woodall Appendix J

Mitchell v. McNeil Case 09 CA 1161 Appendix L.

As with the rest of the Appendix's clearly show along with Defendant Crews position description clearly shows the FIA Statutes, FIA Admin codes Dept of Corr procedures And Federal Regulations that both Defendant Crews And Woodall's Duty to plaintiff

Crews position description at 1.
"This position reports directly to Assistant Warden.

The evidence present a triable issue to overcome summary judgment.

The Supreme Court has been conspicuously reluctant to recognize state laws as creating rights protected by the Federal Constitution. See Hewitt v. Helms, 459 US 460, 467-70 (1983)

The Court has recognized such rights only where the state has used mandatory language to specify procedures which must be used or findings which must be made before benefits are taken away or burdens are placed on individual prisoners. See id

(Where state-created careful procedural structure to regulate prison administrative segregation, using mandatory language in statute and regulations require specific findings before prisoner could be placed in segregation, federal due process required hearing)

The Supreme Court has long recognized that a prisoner may have a state-created liberty interest in certain prison confinement conditions, {2015 U.S. App. Lexis 5} entitling him to procedural due process protections See, e.g. Meachum v. Fano, 427 US 215 (1976); Wolff v. McDonnell, 418 US 539 (1974)

But the Court has been clear that if no State statute, regulation, or policy creates such a liberty interest. A prisoner cannot "invoke the procedural protections of the Due Process Clause." Meschum, 427 US at 224.

In Sandin v. Conner, 515 US 472 (1995)

The Supreme Court added a second requirement for establishing a liberty interest warranting constitutionally adequate process. Sandin holds that,

while a state statute or policy may "create liberty interest" giving rise to Due Process protection, this is so only if the denial of such an interest "imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life" id at 484.

In this instant case, the District Court states, Visage's due process claim is some what confusing and inconsistently articulated. In his complaint, Visage asserts that Defendants violated his "due process rights under the Fourteenth Amendment ... by subjecting [him] to conditions that [posed] atypical and significant hardship," see complaint at 14

In Plaintiff's Brief, Visage states that the Defendants "violated [his] 14th Amendment right to procedural due process by not notifying [him] of the dangers in utilizing the Altered Sliding windows." See Plaintiff's Brief A+7,

Evidence on record will show that plaintiff had a protected interest in utilizing an ordinary window to obtain fresh air and subjecting him to the Altered window [posed] atypical and significant hardship.

The statutes, codes, regulations and procedures see Appendix P-S

'create liberty interest to Visage giving rise to Due Process protection.

In Avoiding the restrictive condition of the window, and the denial of

Defendants adherence to its own statutes, regulations and procedures

and Federal regulations violated the expectation of Visage to the ordinary use of the sliding window.

In this instant case the recorded evidence shows,

Defendant Crew establishes a policy maker and policy in his Declaration pursuant to 28.U.S.C. § 1746 at 5 (Doc 43-15 Pg 10 1075) see Appendix I

Visage establishes a policy maker with Robert Mitchell's Circuit Court Complaint filed March 19, 2009 see Mitchell vs McNeil, 09-CA-1161 (March 19 2009) see Appendix L

Mitchell asserts in his facts, He was injured on March 26, 2008, that approx. 1 year or before his injury Warden Steven Singer ordered that the safety components be removed from the open bay doors windows,

which puts the policy or custom's established date approx. March, 2007.

Mitchell further states,

Thereafter, On June 4, 2008 Asst. Warden Willis sent plaintiff a Dept. of Corrections memo which states: "use a makeshift shim, such as a book to provide safety by jamming inot window when cleaning them."

XIII

REASON FOR GRANTING

A.

THE PETITION

A. The decision of the Eleventh Circuit Court of Appeals is in direct conflict with the holding by the United States Supreme Court, and calls for an exercise of this Court's supervisory power and its subject is imperative to public importance in:

County of Sacramento, v. Lewis, 523

US 833 (1998)

This Court held (1) The 'more-specific-provision rule of Graham v. Connor, 490 US 386, 395

Graham simply requires that if a constitutional claim is covered by a specific constitutional provision, the claim must be analyzed under the standard appropriate to that specific provision, not under the due process.

"A particular sort of government behavior, that Amendment, not the more generalized notion of substantive due process, must be the guide for analyzing these claims,

1661 Just last Term, We explained that Graham "does not hold that All Constitutional Claims relating to physically abusive government conduct must Arise under either the Fourth or Eighth Amendment.

This Courts holding in Lewis, mandated an Application of the precise constitutional violation with which the defendants were charged, Because the Court of Appeals reviewed the District Courts ruling in granting defendants Summary Judgment under an erroneous view of the governing procedural and substantive law, its judgment must be vacated and remanded to that Court for reconsideration of that issue under the proper Fourteenth Amendment Standards. Baker v. McCollum, 443 us 137 (1979) ("The first inquiry in any §1983 suit "is" to isolate the precise constitutional violation with which the defendant is charged".) see id at 140

In Lewis, the respondents face two principle objections to their 1523 us 8411 claim The First, is that its subject is necessarily governed by a more definite provision of the Constitution (to the exclusion of any possible Application of the Substantive due < + pg 1055 = process)

From: Timothy Visage DC# 098216 Quarters Y1105up Job PM Date 12 Mar 16

Request/ Informal Grievance (cont. page 2 of 2)

bunk till Sgt R.B. Sellers yelled at me and give me a direct order to move/sleep back on the top bunk because Y1105up is my assigned housing location.

Like I said before, it hurts and puts me in a lot of pain in/on my hand, And because both Sgt Griffiths and Sgt R.B. Sellers refuse to honor the ~~DC~~ DC4-701D Health Slip/Pass for low bunk.

My Request for relief and/or remedy is to be moved/placed/put into a low bunk to make it easier on my injury / broken finger/hand.

Timothy Visage 098216 3/10/16

PLAINTIFFS
EX. 1

~~FOR~~ . ~~OFF~~

PLAINTIFFS EXHIBIT 11

The Second, that in any event the allegations are insufficient to state a substantive due process violation through executive abuse of power.

The Appellant Court in this instant case has the exact objections with Visage's due process claim and Eighth Amendment standard dealing with Visage's claims of arbitrary behavior by defendant's crews and Woodall in their policy making and supervisory capacities.

The Appellant Court found, First we are unpersuaded by Visage's argument that the District Court erred in granting summary judgment on his claims of deliberate indifference to unsafe prison conditions in violation of the Eighth Amendment.

"When a constitutional provision provides an explicit textual source of constitutional protection, the claim must be analyzed under that explicit provision and not as a substantive due process claim."

County of Sacramento v. Lewis, 523 US 833, 842 (1998)

OK guys,

This Grievance is important
dealing with Defendant Grievs.

I filed the griev. w/ Asst warden
His office sent it to Griffiths (Housing)
You can see her confused response
As of date of my moving books
I WAS moved on the 14 day of injury.
by my dorm Sgt. (Sellers) And they just
switched me & my roommate which
could of been done from day 1.

In this griev I say yellow
copy I showed him PINK copy
he had yellow copy.

Thus, Visages claim is properly Analyzed under the Eighth Amendment and not Substantive due process, Id nor, moreover, do we Analyze his claim under the Fourteenth Amendment because he is a convicted criminal and not a pretrial detainee, JACOBY v. Baldwin Cty, 835 F.3d 1338, 1344 (11th Cir. 2016)

("while the [conditions] under which a convicted inmate are held are scrutinized under the Eighth Amendment prohibition on Cruel And unusual punishment, the [conditions] under which a pretrial detainee are held are reviewed under the Due Process Clause of the Fourteenth Amendment, At (Courts denial pg 3) (emphasis added).

This decision is in direct conflict with the Supreme Courts decision in Lewis,

1523 US 841 | 5

I As in Any state Action under § 1983, the first step is to identify the exact contours of the underlying right said to have been violated. See Graham v. Connor, 490 US 386 394 (1989)

(9) Protective Management Records.

(a) A printed copy of the electronic Report of Protective Management, shall be kept for each inmate placed in protective management.

(b) An Inspection of Special Housing Record, Form DC6-228 shall be maintained in each protective management unit. Each staff person shall sign the record when entering and leaving the protective management unit. Prior to leaving the protective management unit, each staff member will indicate any specific problems including any inmate who requires medical attention. No other unit activities shall be recorded on Form DC6-228.

(c) A Record of Protective Management, Form DC6-235 shall be maintained for each inmate as long as the inmate is in protective management. Once the inmate is released from protective management, Form DC6-235 will be forwarded to classification to be filed in the institutional inmate record. This form shall be used to record any action, remarks or disposition made on a specific inmate. Notations shall be made on Form DC6-235 by medical staff, the ICT, the SCO or other staff dealing directly with the inmate. If items are denied or removed from the inmate, the senior correctional officer on duty must approve the action. The central office ADA coordinator will be contacted within 24 hours if any item is removed that would be considered an auxiliary aid or device that ensures a disabled inmate of equal opportunity as a non-disabled inmate. The items denied or removed will be documented on the Form DC6-235 and the chief of security will make the final decision in regard to the appropriateness of that action no later than the next working day following this action. The housing supervisor will document any unusual occurrences or changes in the inmates behavior and any action taken. Changes in housing location or any other special action will also be documented.

(d) A Housing Unit Log, Form DC6-209, shall be maintained in each protective management unit. Officers shall record all daily unit activities on Form DC6-209, to include any special problems or discrepancies noted. The completed Form DC6-209 shall be forwarded daily to the chief of security for review. Form DC6-209 is incorporated by reference in Rule 33-601.800, F.A.C.

Plaintiffs EXHIBIT 17(c)

1523 us 842

In Lewis, respondents face two principle objections to their 1523US841 claim. The first, is that its subject is necessarily governed by a more definite provision of the Constitution (to the exclusion of any possible application of substantive due < + pr. loss = process.);

The second, that in any event the allegations are insufficient to state a substantive due process violation through executive abuse of power. Respondents can meet the Firstst objection, but not the second.

In Graham the threshold issue raised in several Amicus briefs, whether facts involving a police chase pined at apprehending suspects can ever support a due process claim. The argument runs that in chasing the

motorcycle, Smith was attempting to make a seizure within the meaning of the Fourth Amendment, and, perhaps, even that he succeeded when Lewis was stopped by the fatal collision.

(7) Contact by Staff.

(a) The following staff members shall be required to officially inspect and tour the protective management unit. All visits by staff shall be documented on Form DC6-228, Inspection of Special Housing Record. Form DC6-228 is incorporated by reference in Rule 33-601.800, F.A.C. The staff member shall also document his or her visit on the Record of Protective Management, Form DC6-235, if, during the visit by staff, any discussion of significance, action or behavior of the inmate occurs or any information is obtained which may have an effect on the status of protective management. These visits shall be conducted at a minimum of:

1. At least every 30 minutes by a correctional officer, but on an irregular schedule.
2. Daily by the housing supervisor.
3. Daily by the shift supervisor on duty for all shifts except in case of riot or other institutional emergency.
4. Daily by a clinical health care person.
5. Weekly by the Chief of Security (when on duty at the facility) except in case of riot or other institutional emergency.
6. Weekly by the chaplain. More frequent visits shall be made upon request of the inmate if the chaplain's schedule permits.
7. Weekly by the warden and assistant wardens.
8. At least once a week by a classification officer.
9. At least once a month by a member of the Institutional Classification Team to ensure that the inmates welfare is properly provided for, and to determine the time and method of release or any program changes.

(b) Any inmate who has demonstrated behavior that is or could be harmful to him or herself shall be designated as a special risk inmate. If the inmate demonstrates bizarre, mentally disordered, or self-destructive behavior, the medical department shall be immediately contacted to determine if special watch or suicide watch procedures shall be initiated. Suicidal inmates shall be removed to a designated area where a correctional officer or health care staff provides observation. Visual checks shall be made in accordance with medical protocols or at least every 30 minutes and shall be documented on Form DC4-650, Observation Checklist, until the inmate is no longer considered a special risk inmate. All actions taken by staff with regard to special risk inmates shall be documented on Form DC6-229, Daily Record of Special Housing, and followed with an Incident Report, Form DC6-210. Form DC6-229 is incorporated by reference in Rule 33-601.800, F.A.C and Form DC4-650 is incorporated by reference in Rule 33-602.220, F.A.C.

Plaintiffs Exhibit 17 (B)

Hence, any liability must turn on an application of the reasonableness standard [523 US 843] governing searches, not the due process standard of liability for constitutionally arbitrary executive action. See Graham v. Connor, *supra* at 395.

(All claims that law enforcement officers have used excessive force - deadly or not - in the course of an arrest, investigatory stop, or other "seizure" of a free citizen should be analyzed under the Fourth Amendment and its "reasonableness" standard, rather than under a "substantive" due process" approach (emphasis in original); Albright v. Oliver, 510 US at 276 (Ginsburg J. concurring in judgment); *id.* at 288, n.2. (Souter, J. concurring in judgment).)

[66] The Argument is un sound
Just last Term, we explained that Graham "does not hold that all constitutional claims relating to physically abusive government conduct must arise under ~~the~~ either the Fourth or Eighth Amendments, rather

33-602.221 Protective Management.

(1) Definitions.

(a) Administrative Confinement refers to the temporary removal of an inmate from the general population in order to provide for security and safety until such time as a more permanent inmate management decision can be concluded such as disciplinary confinement, close management, protective management or transfer.

(b) Bureau of Braille and Talking Book Library - refers to the agency that provides books on tape, Braille books, and other auxiliary aids for individuals who, due to a disability are unable to read books in print.

(c) Central Office ADA Coordinator - refers to the employee responsible for implementing the provisions of Title I and Title II of the Americans with Disabilities Act and Section 504 of the 1973 Rehabilitation Act within the Department.

(d) Classification refers to the system of processes which divides inmates into groups for a variety of purposes including facility placement, custody assessment, work and program assessment and placement, housing assessment and placement, periodic reviews, and community, transition, and special needs assessments.

(e) Classification - external, refers to processes related to decisions regarding the custody and facility placement of an inmate outside the secure perimeter of a facility.

(f) Classification - internal, refers to processes related to decisions regarding housing, work, and program placement of an inmate within the secure perimeter of a facility.

(g) Housing Supervisor refers to the Correctional Officer Sergeant or above in charge of the protective management unit for a particular shift.

(h) Clinical Health Care Personnel - where used herein, refers to a Physician, Clinical Associate, Nurse, Correctional Medical Technician Certified (CMTTC), Psychologist, psychology intern, psychology resident, or Psychologist Specialist.

(i) Institutional Classification Team (ICT) refers to the team consisting of the warden or assistant warden, classification supervisor, chief of security, and other members as necessary when appointed by the warden or designated by rule. The ICT is responsible for making work, program, housing and inmate status decisions at a facility and for making other classification recommendations to the State Classification Office (SCO). At private facilities, the Department of Corrections representative is to be considered a fourth member of the ICT when reviewing all job/program assignment, transfer, and custody recommendations/decisions. If a majority decision by the ICT is not possible, the decision of the Department of Corrections representative is final.

(j) Protective Management where used herein refers to a special management status for the protection of inmates from other inmates in an environment as representative of that of the general population as is safely possible.

PLAINTIFFS EXHIBIT 17 (A)

Graham simply requires that if a constitutional claim is covered by a specific constitutional provision, such as the Fourth or Eighth Amendment, the claim must be analyzed under the standard appropriate to that specific provision, not under the rubric of substantive due process."

United States v. ~~Car~~ Laine, 520 US 259 (1997),

Substantive due process analysis is therefore in this case only if respondent's claim is "covered" by the Fourth ~~Amendment~~ Amendment. It is not.

1523 US 8441

Graham's more-specific-provision rule is therefore no bar to respondent's suit,

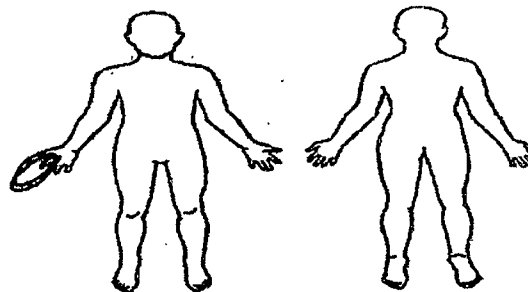
In this instant case,

The Eleventh Circuit's only mention of Vige's Fourteenth Amendment claim is to state.

1 When a constitutional provision "provides an explicit textual source of

**DEPARTMENT OF CORRECTIONS
OFFICE OF HEALTH SERVICES
SKIN PROTOCOL**

Color of lesion/s: red
 Average size of individual lesion: entire finger cm. diameter
 Shape of lesion → Symmetrical: ☐ No ☒ Yes Border: ☒ Regular ☐ Irregular
 Location/distribution of lesion/s: finger (printer)
 Drainage: ☒ No ☐ Yes → Color: pink Amount: small Odor: none



FINDINGS REQUIRING IMMEDIATE CLINICIAN NOTIFICATION

- ☐ Temperature greater than 100.4°
- ☐ Chills, headache, malaise
- ☐ Weeping skin
- ☐ Purulent drainage
- ☒ Tender, red, swollen area or red streak/s that extend proximally from lesion or area
- ☐ Refer to clinician within 1 week for any nevi (mole) that has changed in size, shape, color, become symptomatic (itching or bleeding), or has developed noted borders. This is especially true for nevi with irregular borders or variations of red, blue, and blue-black
- ☐ Severe itching
- ☐ Itching not relieved with previously prescribed topical antihistamine.

PLAN

- ☒ Notify clinician as above: Dr. George Time: 1045
- ☐ Ask clinician if he/she wants culture obtained before skin is cleansed
- ☐ Elevate affected extremity if extremity is inflamed.
- ☐ Medicate for pain: ☐ Ibuprofen 200mg 2-3 tablets by mouth for pain now OR ☐ Tylenol 325mg 2 tablets by mouth for pain now
- ☒ Contact dermatitis: If patient has possible contact dermatitis, have patient immediately wash hands thoroughly with soap and water.
 - ☐ If reaction is localized, have patient wash affected area with soap and tepid water to remove contaminant if they haven't done so already.
 - ☐ If reaction is generalized have pt. take tepid shower ASAP to remove contaminant and change into clean clothes.
 - ☐ If pt. has been to bed since itching began, linens need to be changed.
 - ☐ Once all the contaminant has been removed the lesions/blisters should be covered with dry bandages to protect the skin from infection.
- ☒ Refer patient to clinician to determine if Rx is needed, including topical or oral steroids, topical or oral antihistamine, or if other Rx medication is needed.
- ☐ Pass: _____
- ☐ Other: _____

EDUCATION

Check all that apply:

- ☒ Orders per clinician: See DCX-7146
- ☐ Inmate instructed to take / use prescribed meds as directed. Rx: _____
- ☒ Inmate instructed to take either Ibuprofen 200mg one or two tablets every 4-6 hours as needed for pain or Acetaminophen 325mg 2 tablets by mouth every 4 hours as need for pain
- ☒ Inmate instructed not to share bed lines, clothing, etc. with other inmates
- ☒ Skin maceration: Inmate instructed to dry skin surfaces thoroughly after bathing with gentle patting.
- ☒ Contact dermatitis (including poison ivy, poison oak, and poison sumac): Inmate instructed that their rash -- even the oozing lesion of poison ivy -- is NOT contagious. Inmate instructed that they can spread the contact dermatitis by touching a contaminated area of their body and then touching a non-contaminated body area.
- ☐ Inmate instructed to only RUB (gently) itching skin, and not to scratch it in order to prevent secondary infections.
- ☐ Inmate instructed to watch for signs of skin infection -- redness, swelling, purulent drainage, pain
- ☐ Inmate instructed to return to Medical in _____ day/s for recheck.
- ☒ Inmate instructed to return if symptoms worsen, don't improve, or if any new symptoms develop.
- ☐ Other: _____

INMATE NAME: Visage Timothy
 DC#: 898216 RACE: W SEX: M
 DATE OF BIRTH: 1-12-76
 INSTITUTION: C12

R. Smith, LPN
 Columbia CI/Corizon
 Signature and Stamp/Print
 Time: _____

Constitutional Protection the Claim must be analyzed under that explicit provision and not as a substantive due process claim, County of Sacramento v. Lewis, 523 US 833, 842 (1998) (quotations omitted)

The Appellant Court has departed from the very provision in Graham's Application of the more-specific-rule and in this Court's Application in ~~Crawford~~ Lewis.

Visage's Fourteenth Amendment claim states, Visage sues Woodall, Crews and Jones for deliberate indifference, asserting they knew the window alteration posed an unreasonable risk of harm and failed to fix the window or warn of its danger. See Complaint at 15-16; Def. MSJ EX. A at 15.

His claims against Woodall, Crews and Jones are premised on the positions Visage alleges they held at CCF on the day of the incident. See Complaint 4-6

Visage contends that the Defendants established "a constitutionally inadequate state procedure for depriving [inmates] of a protected interest." See Plaintiff Response at 74

DEPARTMENT OF CORRECTIONS
OFFICE OF HEALTH SERVICES
ATHLETE'S FOOT/FUNGAL INFECTIONS PROTOCOL

SUBJECTIVE: Date: 5/4/16 Time: 1:50 Age: 50 ☒ Sick Call ☐ EMID

Allergies: NKA

Current Medications: HIV HIV meds

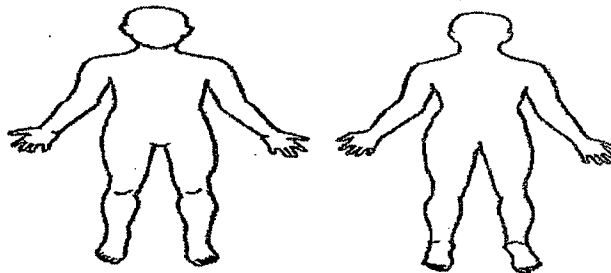
Medical Hx: HIV

Hx previous episode/s of fungal infection? ☐ No ☒ Yes When was last episode? 6mo Part of body? groin

Chief complaint:

Location of symptoms:

- ☐ Foot
☐ Body
☐ Scalp
☒ Groin
☐ Nails ☐ Fingernails ☐ Toenails



☐ Inmate complaining of: ☒ Itching ☒ Burning ☐ Pain

Pain level: ☐ 0 ☐ 1 ☐ 2 ☒ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7 ☐ 8 ☐ 9 ☐ 10

Are you currently taking anything for the symptoms? none

OBJECTIVE: Temp: 98.4 Pulse: 60 Resp: 18 Blood Pressure: 120/70 O2 sat: 98 % Weight: 185

Diabetics: Blood sugar level: NA
Description of skin: ☐ Blisters ☐ Open sores ☐ Swelling ☐ Skin cracks between toes ☐ Drainage ☐ Erythematous patches/lesions Size of area affected: _____ Color of affected area: _____

Description of nails: ☐ Nail discoloration ☐ Nail brittleness ☐ Cracked nail ☐ Irregular looking nail
☐ Loosened nail ☐ Inflammation of nail bed

Signs of secondary/bacterial skin infection noted: ☐ Increased skin redness ☐ Severe pain ☐ Blisters
☐ Open sores ☐ Purulent drainage

☐ If patient has nail fungal infection, patient examined for other areas of infection (feet, scalp, etc.).

FINDINGS REQUIRING IMMEDIATE CLINICIAN NOTIFICATION

- ☐ Temperature greater than 100.4°F
☐ Signs and symptoms of secondary bacterial infection present
☐ Signs and symptoms of severe ringworm may require systemic antifungal

PLAN

☐ No treatment needed

☒ OTC medication given with instructions: Periderm

☐ Pass:

☐ Other:

NOTE: Need for follow-up visit dependent on severity of disease. Needs follow-up visit: ☐ No ☐ Yes

EDUCATION

- ☒ Inmate instructed on good hand hygiene
☒ Inmate instructed to gently wash affected area twice daily with soap and water and dry thoroughly, especially between the toes
☒ Inmate instructed that the infection can be transmitted to other parts of the body by scratching.
☒ Inmate instructed to apply topical antifungal cream as prescribed and/or to take all Rx medication as prescribed.
☒ Inmate instructed to wear sandals/flip flops in shower to protect against re-infection.
☒ Inmate instructed to expose the affected area (e.g., feet) to air as often as possible.
☒ Inmate instructed to return to Medical if symptoms worsen, don't improve, or if they develop any new symptoms.

INMATE NAME: Nurse Timothy
DC#: 098016 RACE: HIV SEX: M
DATE OF BIRTH: 1/13/66
INSTITUTION: CCT

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"Visage concludes that "prison officials used their Supervisory and policy making authority to establish a policy to defy the state of Florida's own procedure for any safety and or fire regulations," See Pl.'s Resp. At 79."

"Visage further asserts that the deprivation of his need for fresh air due to a medical need of fresh air denied him due process. Id At 80."

"because Visage has asserted a deliberate indifference claim, the due process clause fails to provide a separate legal basis for Visage's claim."

The only claim the courts are recognizing is an Eighth Amendment unsafe condition claim and supervisor claim. Which plaintiff meets each standard but its not the issue at this point. See pl. Response pg 73-83

12
13
14
15

Doc. 43-25

The Appellant Court found, According to the Summary Judgment record, we assume, AS the district Court did, that: (1) the defendants were aware that the windows were missing safety devices; (2) there were no warning signs near the windows; And (3) another inmate had previously reported an injury from a falling window.

The Court went on to say, 'On this record, Visage has not sufficiently offered any facts suggesting a substantial risk of serious harm under the Eighth Amendment.

Indeed, AS we've said, the mere possibility of injury is not enough to show a substantive risk of serious harm.

1523 us 8441

[B]

Since the time of our early explanation of due process, we have < *pg. 1057 > understood the core of the concept to be protection against arbitrary action...

We have emphasized time and again that

**DEPARTMENT OF CORRECTIONS
OFFICE OF HEALTH SERVICES
SKIN PROTOCOL**

NOTE: If the patient presents with the following complaints please use the appropriate protocol instead of this Skin Protocol:
Allergic reaction (hives, wheals) use "Allergic Reaction Protocol," DC4-683FF.
Skin infection involving pustules or cysts, use "Acne/Folliculitis/Cysts/Abscesses Protocol," DC4-683Q
Chicken pox, shingles or a cold sore lesions, use "Herpes Protocol," DC4-683EE
Burn or Sunburn, use "Burn/Sunburn Protocol," DC4-683T
Athlete's Foot, lock itch, etc. (fungal infection), use "Athlete's Foot/Fungal Infections Protocol," DC4-683R
Scabies or lice, use "Scabies and Lice Protocol," DC4-683CC

SUBJECTIVE: Date: 5/16/16 Time: 1630 Age: 50 ☐ Sick Call ☒ EMID
 Allergies: None
 Current Medications: see med
 Has there been a recent change in oral or topical medications: ☒ No ☐ Yes →
 Medical Hx: SIP tx HIV
 Hx of recent tattoo: ☒ No ☐ Yes → When: _____ Location on body: _____
 Chief complaint: redness @ hand
 Other symptoms: pain
 Onset of signs & symptoms: 3 days
 Is there a chance the patient has been in contact with poison ivy, poison oak, or poison sumac recently? ☒ No ☐ Yes When: _____
 Have you been ill in any other way in the past few days? ☒ No ☐ Yes →
 Have you had this dermatological condition before? ☒ No ☐ Yes → When: _____
 Did you receive medical tx for it? ☒ No ☐ Yes → What was the dx: _____
 How was it treated? _____
 Are there any others in your dorm with similar skin condition? ☒ No ☐ Yes → Have they been to Medical? ☐ No ☐ Yes
 Pain? ☒ No ☐ Yes → Location: @ hand Pain Level: ☐ 0 ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7 ☐ 8 ☒ 9 ☐ 10
 Effective? ☐ No ☐ Yes

OBJECTIVE: Temp: 97.0 Pulse: 57 Resp: 20 Blood Pressure: 124/80 O2 sat: 98 % Weight: 185
 If patient is a diabetic: Blood sugar: _____
 Type of lesion noted: ☐ Primary ☐ Secondary
 Type: Check all that apply: (Key: > = greater than, < = less than)

PRIMARY LESIONS	SECONDARY LESIONS (OCCUR WHEN PRIMARY LESION CHANGES)
☐ MACULE – FLAT, CIRCUMSCRIBED DISCOLORATION OF SKIN, MAY HAVE ANY SIZE OR SHAPE.	☐ SCALE – HEAPED-UP, HORNY LAYER OF DEAD EPIDERMIS, MAY DEVELOP AS A RESULT OF INFLAMMATORY CHANGES.
☐ PAPULE – SOLID, ELEVATED LESION < 1 CM WIDE	☐ CRUST – COVERING FORMED BY THE DRYING OF SERUM, BLOOD, OR PUS ON THE SKIN
☐ NODULE – RAISED, SOLID LESION > 1 CM WIDE	☐ EXCORIATION – LINEAR SCRATCH MARKS OR TRAUMATIZED AREAS OF SKIN
☐ VESICLE – CIRCUMSCRIBED ELEVATED LESION < 1 CM, CONTAINING FLUID	☐ FISSURE – CRACKS IN THE SKIN, USUALLY FROM MARKED DRYING AND LONG-STANDING INFLAMMATION
☐ BULLA – A VESICLE OR BLISTER > 1 CM WIDE	☐ ULCER – LESION FORMED BY LOCAL DESTRUCTION OF THE EPIDERMIS AND BY PART OR ALL OF THE UNDERLYING DERMIS
☐ PUSTULE – CIRCUMSCRIBED RAISED LESION THAT CONTAINS PUS; MAY FORM AS A RESULT OF PURULENT CHANGES IN A VESICLE	☐ LICHENIFICATION – THICKENING OF SKIN ACCOMPANIED BY ACCENTUATION OF SKIN MARKINGS
☐ WHEEL – ELEVATION OF THE SKIN THAT LASTS LESS THAN 24 HOURS, CAUSED BY EDEMA OF THE DERMIS; MAY BE SURROUNDED BY ERYTHEMA OR BLANCHING	☐ SCAR – NEW FORMATION OF CONNECTIVE TISSUE THAT REPLACED THE LOSS OF SUBSTANCE IN THE DERMIS AS A RESULT OF INJURY
☐ PLAQUE – SOLID, ELEVATED LESION ON THE SKIN OR MUCOUS MEMBRANE, > 1 CM IN DIAMETER	☐ ATROPHY – DIMINUTION IN SIZE OR IN LOSS OF SKIN CELLS THAT CAUSES THINNING OF THE SKIN
☐ CYST – SOFT OR FIRM MASS IN THE SKIN, FILLED WITH SEMISOLID OR LIQUID MATERIAL CONTAINED IN A SAC	☐ KELOID – HYPERTROPHIC SCAR THAT IS LARGER THAN THE ORIGINAL LESION OR INJURY
☐ PETECHIAE – CIRCUMSCRIBED DEPOSITS OF BLOOD OR BLOOD PIGMENT < 1 CM WIDE	
☐ PURPURA – CIRCUMSCRIBED DEPOSITS OF BLOOD OR BLOOD PIGMENT > 1 CM WIDE	

Redness at surgery site
2 pins

INMATE NAME: Visage Timothy
 DC# 00000 RACE: W SEX: M
 DATE OF BIRTH: 11/16/66
 INSTITUTION: CCF

[Signature]
 SIGNATURE AND STAMP/PRINT

"[t]he touchstone of due process is protection of the individual against arbitrary action of government" Wolf v. McDonnell, 418 US 539, 558 (1974) whether the fault lies in a denial of fundamental (523 US 841)

Procedural fairness, see, eg Fuentes v. Stevin, 407 US 67, 82 (1972) ("the procedural due process guarantee protects against arbitrary takings"), or in the exercise of power without any reasonable justification in the service of a legitimate governmental objective, see eg Daniels v. Williams, 474 US, at 331 (the substantive due process ~~goal~~ guarantee protects against government power arbitrarily and oppressively exercised.)

While due process protection in the substantive limits what the government may do in both its legislative, see eg Griswold v. Connecticut, 381 US 479 (1965), and its executive capacities, see, eg. Rochin v. California, 342 US 165 (1952)

**DEPARTMENT OF CORRECTIONS
OFFICE OF HEALTH SERVICES
BURN/SUNBURN PROTOCOL**

SUBJECTIVE: Date: 11/22/16 Time: 1015 Age: 50 ☒ Sick Call ☐ EMID
 Allergies: NRDA
 Current Medication/s: Tegretol, Naproxen, TBC, Complice, multi vit.
 Last Tetanus Toxoid: 3/20/16
 Chief Complaint: Burns to Lt Shin and Lt thumb - burnt on Sat 11/19/16
 Mechanism of Injury (MOI): hot pan
 Date and Time of Injury: 11/19/16 0300 Pain Level: ☐ 0 ☐ 1 ☐ 2 ☒ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7 ☐ 8 ☐ 9 ☐ 10
 First Aid treatment given: no treatment @ that time
 Additional comments: _____

OBJECTIVE: Temp: 98.6 Pulse: 80 Resp: 16 Blood Pressure: 112/74 O2 sat: 100 % Weight: 186

Blood sugar if patient is a diabetic: _____

Airway patent: ☐ No ☒ Yes

Type of burn:

☒ Thermal (fire, steam, hot object/liquid): hot pan

☐ Electrical

☐ Chemical → Use "Poisoning/Overdose Protocol," DC4-683JJ

☐ Radiation (includes sunburn)

☐ Friction (e.g., road rash)

☐ Inhalation injury → Inhaled superheated air. Signs may include swollen lips and/or singed facial/nostril hair.

Did inmate inhale smoke? ☒ No ☐ Yes → use "Respiratory Protocol," DC4-683D, as well as Burn Protocol

Location of burn/s: Lt Shin and Lt thumb

Note: Burns of the face, hands, feet, perineum, and circumferential (the burn encircles an entire body part such as a wrist) burns require special care.

Description of burn:

☒ 1st degree burn: skin pink to red; slight edema

☐ 2nd degree burn

☐ Superficial: skin pink or red; blisters; weeping, edematous, and elastic

☐ Deep dermal: mottled white and red; edematous; reddened areas blanch on pressure. May be yellowish but soft and elastic - may or may not be sensitive to touch; sensitive to cold air

☐ 3rd degree burn: reddened areas do not blanch with pressure. Not painful; inelastic; coloration varies from waxy white to brown; leathery devitalized tissue (eschar).

Use "Rule of Nines" or "Rule of the Palm" to estimate extent of burn. Palm trick: Use the patient's palm size to represent approximately 1% Total Body Surface Area. Imagine a rectangle the width and length of your entire hand (from wrist to fingertips) and that is the size of "one palm."

Mark diagram on page two of affected areas.

Extent of burn: 1st degree: 1%

2nd degree: _____

3rd degree: _____

Other injuries noted: none

Signs of infection in old burn: ☐ Increased redness ☐ Increased swelling ☐ Increased pain ☐ Purulent drainage

FINDINGS REQUIRING IMMEDIATE CLINICIAN NOTIFICATION

☐ Inhalation burn (Activate EMS)

☐ Respiratory distress (Activate EMS)

☐ 1st and 2nd degree burns greater than 15% TBSA are considered to be "moderate burns. 3rd degree burn greater than 1% TBSA is considered to be a "moderate burn".

☐ All face, hands, feet, genitals, and circumferential burns are considered critical

☐ Severe pain

☐ Signs of infection

INMATE NAME: Visage, Timothy
 DC#: 098216 RACE: W SEX: M
 DATE OF BIRTH: 1-13-66
 INSTITUTION: UCI


 P. SHIFFLETT, RN
 UNION CI
 SIGNATURE AND STAMP/PRINT

Criteria to identify what is fatally arbitrary differ depending on whether it is legislation or a specific act of a governmental officer that is at issue.

[At 523 US 852]

But just as the description of the custodial prison situation shows how deliberate indifference can rise to a constitutionally shocking level, so too does it suggest why indifference may ~~not~~ well not be enough for liability in the different circumstances of a case like this one.

[523 US 853] [16]

To recognize a substantive due process violation in these circumstances when only mid level fault has been shown would be to forget that liability for deliberate indifference to inmate welfare rest upon the luxury enjoyed by prison officials of having time to make unhurried judgments, upon the chance for repeated reflection, largely uncomplicated by the pulls of competing obligations.

When such extended opportunities to do better are teamed with protracted failure to even care, indifference is truly shocking

**FLORIDA DEPARTMENT OF CORRECTIONS
OFFICE OF HEALTH SERVICES
FRACTURE/DISLOCATION/SPRAIN PROTOCOL**

SUBJECTIVE: Date: 3-4-16 Time: 1600 Age: 50 ☐ Sick Call ☒ EMID

Chief Complaint: (R) finger

Allergies: NKA

Current Medications: Tegretol, Vit B12, Compdora

Date of last Tetanus Toxoid: _____

Chief Complaint: _____

Mechanism of injury (MOI): Window slammed on (R) finger

Hx of previous dislocations? ☒ No ☐ Yes → Joint/s involved: _____

Location of pain: (R) hand/finger Pain level: ☐ 0 ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7 ☐ 8 ☐ 9 ☒ 10

OBJECTIVE: Temp: 99 Pulse: 118 Resp: 22 Blood Pressure: 136 / 89 O2 sat: _____ % Weight: _____

Pulse distal to injury: ☐ Present ☒ Absent ☐ N/A (fingers/toes) Quality: ☐ Strong ☐ Moderate ☐ Weak

Pallor: Color of skin around the injury site: ☐ Pink ☒ Pale ☐ White ☐ Ecchymotic ☐ Hematoma

Temperature of skin around the injury site: ☐ Warm ☒ Cool ☐ Cold

Capillary refill (blanching) test: ☐ Less than 2 seconds ☒ Greater than 2 seconds

Paresthesia: Extremity numbness? ☒ No ☐ Yes Extremity tingling? ☐ No ☐ Yes

Paralysis: Is patient able to move affected extremity (i.e., pt. is able to bend elbow, wiggle fingers, etc.)? ☒ No ☐ Yes

Swelling: ☐ None ☐ Mild ☒ Moderate ☐ Severe

Deformity present: ☐ No ☒ Yes If yes, describe: _____

Skin intact: ☒ No ☐ Yes → ☐ Abrasion ☐ Laceration → Use also "Abrasion/laceration Protocol," DC4-683V for appropriate care.

Bleeding: ☐ N/A ☐ No ☒ Yes → Use also "Abrasion/Laceration Protocol," DC4-683V for appropriate care.

Additional comments/findings: _____

FINDINGS REQUIRING IMMEDIATE CLINICIAN NOTIFICATION

☒ Patient has possible fracture and/or dislocation

☒ Patient has poor color, temperature, or sensation of affected limb.

☐ Bleeding not controlled with 10 minutes of direct pressure.

PLAN

☒ Clinician notified: Dr. George Time: 1016

☒ Orders from clinician: splint finger, pain management, xray

☐ EMS activated as ordered.

☒ Control bleeding with direct pressure for 10 minutes to bleeding site.

☒ Splint joint above and below suspected fracture/dislocation site.

☐ Apply arm sling

☐ Elevate affected limb.

☐ Apply covered ice pack to affected area for 15 – 20 minutes.

☒ Give ibuprofen 200mg 2-3 tablets by mouth for pain OR ☐ acetaminophen 325mg 2 tablets by mouth for pain now

☐ Give T-Dap* 0.5mg IM or Td 0.5cc IM as prescribed by clinician.

☐ Apply ace wrap PRN (wrap distal to proximal, i.e., wrap up toward the heart)

☐ Provide crutches PRN

☐ Recheck affected distal pulse prior to discharge: ☐ Strong ☐ Moderate ☐ Weak

☐ Issue Pass: _____ ☐ Other: _____

* If inmate has no record or history of receiving the Tdap vaccine (vaccine released in 2005), then Tdap should be given.. If inmate has a history of receiving the Tdap vaccine, then give the Td vaccine. At this time, Tdap is licensed for only one lifetime dose per person.

(Continued on back....)

ok now look at pulse, Resp,
& Blood pressure, compare
to other.

INMATE NAME: Visage, T
DC#: 090216 RACE: W SEX: M
DATE OF BIRTH: 1-13-66
INSTITUTION: CCI-MU

In this instant case,

The Circuit Court asserts "There is no substantial risk of serious harm if a [perfect storm of events] was necessary for the injury to occur."

Brooks v. Warden, 800 F.3d 1295, 1301 (11th Cir. 2015) (Emphasis added) At p 3

This indifference by the Circuit Court is shocking, the court went on to say, "For example, a prison official does not act with deliberate indifference if he [accidentally stepped on a prisoner's toe and broke it]" (Emphasis added)

How those two statements make any sense to the present case where Visage has introduced specific evidence that defendant admit to having 15 years in which to deliberate over fixing these windows or putting a alternative safety device in place or warning of the state created danger. This is truly shocking to contemporary standards. The Circuit Court states Defendants are aware there is no safety device on ~~800~~ 900 of these windows

**DEPARTMENT OF CORRECTIONS
OFFICE OF HEALTH SERVICES
HEAD TRAUMA PROTOCOL**

- ☐ Start oxygen at 3L/min/NC for all moderate to severe head trauma patients.
- ☐ Notify clinician for any patient with h/o unconsciousness or for any abnormal findings as listed above.
- Clinician Name: _____ Time notified: _____
- ☐ Monitor patient for changes in neurological status and decreased LOC.
- ☐ For minor – moderate head injury that doesn't need ER evaluation, verify with the clinician whether or not he/she wants patient admitted to the infirmary (around the clock or just at bedtime) for responsiveness checks every 4 hours for the next 48 hours.
- ☐ Wake patient after the first hour of sleep and then every 4 hours to check on breathing and responsiveness; ask patient's name, age, and current location ("infirmary at Gulf CI") to make sure he/she is not confused.
- ☐ For minor head injuries: Apply covered ice pack to swelling for 15-20 minutes, repeat in one hour.
- ☐ Don't give any pain medications without clinician's approval.
- ☐ Wound care: See "Abrasion/Laceration Protocol," DC4-683V, and document your care on that DC form.

EDUCATION

- ☐ Pain medication per clinician's order: _____
- ☐ Inmate instructed to apply covered ice pack to hematoma 3-4 times per day for the next 48 hours.
- ☐ Inmate instructed re: wound care per "Abrasion/Laceration Protocol," DC4-683V.
- ☐ Inmate instructed to return to the Medical Department if symptoms return or worsen, or if new symptoms develop - such as a headache that persists, dizziness, memory problems, photophobia, problems with balance, nausea or vomiting, ringing in the ears.

Table 3.2 Trauma Score^{a, b}

	Points/Score
Respiratory rate	
36/min or above	2
25-35/min	3
10-24/min	4
0-9/min	1
None	0
Respiratory Expansion	
Normal	1
Shallow	0
Reactive	0
Systolic blood pressure	
90 mm Hg or above	4
70-89 mm Hg	3
50-69 mm Hg	2
0-49 mm Hg	1
No pulse	0
Capillary return	
Normal	2
Delayed	1
None	0

RTS = GCS + SBP score + RR score
16 = 9 + 3 + 4

An RTS of less than 11 is used to indicate the need for transport to a designated trauma center

^aAdvanced Trauma Life Support Guidelines, American College of Surgeons, 1985. With permission.

^bSince the outcome can be correlated with initial trauma score, a patient with a trauma score of 12 or less should optimally be managed at a level I or II trauma center.

Glasgow Coma Score (GCS)

	Points		
Eye opening			
Spontaneous	4		
To voice	3		
To pain	2		
None	1		
Verbal Response			
Oriented	5	Total GCS	
Confused	4	Points	Score
Inappropriate words	3	14-15	5
Incomprehensible words	2	11-13	4
None	1	8-10	3
Motor Response		5-7	2
Obeys command	6	3-4	1
Localized pain	5		
Withdraw (pain)	4		
Flexion (pain)	3		
Extension (pain)	2		
None	1		
Total:		(3-15)	

A Coma Score of 13 or higher correlates with a mild brain injury; 9 to 12 is a moderate injury and 8 or less a severe brain injury.

The Revised Trauma Score (RTS) is one of the more common physiologic scores. It uses 3 specific physiologic parameters, as follows: (1) Glasgow Coma Scale (GCS), (2) systolic blood pressure (SBP), and (3) respiratory rate (RR).

INMAT VISAGE, TIMOTHY
 DC#: DC# 098216
 DATE DOB: 01-13-66 W/M
 INSTI CCI

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See Appendix L A+13

"Moreover, Warden Singer condoned the theft of the Aluminum Safety components and failed to rectify the same thus preventing modification of the components".

A+6. "900 components", Approx. 450-500 pounds of Aluminum, vanished after being removed from the windows.

The defendants assert "the springs" were being made into weapons, inmates make weapons out of anything, but no evidence was presented to this Court, that these allegations are false. The circuit court states "we assume, as the district court did, that (3) another inmate had previously reported an injury from a falling window."

Village asserts this is what the circuit court compares to a "perfect storm of events" or a prison official accidentally stepped on a prisoners toe and broke it."

Plaintiff prays for this court to observe Appendix M 800 of these windows with no safety device to hold them open in the dorms that are not air conditioned in the library, visiting park all areas that its dangerous.

DEPARTMENT OF CORRECTIONS
OFFICE OF HEALTH SERVICES
HEAD TRAUMA PROTOCOL

This is from Emergency Room P+ CCB
SUBJECTIVE: Date: 3/14/16 Time: 0900 Age: 50 ☐ Sick Call ☒ EMID

Allergies: N/A

Current Medication/s: Calcium 500g, Keflex

Last Tetanus Toxoid: 2014

Chief Complaint: fell from top bunk

Mechanism of Injury (MOI): ☐ Blunt head trauma → head was hit with: 1m states he hit his head

☐ Penetrating head trauma → penetrating object was: _____

☐ Fall → Distance of fall: _____ Cause of fall: _____

☐ Other: _____

Date and time of injury: 3/14/16 Pain Level: ☐ 0 ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7 ☐ 8 ☐ 9 ☒ 10

Was injury witnessed? ☒ No ☐ Yes, by: _____

Current symptoms: ☒ Headache ☐ Nausea ☐ Vomiting ☐ Dizziness ☐ Blurred or double vision ☐ Poor coordination

☒ Slurred speech ☐ Other/s: _____

Other injuries: none visible, 1m states lower back

OBJECTIVE: Temp: 98.2 Pulse: 74 Resp: 18 Blood Pressure: 157/89 O2 sat: 98 % Weight: _____

☐ Maintain patent airway. Blood sugar: 104 Time _____ (all patients).

NOTE: Head injuries frequently have concurrent cervical spinal cord injuries due to either the neck "snapping" forward or backwards when the head is hit with an object, or from the impact of the patient falling after being hit in the head.

Location of injury: no bump

Appearance of head wound: ☐ Ecchymotic area ☐ Hematoma ☐ Abrasion ☐ Laceration ☐ Depressed area on skull

NOTE: If patient has abrasion/laceration, also use "Abrasion/Laceration Protocol," DC4-683V to document the injury.

Bleeding at this time: ☒ None noted ☐ Oozing / Minimal ☐ Moderate ☐ Severe ☐ Pulsing spurt

Loss of consciousness on scene? ☐ No ☒ Yes → for how long? 1m states he blacked out

LOC on arrival: ☒ A&O x3 ☐ Confused → disoriented to: ☐ person ☐ place ☐ time ☐ Lethargic ☐ Stuporous

☐ Comatose

Does patient remember accident? ☒ No ☐ Yes

If patient walked in, gait was: ☒ N/A ☐ Normal ☐ Abnormal → Describe: _____

Behavior: ☒ Cooperative ☐ Asking repetitive questions ☐ Restless/Agitated ☐ Combative ☐ Seizure activity

Pupils PERRLA: ☐ No ☐ Yes → Describe: _____

Drainage (clear, serosanguinous, bloody) from ears or nose? ☒ No ☐ Yes → Describe: _____

Grips equal and strong: ☐ No ☒ Yes → Describe: _____

ROM: ☐ Full ROM ☒ Decreased ROM in → ☐ LUE ☐ RUE ☒ LLE ☒ RLE

Bruising noted around the eyes (raccoon eyes) or behind the ears: ☐ No ☐ Yes → Describe: _____

Calculate GCS and RTS using GCS / RTS tables on PAGE 2. Time: _____ Initial GCS _____ Initial RTS _____

FINDINGS REQUIRING IMMEDIATE CLINICIAN NOTIFICATION

- ☐ Unconscious patient or patient with h/o unconsciousness
- ☐ Pulse less than 58 or higher than 110 beats per minute
- ☐ Pulse ox less than 93%
- ☐ Respirations less than 10 and higher than 24
- ☐ Blood pressure less than 90/60 and higher than 140/90
- ☐ Any abnormal findings as listed above.
- ☐ Arterial bleed (bright red, usually spurts from wound)
- ☐ Patient is on an anticoagulant
- ☐ GCS less than 15.
- ☐ Severe headache

PLAN

- ☐ Activate EMS for unconscious patient – If at all possible, leave patient where found and have EMS remove pt from scene.
- ☐ Activate EMS for uncontrollable bleeding

VISAGE, TIMOTHY

INMA DC# 098216
DC#: DOB: 01-13-66 W/M
DATE INST: CCI

My same nurse
SIGNATURE AND STAMP/PRINT

That window sill is what Visages right hand was braced on trying to get fresh air. Does anything look dangerous about that window. please see Appendix N

That finger has been cleaned up, and it's just resting on that cotton gauze, Visage will never be able to use that finger and lost 80% use of right hand and of course plaintiff was right handed his whole life.

But the circuit court compares this with a broken toe.

1523 US 8631

"Historically, the guarantee of due process has been applied to deliberate decisions of government officials to deprive a person of life, liberty, or property" Daniels v. Williams, 474 US 327, 331 (1986) Though it is true, as the Court explains, that "deliberate indifference" to the medical needs of pretrial detainees, City of Revere v. Massachusetts Gen. Hospital, 463 US 239 (1983), or of involuntarily committed mental patients, Youngberg v. Romeo, 457 US 307 (1982) may violate substantive due process, it is not the "deliberate indifference" alone that is the "deprivation"

ADA DEPARTMENT OF CORRECTIONS
Chronological Record of Health Care

EXHIBIT

Allergies: NKDA

DATE/TIME

3/22/2016

12:42pm

Called to see IMP

90 Inability to walk on the left limb.

S/P Fall, Sustained trauma to @ Hip, knee.

S/P OKIT, @ Index finger

ge - AAOX3. Sitting in a wheel chair
Able to stand & limps

Extremities: (N) Left Hip, knee & ankle movement
NO (D) foot deformity

(D) Right Limb.

(R) Hand, forearm in Soft Cast.

Ass: (D) foot plantar-fasciitis
Muscle Spasm - ? Hamstrings mm.

plan: light weight bearing c a Crotche
Exercise Lower Limbs.

Toradol 60mg IM q 12 x 3 doses

Flexeril 10mg P.O q 8° PRN pain x 3 days
RTC PRN

R. Zach, LPN

Columbia CI/Corizon

Date: 3/22/16 Time: 1:30

H. Owonubiye, MD

Medical Director

Columbia CI/Corizon

Date: 3/22/16 Time:

3-29-16
1800

Inc Chart Audit - m/Ole
Col CIM

Inmate Name

DC# 898216

Date of Birth

Institution

VISAGE, Timothy W/M

Race/Sex

1-13-66

COLUMBIA CI

S- Subjective Data

O- Objective Data

A- Assessment of S and O Data

P- Plan

E-Education

plaintiff

EX. 200

Rather, it is that combined with "the state's affirmative act of restraining the individual's freedom to act on his own behalf - through incarceration, institutionalization, or other means of personal liberty." DeShaney v. Winnebago County Dept. of Social Servs. 489 US 189, 200 (1989)

Plaintiff asserts through an abundance of substantial evidence on record attached to this petition which is the very same evidence the Circuit and District Court heard, that plaintiff's Eight Amendment claims met the standards to overcome summary judgment, but that plaintiff's Fourteenth Amendment claims need to be heard. Plaintiff argues in Appendix II to the Circuit Court explicitly in detail. Defendant Crews job description Appendix T as well as Appendix S the FIA Statutes, FIA Admin codes, Florida Dept. of Corr. Procedure 108.014 Appendix P as well as Federal regulations clearly show a debatable issue as to liability to Defendant Crews and Woodall in this instant case

JDA DEPARTMENT OF CORRECTIONS
Chronological Record of Health Care

Allergies: NKDA

DATE/TIME

3/21/16
1500

I'm seen in Ydorm. Complaining of not being able to walk. I'm seen in bunk area. I'm told to stand up which he was able to do immediately. I'm told to take a few steps forward towards nurse which he did. @ Bot on tip toe. I'm state he has pain down his leg when walking. I'm notified all xray normal & MD did not order, w/c i can etc due to no injury. I'm states he cannot walk to chow due to pain in hip to foot. I'm was examined by MD 3/21/16 and ordered pain medication, xray signed off by MD (w/ 3/21/16) & new order for flexeril. I'm requested crutches but has full cast on @ Arm. Instructed I'm only MD could order crutches at this time.

3/22/16
1500

MD instructed this nurse not to give I'm current pain med ordered (ibuprofen) or (excedin). MD stated he was using another med for pain at this time. KOP given back to pharmacy - MD to Dr. [Signature]

W. LYONS
 RN

C-098216 TM 40 06/24/2013

Inmate Nar VISAGE, TIMOTHY

DC#

Date of Birth M/DOB 01/13/1966 (47) XX

Institution COLUMBIA CI

S- Subjective Data

O- Objective Data

A- Assessment of S and O Data

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E- Education

This Court's supervisory powers are demanding in this issue Appendix Q
Plaintiff clearly raises his state-created danger claim its issues must be recognized the Eleventh circuit in Wyke v. Polk County Sch. Bd., 129 F.3d, 560, 567 (11th Cir 1997)
(the language of DeShaney does indeed "leave room" for state liability where state creates a danger or renders an individual more vulnerable to it".)

This Court must protect Visage and other similarly situated plaintiffs Fourteenth Amendment right to be free from arbitrary and oppressive policies or customs that are cause in effect of their (his) serious injury. By state actors using their discretionary, supervisory and policy making authority to create or acquiesce to an arbitrary and abusive policy and custom that creates a state created affirmatively danger.

FLORIDA DEPARTMENT OF CORRECTIONS
Chronological Record of Health Care

Allergies:

NKDA

DATE/TIME

6/8/11
11/30

SEEN IN PLASTIC SURGERY

by Ong M.D.

Orders written

PCP @ PERM INST TO
APPROVE/ARRANGE REQUEST

RTG 2 WEEKS

F. ONG, MD
Plastic Surgeon
RMC with Inmate

Treatment Plan Discussed

B. GLORI

MA

6/8/10

RETURNED FROM RMC MEDICAL TRIP
DENIES ANY INJURY OR DISCOMFORT
CHART TO M.D. YES ☒ NO ☐
RELEASED TO SECURITY

Inmate No.

DC# C-098216 TM 40 06/24/2013

Date of B

Institution VISAGE, TIMOTHY

W/M DOB 01/13/1966(47) XX

S- Subjective Data

O- Objective Data

A- Assessment of S and O Data

P- Plan

E- Education

XIII

Reason For Granting
The Petition

B. Conflicts with DECISIONS OF
OTHER COURTS OF APPEALS HOLDINGS
CONCERNING,

The United States Supreme Courts holding
in, Deshaney v. Winnebago County Dept.
of Social Serv., 489 US 189

Visage asserts a state-created danger
claim. In his claim he contends the harm
caused to him was foreseeable and fairly
direct, that state actor acted in willful
disregard for the plaintiffs safety, there was
relationship between the state and plaintiff,
the state actor used his authority to create an
opportunity for danger that otherwise would
not have existed. see plaintiffs Resp. pg 30 32-37
Appendix Q.

Visage asserts the danger was affirmatively
created due to states action.

"Defendants do not dispute that the
windows at CCF have been permanently
altered. see Def. Motion Summary Judgment A+4

FLORIDA DEPARTMENT OF CORRECTIONS
Chronological Record of Health Care

Allergies:

DATE/TIME

Incidental Note: Formal Grievance answered: 1605-201-099

5/15/16
1500

S: Have not had callout w/ Medical Records
O: Chart reviewed
A: scheduled soon
P: correct

Handwritten signature

K. TODD
ADMINISTRATIVE ASSISTANT
CORIZON HEALTH SERVICES
COLUMBIA CI

5-27-16
1110

BMID Lee DCY-6834

K. Smith, LPA
Columbia CI/Corizon
Date: Time:

5/27/16
1500

PT 90 (2) Index Finger recurrent Swell p. Pain + discharge
Pend p Ortho Flu Clinic

plan: Cont - Cephalexin 500mg p.o q6 x 10 days
Excedrin 1 tab p.o TID x 30 days
Confirm Ortho appointment

Handwritten signature
H. Owofunigbe, MD
Medical Director
Columbia CI/Corizon
Date: 5/27/16 Time:

Inmate Name Usage, Timothy
DC# 098016 Race/Sex WM
Date of Birth 1/13/66
Institution COLUMBIA CI

S- Subjective Data
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Defendant Crews Avers in his declaration that "the spring from the support mechanism (safety springs) for the library windows was removed by a former warden of [CCI] over twenty years ago See Def. MST EX E At 2 Appendix I

Moreover, on March 17, 2016, after Visage's injury, Captain Jason Reeder completed an injury report in which "he recognized a safety hazard [was] created by [windows] being broken" See Def. MST EX. D At 5

~~See~~ Visage asserts the windows were not "broken" as Capt. Reeder suggest in his report. As the defendants do not dispute the windows were altered by a policy making prison official that "created a safety hazard",

The District Court states, "Visage contends that the Defendants established a constitutionally inadequate state procedure for depriving [inmates] of a protected interest. See Plaintiff's response at 74. Appendix P

FLORIDA DEPARTMENT OF CORRECTIONS
Chronological Record of Health Care

Allergies: NKDA

DATE/TIME

5-17-16

Inc. I/M has returned to medical of +
potential infection in R 1st digit e/o IV & d/o.
Attended doctor had request to see him if
symptoms p. - chest to doctor. He placed
in Urgent Care room. - M. [Signature]
S. [Signature]
Director of Nursing
Corizon Health Inc
Columbia CI

5/17/2016

1400

Pt seen and examined.

Ⓡ Index finger Cellulitis
S/P ORF, pin removal

Go. Pain. redness. Swell p

9e - AAOX3

Ⓡ Hand: ↓ Swell p @ distal dorsum of hand.

• Some Swell p reduction @ distal index

finger
• Change in redness of Ⓡ Index finger

• ++ tenderness
• Some discharges from 2 embedded pins

• good blood supply
• bluish discoloration

• ROM of Index, middle & ring fingers

A - Ⓡ Index finger Cellulitis, improving

• Continue Abx Tx

• Continue pain medication

• See MD daily x 3 days

Ky Zick, LPN
Columbia CI/Corizon
Date 5/17/16 Time 1400

[Signature]
H. Owoluyishe, MD
Medical Director
Columbia CI/Corizon

Inmate N: C-098216 TM 40 06/24/2013 -
DC#
Date of Birth: VISAGE, TIMOTHY
Institution
W/M DOB 01/13/1966 (47) XX

S- Subjective Data
O- Objective Data Date: 5/17/16
A- Assessment of S and O Data
P- Plan
E- Education

STATE CREATED DANGER DOCTRINE

As the majority observes, the state-created danger doctrine is said to trace its jurisprudential pedigree in the seventh circuit to the Supreme Court's opinion in Deshauney, perhaps best known for

Justice Blackmun's exclamation, "POOR JOSHUA!" Deshauney v Winnebago County Dept. of Social Serv., 489 US 189 (1989)

We have noted two distinct exceptions to the general rule that the state has no affirmative duty to protect persons from violence inflicted by private actors:

(1) the "special relationship" exception, stemming from a custodial relationship between the state and victim; and (2) the "danger creation" exception, stemming from "affirmative conduct on the part of the state in placing the plaintiff in danger" L.W. Grubbs, 974 F.2d 119, 121 (9th Cir 1992) ("Grubbs I")

The former emanates from language in Deshauney itself. Deshauney, 489 US 199-200 ("when the state takes a person into

FLORIDA DEPARTMENT OF CORRECTIONS
Chronological Record of Health Care

Allergies:

NBDA

DATE/TIME

Incidental Note: Formal Grievance answered: 1604-201-046

4-19-16

S: Need handicap shower

1300

O: Chart reviewed

A: Seeks w/ security. Have been moved

P: Denial

K. Todd

K. TODD
ADMINISTRATIVE ASSISTANT
CORIZON HEALTH SERVICES
COLUMBIA CI

INCIDENTAL NOTE:

Date: 4/21/16 Time: 1500

Date Inmate Request Received: 4/19/16

Date Inmate Request Answered: 4/21/16

Signature and Name Stamp

Y. Coleman
Medical Records Clerk
Columbia CI/Corizon
Date: 4/21/16 Time: 1500

Inmate Name Usage, Timothy
DC# 098216 Race/Sex W/M
Date of Birth 1-13-66
Institution COLUMBIA CI

S- Subjective Data
O- Objective Data
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analysis.

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.)
 The latter, more amorphous, {2006 USAP Lexis 393} was developed by lower courts in response to the Deshaneys' courts observation that "winnabago county neither helped to create the dangers that Joshua faced nor rendered him more vulnerable to those dangers";
Deshaney, 489 US at 201 ("while the state may have been aware of the dangers that Joshua faced... it played no part in their creation, nor did it do anything to render him any more vulnerable to them")
 The Supreme Court has yet to recognize the state-created danger doctrine, and the circuit courts have yet to construct a unified approach either to the state-created danger inquiry or to the role that causation principles should play in the analysis.

**FLORIDA DEPARTMENT OF CORRECTIONS
Chronological Record of Health Care**

Allergies: NADA

DATE/TIME

INCIDENTAL NOTE:

DATE: 4/12/16 TIME: 1120
INMATE SCHEDULED FOR Org
ON 4/13/16 AT RMC

[Signature] Nguyen
Medical Records Clerk
Corizon Healthcare
Columbia CI

4/13/16 11:38 DS SEEN IN PLASTIC SURG. by Org MD
Orders written

PCP @ PERMITTING TO
APPROVE/ARRANGE REQUEST

[Signature] F. ONG, MD Treatment Plan Discussed
Plastic Surgeon With Tamara
RMC X [Signature] B. GLOR
MA

4/13/16
14:38

RETURNED FROM RMC MEDICAL TRIP
DENIES ANY INJURY OR DISCOMFORT
CHART TO M.D. YES [initials] NO [initials]
RELEASED TO SECURITY

[Signature] J. KENDALL, RN
CORIZON HEALTH CARE
COLUMBIA CI
DATE [initials] TIME [initials]

Consult/Prior Approval

Urgent/Routine (EU)

Clinic: Plastic Surgery

Date: 4/14/16 Time: 1:50

[Signature] K. TODD
ADMINISTRATIVE ASSISTANT
CORIZON HEALTH SERVICES
COLUMBIA CI

Inmate Na C-098216 TM 40. 06/24/2013 -
DC#
Date of Bi VISAGE, TIMOTHY
Institution
W/M DOB 01/13/1966 (47) XX

S- Subjective Data
O- Objective Data
A- Assessment of S and O Data
P- Plan
E- Education

However, each court recognizing the theory has required, at a minimum, a showing that the government's act was the "but-for cause" that put the plaintiff in a position of danger she would not otherwise have faced. See, e.g. Carlton v. Cleburne County, 93 F.3d 505 (8th Cir 1996) (collecting cases and noting that in each case where a cognizable due process violation was found "the individuals would not have been in harm's way but for the government's Affirmative Actions").

In Sandford v. Stiles, 456 F.3d 298; 2006 US App Lexis 19428 (3rd Cir Aug 2006) to prevail on a state-created danger claim in the Third Circuit, a plaintiff must prove the following four ~~parts~~ elements:

IDA DEPARTMENT OF CORRECTIONS Chronological Record of Health Care

EXHIBIT
B
2
D

Allergies: NKA

DATE/TIME

Consult/Prior Approval

Urgent/Routine/EU

Clinic: Plastic Surg.Date: 3-9-16 Time: 1430

K. TODD
ADMINISTRATIVE ASSISTANT
CORIZON HEALTH SERVICES
COLUMBIA CI

3/9/16 2200 Inc Note: T/m came to medical continuing to c/o 8/10 pain in R hand. T/m describes pain as "throbbing". 60mg Toradol T/m was given according to order written 3/9/16. Assessment of finger ~~status~~ go was completed. Circulation a/kp appropriate + WNL. T/m was educated regarding elevating the hand + wearing the sling consistently. T/m admitted he has "pumped" his arm/hand on solid objects several times. It was noted also that T/m was at medical w/o his sling on multiple occasions, with the most recent on 3/8/16 at 2200. T/m continues to c/o increased pain with prescribed ~~Therapies~~ going as not effective. R. Brooke, RN

Date: 3/9/16
Time: 1430
Corizon Health Care
R. Brooke, RN

3/10/2016

9:05AM

Called to see & review patient

Go Severe R Hand pain

S/P ORIF @ Index prox. phalanx.

A - Severe Pain, post-ORIF

R. Zack, MD
Columbia CI/Corizon
Date: 3/10/16 Time: 25

Plan: Ultram 50mg p.o q 6h PRN Pain x 5 days.

SD MAR

Written.

H. Owoluyigbe, MD
Medical Director
Columbia CI/Corizon
Date: 3/10/16

VISAGE, TIMOTHY

DC# 098216

Inma DOB: W/M

DC# CCI

Date

Institution COLUMBIA CI

S- Subjective Data

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A- Assessment of S and O Data

P- Plan

E-Education

plaintiff's (C)
EX 41

(1) The harm ultimately caused was foreseeable and fairly direct;

(2) A state-actor acted with a degree of culpability that "shocks the conscience";

(3) A relationship between the state and the plaintiff existed such that the plaintiff was a foreseeable victim of the defendant's act; or a member of a discrete class of persons subjected to the potential harm brought about by the state's action, as opposed to a member of the public in general; and

(4) A state actor affirmatively used his or her authority in a way that rendered the citizen more vulnerable to danger than had the state not acted at all.

The state created danger theory is widely recognized although the Supreme Court has not yet explicitly adopted it. A majority of the circuits have implemented some variation of the theory. See

ADA DEPARTMENT OF CORRECTIONS
Chronological Record of Health Care

Allergies: NKDA

DATE/TIME

3/22/2016
12:42pm

Called to see MP
 No inability to walk on the left limb.
 S/P Fall, Sustained Trauma to (L) Hip, Knee.
 S/P OK IT; (R) Index finger
 Ge - AAO x 3. Sitting in a wheel chair
 Able to stand & limps
 Extremities: (L) Left Hip, knee & ankle movement
 NO (L) foot deformity
 (R) Right Limb.
 (R) Hand, forearm in Soft Cast.
 Abs: (L) foot plantar fasciitis
 muscle spasm - ? Hamstrings mm.

plan: light weight bearing c a Crutch
 Exercise Lower Limbs.
 Toradol 60mg IM q 12° x 3 doses
 Flexeril 10mg p.o q 8° prn pain x 3 days
 RTC prn

R. Zack, MD
 Columbia CI/Corizon
 Date: 3/22/16 Time: 1:30

G. J. Owjuvige
 H. Owjuvige, MD
 Medical Director
 Columbia CI/Corizon
 Date: 3/22/16 Time:

3-29-16 Inc. Chart updated - m. O. L. Col CIM

Inmate Name VISAGE, Timothy
 DC# 898216 Race/Sex W/M
 Date of Birth _____
 Institution COLUMBIA CI

S- Subjective Data
 O- Objective Data
 A- Assessment of S and O Data
 P- Plan
 E- Education

Reva v. Deprieco, 432 F.3d 98, 107-10
Kallstrom v. City of Columbus,
 (2nd cir 2008), 136 F.3d 1055, 1066 (6th cir. 1998), Reed v. Gardner,
 986 F.2d 1122, 1126 (7th cir. 1993), Forrester v. Ross,
 397 F.3d 1047, 1057-59 (8th cir 2005) Kendy
v. City of Eaglefield, 439 F.3d 1055, 1061
Whiting v. Harter, 64 F.3d 567, 572 (10th cir 1995),
Gutera v. District of Columbia, 344 US
 App DC 265, 235 F.3d 648-81 (DC cir 2001)
Wyke v. Polk County Sch. Bd., 129 F.3d
 560, 567 (11th cir) (the language of
 Deshaeny does indeed "leave room" for
 state liability where state creates a
 danger or renders an individual more
 vulnerable to it?)
In Kneipp v. Tedder, 95 F.3d 1193,
 1201 (3d cir 1996) we first adopted the state
 created danger theory as a mechanism
 by which plaintiffs may establish
 constitutional violations under 42 USC 1983.
 We confirmed that liability may
 attach where the state acts to create
 or enhance a danger that deprives

IDA DEPARTMENT OF CORRECTIONS
Chronological Record of Health Care

Allergies: NKDA

DATE/TIME

3/21/16
1500

I'm seen in Ydorm complaining of not being able to walk. I'm seen in bunk area. I'm told to stand up which he says he can't do immediately. I'm told to take a few steps forward towards nurse which he does. I put on tiptoe. I'm stating he has pain down his leg when walking. I'm notified all xray nurse & MD did not order. W/C chair etc due to no order. I'm stating he cannot walk to chow due to pain in hip to foot. I'm was examined by MD 3/21/16 and ordered pain medication. Xray signed off by MD W/C 3/21/16. MD order for Flexeril. I'm requested crutches but has full cast on @ arm. Instructed I'm only MD could order crutches at this time.

3/22/16
1500

MD instructed this nurse not to give I'm current pain med ordered: (Vicodin) or (excedin). MD stated he was using another med for pain at this time. KPR given back to pharmacy - MD to Dr. [Signature]

WILYONS
RN

C-098216 TM 40 06/24/2013

Inmate Name VISAGE, TIMOTHY

DC#

Date of Birth

Institution COLUMBIA CI

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the plaintiff of his or her Fourteenth Amendment right to Substantive due process. id at 1205; See Also, Brown v. PA Dept of Health Emergency med. Servs Training Inst., 318 F.3d 473, 478 (3rd 2003)

THE STANDARD OF CULPABILITY

Because the culpability requirement is often the most difficult element for a plaintiff to prove, the outcome of a State-created danger case will {2006 US APP Lexis 14} often turn on this prong. See id

The Supreme Court has not fully explicated the standard of culpability in substantive due process cases generally, and our own jurisprudence is difficult to discern. See County of Sacramento v. Lewis, 523 US 833, 849, (1998) (noting that a complete analysis of the fault requirement in substantive due process cases is "a matter for closer calls")

the standard of culpability for due process violations in the context of a police chase. Lewis, 523 US at 839

The Court held that generally, in a due process challenge to executive action, the threshold question is whether the government's officers' actions "shock the contemporary conscience", id at 847 n.8.

The Court determined that in the specific context of a high-speed police pursuit, only an 'intent to harm' the plaintiff could shock the conscience, id at 854

However, the Court stated that whether behavior rises to the level of conscience-shocking will depend {456 F.3d 306} upon the facts of each individual case. id at 850

("Rules of due process are not...
... Subject to mechanical application
in unfamiliar territory.")

The exact degree of wrongfulness necessary to reach the "conscience shocking level depends upon the circumstances of a particular case
id at 375 Miller v. City of Philadelphia,
174 F.3d 368, 375 (3rd cir. 1999)

At issue in Lewis, was the conduct of police officers engaged in a pursuit which the Court contrasted with the "conduct of prison officials who face liability under the Eighth Amendment if they are "deliberately indifferent" to the medical need of their prisoners. Lewis 573 US at 850

The Court noted that "as the very term" "deliberately indifferent" implies, the standard is sensibly employed only when actual deliberation is practical and in the custodial situation of a prison, forethought about an inmates' welfare is not only feasible but obligatory. 523 US at 851... We note that

Lewis was not a state-created danger case but rather dealt with substantive due process generally. Following Lewis, we have stated that in substantive due process cases, "[t]he exact degree of wrongfulness necessary to reach the conscience shocking level depends upon the circumstances of a particular case Miller 174 F.3d 368

And we have had occasion to reflect on the appropriate standard of fault in a number of different settings.

In Nieini v. Mosra, 212 F.3d 798, 800-01 (3rd Cir) 2000 {2006 US App Lexis 18}

We reviewed A Substantive due process claim brought by A minor Against A New Jersey Dept. of Humane Serv. Case worker who placed him in the equivalent of A foster home. Ninci was clearly very troubled and had Apparently made two suicide attempts in the past, Id at 801. After Nicini was sexually Abused by one of the parents in his new foster home placement, he filed suit Against the Case worker failed to properly investigate the back ground of the foster parent, and that the Case worker knew or should have known that the placement was inappropriate. Id at 804

We Assessed the Caseworker's Action under the deliberate indifference standard, deciding to impose the heightened standards utilized in Lewis and Miller, Id at 811

We explicitly distinguished Miller because the Caseworker in Nicini, unlike the social worker in Miller, had "time" to make unhurried judgments in investigating whether to permit the child to remain in the foster care in which he was placed, Id quoting Lewis, 523 US At 853)

CONCLUSION ON THE STANDARD OF CULPABILITY

From the cases discussed above, {2006 US App Lexis 25} We gather the following, The level of culpability required to shock the conscience increases as the time state actors have to deliberate decreases in a hyperpressured environment an intent to cause harm is usually required.

On the other hand, in cases where deliberation is possible and officials have time to make "unhurried judgments" deliberate indifference is sufficient.

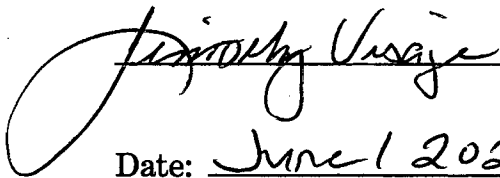
Though we need not decide this issue here, we note the possibility that deliberate indifference might exist without actual knowledge of a risk of harm when the risk is so obvious that it should be known. Sanford v. Stiles, 456 F.3d 298; 2006 US App Lexis 19428 (Aug 2006)

XIV

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Date: June 1 2020

PROVIDED TO APALACHE
CORRECTIONAL INSTITUTION
6/17/20
FOR MAILING



