# 9.27 Particular Rights—Eighth Amendment—Convicted Prisoner’s Claim Re Conditions of Confinement/Medical Care

As previously explained, the plaintiff has the burden of proving that the [act[s]] [failure to act] of the defendant deprived the plaintiff of particular rights under the United States Constitution. In this case, the plaintiff alleges the defendant deprived [him] [her] [other pronoun] of [his] [her] [other pronoun] rights under the Eighth Amendment to the Constitution when [*insert factual basis of the plaintiff’s claim*].

Under the Eighth Amendment, a convicted prisoner has the right to be free from “cruel and unusual punishments.” This includes the right to [*specify particular constitutional interest*]. To prove the defendant deprived the plaintiff of this right, the plaintiff must prove the following additional elements by a preponderance of the evidence:

First, [the plaintiff faced a substantial risk of serious harm] [the plaintiff faced a serious medical need];

Second, the defendant was deliberately indifferent to that [risk] [medical need], that is, the defendant knew of it and disregarded it by failing to take reasonable measures to address it; and

Third, the [act[s]] [failure to act] of the defendant caused harm to the plaintiff.

“Deliberate indifference” is the conscious choice to disregard the consequences of one’s acts or omissions.

[When the defendant lacks authority over budgeting decisions, the issue of whether a

prison official met [his] [her] [other pronoun] duties to an inmate under the Eighth Amendment must be considered in the context of the personnel, financial and other resources available to the

defendant or which [he] [she] [other pronoun] could reasonably obtain.]

**Comment**

Use this instruction only in conjunction with the applicable elements instructions, Instructions 9.3–9.8, and when the plaintiff is a convicted prisoner and claims the defendants’ deliberate indifference to a substantial risk of serious harm or serious medical needs.

When a convicted prisoner claims unconstitutional use of force, use Instruction 9.26 (Particular Rights—Eighth Amendment—Convicted Prisoner’s Claim of Excessive Force).When a pretrial detainee claims unconstitutional use of force, *see* Instruction 9.29 (Particular Rights—Fourteenth Amendment—Pretrial Detainee’s Claim of Excessive Force). When a pretrial detainee claims unconstitutional failure to protect, use Instruction 9.31 (Particular Rights—Fourteenth Amendment—Pretrial Detainee’s Claim of Failure to Protect).

The Eighth Amendment imposes certain duties on prison officials: (1) to provide humane conditions of confinement; (2) to ensure that inmates receive adequate food, clothing, shelter, and medical care; and (3) to “take reasonable measures to guarantee the safety of the inmates.” *Farmer v. Brennan*, 511 U.S. 825, 832 (1994) (citing *Hudson v. Palmer*, 468 U.S. 517, 526-27 (1984)). An Eighth Amendment claim based on deliberate indifference must satisfy both an objective and a subjective component test. *Farmer*, 511 U.S. at 834. A prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official “knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.’ *Id.* at 837; *accord Clement v. Gomez*, 298 F.3d 898, 904 (9th Cir. 2002) (“The inmates must demonstrate that they were confined under conditions posing a risk of ‘objectively, sufficiently serious’ harm and that the officials had a ‘sufficiently culpable state of mind’ in denying the proper medical care. Thus, there is both an objective and a subjective component to an actionable Eighth Amendment violation.” (citation omitted)) “Deliberate indifference has both subjective and objective components. A prison official must ‘be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and . . . must also draw the inference.’” *Labatad v. Corr. Corp. of Am*., 714 F.3d 1155, 1160 (9th Cir. 2013) (quoting *Farmer*, 511 U.S. at 837); *Hampton v. California,* 83 F.4th 754, 767 (9th Cir. 2023) (stating the plaintiff alleged a claim of “a conscious disregard to the health and safety” when the defendants “did not take precautions to avoid transferring COVID-positive inmates to San Quentin or to decrease the likelihood that COVID-19 would spread” once the inmates arrived).

In *Estelle v. Gamble*, the Supreme Court held that a prison official’s deliberate indifference to serious medical needs violates the Eighth Amendment. 429 U.S. 97, 106 (1976). An Eighth Amendment claim for inadequate medical care requires the plaintiff to show that an official acted with deliberate indifference to a serious medical need, that is, that “the course of treatment the official chose was medically unacceptable under the circumstances and that the official chose this course in conscious disregard of an excessive risk to the plaintiff's health.” *Edmo v. Corizon, Inc*., 935 F.3d 757, 786 (9th Cir. 2019). Accepted standards of care and practice within the medical community are highly relevant in determining what care is medically acceptable and unacceptable. *Id.* at 786 (explaining transgender prisoner established that the course of treatment chosen by the Idaho Department of Corrections and its medical provider to alleviate her gender dysphoria was medically unacceptable under the circumstances.) A serious medical need is present, when, for example, the “failure to treat a prisoner’s condition could result in further significant injury or the ‘unnecessary and wanton infliction of pain.’” *Clement*, 298 F.3d at 904 (citations omitted). A serious medical need includes the “existence of an injury that a reasonable doctor or patient would find important and worthy of comment or treatment; the presence of a medical condition that significantly affects an individual’s daily activities; or the existence of chronic and substantial pain.” *Russell v. Lumitap*, 31 F.4th 729, 739 (9th Cir. 2022) (quoting *Colwell v. Bannister*, 763 F.3d 1060, 1066 (9th Cir. 2014). For example, a prisoner who suffered from a cataract in one eye but did not suffer from pain and retained good vision in the other eye, has a serious medical need for cataract removal surgery because “his monocular blindness caused him physical injury.” *Colwell,* 763 F.3d at 1067.

Denying, delaying, or intentionally interfering with medical treatment can violate the constitution. *Stewart v. Aranas*, 32 F.4th 1192, 1195 (9th Cir. 2022) (quoting *Colwell*, 763 F.3d at 1066). In *Stewart*, years-long denial and delay of medical treatment of the plaintiff’s enlarged prostate resulted in long-term issues including kidney disease and erectile dysfunction, where the prisoner’s condition sharply deteriorated during his last few years at the correctional facility. *Stewart*, 32 F.4th at 1195-96 (noting that “[a]t some point ‘wait and see’ becomes deny and delay”).

Appropriate mental health care is also mandated by the Eighth Amendment. “[T]he Eighth Amendment’s prohibition against cruel and unusual punishment requires that prisons provide mental health care that meets ‘minimum constitutional requirements.’ *Disability Rights Montana* *v. Batista*, 930 F.3d 1090, 1097 (9th Cir. 2019), *quoting Brown v. Plata*, 563 U.S. 493, 510 (2011).

Certain conditions of confinement may violate the Eighth Amendment. For example, excess noise and prison conditions may deprive inmates of “identifiable human need[s],” such as sleep. *See Wilson v. Seiter*, 501 U.S. 294, 304 (1991); *accord Rico v. Ducart*, 980 F.3d 1292, 1299 (9th Cir. 2020) (addressing the lawfulness of officer-created noise while conducting court-ordered suicide-prevention welfare checks in a maximum security facility). While an inmate does not have a right to a quiet environment, an inmate has a right to an environment that is “reasonably free” from constant, excessive noise caused by other inmates. *Keenan v Hall*, 83 F.3d 1083, 1090-91 (9th Cir. 1996), amended by, 135 F.3d 1318 (9th Cir. 1998) (holding that an inmate had stated a separate Eighth Amendment claim for being subjected to constant illumination with no legitimate penological purpose). An inmate has the right to outdoor exercise and personal hygiene. *Keenan*, 83 F.3d at 1089-91 (noting that “[d]eprivation of outdoor exercise violates the Eighth Amendment rights of inmates confined to continuous and long-term segregation” and that “[i]ndigent inmates have the right to personal hygiene supplies such as toothbrushes and soap”); *Polanco v. Diaz,* 76 F.4th 918, 929 (9th Cir. 2023) (describing a “textbook case of deliberate indifference: Defendants were repeatedly admonished by experts that their COVID-19 policies were inadequate, yet they chose to disregard those warnings”). In addition, while adequate food is a basic human need protected by the Eighth Amendment (*see Keenan*, 83 F.3d at 1091), “[t]he Eighth Amendment ‘requires only that prisoners receive food that is adequate to maintain health.’” *Mendiola-Martinez v. Arpaio*, 836 F.3d 1239, 1259 (9th Cir. 2016) (citation omitted). Some conditions of confinement may establish an Eighth Amendment violation “in combination” when each alone would not suffice, but only when they have a combined effect that produces the deprivation of a single, identifiable human need such as food, warmth, or exercise—for example, a low cell temperature at night combined with a failure to issue blankets. *Wilson*, 501 U.S. at 304-05.

The Ninth Circuit rejected the argument that a plaintiff need only prove the defendant’s constructive knowledge of a substantial risk of serious harm. *Harrington v. Scribner*, 785 F.3d 1299, 1304 (9th Cir. 2015) (noting, however, that the “obviousness of a risk may be used to prove subjective knowledge”). With respect to claims arising under *Monell v. Department of Social Services of City of New York*, 436 U.S. 658 (1978), a plaintiff must show the municipality’s deliberate indifference under an “objective inquiry.” *Castro v. County of Los Angeles*, 833 F.3d 1060, 1076 (9th Cir. 2016) (en banc). “[T]his objective standard necessarily applied to municipalities for the practical reason that government entities, unlike individuals, do not themselves have states of mind[.]” *Id*.

Whether a prison official met his or her duties to an inmate under the Eighth Amendment must be considered in the context of the personnel, financial, and other resources available to the official or that he or she could reasonably obtain, at least when the official lacks authority over budgeting decisions. *Peralta v. Dillard*, 744 F.3d 1076, 1083-84 (9th Cir. 2014) (en banc) (holding that weighing the resources available for prison dental care and the security concerns related to providing care in prison was appropriate in determining if the defendants acted with deliberate indifference).

In the appropriate case, the trial court may instruct the jury that in considering the elements, it should give deference to prison officials in the adoption and execution of policies and practices that in their judgment are needed to preserve discipline and to maintain internal security in a prison. *Bell v. Wolfish*, 441 U.S. 520, 547 (1979). Courts “must defer to the judgment of correctional officials unless the record contains substantial evidence showing [that] their policies are an unnecessary or unjustified response to problems of jail security.” *Florence v. Bd. of Chosen Freeholders Cnty. of Burlington*, 566 U.S. 318, 322-23 (2012). “It is well established that judges and juries must defer to prison officials’ expert judgments.” *Norwood v. Vance*, 591 F.3d 1062, 1066 (9th Cir. 2010).

The Ninth Circuit has held that failing to give a jury deference instruction based on the general principles outlined in *Bell* was an error. *Norwood*, 591 F.3d at 1066-67 (“Prison officials are entitled to deference whether a prisoner challenges excessive force or conditions of confinement.”). In subsequent cases, the Ninth Circuit explained that a deference instruction should be given only where both of the conditions in *Bell* were present: first, the prison officials adopted and executed “policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security,” *Shorter v. Baca*, 895 F.3d 1176, 1183 (9th Cir. 2018) (quoting *Bell*, 441 U.S. at 547), and second, the record did not contain “substantial evidence showing [that the prison’s] policies are an unnecessary or unjustified response to problems of jail security.” *Id.* (quoting *Florence*, 566 U.S. at 323); *see also Fierro v. Smith*, 39 F.4th 640, 648 (9th Cir. 2022) (restating the rule that “two conditions” inform whether the deference instruction should be given when prisoners assert Eighth Amendment claims challenging their treatment in prison, namely “whether the treatment the prisoner challenges (1) was provided pursuant to a security-based policy or practice, and, if so, (2) was a necessary, justified, and non-exaggerated response to security needs”).

In light of the two *Bell* conditions, the Ninth Circuit has explained the contours of giving a deference instruction in different scenarios. The plaintiff bears the burden of producing “substantial evidence” in the record that the two conditions are not met. *Shorter*, 895 F.3d at 1183 (“In the absence of substantial evidence in the record to indicate that the officials have exaggerated their response to [security] considerations courts should ordinarily defer to their expert judgment in such matters” (citing *Block v. Rutherford*, 468 U.S. 576, 584-85 (1984)). If the plaintiff has failed to carry this burden, or if the parties do not dispute that both *Bell* conditions are met, the trial court must give a jury the deference instruction. *Fierro*, 39 F.4th at 648; *Norwood*, 591 F.3d at 1067. Where the parties agree that one condition is met and one is absent, or that both conditions are absent, then the trial court may not give the jury deference instruction. *Fierro*, 39 F.4th at 648.

In cases involving the denial of medical care to prisoners, which highlight *Bell*’s first condition (whether the policy or procedure addressed the need for prison security), the deference instruction should not be given “unless a party’s presentation of the case draws a plausible connection between a security-based policy or practice and the challenged medical care decision.” *Chess v. Dovey*, 790 F.3d 961, 972 (9th Cir. 2015); *see also* *Shorter*, 895 F.3d at 1184 (holding that “the [jury deference] instruction may be given only when there is evidence that the treatment to which the plaintiff objects was provided pursuant to a security-based policy”); *Coston v. Nangalama*, 13 F.4th 729, 734 (9th Cir. 2021) (holding, in a medical care case, that the deference instruction should not have been given because, among other things, defendants “did not draw a plausible connection between a security-based policy or practice and the challenged decision to terminate [defendant’s] morphine prescription without tapering”).

In a case highlighting *Bell*’s second condition (whether there was substantial evidence that prison officials had exaggerated their response), a deference instruction was not appropriate when the record contained substantial evidence that the jail’s search practice “was an unnecessary, unjustified, and exaggerated response to jail officials’ need for prison security.” *Shorter,* 895 F.3d at 1184 (stating that “jail officials concede[d] that there was no legitimate penological purpose for shackling mentally ill, virtually unclothed, female pretrial detainees to their cell doors for hours at a time”).

Finally, in some cases, whether or not to give deference to prison officials should be left to the jury to decide. *Coston,* 13 F.4th 735. If the plaintiff offered substantial evidence that the prison official’s action “was not provided pursuant to a security-based policy or practice,” and the policy at issue was “an unnecessary, unjustified, or exaggerated response,” but in response the prison adduced substantial evidence that the prison official’s “actions were (1) taken because of a security-based policy or practice and (2) necessary, justified, and not exaggerated,” *Coston*, 13 F.4th at 735, then “it might be appropriate to instruct the jury that ‘whether to give deference to prison officials [is] left to the jury to decide.’” *Fierro*, 39 F.4that 648-49 (citing *Coston*, 13 F.4th at 735).

This framework also applies to pretrial detainees challenging use of force and other conditions of confinement. *See Fierro*, 39 F.4th 648. n.6 (“This framework also applies to pretrial detainees challenging their conditions of confinement under the Fourteenth Amendment.”). A court must also account for the “legitimate interests that stem from [the government’s] need to manage the facility in which the individual is detained,” appropriately deferring to “policies and practices that in th[e] judgment” of jail officials “are needed to preserve internal order and discipline and to maintain institutional security.” *Kingsley*, 576 U.S. at 397 (quoting *Bell v. Wolfish*, 441 U.S. at 540). *See also Bell v. Williams*, 108 F.4th 809, 828 (9th Cir. 2024) (approving instructing the jury on deference owed to jail’s security interests for pretrial detainee’s claims under the ADA and Rehabilitation Act: “consider a detention facility's legitimate correctional interests, and whether there is a valid, rational connection between the action taken and the legitimate and neutral governmental interest put forward to justify it.”).

The Ninth Circuit also addressed the relationship between the principle of deference to prison officials and strict scrutiny in a case which included a race discrimination equal protection claim. When a prisoner case includes an equal protection claim involving strict scrutiny, “prison security and deference to prison authorities do not trump” the narrow tailoring required for equal protection claims. *See Harrington*, 785 F.3d at 1306. Indeed, “[p]risoners are protected under the Equal Protection Clause of the Fourteenth Amendment from invidious discrimination based on race.” *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974). When a prisoner brings an equal protection claim, “the plaintiff must prove by a preponderance of the evidence that defendants . . . acted with an intent or purpose to discriminate against the plaintiff, or against a class of which the plaintiff is a member, based on his race.” *Harrington*, 785 F.3d at 1305. In this context, “[i]ntentional discrimination means that a defendant acted at least in part because of the plaintiff’s race.” *Id.*

The state must show that its race-based action is “necessary to further a compelling governmental interest” and is “narrowly tailored to serve such a governmental interest.” *Id.* “The necessities of prison security and discipline, are a compelling government interest justifying only those uses of race that are narrowly tailored to address those necessities.” *Johnson v. California*, 543 U.S. 499, 512 (2005) (internal quotation omitted); *Harrington*, 785 F.3d at 1307 (“[T]he court also erred by allowing the jury to defer generally to officials when considering [the plaintiff’s] equal protection claim, rather than assessing whether the challenged race-based actions were narrowly tailored.”).

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