# 9.33B Particular Rights—Fourteenth Amendment—Due Process—State-Created Danger

 As previously explained, the plaintiff has the burden of proving that the act[s] of the defendant deprived the plaintiff of particular rights under the United States Constitution.

 In this case, the plaintiff alleges that the defendant deprived the plaintiff of [his] [her] [other pronoun] rights under the Fourteenth Amendment to the Constitution when *[insert factual basis of the plaintiff’s claim*].

 Under the Fourteenth Amendment, a person has the constitutional right to be free from a government employee affirmatively placing that person in a position of actual, particularized danger (or in a situation of actual, particularized danger that is more dangerous than the position that the person already faced) if the government employee acted with deliberate indifference to a known or obvious danger.

 To prove the defendant deprived the plaintiff of this Fourteenth Amendment right, the plaintiff must prove the following additional elements by a preponderance of the evidence:

 First, the defendant committed an affirmative act;

 Second, the affirmative act placed the plaintiff in a position of an actual, particularized danger by creating or exposing the plaintiff to a danger that [he] [she] [other pronoun] would not have otherwise faced;

 Third, the defendant acted with deliberate indifference to a known or obvious danger; and

 Fourth, the affirmative act that created the actual, particularized danger caused injury to the plaintiff that was foreseeable.

 In this context, “deliberate indifference” means that the defendant disregarded a known or obvious consequence of [his] [her] [other pronoun] action[s]. In other words, the defendant must have known that something was going to happen but ignored the risk and still exposed the plaintiff to that risk.

**Comment**

 Use this instruction only in conjunction with the applicable elements instruction from Instructions 9.3–9.8.

 The “state may be constitutionally required to protect a plaintiff that it affirmatively places in danger by acting with deliberate indifference to a known or obvious danger.” *Martinez v. City of Clovis*, 943 F.3d 1260, 1271 (9th Cir. 2019) (quotations omitted); *see also Martinez v. High*, 91 F.4th 1022, 1028-29 (9th Cir. 2024) (explaining that an officer acted with deliberate indifference when the police officer disclosed a domestic violence victim’s confidential report of domestic violence to victim’s alleged abuser, who was another police officer, and knew victim was in the room with the abuser and would thus be exposed to his violent reaction, after which the abuser further physically abused the plaintiff); *Polanco v. Diaz*, 76 F.4th 918, 925-29 (9th Cir. 2023) (upholding a claim of state-created danger against prison officials in a case arising from prison guard’s death from COVID-19 complications after 122 ill inmates with COVID-19 were transferred from another prison); *Murguia v. Langdon*, 61 F.4th 1096, 1110-17 (9th Cir. 2023) (“In examining whether an officer affirmatively places an individual in danger, . . . we examine whether the officers left the person in a situation that was more dangerous than the one in which they found him.”); *Sinclair v. City of Seattle*, 61 F.4th 674, 682 (9th Cir. 2023) (holding that the danger of uncontrolled lawlessness created by the city’s decision to withdraw law enforcement from a neighborhood and surrender it to protestors failed to allege that the danger was sufficiently particularized to support a mother’s claim that the city’s actions deprived her of her substantive due process right to son’s companionship); *Hernandez v. City of San Jose*, 897 F.3d 1125, 1133-35 (9th Cir. 2018) (stating police officers “shepherding” of presidential candidate’s supporters into a crowd of violent counter-protesters increased the danger to the attendees and was in deliberate indifference to that danger).

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