**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[s] [*insert name[s] of defendant[s]*] deprived the plaintiff of particular rights under the United States Constitution.

In this case, the plaintiff alleges that the defendant[s] deprived the plaintiff of [his] [her] 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.

In order to prove the defendant[s] deprived the plaintiff of this Fourteenth Amendment right, the plaintiff must prove the following additional elements by a preponderance of the evidence:

1. the defendant[s] committed an affirmative act;

2. 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] would not have otherwise faced;

3. the defendant[s] acted with deliberate indifference to a known or obvious danger; and

4. 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[s] disregarded a known or obvious consequence of [his] [her] [their] action[s]. In other words, the defendant[s] 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.

*See Polanco v. Diaz*, 76 F.4th 918, 925-29 (9th Cir. 2023); *Murguia v. Langdon*, 61 F.4th 1096, 1110-17 (9th Cir. 2023) *Hernandez v. City of San Jose*, 897 F.3d 1125, 1133-35 (9th Cir. 2018); *Kennedy v. City of Ridgefield*, 439 F.3d 1055, 1061-65 (9th Cir. 2006).

*Revised Dec. 2023*