# HANDBOOK FOR SECTION 1983 PRISONER LITIGATION

**UNITED STATES DISTRICT COURT**
**WESTERN DISTRICT OF ARKANSAS**

**This outline is to be used as a starting point for research. It is not intended to express the views or opinions of the Western District of Arkansas, and it may not be cited as authority by the parties to any lawsuit.**

Acknowledgment: This handbook was prepared through the work of the externs to United States Magistrate Judge Christina Comstock and the work of the Court's Pro Se Staff Attorneys. Participating externs include Tatum Cooper, Savannah Vann, Abigail Todd, and Margaret Whisenhunt, Gabrielle Rancifer, and Stephanie Ponzaneli.

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## I. General Features of 42 U.S.C. § 1983 Claims

### A. Elements of a Section 1983 Claim.

"The essential elements of a § 1983 claim are (1) that the defendant(s) acted under color of state law, and (2) that the alleged wrongful conduct deprived the plaintiff of a constitutionally protected federal right." *Schmidt v. City of Bella Villa*, 557 F.3d 564, 571 (8th Cir. 2009) (citing *DuBose v. Kelly*, 187 F.3d 999, 1002 (8th Cir. 1999)); *see also McKay v. City of St. Louis*, 960 F.3d 1094, 1099 (8th Cir. 2020). To act "under color of state law," the defendant must exercise or misuse power "possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law." *Dossett v. First State Bank*, 399 F.3d 940, 949 (8th Cir. 2005); *see also Ramirez-Peyro v. Holder*, 574 F.3d 893, 900 (8th Cir. 2009) (provided there is some nexus between the official's position and the conduct in question, "[a]cts of [public officials] who undertake to perform their official duties are included whether they hew to the line of their authority or overstep it."). "A private party who willfully participates in joint activity with the State or its agents is considered a state actor." *Youngblood v. Hy-Vee Food Stores, Inc.*, 266 F.3d 851, 855 (8th Cir. 2001).

## B. Federal Violation Required

"In order to seek redress through section 1983, . . . a plaintiff must assert the violation of a federal right, not merely a violation of federal law." *Spectra Commc'ns Group, LLC v. City of Cameron, Mo.*, 806 F.3d 1113, 1118 (8th Cir. 2015) (internal quotations and citations omitted).

## C. Suing a Public Servant in his/her Individual and/or Official Capacity

Pursuant to § 1983, public servants can be sued in their individual capacity, official capacity, or both. *Johnson v. Outboard Marine Corp.*, 172 F.3d 531, 535 (8th Cir. 1999). The Eighth Circuit *previously* required that "in order to sue a public official in his or her individual capacity, a plaintiff must expressly and unambiguously state so in the pleadings, otherwise, it will be assumed that the defendant is sued only in his or her official capacity." *Id*. But in *S.A.A. v. Geisler,* 127 F.4th 1133, 1135 (8th Cir. 2025) (en banc), the Eighth Circuit discarded the "clear statement" standard, replacing it with a "course of the proceedings" test. In departing from the "clear statement" standard, the Eighth Circuit concluded that the rule "conflicts with the Federal Rules of Civil Procedure, is in tension with Supreme Court decisions, and unwarrantedly sets us alone among the courts of appeals." *Id.* at 1136.

The "course of proceedings" test requires courts to consider how the parties have treated a defendant during the "course of the proceedings." Relevant factors in this analysis "include, but are not limited to, how early in the litigation the plaintiff first specified individual capacity claims, whether plaintiff's complaint included a prayer for punitive damages, and whether the defendant decline to raise a qualified immunity defense." *Id.* at 1139.

A claim against officials "in their individual capacity 'seek to impose personal liability upon a government official for actions he takes under color of state law.'" *Handt v. Lynch*, 681 F.3d 939, 943 (8th Cir. 2012) (quoting *Kentucky v. Graham*, 437 U.S. 159, 165 (1985)). By contrast, "[a] suit against a public official in his official capacity is actually a suit against the entity for which the official is an agent." *Parrish v. Ball*, 594 F.3d 993, 997 (8th Cir. 2010) (quoting *Elder-Keep v. Aksamit*, 460 F.3d 979, 986 (8th Cir. 2006)). If a plaintiff chooses to sue a public employee in their official capacity, the plaintiff "sues only the public employer and therefore must establish the municipality's liability for the alleged conduct." *Johnson*, 172 F.3d at 535.

**D. Municipal Liability**

"A municipality can be liable under § 1983 only if a municipal policy or custom caused a plaintiff to be deprived of a federal right or if the municipality failed to adequately train its employees." *Snider v. City of Cape Girardeau*, 752 F.3d 1149, 1160 (8th Cir. 2014). Further, a municipality can be liable under § 1983 if the municipality failed to adequately supervise its employees. *City of Canton, Ohio v. Harris*, 489 U.S. 378, 389 (1989). In sum, § 1983 liability for a constitutional violation may attach to a municipality "if the violation resulted from (1) an 'official municipal policy,' (2) an unofficial 'custom,' or (3) a deliberately indifferent failure to train or supervise." *Corwin v. City of Indep., Mo.,* 829 F.3d 695, 699 (8th Cir. 2016) (citations omitted).

**Policy:** "[A] 'policy' is an official policy, a deliberate choice of a guiding principle or procedure made by the municipal official who has final authority regarding such matters." *Mettler v. Whitledge*, 165 F.3d 1197, 1204 (8th Cir. 1999). "A *single decision* by a government's 'authorized decisionmakers' to adopt a particular course of action 'surely represents an act of official government policy,' regardless of 'whether or not that body had taken similar action in the past or intended to do so in the future.'" *Sorcan v. Rock Ridge Sch. Dist.*, 131 F.4th 646, 651 (8th Cir. 2025) (quoting *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480-81 (1986) (emphasis in original)).

"[A] policy giving rise to liability cannot be established merely by identifying a policymaker's conduct that is properly attributable to the municipality. The plaintiff must also demonstrate that, through its deliberate conduct, the municipality was the 'moving force' behind the injury alleged." *Bd. of Cty. Comm'rs of Bryan Cty., Okla. v. Brown*, 520 U.S. 397, 397 (1997) (citing *Monell*, 436 U.S. at 694). Therefore, "a plaintiff must show that the municipal action was taken with the requisite degree of culpability and must demonstrate a direct causal link between the municipal action and the deprivation of federal rights." *Brown*, 520 U.S. at 397.

**Custom:** The plaintiff may establish municipal liability through unofficial custom if he proves:

> (1) the existence of a continuing, widespread, persistent pattern of unconstitutional misconduct by the governmental entity's employees; (2) deliberate indifference to or tacit authorization of such conduct by the governmental entity's policymaking officials after notice to the officials of that misconduct; and (3) that plaintiff was injured by acts pursuant to the governmental entity's custom, i.e., that the custom was a moving force behind the constitutional violation.

*Hall v. Higgins*, 77 F.4th 1171, 1180 (8th Cir. 2023).

**Failure to Train:** A municipality may also be liable for failure to train: "where (1) the [county's]. . . training practices [were] inadequate; (2) the [county] was deliberately indifferent to the rights of others in adopting them, such that the 'failure to train reflects a deliberate or conscious choice by [the county]'; and (3) an alleged deficiency in the . . . training procedures actually caused the plaintiff's injury." *Parrish v. Ball*, 594 F.3d 993, 997 (8th Cir. 2010) (quoting *Andrews v. Fowler*, 98 F.3d 1069, 1076 (8th Cir. 1996)). To establish a "failure to train" claim, the fact that an "officer may be unsatisfactorily trained will not alone suffice to fasten liability" on the municipality, *City of Canton*, 489 U.S. at 390-91, instead, "the need for more or different training [or supervision] [must be] so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need." *S.M. v. Lincoln Cty.*, 874 F.3d 581, 585 (8th Cir. 2017) (quoting *City of Canton*, 489 U.S. at 390).

**Failure to Supervise:** Finally, a municipality may be liable for failure to supervise. The court applies the same analysis to failure to train and failure to supervise claims. *Atkinson v. City of Mt. View,* 709 F.3d 1201, 1216 (8th Cir. 2013).

In *S.M. v. Lincoln Cty.,* 874 F.3d 581, 585 (8th Cir. 2017), the Eighth Circuit stated:

> In *City of Canton v. Harris*, 489 U.S. 378, 388, 109 S. Ct. 1197, 103 L.Ed.2d 412 (1989), the Court held that municipal liability for a claim such as failure to supervise . . . requires proof that the failure "amounts to deliberate indifference to the rights of persons with whom the [employee] come[s] into contact." Municipal inaction must be the "moving force [behind] the constitutional violation." *Id.* at 389, 109 S. Ct. 1197 (alteration in original) (quotation omitted); *see, Szabla*, 486 F.3d at 390-91.
>
> Deliberate indifference in this context "is a stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his action." *Bd. of Cnty. Comm'rs v. Brown*, 520 U.S. 397, 410 (1997). The issue is whether, "in light of the duties assigned to specific officers or employees the need for more or different [supervision] is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the [county] can reasonably be said to have been deliberately indifferent to the need." *City of Canton*, 489 U.S. at 390.

*Id.* at 585.

### E. Individual Liability

To establish an individual capacity claim under § 1983, "the plaintiff must plead that a government official has personally violated the plaintiff's constitutional rights." *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009). "In requiring a plaintiff to allege that each defendant was personally involved in the deprivation of his constitutional rights, [courts] assess each defendant relative to his authority over the claimed constitutional violation." *Jackson v. Nixon*, 747 F.3d 537, 543 (8th Cir. 2014). A government official may also be held liable for failing to intervene when a constitutional violation occurs in their presence. *See Putman v. Gerloff*, 639 F.2d 415, 423 (8th Cir. 1981) (determining that a deputy could be held "jointly liable for failing to intervene if a fellow officer . . . was using excessive force and otherwise was unlawfully punishing the prisoner").

To establish that a supervisor is liable in his or her individual capacity for failure to supervise or train a subordinate, the plaintiff must show that the supervisor: "(1) [r]eceived notice of a pattern of unconstitutional acts committed by subordinates; (2) [d]emonstrated deliberate indifference to or tacit authorization of the offensive acts; (3) [f]ailed to take sufficient remedial action; and (4) [t]hat such a failure proximately caused injury to [plaintiff]." *Parrish v. Ball*, 594 F.3d 993, 1002 (8th Cir. 2010) (citing *Jane Doe A v. Special Sch. Dist. of St. Louis Cty.*, 901 F.2d 642, 645 (8th Cir. 1990)).

**F. Corporate Defendants**

A private party can be held liable under § 1983 when it acts under color of state law. *See Sanders v. Sears, Roebuck & Co.*, 984 F.2d 972, 975 (8th Cir. 1993); *see also Dennis v. Sparks*, 449 U.S. 24, 27-28 (1980) ("Private persons, jointly engaged with state officials in the challenged action, are acting 'under color' of law for purposes of § 1983 actions."). Thus, private corporations that contract with the State to perform government services, such as providing medical care to correctional facilities, are acting under color of law. Accordingly, employees of such private corporations are acting under color of law and may be sued in their individual capacities. However, a plaintiff wishing to bring a claim against a private corporation in its official capacity must demonstrate that the alleged deprivation was a result of an express policy or practice by the corporation. *See Smith v. Insley's, Inc.*, 499 F.3d 875, 880 (8th Cir. 2007) ("A corporation acting under color of state law will be held liable under § 1983 for unconstitutional policies, but will not be liable on a respondeat superior theory.").

## II. Immunities

Defendants in a §1983 action may be entitled to immunity.

### A. Federal Officials

Federal officials cannot be held liable for their constitutional torts under § 1983. *See Farah v. Weyker*, 926 F.3d 492, 497 (8th Cir. 2019). Instead, a plaintiff may bring a constitutional claim against federal officials in their individual capacities pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971) ("*Bivens*"). *Id.* The federal official may be entitled to qualified immunity. "Qualified immunity shields federal and state officials from money damages unless a plaintiff pleads facts showing (1) that the official violated a statutory or constitutional right, and (2) that the right was 'clearly established' at the time of the challenged conduct." *Ashcroft v. al-Kidd,* 563 U.S. 731, 735 (2011) (citation omitted).

But the United States Supreme Court has recognized a *Bivens* action in only three circumstances. *See Farah*, 926 F.3d at 498 (citing *Carlson v. Green*, 446 U.S. 14, 16-18 (1980) (Eighth Amendment established a damages remedy for failure to provide adequate medical treatment); *Davis v. Passman*, 422 U.S. 228, 248 (1979) (Fifth Amendment Due Process Clause provides damages remedy for gender discrimination); *Bivens*, 403 U.S. at 397 (Fourth Amendment provides damages remedy for search and seizure violation)).

Moreover, since 1980, the Supreme Court has "consistently refused to extend *Bivens* to any new context or new category of defendants." *Farah,* 926 F.3d at 498 (citing *Ziglar v. Abbasi*, 582 U.S. 120, 135 (2017)); *see also Hernandez v. Mesa,* 589 U.S. 735 (2020) (*Bivens* was decided in an "era when the Court routinely inferred 'causes of action.'" Pointing out *Abbasi* determined this is no longer the position of the Court).

Determining whether an implied cause of action is available under *Bivens* involves two steps. *Farah,* 926 F.3d at 498. At step one, courts "must first determine whether the case [] present[s] one of 'the three *Bivens* claims the Court has approved in the past' or whether, instead, allowing the plaintiffs to sue would require [the court] to extend *Bivens* to a 'new context.'" *Id.* (quoting *Abbasi*, 582 U.S. at 140). "If there is a previously recognized *Bivens* claim alleged, then the case[] may proceed. If not, then [the court] advance[s] to the second step and ask[s] whether any 'special factors counsel[] hesitation' before implying a new cause of action 'in the absence of affirmative action by Congress.'" *Id.* (quoting *Abbasi*, 582 U.S. at 143). "Only if [the court is] confident that 'the Judiciary is well suited . . . to consider and weigh the costs and benefits of allowing a damages action' will [the court] take it upon [itself] to do so." *Id.* (quoting *Abbasi*, 582 U.S. at 136).

**B. State Officials**

The Eleventh Amendment bars § 1983 claims against the State and its agencies. *Murphy v. State of Ark.*, 127 F.3d 750, 754 (8th Cir. 1997), *abrogated on other grounds by S.A.A. v. Geisler*, 127 F.4th 1133 (8th Cir. 2025). Further, § 1983 claims for damages against individual defendants acting in their *official* capacities are "likewise barred, either by the Eleventh Amendment or because in these capacities they are not 'persons' for § 1983 purposes." *Id.* (citing *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 109 (1989)). But there is no bar for claims against individual officials in their official capacities for prospective, injunctive relief. *Id.* Also, there is no bar for claims for damages against individual defendants acting in their individual capacities. *Id.*

That said, under the affirmative defense of qualified immunity, state officials are generally shielded from individual liability for civil damages "if their conduct did not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Watkins v. City of St. Louis, Mo.*, 102 F.4th 947, 951 (8th Cir. 2024) (quoting *Dillard v. O'Kelley*, 961 F.3d 1048, 1052 (8th Cir. 2020)). To determine whether qualified immunity applies, "[the court] conduct[s] a two-part inquiry: '(1) [whether] the facts, viewed in the light most favorable to [the plaintiff], demonstrate the deprivation of a constitutional or statutory right; and (2) [whether] the right was clearly established at the time of the deprivation.'" *Ryno v. City of Waynesville*, 58 F.4th 995, 1004 (8th Cir. 2023) (citing *Jones v. McNeese*, 675 F.3d 1158, 1161 (8th Cir. 2012)).

### C. City and County Officials

City and county officials may be sued in both their official and individual capacities. A claim "against municipal officers in their official capacities [is] treated as [a] claim[] against the municipality." *Ness v. City of Bloomington*, 11 F.4th 914, 922 (8th Cir. 2021). Additionally, municipalities may be sued directly for retrospective or prospective relief. *See generally Lake Cty. Estates Inc. v. Tahoe Regional Planning Agency*, 440 U.S. 391 (1979). Under *Monell,* however, *respondeat superior* is not a basis for municipal liability. 436 U.S. at 658. Municipal liability is based on injury caused by a "policy or custom" or a failure to train or supervise. *See id*. When sued in their individual capacities, county officials may also assert the defense of qualified immunity. *See Plumhoff v. Rickard*, 572 U.S. 765, 778 (2014).

**D. Specific Public Servants**

Individuals in certain public servant roles enjoy either absolute or limited immunity, or are not considered state actors. Some of those commonly named include:

- **Judges:** "Few doctrines were more solidly established at common law than the immunity of judges for liability for damages for acts committed within their judicial jurisdiction." *Pierson v. Ray,* 386 U.S. 547, 553-54 (1967).
- **Prosecutors:** The United States Supreme Court in *Imbler v. Pachtman*, 424 U.S. 409, 431 (1976), established the absolute immunity of a prosecutor from a civil suit for damages under 42 U.S.C. § 1983 "in initiating a prosecution and in presenting the State's case." *Id*. at 431. This immunity extends to all acts that are "intimately associated with the judicial phase of the criminal process." *Id*. at 430; s*ee also Buckley v. Fitzsimmons*, 509 U.S. 259 (1993) (Prosecutor acting as an advocate for the state in a criminal prosecution is entitled to absolute immunity). However, this immunity does not extend to actions for declaratory and injunctive relief. *See Supreme Court v. Consumers Union of U.S*, 446 U.S. 719, 736 (1980); *Heartland Acad. Cmty. Church v. Waddle*, 427 F.3d 525, 531 (8th Cir. 2005).
- **Court Clerks:** "Clerks are absolutely immune only for acts that may be seen as discretionary, or for acts taken at the direction of a judge or according to court rule." *Geitz v. Overall,* 62 Fed.Appx. 744, 2003 WL 1860542, at *1 (8th Cir. April 11, 2003) (citing *Antoine v. Byers & Anderson, Inc.,* 508 U.S. 429, 436 (1993)).
- **Public Defenders**: Neither public defenders nor privately retained defense counsel act under color of state law when performing a lawyer's traditional functions as counsel to a defendant in criminal proceedings. *Polk Cty. v. Dodson,* 454 U.S. 312, 324 (1981).

### E. Private Contractors

Private contractors, acting under the color of state law, are "not necessarily entitled to assert the defense of qualified immunity in defending section 1983 claims." *Davis v. Buchanan Cty.*, 11 F.4th 604, 617 (8th Cir. 2021). To determine whether private contractors are entitled to assert qualified immunity, the court considers the "general principles of tort immunities and defenses applicable at common law, and the reasons we have afforded protection from suit under section 1983." *Filarsky v. Delia*, 566 U.S. 377, 384 (2012). Additionally, employees of "systematically organized private firms, tasked with assuming a major lengthy administrative task" rather than a "limited and discrete task for the state" are not entitled to assert qualified immunity and may be held liable for their deliberate indifference to the inmates' medical needs. *Davis*, 11 F.4th at 619.

## III. Requirements/ Limitations of the Prison Litigation Reform Act

### A. Screening

The Prison Litigation Reform Act ("PLRA") pertains to complaints filed by prisoners about the conditions of their confinement. The PLRA imposes several requirements on such cases. One such requirement is that courts must screen complaints prior to service being issued. Pursuant to 28 U.S.C. § 1915A, the court must dismiss complaints that are: (1) frivolous or malicious; (2) fail to state a claim upon which relief may be granted; (3) or seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b).

### B. Physical Injury Requirement

Under § 1997e, prisoners are limited in their recovery of damages—namely, prisoners cannot recover damages for mental or emotional injuries without a prior showing of physical injury or the commission of sexual act. The physical injury must be more than *de minimis* to satisfy this requirement under § 1997e. *McAdoo v. Martin*, 899 F.3d 521, 525-27 (8th Cir. 2018). This provision serves as a limitation on damages rather than a complete bar to filing a lawsuit. *Id*. at 525.

- In *McAdoo*, the Eighth Circuit held that the PLRA's physical injury requirement was met when a prisoner's shoulder fracture caused permanent disability, allowing recovery of compensatory damages for pain caused by the denial of prescribed medication. 899 F.3d at 525. In doing so, the Court explained that "in the Eighth Amendment context, in order to recover compensatory damages, the PLRA requires a showing of harm caused by some unconstitutional conduct that amounted to deliberate indifference *and* an accompanying showing of physical injury." *Id.* at 526.

- In *Royal v. Kautzky*, 375 F.3d 720 (8th Cir. 2004), the Eighth Circuit affirmed the district court's award for nominal damages only in a case involving First Amendment violation. *Id.* at 723.

### C. Three Strikes Provision

The "three strikes" rule, codified at § 1915(g), prohibits prisoners from proceeding *in forma pauperis* ("IFP") if they have had three or more prior lawsuits or appeals dismissed as frivolous, malicious, or for failure to state a claim, unless they are under "imminent danger of serious physical injury" at the time of filing. 28 U.S.C. § 1915(g); *see also Lyon v. Vande Krol*, 127 F.3d 763, 764 (8th Cir. 1997); *Martin v. Shelton*, 319 F.3d 1048, 1049-50 (8th Cir. 2003); *Ashley v. Dilworth*, 147 F.3d 709, 715 (8th Cir. 1997). The three strikes provision does not bar prisoners from filing lawsuits entirely; instead, it requires them to pay the full filing fee upfront if they do not meet the imminent danger exception. *Lyon*, 127 F.3d at 764; *Martin*, 319 F.3d at 1048; *Ashley*, 147 F.3d, at 715.

The imminent danger exception requires specific and plausible allegations of ongoing or future harm, not past harm. The Court of Appeals for the Eighth Circuit addresses whether imminent danger of serious physical injury existed in the cases outlined below:

- In *Ashley*, the Eighth Circuit reversed the district court's denial of IFP status under § 1915(g), concluding that the plaintiff had sufficiently alleged that he was in imminent danger of serious physical injury from being housed next to inmates on his "enemy list." *Ashley v. Dilworth*, 147 F.3d 709, 717 (8th Cir. 1997).

- In *McAlphin*, the Eighth Circuit reversed the district court's denial of the prisoner's IFP application, concluding that the prisoner's allegations that the prison's failure to extract two teeth had caused him to contract a mouth infection met the imminent danger exception. *McAlphin*, 281 F.3d 709, 710 (8th Cir. 2002).
- In *Martin*, the Eighth Circuit held that the imminent danger exception requires the danger to exist at the time the complaint or appeal is filed, not when the alleged wrongdoing occurred. *Martin v. Shelton*, 319 F.3d 1048, 1050 (8th Cir. 2003). The court found that Martin's allegations of being forced to work in inclement weather on two separate occasions did not meet the imminent danger standard, as the danger was not ongoing or immediate at the time of filing. (*Id*.).

### D. Payment of Filing Fees

Prisoners proceeding IFP must pay the full filing fee but are allowed to pay in installments. An initial partial filing fee of 20% of the greater of the average monthly deposits or balance in the prisoner's account over the preceding six months is required, followed by monthly payments of 20% of the preceding month's income until the fee is paid in full. *Lyon v. Vande Krol*, 127 F.3d 763, 763 (8th Cir. 1997). If a prisoner has no assets or means to pay the initial partial filing fee, he cannot be barred from bringing a civil action or appeal. *Id*.; *see also* 28 U.S.C. § 1915 (proceedings *in forma pauperis*).

As discussed above, prisoners with three strikes must pay the entire filing fee at the time of filing unless the imminent danger exception applies. (*Lyon*, 127 F.3d at 763; see also *Ashley*, 147 F.3d at 715; 28 U.S.C. § 1915 (proceedings *in forma pauperis*)).

### E. Limitations on Prospective Injunctive Relief

The PLRA limits the injunctive relief a court may order for incarcerated individuals. Specifically, in 18 U.S.C. § 3626(a) it provides that "prospective relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs." Before granting injunctive relief, the court must find that such relief is "narrowly drawn, extends no further than necessary to correct the violation of a federal right, and is the least intrusive means necessary to correct that violation." *Harvey v. Schoen,* 245 F.3d 718, 720 (8th Cir. 2001) (citations omitted). The injunctive relief requested must be related to the claims in the case. *Devose v. Herrington*, 42 F.3d 470, 471 (8th Cir. 1994). At the same time, however, a preliminary injunction is not intended grant the ultimate relief sought in a plaintiff's Complaint without the benefit of a full merits analysis. *See WarnerVision Ent. Inc. v. Empire of Carolina, Inc.*, 101 F.3d 259, 261 (2d Cir. 1996) ("The purpose of a preliminary injunction is not to give the plaintiff the ultimate relief it seeks."); *Sanborn Mfg. Co. v. Campbell Hausfeld/Scott Fetzer Co.,* 997 F.2d 484, 490 (8th Cir.1993) (affirming the denial of a request for preliminary injunction as seeking improper injunctive relief, because the motion asked for an affirmative action to correct an alleged issue before that issue had been decided on the merits).

## IV. Exhaustion of Administrative Remedies

### A. General Rule

The Prison Litigation Reform Act ("PLRA") also requires a prisoner to exhaust "such administrative remedies as are available" before bringing a suit "with respect to prison conditions under section 1983 . . . or any other Federal law. . ." 42 U.S.C. § 1997e(a). "Requiring exhaustion allows prison officials an opportunity to resolve disputes concerning the exercise of their responsibilities before being hauled into court. This has the potential to reduce the number of suits that are filed by producing a useful administrative record." *Woodford v. Ngo*, 548 U.S. 81, 94-95 (2006). Inmates "must exhaust their administrative remedies as to all defendants at all levels of the grievance procedure before filing a Section 1983 lawsuit." *Muhammad v. Mayfield*, 933 F.3d 993, 1002 (8th Cir. 2019).

The PLRA exhaustion requirement applies when: "(1) the action was brought by a prisoner confined in a jail, prison, or other correctional facility, (2) the action was brought after the enactment of the PLRA, and (3) the action concerns prison conditions." *Foulk v. Charrier*, 262 F.3d 687, 694 (8th Cir. 2001). "[T]he PLRA's exhaustion requirement applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong." *Porter v. Nussle*, 534 U.S. 516, 532 (2002). However, "[t]he level of detail necessary in a grievance to comply with the grievance procedures will vary from system to system and claim to claim, but it is the prison's requirements, and not the

PLRA, that define the boundaries of proper exhaustion." *Jones v. Bock*, 549 U.S. 199, 218 (2007). "If exhaustion was not completed at the time of filing [suit in federal court], dismissal is mandatory." *Johnson v. Jones*, 340 F.3d 624, 627 (8th Cir. 2003); *Gibson v. Weber*, 431 F.3d 339, 341 (8th Cir. 2005) (unexhausted claims may not be brought in federal court); *compare Allen v. Amsterdam*, 132 F.4th 1065, 1068 (8th Cir. 2025) (no exhaustion required when plaintiff filed amended complaint after his release from custody).

**B. Strict Compliance Required**

42 U.S.C. § 1997e(a) "says nothing about a prisoner's subjective beliefs, logical or otherwise, about the administrative remedies that might be available to him." *Chelette v. Harris*, 229 F.3d 684, 688 (8th Cir. 2000). "If administrative remedies are available, the prisoner must exhaust them." *Id*. Failure to exhaust administrative remedies is an affirmative defense. *See Foulk v. Charrier*, 262 F.3d 687, 697 (8th Cir. 2001).

**C. Burden of Proof**

Because exhaustion is an affirmative defense, "defendants have the burden of raising and proving the absence of exhaustion." *Porter v. Sturm*, 781 F.3d 448, 451 (8th Cir. 2015) (citing *Jones*, 549 U.S. at 211-212).

**V. Statute of Limitations**

State law governs the statute of limitations period for § 1983 actions. *Hardin v. Straub*, 490 U.S. 536, 538–539 (1989); *Bd. of Regents of Univ. of State of N.Y. v. Tomanio*, 446 U.S. 478, 484-486 (1980) *abrogated on other grounds recognized by Farrell v. McDonough,* 966 F.2d 279, 280 (7th Cir. 1992). The Supreme Court has stated that "[i]n 42 U.S.C. § 1988, Congress 'quite clearly instructs [federal courts] to refer to state statutes' when federal law provides no rule of decision for actions brought under § 1983." *Tomanio*, 446 U.S. at 484 (citing *Robertson v. Wegmann*, 436 U.S. 584, 588 (1978)). For Arkansas, the statute of limitations for a § 1983 claim is three years. Ark. Code Ann. § 16-56-105(3); *see also Miller v. Norris*, 247 F.3d 736, 739 (8th Cir. 2001).

## VI. Who must provide the prisoners with medical care?

### A. Correctional Facilities

"The public [shall] be required to care for the prisoner, who cannot by reason of the deprivation of his liberty, care for himself." *Estelle v. Gamble*, 429 U.S. 97, 104 (1976).

## VII. Who can the prisoner sue?

### A. Correctional Officers and Personnel

"Deliberate indifference to serious medical needs of prisoners constitutes the unnecessary and wanton infliction of pain proscribed by the Eighth Amendment." *Id.* at 104. (internal citation omitted).

### B. Doctors and Other Medical Personnel

Medical personnel may be held liable for the consequences of their own acts or omissions that amount to deliberate indifference. *See Smith v. Jenkins*, 919 F.2d 90, 92 (8th Cir. 1990). Deliberate indifference may be found where "medical care [is] so inappropriate as to evidence intentional maltreatment." *Id*. Negligence or a difference in medical opinion does not rise to the level of a constitutional violation. *See Estate of Rosenburg v. Crandell*, 56 F.3d 35, 37 (8th Cir. 1995). Therefore, while medical personnel can be held liable for deliberate indifference, the standard for establishing such indifference requires more than mere "negligence, more even than gross negligence, [or] a mere disagreement" over the appropriate course of medical treatment to establish a constitutional violation. *Id*. While some private physicians have some immunity from tort claims under common law, "the deliberate indifference claims... are outside [the] scope" of such immunity. *Davis,* 11 F.4th at 619.

**C. Wardens and Other Supervisors**

A warden or supervisor may be held liable under § 1983 for their own misconduct or for failure to train or supervise properly the subordinate employee(s) who caused the deprivation. *See Laganiere v. County of Olmsted*, 772 F.3d 1114, 1117 (8th Cir. 2014). To satisfy this standard, the plaintiff "must demonstrate that the supervisor was deliberately indifferent to or tacitly authorized the offending acts." *Wever v. Lincoln County*, 388 F.3d 601, 606 (8th Cir. 2004). Therefore, the plaintiff must show that the supervisor "had notice that the training procedures and supervision were inadequate and likely to result in a constitutional violation." *Id*.

**D. Local Governments**

See the discussion beginning on page 5 on how to establish governmental entity liability under *Monell v. New York City Dep't. of Soc. Servs.,* 436 U.S. 658 (1978).

**E. Private Corporations**

See the discussion on page 9 on how to establish liability on the part of private corporations.

## VIII. Which Amendment applies?

### A. Arrestee/Pretrial Detainee (pre- and post- determination of probable cause), Fourteenth Amendment with Eighth Amendment standards:

An arrestee's and a pretrial detainee's "claim[s] [are] analyzed under the due process clause of the fourteenth amendment rather than the eighth amendment." *Ervin v. Busby*, 992 F.2d 147, 150 (8th Cir. 1993). While "no standard has been clearly established," in prior cases "this court used the deliberate indifference standard in analyzing pretrial detainees." *Id*. *See also*, *Davis v. Hall,* 992 F.2d 151, 152–53 (8th Cir. 1993) (per curiam) (applying deliberate indifference standard to pretrial detainee's claims of inadequate medical care). "Pretrial detainees are entitled to at least as much protection under the Fourteenth Amendment as under the Eighth Amendment." *Hartsfield v. Colburn*, 371 F.3d 454, 457 (8th Cir. 2004).

### B. Prisoner, Eighth Amendment:

The Eighth Amendment does not protect against all unnecessary inflictions of pain, but rather just those that are "unnecessary and wanton." *Estelle*, 429 U.S. at 104. Thus, to establish a claim under § 1983, a plaintiff must show that an official acted with "deliberate indifference" towards their serious medical needs that resulted in an "unnecessary and wanton infliction of pain" as proscribed by the Eighth Amendment. *See id*.

## IX. What constitutes "deliberate indifference" under the Eighth Amendment?

### A. Basic Rule

A showing of deliberate indifference involves both an objective and a subjective component. *See Wilson v. Seiter*, 501 U.S. 294, 298 (1991). "The plaintiff must demonstrate (1) that [he] suffered [from] objectively serious medical needs and (2) that the prison officials actually knew of but deliberately disregarded those needs." *Jolly v. Knudsen*, 205 F.3d 1094, 1096 (8th Cir. 2000) (quoting *Dulany v. Carnahan*, 132 F.3d 1234, 1239 (8th Cir. 1997)).

### B. Objective

The objective component considers whether the deprivation was sufficiently serious. *Wilson*, 501 U.S. at 298. For a plaintiff to demonstrate this, he must show that he "has been diagnosed by a physician as requiring treatment" or has an injury "that is so obvious that even a layperson would easily recognize the necessity for a doctor's attention." *Schaub v. VonWald*, 638 F.3d 905, 914 (8th Cir. 2011).

Examples wherein an inmate had an injury obvious enough for a layperson to recognize:

- An inmate with swollen and bleeding gums coupled with complaints of excessive tooth pain had a medical condition obvious enough that even a layperson could recognize the necessity for medical care. *See Hartsfield v. Colburn*, 371 F.3d 454, 457 (8th Cir. 2004).
- An inmate's condition was an objectively serious medical need such that a layperson would recognize the necessity for medical attention when she was pregnant, bleeding, passing blood clots, and experiencing pain that prevented her from performing daily tasks such as

eating and showering. *See Pool v. Sebastian Cty. Ark.*, 418 F.3d 934, 944-945 (8th Cir. 2005).

- An inmate's condition constituted a serious medical need when the inmate complained of trouble breathing and chest pain coupled with a preexisting heart disease. *See Gordon v. Frank*, 454 F.3d 858, 863 (8th Cir. 2006).

Examples wherein an inmate had a physician's diagnosis:

- An inmate's condition was an objectively serious medical need when he had a physician's diagnosis that he had sensorial hearing loss that required treatment with bilateral hearing aids. *See De Rossitte v. Correct Care Sols., LLC*, 22 F.4th 796, 803 (8th Cir. 2022).

- A pulmonary edema diagnosis from a physician would constitute an objectively serious medical condition. *See Robinson v. Hager*, 292 F.3d 560, 564 (8th Cir. 2002).

"Deliberate indifference may be demonstrated by prison guards who intentionally deny or delay access to medical care or intentionally interfere with prescribed treatment, or by prison doctors who fail to respond to prisoners' serious medical needs. When alleging a deprivation due to delay in treatment, a plaintiff must demonstrate the objective seriousness of the deprivation caused by the delay, not merely the underlying medical condition. *See Jackson v. Riebold*, 815 F.3d 1114, 1120 (8th Cir. 2016). "A prisoner alleging a *delay* in treatment must present verifying medical evidence that the prison officials ignored an acute or escalating situation or that these delays adversely affected his prognosis." *Redmon v. Kosinski*, 999 F.3d 1116, 1121 (8th Cir. 2021) (emphasis added) (quoting *Holden*, 663 F.3d at 342).

Example wherein an inmate suffered a serious physical injury from a delay in treatment:

- An inmate suffering from serious physical conditions resulting from a delay in treating his diabetes including: "excessive urination, excessive thirst, migraine-like headaches,

> diarrhea, dehydration, sweating and weight loss... excessive hunger dizziness, diminished vision, loss of sleep, nausea, and fits of raving and delirium" constituted a severe deprivation caused by a delay of treatment by the prison official responsible for the inmate. *Roberson v. Bradshaw*, 198 F.3d at 646.

Examples wherein an inmate did not suffer a serious physical injury from a delay in treatment:

- A disagreement between an inmate and prison official with regard to the inmate's proper course of treatment, dose of prescription medication and change of psychiatrist did not qualify a severe denial of medical care. *Vaughan v. Lacey*, 49 F.3d 1344, 1346 (8th Cir. 1995).
- A change in a physician's diagnosis or course of care regarding an inmate's HIV infection, without other evidence, was not sufficient to rise to a claim of deliberate indifference. *Popoalii v. Corr. Med. Servs*., 512 F.3d 488, 499 (8th Cir. 2008).

### C. Subjective

The subjective component considers whether the official acted "with a sufficiently culpable state of mind." *Wilson*, 501 U.S. at 298. The subjective component for a showing of deliberate indifference is twofold: the official must have both "recognized that a substantial risk of harm existed and knew that their conduct was inappropriate in light of that risk." *Shipp v. Murphy*, 9 F.4th 694, 703 (8th Cir. 2021) (quoting *Letterman v. Does*, 789 F.3d 856, 862 (8th Cir. 2015); *see also Farmer v. Brennan*, 511 U.S. 825, 837 (1994).

It is not sufficient that a reasonable official *should* have known the risk; rather, "a plaintiff must demonstrate the official *actually* knew of the risk and deliberately disregarded it." *Vaughn v. Greene Cty.*, 438 F.3d 845, 850 (8th Cir. 2006) (emphasis added). The determination of whether an official "had actual knowledge of a serious medical need may be inferred from circumstantial evidence or from the very fact that the risk was obvious." *Jones v. Minn. Dep't of Corr*., 512 F.3d. 478, 481-82 (8th Cir. 2008).

Example Wherein Officials Acted with Deliberate Indifference

- Officials who delayed providing an inmate with batteries for his bilateral hearing aids were deliberately indifferent when the officers knew the inmate had "always possessed at least one functioning hearing aid" throughout his time in the facility. *De Rossitte v. Correct Care Sols., LLC*, 22 F.4th 796, 803 (8th Cir. 2022).

The plaintiff must show that "the defendant subjectively acted with a culpable state of mind such that he 'actually knew of but deliberately disregarded those needs.'" *Shipp v. Murphy*, 9 F.4th 694, 703 (8th Cir. 2021) (quoting *Roberson v. Bradshaw*, 198 F.3d 645, 647 (8th Cir. 1999)). The mental state required is "akin to criminal recklessness." *Vaughn v. Gray*, 557 F.3d 904, 908 (8th Cir. 2009). A deliberate disregard to an inmate's mental illness, erratic behavior (such as ingesting shampoo) and lack of action after medical attention was requested by the inmate established a culpable state of mind amongst several officers during a seven-hour period. *Vaughn*, 557 F.3d at 909. An inmate presented sufficient facts to establish a violation of his Eighth Amendment rights when prison officials delayed calling an ambulance while he was suffering a heart attack. *Plemmons v. Roberts*, 439 F.3d 818, 825 (8th Cir. 2006).

## CLAIMS REGARDING CONDITIONS OF CONFINEMENT

### I. Eighth Amendment – Convicted Inmates

A conditions of confinement claim asserted by a convicted prisoner is analyzed under the Eighth Amendment "deliberate indifference" standard. *See Thomas-El v. Francis*, 99 F.4th 1115, 1117 (8th Cir. 2024). This standard has two components: "an objective component and a subjective component." *Id.*

"First, the alleged violation must be, objectively, sufficiently serious." *Id.* (quoting *Farmer v. Brennan*, 511 U.S. 825, 834 (1994)) (cleaned up). To satisfy this prong, "the deprivation must result in the denial of the minimal civilized measure of life's necessities." *Id.* (internal citation and quotation omitted). The Eighth Circuit has held, for example, that "a long-term, repeated deprivation of adequate hygiene supplies violates inmates' Eighth Amendment rights." *Id.* (quoting *Myers v. Hundley*, 101 F.3d 542, 544 (8th Cir. 1996)).

The subjective prong "requires the Court to determine whether [defendants] acted with the requisite subjective state of mind." *Id.* A prison official is deliberately indifferent if "he 'knows of and disregards' a substantial risk of serious harm to an inmate.'" *Reynolds v. Dormire*, 636 F.3d 976, 979 (8th Cir. 2011) (citing *Farmer*, 511 U.S. at 837). To apply the standard to conditions of confinement, the evidence first must show "whether a substantial risk to the inmate's safety existed, and [then] whether the officer had knowledge of the substantial risk to the inmate's safety but nevertheless disregarded it. The subjective component requires that the official was both aware of facts from which the inference could be drawn that a substantial risk of serious harm existed, and he must also draw the inference." *Davis v. Oregon Cty., Mo.*, 607 F.3d 543, 548 (8th Cir. 2010). Further, "deliberate indifference includes something more than negligence but less than actual intent to harm; it requires proof of a reckless disregard of the known risk." *Jackson v. Montgomery*, 140 F.3d 1149, 1152 (8th Cir. 1998).

Importantly, "[a]ny analysis of confinement conditions must be based on the totality of the circumstances." *Howard v. Adkinson*, 887 F.2d 134, 137 (8th Cir. 1989). Further, "some conditions of confinement may establish an Eighth Amendment violation 'in combination' when each would not do so alone, but only when they have a mutually enforcing 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 v. Seiter*, 501 U.S. 294, 304 (1991). However, "nothing so amorphous as 'overall conditions' can rise to the level of cruel and unusual punishment when no specific deprivation of a single human needs exists." *Id*. at 305. "[T]he length of time a prisoner is subjected to harsh conditions is a critical factor" in the analysis. *Smith v. Copeland*, 87 F.33d 265, 269 (8th Cir. 1996).

Examples of Eighth Amendment Violations Due to Conditions of Confinement:

- A prisoner's rights were violated when he was forced to live in a cell, for two years, with human waste covering the walls, was denied access to cleaning supplies, and when his mattress was "torn, dirty, stained with urine, and covered in human waste." *Howard v. Adkison*, 887 F.2d 134, 137 (8th Cir. 1989).

- Prisoners' rights were violated when one of the prisoners asserted that inmates were allowed "only one forty-five minute out-of-cell recreation period per week, were denied access to the law library and gym, were allowed only five minutes shower time, had insufficient clothing which they were forced to wash in their cell sinks, could phone an attorney only if they could prove that they had a court date set within the next thirty days, were limited to bi-weekly five minute phone calls to family members, received insufficient cleaning supplies, and received insufficient amounts of cold unappetizing food prepared from a restricted menu which was delivered through unsanitary food slots in their cell doors." *Divers v. Dep't of Corr.*, 921 F.2d 191, 193 (8th Cir. 1990).

Examples of Conditions of Confinement that **Do Not Violate** the Eighth Amendment:

- Prisoners' rights were not violated when the "toilet was covered with dried feces on both the inside and outside, the sink was covered with hair and vomit, the floor was covered with garbage and rotting food, and the walls were covered with dried human mucus." *Whitnack v. Douglas Cty.*, 16 F.3d 954, 956 (8th Cir. 1994). The court's decision was based on the fact that the conditions lasted no more than 24 hours before the inmates were provided with cleaning supplies. *Id*. at 958.
- A prison guard's actions were insufficient to prove he caused "a substantial risk of serious harm" to a prisoner when the guard deliberately let water and trash accumulate in a prisoner's cell, causing the prisoner to slip and fall. *Baker v. Delo*, 38 F.3d 1024, 1026 (8th Cir. 1994). Because there was no showing of volume or depth of water, the court found there was insufficient evidence against the guard. *Id*.
- A prisoner's constitutional rights were not violated by limited out of cell exercise time when he did not suffer any injury or decline in health as a result. *Wishon v. Gammon*, 978 F.2d 446, 449 (8th Cir. 1992). Lack of exercise likely does not constitute a constitutional violation unless "one's muscles are allowed to atrophy or if an inmate's health is threatened." *Id*.

## II. Fourteenth Amendment – Pretrial Detainees

A pretrial detainee's unconstitutional conditions of confinement claim is analyzed under "the Fourteenth Amendment's Due Process Clause rather than the Eighth Amendment." *Stearns v. Inmate Servs. Corp.*, 957 F.3d 902, 906 (8th Cir. 2020). "Neither pretrial detainees nor civilly committed individuals may be punished without running afoul of the Fourteenth Amendment." *Karsjens v. Lourey*, 988 F.3d 1047, 1052 (8th Cir. 2021). In *Stearns v. Inmate Servs. Corp., et al.,* 957 F.3d 902 (8th Cir. 2020), the Eighth Circuit clarified that, despite some prior inconsistencies in its cases, the deliberate indifference standard of the Eighth Amendment did not apply to conditions of confinement cases brought by pretrial detainees. Instead, the Eighth Circuit held in *Stearns* that the claims of pretrial detainees must be analyzed under the Fourteenth Amendment as set forth in *Bell v. Wolfish*, 441 U.S. 520 (1979). In *Bell*, the Court stated that "the proper inquiry is whether [the] conditions amount to punishment of the detainee." *Id.*, 441 U.S. at 535. The Eighth Circuit in *Stearns* stated:

> In *Bell v. Wolfish*, the Supreme Court articulated the standard governing pretrial detainees' claims related to conditions of confinement. The Court held that the government may detain defendants pretrial and "may subject [them] to the restrictions and conditions of [a] detention facility so long as those conditions and restrictions do not amount to punishment, or otherwise violate the Constitution." *Id.* at 536-37. The Court articulated two ways to determine whether conditions rise to the level of punishment. A plaintiff could show that the conditions were intentionally punitive. *Id.* at 538. Alternatively, if there is no expressly demonstrated intent to punish, the plaintiff could also show that the conditions were not reasonably related to a legitimate governmental purpose or were excessive in relation to that purpose. *Id.* at 538-39. If conditions are found to be arbitrary or excessive, it is permissible to "infer that the purpose of the governmental action is punishment that may not constitutionally be inflicted upon detainees *qua* detainees." *Id.* at 539.

*Stearns*, 957 F.3d at 907 (alterations in original) (citations omitted). In short, the Constitution prohibits conditions for pretrial detainees that: (1) are intentionally punitive; (2) are not reasonably related to a legitimate governmental purpose; or (3) are excessive to that stated purpose. *Id.* Conditions of confinement that are reasonably related to a legitimate government interest do not amount to punishment. *Bell,* 441 U.S. at 536-39. "In considering whether the conditions of pretrial detention are unconstitutionally punitive, we review the totality of the circumstances of a pretrial detainee's confinement." *Morris v. Zefferi*, 601 F.3d 805, 810 (8th Cir. 2010). Further, the length of time a prisoner is subject to harsh conditions is an important consideration when considering the totality of the circumstances. *Stearns*, 957 F.3d at 909. Finally, "[n]ot every disability imposed during pretrial detention amounts to punishment in the constitutional sense." *Smith v. Copeland*, 87 F.3d 265, 268 (8th Cir. 1996). "There is a *de minimis* level of imposition with which the Constitution is not concerned." *Id.*

### A. Eighth Circuit Case Law Applying the *Stearns* Standard:

The Eighth Circuit has only decided five cases regarding pretrial detainees' conditions of confinement claims since the *Stearns* opinion was issued. *See Aery v. Beitel,* 2025 WL 1368179, (8th Cir. 2025) (affirming the grant of summary judgment on the plaintiff's conditions of confinement claims by citing *Stearns* but providing no analysis); *Dalen v. Harpstead*, 123 F.4th 900 (8th Cir. 2024) (affirming the dismissal of the plaintiff's complaint because he failed to allege specific allegations of punitive conditions of confinement); *Hall v. Higgins,* 77 F.4th 1171 (8th

Cir. 2023) (affirming dismissal of the plaintiff's conditions of confinement claim because he only asserted an official capacity claim and failed to establish a policy of the county which caused the complained of conditions of confinement); *Karsjens v. Lourey,* 988 F.3d 1047 (8th Cir. 2021) (remanding to the district court to apply the standard for punitive conditions of confinement outlined in *Bell*); and *Bartunek v. Hall County, Nebraska,* 828 Fed.Appx.340 (8th Cir. 2020) (affirming the district court's grant of summary judgment and agreeing the undisputed evidence demonstrated the prison temperature and sleeping arrangements were not punitive.).

**B. Western District of Arkansas Case Law post-*Stearns***

- *Buyalova v. Cantrell,* 2025 WL 2304791 (W.D. Ark. July 24, 2025) (dismissing complaint at screening because the conditions of a very cold cell for fifteen hours were "*de minimis"*).
- *Blankenship v. Gentry*, 2024 WL 5412436 (W.D. Ark. Dec. 18, 2024) (finding the undisputed facts on summary judgment – that plaintiff was not purposefully housed with COVID positive inmates and instead was moved into a quarantine pod with other non-symptomatic inmates – could not support any punitive intentions by the defendants).
- *Williams v. Pineda*, 2022 WL 18109624 (W.D. Ark. Dec. 14, 2022) (facts indicating the plaintiff was without a blanket in a cold cell for less than twenty-four hours without proof of punitive intent fails to survive summary judgment).
- *Mayfield v. Raymond,* 2020 WL 7714715, at *17 (W.D. Ark. Dec. 29, 2020) (holding that "relatively short, sporadic deprivations of cleaning supplies, recreation, showers, access to the newspaper, receiving medication late (on a single occasion), or not being allowed to use the law library on the day requested" do not constitute punishment).

# CLAIMS ARISING UNDER THE FIRST AMENDMENT

## I. General Law

“Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system.” *Leonard v. Nix*, 55 F.3d 370, 374 (8th Cir. 1995). “[A] prison inmate retains those First Amendment rights that are not inconsistent with [his] status as a prisoner or with the legitimate penological objectives of the corrections system.” *Id*. “[T]he limitation on the prisoner’s retained First Amendment rights must be no greater than necessary to protect the governmental interest.” *Id*.

“Constitutional claims that would otherwise receive strict scrutiny analysis if raised by a member of the general population are evaluated under a lesser standard of scrutiny in the context of a prison setting.” *Murphy v. Mo. Dep’t of Corr*., 372 F.3d 979, 982 (8th Cir. 2004). “A prison regulation or action is valid, therefore, even if it restricts a prisoner’s constitutional rights if it is ‘reasonably related to legitimate penological interests.’” *Id*. (quoting *Turner v. Safley*, 482 U.S. 78, 81 (1987). There are four factors (the *Turner* factors) courts consider in determining whether a regulation is reasonably related to legitimate penological interests:

> (1) Is there a valid and rational connection between the regulation and the interest justifying it? (2) Is there an alternative way for the inmates to exercise the right? (3) Would an accommodation have a “significant ripple effect on the guards, other inmates, and prison

> resources?" (4) Is there an alternative that "fully accommodates the prisoner at de minimis cost" to the valid penological interest?

*Murphy*, 372 F.3d at 982-83; *Turner*, 482 U.S. at 81.

## II. Freedom of Religion

"The Supreme Court has made it clear that persons who are incarcerated do not forfeit First Amendment protection of their rights to freedom of speech and religion at the prison gate." *Human Rights Defense Ctr. v. Baxter Cnty. Ark.*, 999 F.3d 1160, 1164 (8th Cir. 2021) (citing *Bell v. Wolfish*, 441 U.S. 520, 545 (1979)). But "maintaining institutional security and preserving internal order and discipline are essential goals that may require limitation or retraction of the retained constitutional rights of both convicted prisoners and pretrial detainees." *Id.* (quoting *Bell*, 441 U.S. at 547).

"Inmates clearly retain protections afforded by the First Amendment, including its directive that no law shall prohibit the free exercise of religion." *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 348 (1987) (internal citation omitted). But this right is also not without limitation. In determining whether prison regulations violate the free-exercise clause, federal courts "consider first the threshold issue of whether the challenged governmental action 'infringes upon a sincerely held religious belief,' and then apply the *Turner* factors to determine if the regulation restricting the religious practice is 'reasonably related to legitimate penological objectives." *Murphy v. Missouri Dept. of Corrections*, 372 F.3d 979, 983 (8th Cir. 2004) (internal citation omitted). However, the first *Turner* factor requires more than a legitimate penological interest. The Eighth Circuit recently addressed this issue in *Schmitt v. Rebertus* when a prison discontinued access to the prisoners for a Quest class based on the biblical viewpoint of manhood:

> The first *Turner* factor, however, requires more than a legitimate penological interest. "[T]he governmental objective must be a legitimate *and* neutral one." *Turner*, 482 U.S. at 90, 107 S. Ct. 2254 (emphasis added). A prison policy must "operate[ ] in a neutral fashion, without regard to the content of the expression." *Id.* "This means that the proffered mechanism by which the regulation promotes the legitimate government interest must be 'unrelated to the suppression of expression.'" *Sisney*, 15 F.4th at 1190 (quoting *Thornburgh*, 490 U.S. at 415, 109 S. Ct. 1874).
>
> "Religion is [a] viewpoint from which ideas are conveyed." *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 112 n.4, 121 S. Ct. 2093, 150 L.Ed.2d 151 (2001). The First Amendment prohibits the state from "bas[ing] laws or regulations on hostility to a religion or religious viewpoint." *Masterpiece Cakeshop v. Colo. C.R. Comm'n*, 584 U.S. 617, 638, 138 S. Ct. 1719, 201 L.Ed.2d 35 (2018). "[T]he government, if it is to respect the Constitution's guarantee of free exercise, cannot impose regulations that are hostile to the religious beliefs of affected citizens and cannot act in a manner that passes judgment upon or presupposes the illegitimacy of religious beliefs and practices." *Id.* The "[g]overnment fails to act neutrally when it proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature." *Fulton v. City of Philadelphia*, 593 U.S. 522, 533, 141 S. Ct. 1868, 210 L.Ed.2d 137 (2021). Moreover, the government "may not discriminate against some or all religious beliefs." *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 461, 137 S. Ct. 2012, 198 L.Ed.2d 551 (2017) (internal quotation marks omitted). And even "subtle departures from neutrality on matters of religion" are prohibited by the Free Exercise Clause. *Masterpiece Cakeshop*, 584 U.S. at 638, 138 S. Ct. 1719 (internal quotation marks omitted). In sum, "[t]he government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction." *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829, 115 S. Ct. 2510, 132 L.Ed.2d 700 (1995).

> Governmental policies affecting First Amendment liberties must be neutrally applied. "If a policy is not neutrally applied, it cannot withstand constitutional scrutiny." *Baxter II*, 129 F.4th at 504 n.4 (citing *Turner*, 482 U.S. at 90, 107 S. Ct. 2254). "For example, although 'inmate rehabilitation' is a legitimate government interest, a prison may not censor 'literature advocating racial purity' on the ground that exposure to racist ideas inhibits rehabilitation." *Sisney*, 15 F.4th at 1190 (first quoting *Dawson*, 986 F.2d at 261; then quoting *McCabe v. Arave*, 827 F.2d 634, 638 (9th Cir. 1987)). Here, although the [Prison] set forth a legitimate government interest, its termination of Quest was not "in a neutral fashion, without regard to the content of the expression." *See Turner*, 482 U.S. at 90, 107 S. Ct. 2254.

*Schmitt v. Rebertus*, 148 F.4th 958, 968–70 (8th Cir. 2025).

Finally, a "prisoner need not be afforded his preferred means of practicing his religion as long as he is afforded sufficient means to do so." *Murphy*, 372 F.3d at 983.

## III. Access to Mail

"Prison rules censoring a prisoner's personal outgoing mail are justified only if the regulation or practice in question furthers an important governmental interest of security, order, or rehabilitation." *Leonard*, 55 F.3d at 374. "While prisoners have a right to send and receive mail, prison officials have a legitimate interest in monitoring that mail for security reasons." *Ortiz v. Fort Dodge Corr. Facility*, 368 F.3d 1024, 1026 (8th Cir. 2004). But an inmate's legal mail is subject to greater protections and "cannot be opened for inspection outside the inmate's presence." *Cody v. Weber*, 256 F.3d 764, 768 (8th Cir. 2001) (citing *Wolff v. McDonnell*, 418 U.S. 539, 575-77 (1974)). Privileged legal mail is defined as "mail to or from an inmate's attorney and identified as such." *Gardner v. Howard*, 109 F.3d 427, 430 (8th Cir. 1997). "Mail to and from a court or opposing counsel does not fall under this narrow definition of privileged legal mail and, therefore, may be opened outside of the inmate's presence." *Barron v. Jones*, No. 3:20-CV-00311-DPM-PSH, 2020 WL 6200187 at * 2 (E.D. Ark. Oct. 22, 2020), *report and recommendation adopted by* 2020 WL 6750353 at *1 (E.D. Ark. Nov. 17, 2020) (citing *Burgess v. Dormire*, No. 05-4111-CV-S-SOW, 2006 WL 1382317, at *3 (W.D. Mo. May 17, 2006)), *see also Moore v. Rowley*, 126 F. App'x 759, 760 (8th Cir. 2005) (per curiam) (concluding that prisoner had no constitutional right to have his bankruptcy petition mailed without first being inspected).

A prison official's duty to maintain security within prison does not extend to reading inmates' legal mail. *See Thongvanh v. Thalacker*, 17 F.3d 256, 258-59 (8th Cir. 1994); *see also Powells v. Minnehaha Cty. Sheriff Dep't*, 198 F.3d 711, 712 (8th Cir. 1999) (an allegation that prison officials opened legal mail outside of inmate's presence is sufficient to state a constitutional claim).

Prisoners also have First Amendment protections related to their non-legal mail as well. As recently analyzed in *Ward v. Runion*, No. 4:22-CV-04119, 2024 WL 1195540, at *6–7 (W.D. Ark. Mar. 19, 2024), jail policies limiting access to publications or certain categories of mail also implicate an inmate's First Amendment Rights. The "Constitution protects the rights [of inmates] to receive information and ideas." *Kleindienst v. Mandel*, 408 U.S. 753, 762 (1972). "Prison walls do not form a barrier separating prison inmates from the protections of the Constitution." *Turner*, 482 U.S. at 84.

"The Supreme Court has made it clear that persons who are incarcerated do not forfeit First Amendment protection of their rights to freedom of speech ... at the prison gate." *Human Rights Defense Ctr. v. Baxter Cnty. Ark.*, 999 F.3d 1160, 1164 (8th Cir. 2021) (*citing Bell v. Wolfish*, 441 U.S. 520, 545 (1979)). However, "maintaining institutional security and preserving internal order and discipline are essential goals that may require limitation or retraction of the retained constitutional rights of both convicted prisoners and pretrial detainees." *Human Rights Defense Ctr.*, 999 F.3d at 1164 (quoting *Bell*, 441 U.S. at 547). "[A] prison inmate retains those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system." *Pell v. Procunier*, 417 U.S. 817, 822 (1974). "Restrictions on access to newspapers have been upheld in only limited circumstances." *Morgan v. Rothe*, No. 5:21-CV-05114, 2022 WL 9799601, at *16 (W.D. Ark. July 21, 2022), *report and recommendation adopted*, No. 5:21-CV-05114, 2022 WL 4355141 (W.D. Ark. Sept. 20, 2022) (citing *Beard v. Banks*, 548 U.S. 521 (2006) (upholding prison policy restricting access to newspapers, magazines, and photographs by a small subpopulation of inmates placed in the most restrictive level of prison's long-term segregation unit)).

"To determine whether a jail or prison policy infringes on the First Amendment rights of inmates, as well as those seeking to communicate with them, the relevant inquiry is whether the policy is reasonably related to legitimate penological interests." *Human Rights Defense Ctr.*, 999 F.3d at 1164. The test for determining the reasonableness of a policy's relation to legitimate penological interests is the same *Turner* factors as already listed. *Turner*, 482 U.S. at 89-91. An analysis of the four *Turner* factors is "a fact-intensive inquiry requiring careful examination of the policies and institutions at issue in each case." *Simpson v. County of Cape Girardeau, Missouri*, 879 F.3d 273, 282 (8th Cir. 2018).

## IV. Access to Courts

Under the Constitution, prisoners have a right to access the courts. *White v. Kautzky*, 494 F.3d 677, 679 (8th Cir. 2007). "For prisoners, meaningful access to the courts 'requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law.'" *Id.* (quoting *Bounds v. Smith*, 420 U.S. 817, 828 (1977)). The phrase "'adequate assistance from persons trained in the law' refers to 'the adequacy of the prisoner's access to his or her court-appointed counsel or other law-trained assistant,' not 'to the effectiveness of the representation.'" *Id*. Since prisoners do not have a constitutional right to legal counsel to pursue their grievances, they do not have a constitutional right to *effective* assistance of counsel in pursuing advice regarding prison grievances. *Shrier v. Halford*, 60 F.3d 1309, 1313-14 (8th Cir. 1995).

Further, "[m]eaningful access to the courts is the capability to bring 'actions seeking new trials, release from confinement, or vindication of fundamental civil rights.' The state has no obligation to 'enable the prisoners to discover grievances [or] to litigate effectively once in court.'" *White*, 494 F.3d at 679 (quoting *Bounds*, 420 U.S. at 827; *Lewis v. Casey*, 518 U.S. 343, 354 (1996)).

An inmate's constitutional right of access to the courts "requires the provision of some means 'for ensuring a reasonably adequate opportunity to present claimed violations of fundamental constitutional right to the courts.'" *Bear v. Fayram*, 650 F.3d 1120, 1123 (8th Cir. 2011) (quoting *Lewis*, 518 U.S. at 351). "There is no one method of satisfying this constitutional requirement, and a 'prison system may experiment with prison libraries, jailhouse lawyers, private lawyers on contract with the prison, or some combination of these other devices.'" *Bear v. Fayram*, 650 F.3d at 1123 (quoting *Bear v. Kautzky*, 305 F.3d 802, 806 (8th Cir. 2002)).

Notably, actual injury is required to prove a violation of the right of meaningful access to the courts:

> a prisoner must establish the state has not provided an opportunity to litigate a claim challenging the prisoner's sentence or conditions of confinement in a court of law, which resulted in actual injury, that is, the hinderance of a nonfrivolous and arguably meritorious underlying legal claim. To prove actual injury, [a prisoner] must 'demonstrate that a nonfrivolous legal claim has been frustrated or was being impeded.'

*Hartsfield v. Nichols*, 511 F.3d 826, 831-832 (8th Cir. 2008) (quoting *Lewis*, 518 at 353). "Because [a prisoner does not have] an abstract, freestanding right to a law library or legal assistance, an inmate cannot establish relevant actual injury simply by establishing that [their] prison's law library or legal assistance program is subpar in some theoretical sense." *Hartsfield*, 511 F.3d at 832. Instead, the inmate "must go one step further and demonstrate that the alleged shortcomings in the library or legal assistance program hindered [their] efforts to pursue a legal claim." *Id*.

"[C]ommunications between inmates about legal matters are not entitled to greater constitutional protection than other communications." *Bear v. Kautzky*, 305 F.3d at 804. "[T]here is no absolute First Amendment right to communicate with other inmates about legal or other matters." *Id*. at 805. "[W]hen a regulation restricting inmate legal communication is challenged, the *Turner* factors must be weighed in a manner that takes into account any impact on the inmate's right of access to the courts. But courts must still defer to prisoner officials' reasonable penological decisions." *Id*. at 805-06.

## V. Retaliation Claims

"The right to be free from retaliation for availing one's self of the prison grievance process has been clearly established in this circuit for more than twenty years." *Santiago v. Blair*, 707 F.3d 984, 991 (8th Cir. 2013). "To prevail on a § 1983 claim for retaliation in violation of the First Amendment, [a plaintiff] must demonstrate (1) that he engaged in a protected activity; (2) that the government official took adverse action against him that would chill a person of ordinary firmness from continuing in the activity; and (3) that the adverse action was motivated at least in part by the exercise of the protected activity." *Id.* (citing *Revels v. Vincenz*, 382 F.3d 870, 876 (8th Cir. 2004)). *See also Lamar v. Payne,* 11 F.4th 902, 907 (8th Cir. 2024).

In general, "[c]onduct that retaliates against the exercise of a constitutionally protected right is actionable, even if the conduct would have been proper if motivated by a different reason." *Cody v. Weber*, 256 F.3d 764, 771 (8th Cir. 2001) (citation omitted); *Madewell v. Roberts*, 909 F.2d 1203, 1206 (8th Cir. 1990) (same). "Indeed, the retaliatory conduct does not itself need to be a constitutional violation in order to be actionable." *Id. See also Dixon v. Brown*, 38 F.3d 379, 380 (8th Cir. 1994) ("[W]hen retaliatory conduct is involved, there is no independent injury requirement."). However, Plaintiff must "show [that] the protected activity was a 'but-for-cause' of the adverse actions, meaning that the adverse action against [him] would not have been taken absent a retaliatory motive." *De Rossitte v. Correct Care Sols., LLC.*, 22 F.4th 796, 804 (8th Cir. 2022).

Courts have held that threats of retaliation such as death threats or other threats to the inmate's safety from prison guards responsible for guarding the inmates are sufficient to chill a person of ordinary firmness from continuing the protected activity. *Santigo*, 707 F.3d at 992. Also, a written charge of a rule violation and being placed in isolation or administrative segregation may chill a person of ordinary firmness from engaging in protected activities. *Lamar,* 111 F.4th at 908.

"The ordinary-firmness test is an objective one, not subjective. In determining whether threats of death would chill a prisoner of ordinary firmness from using the prison grievance process, the question is not whether [the inmate himself] was deterred, though how [the inmate] acted might be evidence of what a reasonable [inmate] would have done. Rather, the test is what a[n] [inmate] of ordinary firmness would have done in reaction to the . . . threats. Ultimately, this sort of question is usually best left to the judgment of a jury . . . .” *Santiago,* 707 F.3d at 992 (internal citations and quotations omitted).

## CLAIMS ARISING UNDER THE FOURTH AND FOURTEETH AMENDMENT (ARRESTEES AND PRETRIAL DETAINEES)

### I. Excessive Force

The standard by which courts consider a plaintiff’s excessive force claims depends on the status of the plaintiff at the time of the events giving rise to his claims.

#### A. Arrestees

A person has been “seized” “[w]hen the officer’s conduct or ‘questioning is so intimidating, threatening, or coercive’ that a reasonable person would not feel free to leave.” *United States v. Jones*, 269 F.3d 919, 925 (8th Cir. 2001) (quoting *United States v. Hathcock*, 103 F.3d 715, 718 (8th Cir. 1997)).

“The Fourth Amendment’s prohibition against unreasonable seizures of the person applies to excessive-force claims that ‘arise[ ] in the context of an arrest or investigatory stop of a free citizen . . . .’” *Wilson v. Spain*, 209 F.3d 713, 715 (8th Cir. 2000) (quoting *Graham v. Connor*, 490 U.S. 386, 394 (1989)). It is well established that “the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it." *Graham*, 490 U.S. at 396 (internal citation omitted). But an officer's use of force is a violation of the Fourth Amendment when it is objectively unreasonable in light of the particular facts and circumstances of the case at hand, as "judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Id.* at 396. The reasonableness determination requires an analysis of "the nature and quality of the intrusion on the individual's Fourth Amendment interests' against the countervailing governmental interests at stake." *Id*. (internal citation omitted).

In deciding whether the force was reasonable, the court evaluates the "totality of the circumstances, including the severity of the crime, the danger the suspect poses to the officer or others, and whether the suspect is actively resisting arrest or attempting to flee." *Id*.; *see also Brown v. City of Golden Valley*, 574 F.3d 491, 497 (8th Cir. 2009) (finding the officer's use of force was not objectively reasonable after tasering and arresting the plaintiff for a minor violation where a minimal safety threat was present); *Johnson v. Carroll*, 658 F.3d 819, 828 (8th Cir. 2011) (finding at the time of the incident, "the law was sufficiently clear to inform a reasonable officer that it was unlawful to throw to the ground and mace a nonviolent, suspected misdemeanant who was not fleeing or herself resisting arrest, who posed little or no threat to anyone's safety, who never received verbal commands to remove herself, and whose only action was to engage in a protective maneuver").

With respect to the extent of the injury, the Eighth Circuit in *Chambers v. Pennycook,* 641 F.3d 898 (8th Cir. 2011), held "evidence of only *de minimis* injury" does not "necessarily foreclose[] a claim of excessive force under the Fourth Amendment. *Id.* at 906. Rather, "[t]he appropriate inquiry is whether the force used to effect a particular seizure is 'reasonable.'" *Id.* The court reasoned "it is logically possible to prove an excessive use of force" can still "cause[] only a minor injury," and such claims should not be foreclosed based solely on the extent of the injury suffered. *Id.*

It is well-established that "absent probable cause" for an officer to believe the suspect poses "an immediate threat of death or serious bodily injury" to others, "use of deadly force is not objectively reasonable." *Cole Estate of Richards v. Hutchins*, 959 F.3d 1127, 1132 (8th Cir. 2020) (quoting *Billingsley v. City of Omaha*, 277 F.3d 990, 993 (8th Cir. 2002)).

**B. Pretrial Detainees**

Excessive force claims brought by pretrial detainees are viewed under the Due Process Clause of the Fourteenth Amendment. *See e.g., Graham,* 490 U.S at 395. The Due Process Clause protects pretrial detainees from the use of force that amounts to punishment. *Kingsley v. Hendrickson,* 576 U.S. 389, 399 (2015). "A detainee alleging an excessive use of force must show that the force used against him was objectively unreasonable." *Glover v. Paul*, 78 F.4th 1019, 1021 (8th Cir. 2023) (citing *Kingsley v. Hendrickson*, 576 U.S. 389, 396-97 (2015)). In determining whether the amount of force used was reasonable or unreasonable, the Court considers: "the relationship between the need for the use of force and the amount of force used; the extent of the plaintiff's injury; any effort made by the officer to temper or to limit the amount of force; the severity of the security problem at issue; the threat reasonably perceived by the officer; and whether the plaintiff was actively resisting." *Id.* at 397.

## II. Failure to Intervene to Stop Constitutional Violation by Another

In connection with an arrestee, "a state actor may be liable for an unreasonable seizure under the Fourth Amendment if he fails to intervene to prevent the unconstitutional use of excessive force by another official." *Krout v. Goemmer*, 583 F.3d 557, 565 (8th Cir. 2009). Similar liability exists under the Fourteenth Amendment in cases involving pretrial detainees. The Eighth Circuit has "held that a prison guard could be liable under § 1983 if he was present and saw another correctional officer hit an inmate several times with a gun but did nothing to stop the assault." *Putman v. Gerloff*, 639 F.2d 415, 423 (8th Cir. 1981).

Further, as noted above, a supervisory official can be found liable if they (1) "had 'notice of a pattern of unconstitutional acts committed by subordinates;' (2) [were] deliberately indifferent to or tacitly authorized those acts; and (3) failed to take 'sufficient remedial action;' (4) proximately causing injury to [the detainee]." *Andrews v. Fowler*, 98 F.3d 1069, 1078 (8th Cir. 1996) (quoting *Jane Doe A. v. Special Sch. Dist. of St. Louis Cty.*, 901 F.2d 642, 645 (8th Cir. 1990)). Further, to prove "deliberate indifference or tacit authorization, [the plaintiff] must allege and ultimately prove [the second official] 'had notice that the training procedures and supervision were inadequate and likely to result in a constitutional violation.'" *Livers v. Schenck*, 700 F.3d 340, 355-56 (8th Cir. 2012) (quoting *Andrews*, 98 F.3d at 1078).

## III. Unreasonable Restraint on Movement

A plaintiff may also allege an unlawful seizure through an unconstitutional restraint on movement.

### A. Terry Stop

A police officer "may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot." *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000) (citing *Terry v. Ohio*, 392 U.S. 1, 30 (1968)). While the "reasonable, articulable suspicion" standard "is a lower standard than probable cause, officers must be able to point to specific facts that justify the seizure and are more than simply an 'inarticulate hunch[].'" *United States v. Arvizu*, 534 U.S. 266, 274 (2002); *see also Terry*, 392 U.S. at 22. In conducting a so-called *Terry s*top, officers must use "the least intrusive means of detention and investigation . . . reasonably necessary." *United States v. Sanford*, 813 F.3d 708, 713 (8th Cir. 2016). However, they are permitted to "take any additional steps that are 'reasonably necessary to protect their personal safety and to maintain the status quo during the course of the stop.'" *United States v. Navarrete-Barron*, 192 F.3d 786, 790 (8th Cir. 1999). Under these circumstances, "[a]n officer may have reasonable suspicion to conduct a *Terry* stop based on a combination of factors even where no single factor, considered alone, would justify a stop." *United States v. Quinn*, 812 F.3d 694, 698 (8th Cir. 2016); *see also United States v. Stokes*, 62 F.4th 1104, 1107 (8th Cir. 2023) (finding that the officer gave "several specific factors that led him to conduct a *Terry* stop including: (1) his experience arresting people at salvage lots for theft and trespassing 'a couple times a week'; (2) the time of night; (3) [defendant's] sole presence on the salvage lot; (4) [defendant's] attire matching the description given by the property owner; and (5) [defendant's] unreasonable responses"); *United States v. Jones*, 269 F.3d 919, 924 (8th Cir. 2001) (asserting that "an officer, in the course of a *Terry* stop involving a vehicle, may ask a suspect for identification, 'request that the driver step out of the vehicle,' and run computer searches to determine if the driver has a criminal history or outstanding warrants.").

**B. False Arrest and False Imprisonment**

A false arrest claim is actionable "when there is confinement without legal justification." *Kurtz v. City of Shrewsbury*, 245 F.3d 753, 757 (8th Cir. 2001). The key element in false arrest claims is the unlawfulness of restraint. *Id.* But "a false arrest claim under § 1983 does not lie where officer had probable cause to make the arrest." *Anderson v. Franklin Cty*, 192 F.3d 1125, 1131 (8th Cir. 1999). An officer has probable cause when "the totality of the circumstances at the time of the arrest '[is] sufficient to lead a reasonable person to believe that the defendant has committed or is committing an offense.'" *Joseph v. Allen*, 712 F.3d 1222, 1226 (8th Cir. 2013) (quoting *Borgman v. Kedley*, 848 F.3d 518, 523 (8th Cir. 2010)).

False imprisonment is a state law tort cause of action. *King v. Beavers,* 148 F.3d 1031, 1034 (8th Cir. 1998) ("False imprisonment is a state law tort claim. It is not coextensive with the Fourteenth Amendment, which 'protects only against deprivations of liberty accomplished without due process of law.'") (quoting *Baker v. McCollan,* 443 U.S. 137, 145 (1979)). Courts have sometimes construed "false imprisonment" claims as an extension of "false arrest claims." *See, e.g., Rinne v. City of Beatrice*, Case No. 4:18CV3037, 2018 WL 4492227, at *7, n.3 (D. Neb. Sept. 19, 2018) (listing cases). As noted above, moreover, a false arrest claim under § 1983 "fails as a matter of law where the officer had probable cause to make the arrest." *Kurtz v. City of Shrewsbury*, 245 F.3d 753, 758 (8th Cir. 2001) (citing *Anderson v. Franklin Cty.*, 192 F.3d 1125, 1131 (8th Cir. 1999)).

**C. Unreasonable Searches**

"The Fourth Amendment protects 'the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.' The basic purpose of this Amendment . . . is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials." *Carpenter v. United States*, 585 U.S. 296, 303 (2018) (quoting *Camara v. Municipal Court of City and Cty. of San Francisco*, 387 U.S. 523, 528 (1967)). "The Fourth Amendment proscribes all unreasonable searches and seizures, and it is a cardinal principle that 'searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.'" *United States v. Taylor*, 636 F.3d 461, 464 (8th Cir. 2011) (quoting *Mincey v. Arizona*, 437 U.S. 385, 390 (1978) (internal citation omitted)). But "[t]he applicability of the Fourth Amendment turns on whether 'the person invoking its protections can claim a justifiable, a reasonable, or a legitimate expectation of privacy that has been invaded by government action." *Hudson v. Palmer*, 468 U.S. 517, 525 (1984) (quoting *Smith v. Maryland*, 442 U.S. 735, 740 (1979)).

- **Prison Cells**

In the context of prison cells, in *Hudson v. Palmer,* 468 U.S. 517 (1984), the Supreme Court held:

> Notwithstanding our caution in approaching claims that the Fourth amendment is inapplicable in a given context, we hold that society is not prepared to recognize as legitimate any subjective expectation of privacy that a prisoner might have in his prison cell and that, accordingly, the Fourth Amendment proscription against unreasonable searches does not apply within the confines of the prison cell. The recognition of privacy rights for prisoners in their individual cells simply cannot be reconciled with the concept of incarceration and the needs and objectives of penal institutions.

*Id.* at 525-26.

- **Strip Searches**

Although "prison inmates have a far lower expectation of privacy than . . . other individuals, the Fourth Amendment protects them from unreasonable searches of their bodies." *Beard v. Falkenrath*, 97 F.4th 1109, 1114-15 (8th Cir. 2024) (quoting *LeVine v. Roebuck*, 550 F.3d

684, 687 (8th Cir. 2008)). "The scope, manner, and location are what matter, and strip searches raise special considerations." *Id.* at 1115 (internal citations and quotations omitted). "Evidence of . . . touching, . . . prodding, . . . or the use of physical force . . . are important considerations in weighing the level of insult to personal privacy." *Id.* (citation omitted) (cleaned up).

Determining the reasonableness of a strip search "requires a balancing of the need for the particular search against the invasion of personal rights that the search entails. Courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted." *Bell v. Wolfish*, 441 U.S. 520, 559 (1979) (allowing body-cavity searches of inmates because of the danger of inmates smuggling "money, drugs, weapons, and other contraband" by "concealing them in body cavities"); *see also Beard*, 97 F.4th at 1116 (strip search involving "numerous guards, the use of pepper spray, the placement of a knee directly into [plaintiff's] back, and the forceful removal of [plaintiff's] clothes" established a plausible violation of the Fourth Amendment sufficient to survive a motion to dismiss); *cf. Story v. Foote*, 782 F.3d 968, 973 (8th Cir. 2015) (visual body-cavity inspection conducted of plaintiff's person did not violate a clearly established constitutional right).

**D. Destruction of Property During a Search under the Fourteenth and Fourth Amendments**

In *Hudson v. Palmer,* 468 U.S. 517, 533 (1984), the Supreme Court held that "an unauthorized intentional deprivation of property by a state employee does not constitute a violation of the procedural requirements of the Due Process Clause of the Fourteenth Amendment if a meaningful post-deprivation remedy for the loss is available." In Arkansas, the state law causes of action for conversion, tort of outrage, etc., generally suffice. *See Butler v. Smith*, 208 F.3d 217 (Table), 2000 WL 268505, at *1 (8th Cir. Mar. 13, 2000) (affirming dismissal of § 1983 claim that prisoner-plaintiff was wrongly charged for meals when he was housed at the jail because Arkansas state law provides an adequate post-deprivation remedy); *see also Ali v. Ramsdell*, 423 F.3d 810, 814 (8th Cir. 2005) (concluding that the majority in *Hudson*, 468 U.S. 517 determined that a "Fourth Amendment property claim against state officials is barred by the availability of an adequate remedy under state law").

# 8TH AMENDMENT EXCESSIVE FORCE AND FAILURE TO PROTECT (PRISONERS)

## I. Excessive Force – Prisoner Standard

While the Fourth Amendment applies to excessive force claims brought by arrestees and the Fourteenth Amendment applies to excessive force claims brought by pretrial detainees, such claims brought by prisoners are analyzed under the Eighth Amendment prohibition of cruel and unusual punishment. *See Hudson v. McMillian*, 503 U.S. 1, 2 (1992).

"After incarceration, only the unnecessary and wanton infliction of pain constitutes cruel and unusual punishment forbidden by the Eighth Amendment." *Burns v. Eaton*, 752 F.3d 1136, 1138 (8th Cir. 2014) (quoting *Whitley v. Albers*, 475 U.S. 312, 319 (1986), *overruled in part on other grounds by Pearson v. Callahan,* 555 U.S. 223 (2009)). "The infliction of pain in the course of a prison security measure, therefore, does not amount to cruel and unusual punishment simply because it may appear in retrospect that the degree of force authorized or applied for security purposes was unreasonable, and hence unnecessary in the strict sense." *Id*. at 1138-39 (quoting *Whitley*, 475 U.S. at 319). Rather, "whenever prison officials stand accused of using excessive physical force in violation of the Cruel and Unusual Punishments Clause, the core judicial inquiry is that set out in *Whitley*: whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm." *Id*. at 1139 (quoting *Hudson v. McMillian*, 503 U.S. 1, 6-7 (1992)). This inquiry "turns on such factors as the need for the application of force, the relationship between the need and the amount of force that was used, and the extent of injury inflicted, from which inferences may be drawn as to whether the use of force could plausibly have been thought necessary, or instead evinced such wantonness with respect to the unjustified infliction of harm as is tantamount to a knowing willingness that it occur." *Jackson v. Gutzmer*, 866 F.3d 969, 974 (8th Cir. 2017) (quoting *Whitley*, 475 U.S. at 321). "[B]ecause 'not . . . every malevolent touch by a prison guard gives rise to a federal cause of action,' a *de minimis* application of force will not give result in a constitutional violation." *Williams*, 600 F.3d at 1012 (quoting *Hudson*, 503 U.S. at 9). The extent of the resulting injury, "while material to the question of damages and informative as to the likely degree of force applied, is not in and of itself a threshold requirement for proving this type of Eighth Amendment claim." *Id.* (quoting *Williams v. Jackson*, 600 F.3d 1007, 1012 (8th Cir. 2010)).

### II. Failure to Protect – Prisoners

For failure-to-protect claims, prisoner-plaintiffs must establish two elements: "(1) an objective component, that there was a substantial risk of harm to the inmate, and (2) a subjective component, that the prison official was deliberately indifferent to that risk." *Patterson v. Kelley*, 902 F.3d 845, 851 (8th Cir. 2018); *see also Farmer v. Brennan*, 511 U.S. 825, 825 (1994). Deliberate indifference requires that the official knew of and disregarded an excessive risk to inmate health or safety. *See id.*; *see also Farmer*, 511 U.S. at 825; *Jenson v. Clarke*, 94 F.3d 1191, 1192 (8th Cir. 1996); *Holden v. Hirner*, 663 F.3d 336, 337 (8th Cir. 2011); *Webb v. Lawrence County*, 144 F.3d 1131, 1132 (8th Cir. 1998).

## ABSTENTION

### I. Younger v. Harris, 401 U.S. 37 (1971)

#### A. The Elements

In *Younger v. Harris*, 401 U.S. 37 (1971), "the Supreme Court held that, consistent with our nation's commitment to the principles of comity and federalism, a federal court should abstain from exercising jurisdiction in cases where there is a parallel, pending state criminal proceeding so long as certain conditions are met." *Minnesota Living Assistance, Inc. v. Peterson*, 899 F.3d

548, 551 (8th Cir. 2018) (citing *Younger*, 401 U.S. at 43-46). Since then, courts have expanded *Younger* abstention doctrine beyond criminal cases. *Id.* Accordingly, in determining whether *Younger* abstention applies, courts engage in a three part inquiry: "(1) does the underlying state proceeding fall within one of the three 'exceptional circumstances' where *Younger* abstention is appropriate?; (2) if the underlying proceeding fits within a *Younger* category, does the state proceeding satisfy what are known as the 'Middlesex' factors?; and (3) even if the underlying state proceedings satisfies the first two inquiries, is abstention nevertheless inappropriate because an exception to abstention applies?" *Id.* at 552 (internal citations and quotations omitted) (cleaned up).

With respect to the first element, "*Younger* abstention is applicable only where the state proceeding qualifies as (1) criminal prosecution, (2) a civil enforcement proceeding that is akin to a criminal prosecution, or (3) a proceeding implicating a state's interest in enforcing the orders and judgments of its courts." *Id.* (citing *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 72-73 (2013)). Regarding the second element, under the three *Middlesex* factors, courts "ask whether the state proceeding (1) is judicial in nature, (2) implicates important state interests, and (3) provides an adequate opportunity to raise constitutional challenges." *Id.* at 553. Finally, with respect to the third element, if the other *Younger* factors are met, "a federal court should abstain unless it detects 'bad faith, harassment, or some extraordinary circumstance that would make abstention inappropriate.'" *Night Clubs, Inc. v. City of Ft. Smith, Ark.*, 163 F.3d 475, 479 (8th Cir.

1998) (quoting *Middlesex Cty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 435 (1982)).

### B. Cases Applying *Younger*

- In *Kaylor v. Fields*, the Eighth Circuit affirmed the district court's application of *Younger*, finding that plaintiff's ongoing criminal proceedings offered her an opportunity to raise her federal claims if the state elected to try her again and that "[n]o more is required to invoke *Younger* abstention." 661 F.2d 1177, 1181 (8th Cir. 1996) (quoting *Juidice v. Vail*, 430 U.S. 327, 337 (1977)).

- In *Minnesota Living Assistance, Inc. v. Peterso*n, the court concluded that the ongoing state civil enforcement proceedings satisfied *Younger* and that no exception to the doctrine applied. 899 F. 3d 548, 549 (8th Cir. 2018).

- In *Fantasysrus 2, LLC v. City of E. Grand Forks*, the court declined to apply *Younger* when the plaintiff filed a § 1983 claim alleging the zoning code was unconstitutional and sought a preliminary injunction because there was no ongoing state judicial proceeding. 881 F.Supp.2d 1024, 1025 (D. Minn. 2012).

### C. The Effect of Abstention: Stay or Dismissal

When *Younger* applies to a claim for money damages (and the damages claim would not require a declaration that a state statute is unconstitutional), the Eighth Circuit has held that the case should not be dismissed but rather stayed. *Yamaha Motor Corp., U.S.A. v. Stroud*, 179 F.3d 598, 603-04 (8th Cir. 1999). Where, however, the request for relief is purely equitable, *Younger* requires the Court to dismiss this action for lack of jurisdiction. *See Tony Alamo Christian Ministries v. Selig*, 664 F.3d 1245, 1251 (8th Cir. 2012).

- In *Fuller v. Ulland*, the court vacated a dismissal and remanded for entry of a stay, emphasizing that dismissal is inappropriate if there is a chance of returning to federal court. 76 F.3d 957, 958 (8th Cir. 1996).
- In *Yamaha Motor Corp. v. Stroud*, the court remanded a case with instructions to stay rather than dismiss, as the plaintiff sought damages that might remain viable after state proceedings. 179 F.3d 598, 604 (8th Cir. 1999).
- In *Night Clubs v. City of Fort Smith*, the court affirmed dismissal where the federal claims were intertwined with ongoing state judicial proceedings and no exceptions to *Younger* applied. 163 F.3d 475, 477 (8th Cir. 1998).
- In *Wassef v. Tibben*, the court clarified that dismissals under *Younger* should be without prejudice, allowing plaintiffs to pursue their claims in state court or return to federal court if appropriate. 68 F.4th 1083, 1091 (8th Cir. 2023).

## II. Rooker-Feldman ***Doctrine***

The *Rooker-Feldman* Doctrine also bears mentioning. "The basic theory of the *Rooker-Feldman* doctrine is that only the United States Supreme Court has been given jurisdiction to review a state-court decision, so federal district courts generally lack subject-matter jurisdiction over attempted appeals from a state-court judgment." *Dodson v. Univ. of Ark. for Med. Scis.*, 601 F.3d 750, 754 (8th Cir. 2010) (quoting *Friends of Lake View Sch. Dist. No. 25 v. Beebe*, 578 F.3d 753, 758 (8th Cir. 2009)) (cleaned up). The doctrine is narrow, and "confined to cases . . . brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced." *Id.* (citing *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005)).

As this doctrine pertains to § 1983 actions, the Eighth Circuit has expressly cautioned:

> Litigants can choose whether to pursue ... claims in state or federal court. Once a party has litigated in state court, however, he cannot circumvent *Rooker–Feldman* by recasting his or her lawsuit as a [section] 1983 action. In other words, if a litigant has raised and lost claims in state court, he may not recast those claims under section 1983 and try again. He must follow the appellate procedure through the state courts and seek review before the Supreme Court.

*Id.* at 754-55 (internal quotations and citations omitted).

## THE *HECK* DOCTRINE

### I. The *Heck* Doctrine Defined

In *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994), the Supreme Court held that

> [i]In order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentenced invalid, a [42 U.S.C.] § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination or called into question by a federal court's issuance of a writ of habeas corpus. A claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under § 1983.

512 U.S. at 486-87 (footnote omitted). The doctrine set forth in Heck is not limited to requests for money damages. *See Sheldon v. Hundley*, 83 F.3d 231, 233 (8th Cir. 1996). Rather, in determining whether Heck applies, district courts must "disregard the form of relief sought and instead look to the essence of the plaintiff's claims." *Id.*

A dismissal pursuant to *Heck* is a dismissal without prejudice. *See Schafer v. Moore*, 46 F.3d 43, 45 (8th Cir. 1995) (dismissal of *Heck*-barred claims should be without prejudice so that plaintiff can refile if he satisfies *Heck* requirements).

### A. *Heck* Footnote 7

In *Heck*, the Supreme Court explained that if the district court determines that a § 1983 action, "even if successful, will not demonstrate the invalidity of any outstanding criminal judgment' against the plaintiff, the action should be allowed to proceed." *Heck*, 512 U.S. at 87. In footnote seven, the Supreme Court explained further:

> For example, a suit for damages attributable to an allegedly unreasonable search may lie even if the challenged search produced evidence that was introduced in a state criminal trial resulting in the § 1983 plaintiff's still-outstanding conviction. Because of doctrines like independent source and inevitable discovery, and especially harmless error, such a § 1983 action, even if successful, would not necessarily imply that the plaintiff's conviction was unlawful.

*Heck*, 512 U.S. at 487 n.7 (internal citations omitted).

### B. Cases Applying *Heck*

- In *Dolney v. Lahammer*, relying on *Heck*, the district court dismissed the case, concluding that plaintiff's claims, if successful, would necessarily imply the invalidity of his parole revocation hearing. *Dolney v. Lahammer*, 70 F. Supp. 2d 1038, 1039-40 (D.S.D. 1999). Here, the court emphasized that a § 1983 plaintiff must demonstrate that the conviction or sentence has been invalidated before proceeding with such claims. *Id*.
- In *Moore v. Sims*, the court held that a § 1983 claim for unlawful seizure was not barred by *Heck* because success on the claim would not necessarily imply the invalidity of the

plaintiff's conviction. *Moore v. Sims*, 200 F.3d 1170, 1171 (8th Cir. 2000). However, other claims that were barred by *Heck* were dismissed, as they would have implied the invalidity of the conviction.

- In *Whitmore v. Harrington*, the court reversed the dismissal of a § 1983 claim for an unlawful investigative stop, finding that success on the claim would not necessarily imply the invalidity of the plaintiff's drug convictions. *Whitmore v. Harrington*, 204 F.3d 784, 784 (8th Cir. 2000). The court reiterated that some § 1983 claims, such as those challenging unreasonable searches, may proceed even if the plaintiff's conviction remains valid.

- In *Sheldon v. Hundley*, the court held that § 1983 claim challenging a disciplinary ruling that lengthened a prisoner's sentence was barred by *Heck*. *Sheldon v. Hundley*, 83 F.3d 231, 232 (8th Cir. 1996). The court reasoned that such claims do not arise until the disciplinary ruling is invalidated through state or federal habeas proceedings.

- In *Portley-El v. Brill*, the court dismissed a § 1983 claim as *Heck*-barred because the claims constituted a direct attack on the validity of a disciplinary decision that resulted in the loss of good time credits. *Portley-El v. Brill*, 288 F.3d 1063, 1064 (8th Cir. 2002). The court emphasized that habeas corpus, not § 1983, is the exclusive remedy for challenging the validity or length of confinement.

- In *Schafer v. Moore*, the court affirmed the dismissal of a § 1983 claim challenging the denial of parole, concluding that success on the claim would necessarily imply the invalidity of the plaintiff's continued confinement. *Schafer v. Moore*, 46 F.3d 43, 44 (8th Cir. 1995). The dismissal was modified to be without prejudice, allowing the plaintiff to refile if he successfully challenged his confinement through appropriate remedies. *Id*.

- In *Armento-Bay v. Harper*, the court reversed the dismissal of a § 1983 claim for procedural due process violations during a disciplinary hearing. *Armento-Bay v. Harper*, 68 F.3d 215, 216-17 (8th Cir. 1995). The court found that the claim, which sought damages only and did not challenge the loss of good time credits, was not barred by *Heck* because it focused on procedural issues rather than the validity of the disciplinary decision. *Id*.

- In *Figg v. Russell*, the court upheld the dismissal of § 1983 claim as barred by *Heck* because the plaintiff could not satisfy the *Heck* "favorable-termination" rule. *Figg v. Russell*, 433 F.3d 593, 594 (8th Cir. 2006). The court also noted that collateral estoppel did not bar the plaintiff's state law claims, so those claims should have been dismissed without prejudice. *Id.* at 600.

# ATTORNEYS' FEES

## I. Attorneys' Fees Generally

The United States legal system generally requires each party to bear its own litigation expenses, including attorneys' fees, regardless of the outcome of the case. This is known as the "American Rule." But Congress has authorized courts to deviate from the American Rule in certain types of cases by shifting fees from one party to the other. Section 1988, for example, allows the court to award "a reasonable attorney's fee" to "the prevailing party" in various kinds of civil rights cases, including cases brought under 42 U.S.C. § 1983. *Fox v. Vice*, 563 U.S. 826, 828 (2011). Notably, 42 U.S.C. § 1988(c) allows courts to include expert fees as part of the attorneys' fee award in actions enforcing certain provisions. Yet, this provision does not explicitly extend to § 1983 cases.

In *Fox v. Vice*, the Supreme Court held that in cases involving both frivolous and non-frivolous claims, a prevailing defendant may recover reasonable attorneys' fees related to the frivolous claims. 563 U.S. at 829. But the defendant is not entitled to fees for work that would have been necessary even in the absence of the frivolous claims. *Id*. Accordingly, in assessing fees, courts must distinguish between fees attributable to frivolous allegations and those related to the overall litigation. If the lower court fails to properly account for this distinction, a remand is appropriate to apply the correct standard.

In *Farrar v. Hobby*, the Supreme Court also addressed the issues of attorneys' fees. 506 U.S. 103, 104 (1992). In that case, the Court held that under § 1988, plaintiffs who win nominal damages constitute "prevailing part[ies]" and are eligible for attorneys' fees. *Id*. at 122. However, the Court also emphasized the degree of success obtained is the "most critical factor" in determining the reasonableness of a fee award. *Id*. at 103. In cases where the plaintiff only recovers only nominal damages due to a failure to prove compensable injury, the Court concluded that "the only reasonable fee is usually no fee at all." *Id*. at 115.

The plaintiff in *Farrar* sought $17 million in damages but was ultimately awarded only $1 in nominal damages, because he did not demonstrate actual injury. 506 U.S. at 103. The district court initially awarded $280,000 in attorneys' fees, but the Supreme Court reversed, holding the limited success achieved did not justify such a fee award. The Court reasoned that the nominal damages highlighted the plaintiff's inability to prove an essential element of the claim, and thus, no attorneys' fees were appropriate in this case.

## CHALLENGES FACING INCARCERATED PLAINTIFFS

It is important to remember that prisoner-plaintiffs face unique challenges due to their incarcerated status—frequent transfers to different facilities may disrupt the litigation process, for example, as inmates may lose access to their legal materials, personal property, or the ability to communicate effectively with their attorneys and opposing counsel. Prison policies and procedures may also delay the delivery of inmates' mail, limit inmates' access to the law library, or limit their ability to communicate directly with potential witnesses. Further, the inmates themselves may be suffering from a medical or mental health condition that may impact their ability to effectively communicate or participate in the litigation.