



Arkansas Association of Defense Counsel

May 8, 2017

Conditions of Confinement: A Change in Standard

By: **Jamie Huffman Jones¹**
Friday, Eldredge & Clark, LLP

Conditions of confinement refer to a prisoner's environment and access to necessities such as water, food, and shelter. Whether you are defending against such a case, or whether you are appointed to represent a prisoner, the standard applied will be the threshold question. Prior to January of this year, the claims of both a pre-trial detainee and a post-trial prisoner were analyzed under a deliberate indifference standard. However, with the case of *Ingram v. Cole County*, the Eight Circuit Court of Appeals has changed the standard for pre-trial detainees. 846 F.3d 282 (8th Cir. 2017). This article will address the standard prior to *Ingram*, and set out the standard after *Ingram*.

Civil Rights Claims Under 42 U.S.C. § 1983

In relevant part, Title 42 U.S.C. § 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory. . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the

Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

42 U.S.C. § 1983. Section 1983 was created to provide "a broad remedy for violations of federally protected civil rights." *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 685, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978). "To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution [or] laws of the United States and must show that the alleged deprivation was committed by a person acting under color of state law." *West v. Atkins*, 487 U.S. 42, 48, 108 S. Ct. 2250, 101 L. Ed. 2d 40 (1998).

While the Constitution requires that prisoners are housed in a humane manner, "it does mandate comfortable prisons" or that those prisoners be "free of discomfort." *Rhodes v. Chapman*, 452 U.S. 337, 349, 101 S.Ct. 2392, 69 L. Ed. 2d 59 (1981). In other words, the Constitution "'does not mandate comfortable prisons', it prohibits 'inhumane ones.'" *Williams v. Delo*, 49 F.3d 442, 445 (8th Cir. 1995) (*quoting Farmer v. Brennan*, 128 L. Ed. 2d 811, 114 S. Ct. 1970, 1976 (1994)). When such allegations such as access to food, water, shelter, and clothing are made in Section 1983 cases, they are often called "conditions of confinement" cases.

¹ Special thanks to Chris Stevens and Patrick

Spivey of the Fuqua Campbell firm for the alert on the *Ingram* case.

Pre-Trial Detainees and Post-Conviction Prisoners

When analyzing a condition of confinement case, the first question to be asked is if the prisoner is a pre- or post-trial detainee. "As a pre-trial detainee, [the prisoner's] conditions of confinement claims are analyzed under the Fourteenth Amendment's Due Process Clause, rather than the Eighth Amendment. *Owens v. Scott County Jail*, 328 F.3d 1026, 1027 (8th Cir. 2003)." *Stewart v. Pope Cty. Det. Ctr.*, No:4:12CV00403JLH, 2013 U.S. Dist. LEXIS 60652 (E.D. Ark. April 3, 2013) (adopted by Judge Holmes in 2013 U.S. Dist. LEXIS 60654 (April 29, 2013)).

Although the question had to be asked, prior to this January, it was largely a moot issue in the Eighth Circuit. In *Butler v. Fletcher*, 465 F.3d 340, 341 (8th Cir. 2006), a pre-trial detainee brought a § 1983 action against a Minnesota county detention facility, alleging that improper policies and safeguards had resulted in his infection with tuberculosis. The District Court applied the deliberate indifference standard to his claim, resulting in the grant of summary judgment against him. *Id.* The plaintiff appealed, and argued that the Eighth Amendment deliberate indifference standard did not apply and that a lessor pre-trial detainee standard applied. *Id.* The Eighth Circuit Court of Appeals affirmed the grant of summary judgment. In affirming, the *Ingram* Court stated that even after the United States Supreme Court discussion in *Bell v. Wolfish*,²

we have recognized that it is an open question but have repeatedly applied the deliberate indifference standards to pretrial detainee claims that prison officials unconstitutionally

ignored a serious medical need or failed to protect the detainee from a serious risk of harm.

Id. at 343.

Butler was subsequently interpreted to call for the same deliberate indifference standard for both pre-trial detainees and post-conviction prisoners in conditions of confinement cases. *See generally Stewart, supra* ("[u]nder the Fourteenth Amendment, pretrial detainees are entitled to 'at least as great' protection as that afforded convicted prisoners under the Eighth Amendment, [and] 'courts apply the identical deliberate indifference standard as that applied to conditions of confinement claims made by convicts.'" (citations omitted)).

The Ingram Standard

The application of the deliberate indifference standard to a pre-trial detainee conditions of confinement case changed on January 17, 2017. *Ingram v. Cole Cty.*, 846 F.3d 282 (8th Cir. 2017). In considering the laundry policy of a county detention facility, the *Ingram* court concluded that the discussion in *Butler, supra* regarding conditions of confinement was dicta and that the holding applied to medical claims but not to conditions of confinement cases. *Id.* at 286. The *Ingram* court explained:

In evaluating the constitutionality of pretrial-detention conditions, "the proper inquiry is whether those conditions amount to punishment of the detainee." *Bell v. Wolfish*, 441 U.S. 520, 535, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979). The Due Process Clause prohibits any punishment before someone is adjudicated guilty. *Id.*

² 441 U.S. 520, 99 S. Ct. 1861, 60 L. Ed. 2d

447 (1979), a conditions of confinement case

that set out the difference in the protections

of the Fourteenth and Eighth Amendments.

We must first ask whether a given imposition is of "a de minimis level . . . with which the Constitution is not concerned." *Id.* at 539 n.21 (quoting *Ingraham v. Wright*, 430 U.S. 651, 674, 97 S. Ct. 1401, 51 L. Ed. 2d 711 (1977)). Then, if the imposition is of constitutional concern, the second question is whether it "amounts to 'punishment' in the constitutional sense." *Id.* at 537.

This second question—whether there is punishment in the constitutional sense—arises in pretrial detainee cases because detention always involves some loss of freedom and of life's ordinary comforts. *Id.* Yet "the Government concededly may detain [someone] to ensure his presence at trial and may subject him to the restrictions and conditions of the detention facility so long as those conditions and restrictions do not amount to punishment." *Id.* at 536-37. The relationship of the condition or restriction to nonpunitive government purposes is key. If a pretrial-detention condition or restriction "is reasonably related to a legitimate governmental objective, it does not, without more, amount to 'punishment.'" *Id.* at 539. But if it "is not reasonably related to a legitimate goal—if it is arbitrary or purposeless—a court permissibly may infer that the

purpose of the governmental action is punishment that may not constitutionally be inflicted upon detainees qua detainees." *Id.*

Id. at 285-86. With this holding, the Eighth Circuit now applies the Fourteenth Amendment test to conditions of confinement cases involving pre-trial detainees, rather than the deliberate indifference test of the Eighth Amendment.

The AADC thanks Jamie Huffman Jones of Friday, Eldredge & Clark for writing this article.



The AADC welcomes your articles and thoughts for future editions.
We Are Better Together: Support the AADC