

## KNOW YOUR RIGHTS: USE OF FORCE BY CORRECTIONAL OFFICIALS

**Basics:** The Constitution “does not mandate comfortable prisons,” but neither does it permit inhumane ones.<sup>1</sup> In its prohibition of “cruel and unusual punishments,” the Eighth Amendment to the United States Constitution imposes duties on prison officials who must ensure that people in prison receive “adequate food, clothing, shelter, and medical care” and must take reasonable measures to guarantee prisoners’ safety.<sup>2</sup> The use of excessive physical force against a prisoner may constitute cruel and unusual punishment.<sup>3</sup>

**The “Malicious & Sadistic” Standard Applies to Officers Who Actually Use Force:** Not all force used by correctional personnel against prisoners violates the Constitution. In determining whether the amount of force used against a prisoner violates the Eighth Amendment, a court will look at “whether force was applied in a good faith effort to maintain or restore discipline,” or whether the force was used “maliciously and sadistically for the very purpose of causing harm.”<sup>4</sup> Five factors relevant to ascertaining whether force was used “maliciously and sadistically” for the purpose of causing harm include: (1) the extent of the injury, (2) the need for application of force, (3) the relationship between the need and the amount of force used, (4) any efforts made to temper the severity of a forceful response, and (5) the extent of the threat to the safety of staff and prisoners, as reasonably perceived by the responsible officials.<sup>5</sup>

**The “Deliberate Indifference” Standard Applies to Supervisory Personnel in Use of Force Cases:** To prove a constitutional violation by supervisory personnel who did not participate in the actual use of excessive force, a plaintiff must show that there was a causal connection between the supervisor’s actions and the subordinates’ use of excessive force.<sup>6</sup> A causal connection may be established when: (1) a “history of widespread abuse” would put a responsible supervisor on notice of the need to correct the pattern of abuse, and he or she fails to do so; (2) a supervisor’s custom or policy results in deliberate indifference to constitutional rights; or (3) the supervisor directed subordinates to act unlawfully or knew that subordinates would act unlawfully and failed to stop them from doing so.<sup>7</sup>

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<sup>1</sup> *Farmer v. Brennan*, 511 U.S. 825, 832 (1994).

<sup>2</sup> *Id.*

<sup>3</sup> *Hudson v. McMillian*, 503 U.S. 1 (1992).

<sup>4</sup> *Hudson*, 503 U.S. at 6-7.

<sup>5</sup> *Campbell v. Sikes*, 169 F.3d 1353, 1375 (11th Cir. 1999).

<sup>6</sup> *Valdes v. Crosby*, 450 F.3d 1231, 1237 (11th Cir. 2006).

<sup>7</sup> *Valdes*, 450 F.3d at 1237.

**The “Deliberate Indifference” Standard Applies to Officer “Bystanders”:** It is not necessary that an officer actually participate in the use of excessive force in order to be held liable. Rather, an officer who is present at the scene and who fails to take reasonable steps to protect the victim of another officer’s use of excessive force can be held liable for his nonfeasance.<sup>8</sup>

**The Force Used Must Be More Than “De Minimis”:** The United States Supreme Court has held that not “every malevolent touch by a prison guard gives rise to a federal cause of action.” A *de minimis* use of force does not violate the Eighth Amendment. In other words, “[a]n inmate who complains of a ‘push or shove’ that causes no discernible injury almost certainly fails to state a valid excessive force claim.”<sup>9</sup>

**The Injury You Sustained Need *Not* Be Life-Threatening:** Officials who “maliciously and sadistically use force to cause harm” violate the Eighth Amendment even if the prisoner in question did not sustain a “significant injury” as a result.<sup>10</sup> Thus, in *Hudson v. McMillian*, a Louisiana prisoner who alleged that officers beat him while he was handcuffed, cracking his dental plate, and giving him bruising and facial swelling, while a supervising officer looked on and told the offending officer “not to have too much fun,” alleged harm sufficient to violate Eighth Amendment.<sup>11</sup>

**Use of Chemical Agents:** When chemical agents are used unnecessarily, without penological justification, or for the very purpose of punishment or harm, that use satisfies the Eighth Amendment’s objective harm requirement.<sup>12</sup>

#### **CASES IN WHICH PRISONERS STATED A CLAIM OF EXCESSIVE FORCE:**

The following is presented by way of example and is not an exhaustive summary of recent cases:

- *Bozeman v. Orum*, 422 F.3d 1265, 1271-72 (11th Cir. 2005) (holding that officers at the Montgomery County Detention Facility acted maliciously and sadistically where, after the officers had subdued a 17-year-old detainee, they held him face-down, forced his head into a mattress, and stated, “Oh, we don’t think you’ve had enough,” ultimately causing his death by suffocation).

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<sup>8</sup> *Skrnich v. Thornton*, 280 F.3d 1295, 1301-1302 (11th Cir. 2002).

<sup>9</sup> *Wilkins v. Gaddy*, 130 S.Ct. 1175, 1178 (2010).

<sup>10</sup> *Hudson v. McMillian*, 503 U.S. 1, 9 (1992).

<sup>11</sup> *Hudson*, 503 U.S. at 4, 10.

<sup>12</sup> *Thomas v. Bryant*, 2010 WL 3270965 (11th Cir. Aug. 20, 2010) (finding that the Florida DOC’s policy of spraying people with mental illness with chemical agents while they are secured in cells, not presenting a threat of immediate harm to others, and unable to understand and comply with officers’ orders due to mental illness violates the Eighth Amendment’s objective harm requirement); *Danley v. Allen*, 540 F.3d 1298, 1311 (11th Cir. 2008), *overruled in part on other grounds*, *Randall v. Scott*, 610 F.3d 701 (11th Cir. 2010) (holding that prolonged exposure to pepper spray due to a failure to properly decontaminate a prisoner may form the basis of an Eighth Amendment claim); *Iko v. Shreve*, 535 F.3d 225, 239 (4th Cir. 2008) (use of additional bursts of pepper spray after prisoner attempted to comply with officer’s orders and which possibly contributed to prisoner’s asphyxiation and death sufficiently alleged objective component of excessive force claim); *Soto v. Dickey*, 744 F.2d 1260, 1270 (7th Cir. 1984) (“[I]t is a violation of the Eighth Amendment for prison officials to use mace or other chemical agents in quantities greater than necessary or for the sole purpose of punishment or the infliction of pain.”).

- *Brown v. Thompson*, 159 Fed. Appx. 119, 119-20 (11th Cir. Dec. 14, 2005) (unpublished) (holding that a Florida prisoner who alleged that officers repeatedly stunned him with a stun gun to prod him to obey orders, although officers knew that prisoner was unable to comply with their orders, stated an excessive force claim).
- *Skrnich v. Thornton*, 280 F.3d 1295, 1299-1300 (11th Cir. 2002) (holding that officers' punching, kicking, and beating the prisoner, after he had been rendered incapacitated by a "shock shield," to the extent he had to be airlifted from the prison to a hospital where he remained for nine days, constituted an Eighth Amendment violation).
- *Johnson v. Breeden*, 280 F.3d 1308, 1312 (11th Cir. 2002) (affirming jury award of compensatory damages for man incarcerated at Phillips State Prison in Georgia who alleged that officers choked him and beat him with batons until he lost consciousness, causing him to sustain injuries requiring treatment at an off-site hospital).
- *Harris v. Chapman*, 97 F.3d 499, 505-506 (11th Cir.1996) (holding that a prisoner who was kicked and beaten, slapped in the back of the head with a towel, and slapped twice in the face such that he developed a back condition or experienced a worsening of an existing back condition suffered more than *de minimis* injury).

**CASES IN WHICH PRISONERS *DID NOT* STATE A CLAIM OF EXCESSIVE FORCE:**

- *Fischer v. Ellegood*, 238 Fed. Appx. 428, 432 (11th Cir. June 6, 2007) (unpublished) (finding that use of pepper spray in response to prisoner's failure to face the wall during a shakedown did not constitute malicious and sadistic use of force).
- *Johnson v. Moody*, 206 Fed. Appx. 880, 884-86 (11th Cir. Oct. 31, 2006) (unpublished) (finding that an Alabama prisoner who alleged that an officer kicked a metal tray door into his hand, prompting a tetanus shot, bandages and five months of treatment with non-prescription pain killers did not allege more than *de minimis* injury, where X-rays revealed the finger was not broken, the injury required only 15 minutes of treatment on the day of the injury, and there was no evidence of permanent injury or debilitating pain).
- *Palmer v. Cottrell*, 2010 WL 2179897 (M.D. Ala. May 5, 2010) (finding that prisoner at Kilby Correctional Facility who alleged that an officer slapped him for no reason did not state an Eighth Amendment violation because force used was "*de minimis*").

**DIRECT CORRESPONDENCE REGARDING EXCESSIVE FORCE BY OFFICERS TO THE FOLLOWING:**

**Georgia State Prisons**

Ms. Shervonda Fields  
Office of the Ombudsman  
and Family Advocacy  
Georgia Department of  
Corrections  
2 Martin Luther King Jr.  
Drive, S.E.  
East Tower, Suite 954  
Atlanta, GA 30334  
(404) 657-7588 (T)  
(404) 651-6537 (F)  
Email:  
[ombudsman@dcor.state.ga.us](mailto:ombudsman@dcor.state.ga.us)

**Alabama State Prisons**

Mr. James DeLoach  
Associate Commissioner  
Alabama Department of  
Corrections  
301 S. Ripley Street  
P.O. Box 301501  
Montgomery, AL 36130-  
1501

Or contact the ADOC  
Investigations &  
Intelligence Division at the  
same address

**Federal Prisons**

Raymond Holt  
Regional Director  
Southeast Regional Office  
Federal Bureau of Prisons  
3800 Camp Creek Pkwy.  
SW/BDG 2000  
Atlanta, GA 30331

**Local Jails**

Contact the Sheriff and/or  
County Commission

**Statute of Limitations:** In Georgia and Alabama, civil rights claims brought under 42 U.S.C. § 1983 are subject to a 2-year statute of limitations, but violations of state law may have earlier limitations periods and notice requirements.<sup>13</sup>

**Exhaustion of Grievance Procedure:** Under the Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997(e), no legal action may be brought “with respect to prison conditions” under section 1983 or any other federal law, by a prisoner confined in any jail, prison, or other correctional facility “until such administrative remedies as are available are exhausted.” In other words, if the prison/jail you are in has a grievance process, you must complete the grievance process before filing a lawsuit raising federal claims.

**Resources:** You may request a free copy of *The Jailhouse Lawyer’s Handbook: How to Bring a Federal Lawsuit to Challenge Violations of Your Rights in Prison* by writing to The Center for Constitutional Rights at: Jailhouse Lawyers Handbook c/o The Center for Constitutional Rights, 666 Broadway, 7<sup>th</sup> Floor, New York, NY 10012.

**Please Note:** This document focuses on cases from the federal courts in Alabama and Georgia. The law is always evolving. The date at the bottom of this page indicates when this information sheet was last updated.

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<sup>13</sup> Section 1983 of Title 42 of the United States Code (“42 U.S.C § 1983”) is part of the Civil Rights Act of 1871. This provision is the primary means of remedying constitutional violations by state actors. The provision was enacted to prevent post-Civil War racial violence in the Southern states. Section 1983 provides a mechanism for seeking redress for an alleged deprivation of a person’s federal constitutional and federal statutory rights by persons acting under color of state law.