



HEP
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PROJECT

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TODAY'S PRESENTERS

- Gabe Eber
 - ACLU National Prison Project
- Peter Erlinder and Peter Nickitas
 - International Humanitarian Law Institute
- Joel Thompson
 - Prisoner Legal Services of Massachusetts



HOUSEKEEPING

- Type questions into the chat box or use the “Raise Hand” feature. Questions addressed at the end.
- Please ask questions that address these cases specifically – no legal advice.
- Discussion forum at NHCN Google Group, link provided via email.
- For more info or if you have questions, email rich@hepeducation.org.
- Visit www.hcvinprison.org and email Rich to be added to mailing list.



Deliberate Indifference in a Nutshell

Gabriel B. Eber, JD, MPH, CCHP

Senior Staff Counsel, ACLU National Prison Project

Associate, Dept. of Epidemiology, Johns Hopkins Bloomberg School of Public Health

**“Deliberate indifference” is
the most common legal
claim used by prisoners in
cases involving health care.**

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

EMILIAN PASZKO and JEFFREY FOWLER,
on behalf of themselves and all others similarly
situated,

Plaintiffs,

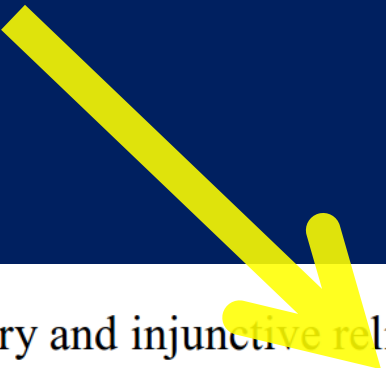
v.

CAROL HIGGINS O'BRIEN, Commissioner of
Massachusetts Department of Correction, in her
official capacity, and MASSACHUSETTS
PARTNERSHIP FOR CORRECTIONAL
HEALTHCARE, LLC,

Defendants.

CIVIL ACTION
NO.

CLASS ACTION COMPLAINT



1. This is a class action that seeks declaratory and injunctive relief under 42 U.S.C. §1983 for violation of the Eighth Amendment as a result of the deliberate indifference of defendants, the Commissioner of the Massachusetts Department of Correction and the Massachusetts Partnership for Correctional Healthcare, LLC (“MPCH”), to the serious medical needs of plaintiffs and the members of the class, who are infected with the Hepatitis C virus.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

RONALDO LIGONS,
BARRY MICHAELSON,
JOHN ROE, and JANE ROE,
JOHN MILES AND JANE MILES,
JOHN STILES AND JANE STILES,
individually, and on behalf of those similarly situated,

File No. 15-CV-2210, PJS/BT

Plaintiffs,

v.

FIRST AMENDED

MINNESOTA DEPARTMENT OF CORRECTIONS,

COMPLAINT

THOMAS ROY,
Minnesota Commissioner of Corrections,
in his official capacity,

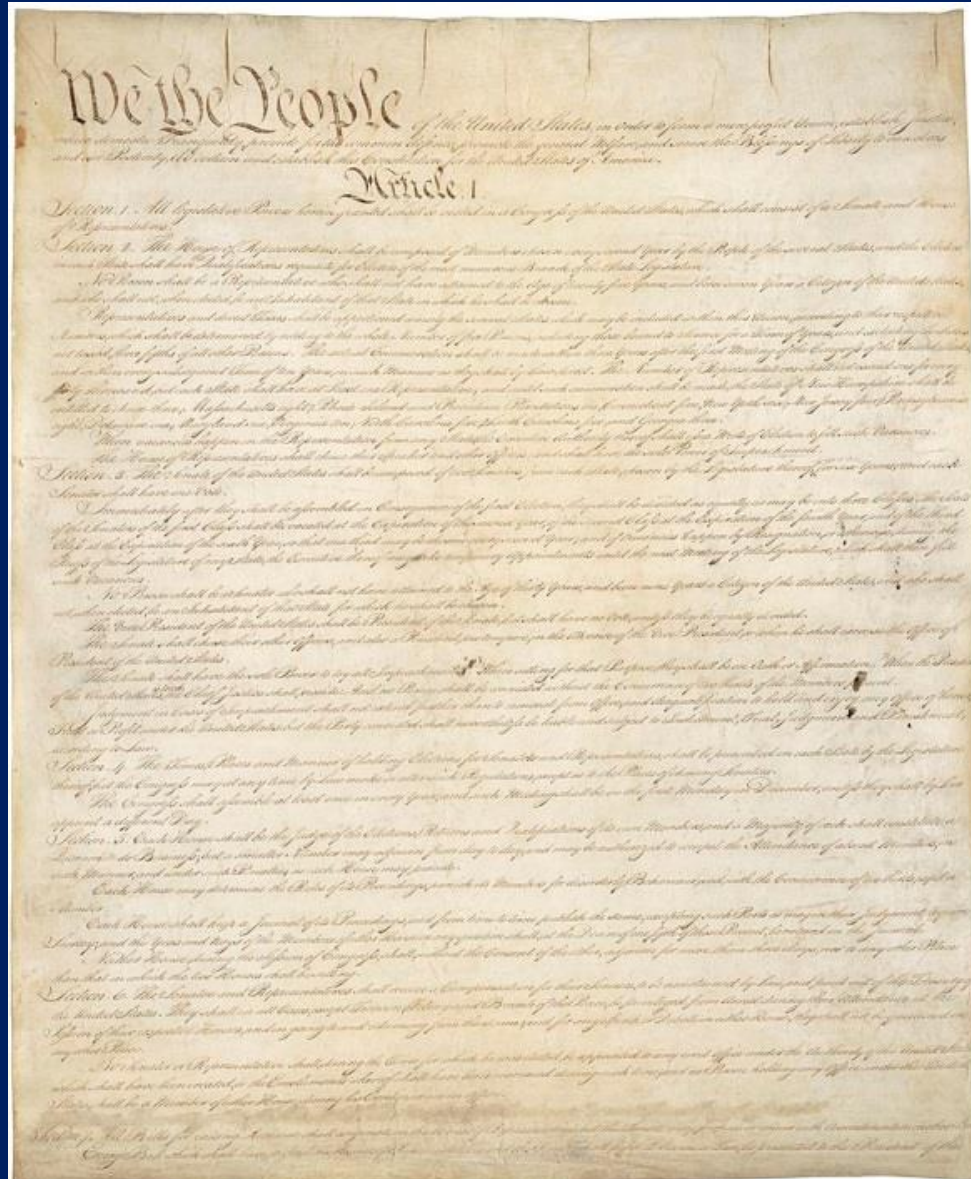
JURY DEMANDED
for all claims triable to
the jury;

standard of care, with reference to *Erickson v. Pardus*, 551 U.S. 89, 90, 127 S. Ct. 2197 (2007), which constitutes a deliberate indifference to the serious medical needs of Plaintiffs LIGONS, MICHAELSON, and all similarly situated Plaintiffs

So what does it mean?

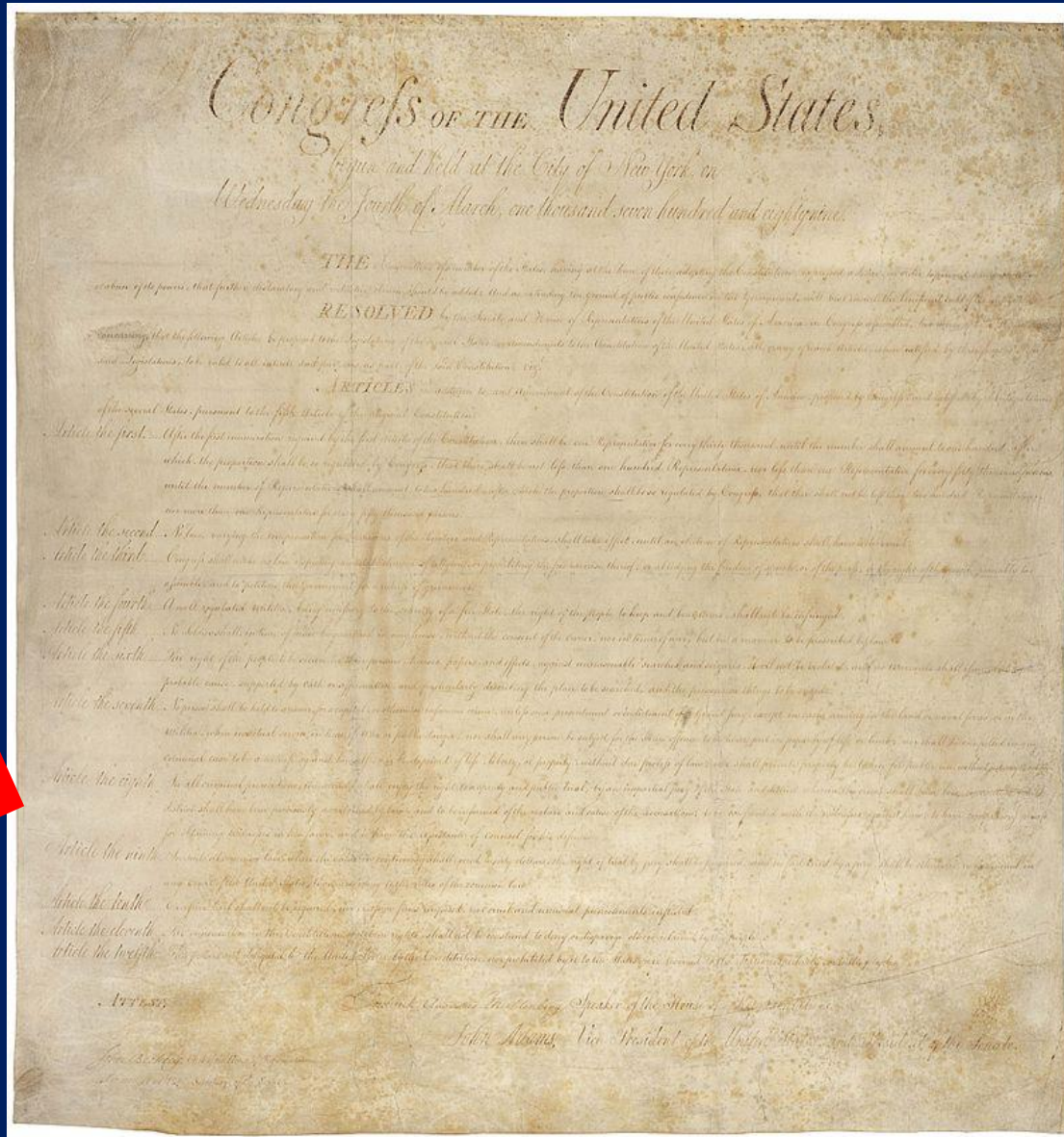


The United States Constitution

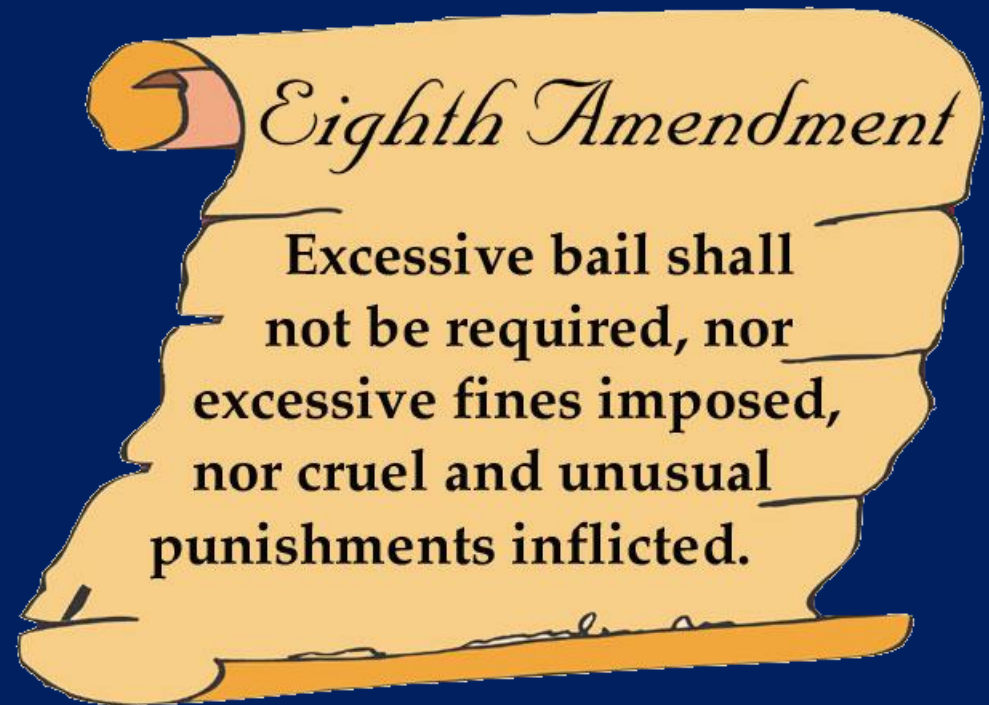


The Bill of Rights

The Eighth Amendment



The Eighth Amendment to the United States Constitution



Three Landmark Cases Interpreting the Eighth Amendment

Estelle v. Gamble

The Key Facts

- Texas prisoner suffered a workplace injury
- Over the next several weeks, he was seen by prison health care staff
- Citing several alleged failures to provide him with proper medical care, he filed a lawsuit claiming that prison staff violated his constitutional rights
- Case went to the United States Supreme Court

Estelle v. Gamble

These elementary principles establish the government's obligation to provide medical care for those whom it is punishing by incarceration.

Estelle v. Gamble

An inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met. In the worst cases, such a failure may actually produce physical “torture or a lingering death,”

In less serious cases, denial of medical care may result in pain and suffering which no one suggests would serve any penological purpose.

Estelle v. Gamble

This conclusion does not mean, however, that every claim by a prisoner that he has not received adequate medical treatment states a violation of the Eighth Amendment.

Estelle v. Gamble

In order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs.

**So... to violate the
Constitution, there
must be “deliberate
indifference to serious
medical needs”**

Deliberate Indifference

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graph TD; A([Deliberate Indifference]) --> B[Objective Prong]; A --> C[Subjective Prong];
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Objective
Prong

Subjective
Prong

The Objective Prong

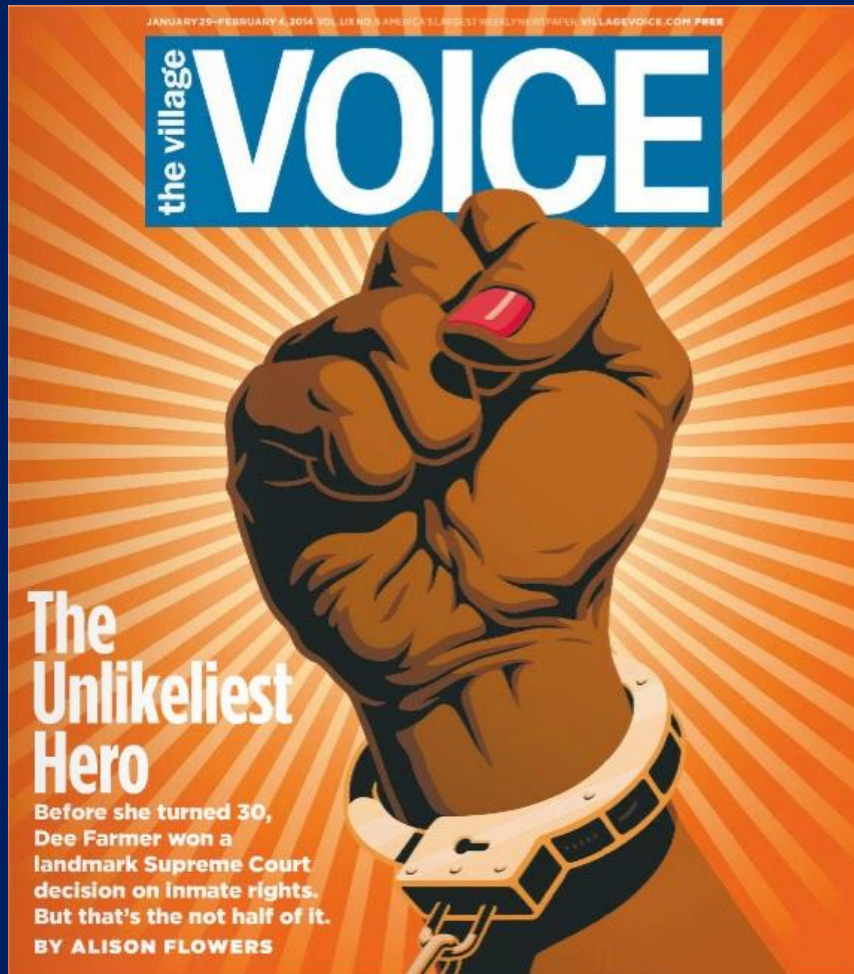
- Refers to the nature/seriousness of the health need at issue in the case
- Health need must be more than minor
- Ask: “Did/does the patient have a serious health need?”
- Threshold for satisfying the objective prong is not high (the health need does not need to be catastrophic)

The Subjective Prong

- Refers to whether health care staff knew about the patient's serious health need
- “Should have known about” is not good enough
- Calls for pretty close to “actual knowledge”
- Ask: “Did health care staff at the prison know about the patient's serious health need?”

Huh?????

Farmer v. Brennan



511 U.S. 825, 128 L.Ed.2d 811

⁸²⁵Dee FARMER, Petitioner

v.

Edward BRENNAN, Warden, et al.

No. 92-7247.

Argued Jan. 12, 1994.

Decided June 6, 1994.

Farmer v. Brennan

Prison officials can be held liable for a constitutional violation if they:

Have knowledge of a substantial risk of serious harm and fail to take reasonable steps to abate that risk.

Helling v. McKinney

Prison officials can be held liable
future risks of harm (i.e., harms that
have yet to materialize):

“That the Eighth Amendment protects
against future harm to inmates is not
a novel proposition.”

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