

NINTH CIRCUIT CLARIFIES PRE-TRIAL INMATES HAVE A CONSTITUTIONAL RIGHT TO A PROPER MEDICAL SCREEN AND TO DIRECT-VIEW SAFETY CHECKS

August 6, 2021 | Law Alerts



Gordon v. County of Orange, et al.

United States Court of Appeals for the Ninth Circuit
July 26, 2021

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On September 8, 2013, Gordon was arrested by the Placentia Police Department on heroin-related charges and booked into the Orange County Central Men's Jail. During his intake, Gordon informed Defendant Debbie Finley, a registered nurse, of his 3-grams-a-day heroin habit. Despite having a policy for opiate withdrawal (known as the Clinical Opiate Withdrawal Scale, "COWS"), jail staff placed Gordon on an alcohol withdrawal protocol (known as the Clinical Institute Withdrawal Assessment, "CIWA") and in regular housing rather than medical unit housing. After his intake assessment, Gordon was placed in general population and given his prescribed treatment. The following day officers performed their hourly safety checks but from their vantage point could not ascertain whether Gordon had any potential indications of a physical problem. Around 10:45 p.m., deputies heard inmates yelling "man down." Jail medical staff immediately responded, rushed Gordon to a local hospital where he was pronounced dead.

Gordon's mother sued the jail staff, county, and associated entities, alleging a violation of the detainee's right to adequate medical care under the Due Process Clause of the Fourteenth Amendment. The California district court granted summary judgment in favor of Defendants. Gordon's mother appealed. The Ninth Circuit vacated and remanded. On remand, the district court again granted summary judgment in favor of Defendants. Gordon's mother again appealed.

On appeal, the Ninth Circuit addressed three issues. First, it held that medical personnel at jail facilities are required to screen pretrial detainees for critical medical needs. "Thus, at the time of the incident, Gordon had a clearly established constitutional right to have a proper medical screen conducted to ensure the medically appropriate protocol was initiated." Applying that analysis, the Ninth Circuit held that remand was necessary for the trial court to determine whether jail staff properly administered the appropriate medical protocol.

Second, the Ninth Circuit held that the detention officers had qualified immunity on the direct-view safety check issue. While Gordon "had a constitutional right to direct-view safety checks when he was known to require medical attention," no previous precedent recognized such a right at the time of the incident. As a result, the Court granted Defendants qualified immunity for Plaintiff's claim in this regard. However, the Court held that going forward "pre-trial detainees do have a right to direct-view safety checks sufficient to determine whether their presentation indicates the need for medical treatment."

Finally, the Ninth Circuit affirmed summary judgment for the entities on Plaintiff's *Monell* claim. Plaintiff had not identified any other instance in which jail personnel used the CIWA protocol for inmates withdrawing from opiates or where a low-visibility safety check resulted in allegedly inadequate medical care. The record also lacked evidence of any other event involving similar conduct or constitutional violations and Plaintiff's reference to the subsequent changes to operating procedures was insufficient. Thus it held the district court properly granted summary judgment in this regard.

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[Justin Ackerman](#) represents clients in federal and state appellate matters in cases involving excessive force, wrongful death, personal injury, bad faith, and premises liability. After graduating as the valedictorian of his class from Phoenix School of Law, Justin worked as a law clerk for the Hon. Michael J. Brown in Division One of the Arizona Court of Appeals. Justin has successfully represented clients and argued before the Arizona Court of Appeals, Arizona Supreme Court, and Ninth Circuit Court of Appeals.

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