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Watch Your Step: Recovery for Inmate Slip and Fall - Rodriguez v. City Of New York

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Cover Page Footnote

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**WATCH YOUR STEP: RECOVERY FOR INMATE SLIP
AND FALL**

**SUPREME COURT OF NEW YORK
APPELLATE DIVISION, FIRST DEPARTMENT**

Rodriguez v. City of New York¹
(decided Sept. 1, 2011)

I. INTRODUCTION

Within our jurisprudence is an underlying philosophy that all citizens, even those who are imprisoned, are entitled to certain individual rights provided by the United States Constitution. The Bill of Rights, particularly the first eight amendments, provides individual rights applicable to the federal government. The Eighth Amendment protects those imprisoned from suffering “cruel and unusual punishment.”² In addition, the Fourteenth Amendment prohibits states from depriving citizens of due process in a court of law.³ The language of the Fourteenth Amendment is crucial because “due process” serves to incorporate selective rights, such as those found in the Eighth Amendment, and make them applicable to the states.⁴ Furthermore, several remedial measures exist which may be utilized when one’s constitutional rights have been violated. For instance, one may file a claim under Section 1983⁵ which “provides a civil claim for damages

¹ 929 N.Y.S.2d 212 (App. Div. 1st Dep’t 2011).

² U.S. CONST. amend. VIII (“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”).

³ U.S. CONST. amend. XIV, § 1 (“[N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”).

⁴ *Rodriguez*, 929 N.Y.S.2d at 214.

⁵ 42 U.S.C. § 1983 (2006) (“Every person who, under color of . . . any State . . . subjects,

against a person who, acting under color of state law, deprives another of a right, privilege or immunity secured by the Constitution.”⁶ Therefore, it is possible that an inmate may successfully recover from a prison official for a deprivation of his constitutional rights.

It is necessary to determine which acts of a prison official constitute a violation of the Eighth Amendment. In *Rodriguez v. City of New York*,⁷ the Appellate Division, First Department addressed whether an inmate could recover damages after a slip and fall on flooded hallways in his facility.⁸ In the past, courts have found that slip and fall cases constitute negligence but do not violate the Eighth Amendment.⁹ This seems fair, because any citizen may recover damages under the tort of negligence for a slip and fall; however, an inmate is not just any citizen. Average citizens remain in control of their daily choices, but inmates are subjected to the care and control of prison officials.¹⁰ Undoubtedly, this is a result of the inmates’ own criminal propensities. However, it is the absence of self autonomy that contorts what is traditionally an issue of negligence into an issue of a potential deprivation of constitutional rights.

This case note seeks to determine whether inmate slip and fall cases warrant recovery for a violation of the Eighth Amendment and concludes that they do not. In coming to that conclusion the importance of providing remedies for inmates who have suffered a deprivation of constitutional rights is not to be undermined. Instead, this case note takes the position that inmates should enjoy the right to recover for injuries sustained by slip and fall cases, but under a theory of tort law, not constitutional law.

II. CASE AT ISSUE

In *Rodriguez*, the plaintiff, an inmate at Anna M. Kross Cen-

or causes to be subjected, any citizen of the United States . . . the deprivation of any rights, . . . secured by the Constitution and laws, shall be liable to the party injured . . .”).

⁶ *Rodriguez*, 929 N.Y.S.2d at 214.

⁷ 929 N.Y.S.2d 212 (App. Div. 1st Dep’t 2011).

⁸ *Id.* at 214.

⁹ See *Heredia v. Doe*, 473 F. Supp. 2d 462, 463 (S.D.N.Y. 2007) (finding that slip and fall cases satisfy claims of negligence, not violations of Eighth Amendment rights).

¹⁰ See *DeShaney v. Winnebago Cnty. Dep’t of Soc. Servs.*, 489 U.S. 189, 200 (1989) (referring to prisoners’ lack of autonomy).

ter correctional facility (hereinafter “the Center”), alleged a violation of his constitutional rights under the Eighth and Fourteenth Amendments after he “slipped and fell on a wet floor” at the Center.¹¹ The plaintiff claimed that the defendant, a Warden at the Center, had knowledge of the leaks but failed to repair them, which amounted to a dangerous condition.¹² The plaintiff also alleged that the defendant’s “deliberate[] indifferen[ce] to these ‘conditions of confinement . . . imposed a substantial risk of serious injury’ ”¹³ Additionally, the plaintiff alleged that a failure to provide him “with immediate medical attention” caused him “additional pain and suffering.”¹⁴ The Appellate Division, First Department found that the plaintiff failed to satisfy the requirements of a Section 1983 action for violation of constitutional rights.¹⁵

III. APPLICABLE PROVISIONS:

a. Eighth Amendment

Through the Due Process Clause of the Fourteenth Amendment, states are bound by the Eighth Amendment to protect prisoners held in their jurisdiction from cruel and unusual punishment.¹⁶ Since its inception, the Eighth Amendment has evolved to comport with the progression of society.¹⁷ For instance, in 1878, the Supreme Court in

¹¹ *Rodriguez*, 929 N.Y.S.2d at 214.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Rodriguez*, 929 N.Y.S.2d at 214 (“The Eighth Amendment to the Constitution, which applies to the States through the Due Process Clause of the Fourteenth Amendment, prohibits the imposition of cruel and unusual punishment and guarantees prisoners humane conditions of confinement.”).

¹⁷ *See* *Weems v. United States*, 217 U.S. 349, 378 (1910) (“[The Eighth Amendment] may be therefore progressive, and is not fastened to the obsolete, but may acquire meaning as public opinion becomes enlightened by a humane justice.”); Shannon D. Gilreath, *Cruel and Unusual Punishment and the Eighth Amendment as a Mandate for Human Dignity: Another Look at Original Intent*, 25 T. JEFFERSON L. REV. 559, 563 (2003) (“[T]he true genius of the Eighth Amendment, . . . is that its very construction invites successive generations of Americans . . . to pose the inquiry of what constitutes a cruel and unusual punishment against a paradigm of modernity, not bound by reference to a fixed historical point.”).

Wilkerson v. Utah,¹⁸ found that varying modes of capital punishment did not constitute cruel and unusual punishment under the Eighth Amendment.¹⁹ Logically, as the law evolves, so does the application of the Eighth Amendment.²⁰ Although the expansion of Eighth Amendment rights speaks to a moral evolution, the full extent to which courts are willing to apply the Eighth Amendment remains undetermined. Therefore, the determination of whether punishment is “cruel and unusual,” such that it violates the Eighth Amendment, must be viewed in light of “contemporary standards.”²¹

b. Section 1983

Anyone who is deprived of a constitutional right at the hands of someone acting “under the color of . . . any state,”²² may file a claim under Section 1983 “which provides a civil claim for damages.”²³ Section 1983 was drafted to further “the preservation of human liberty and human rights” by allowing someone deprived of a constitutional right to seek damages.²⁴ Comparable to the application of the Eighth Amendment, courts have been liberal with the application of Section 1983.²⁵ Courts have interpreted the language of Section 1983 to provide two threshold elements necessary to stating a cause of action. The first element requires an adequate claim of a deprivation of a constitutional right, and the second element requires a showing that such deprivation was caused by someone acting for the

¹⁸ 99 U.S. 130 (1878).

¹⁹ *Id.* at 134-35 (“Cruel and unusual punishments are forbidden by the Constitution, but . . . the punishment of shooting . . . is not included in that category, within the meaning of the eighth amendment.”).

²⁰ *Rhodes v. Chapman*, 452 U.S. 337, 346 (1981) (“No static ‘test’ can exist by which courts determine whether conditions of confinement are cruel and unusual, for the Eighth Amendment ‘must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.’” (quoting *Trop v. Dulles*, 356 U.S. 86, 101 (1958) (plurality opinion))).

²¹ *Id.* at 347 (“But conditions that cannot be said to be cruel and unusual under contemporary standards are not unconstitutional.”).

²² 42 U.S.C. § 1983.

²³ *Rodriguez*, 929 N.Y.S.2d at 214.

²⁴ *Owen v. City of Independence, Missouri*, 445 U.S. 622, 636 (1980) (quoting Cong. Globe, 42d Cong., 1st Sess., App. 68 (1871) (Rep. Shellabarger)).

²⁵ *Gomez v. Toledo*, 446 U.S. 635, 639 (1980) (“As remedial legislation, § 1983 is to be construed generously to further its primary purpose.”).

state.²⁶ Additionally, leading scholars have proposed that there are additional elements, such as causation.²⁷

IV. FEDERAL APPROACH

The mere assertion of a deprivation of a constitutional right does not automatically invoke recovery under Section 1983.²⁸ Accordingly, in *Rodriguez*, it is uncontested that the plaintiff is an inmate protected by the Eighth Amendment prohibition of “cruel and unusual punishment.” However, the court found that the plaintiff’s slip and fall did not satisfy the requirements necessary to recover for an Eighth Amendment violation under Section 1983.²⁹ To satisfy the two threshold elements necessary to bring a Section 1983 claim, the proponent must demonstrate several preliminary factors.

a. The First Element: “The deprivation of any rights”

First, the proponent must show with specificity facts which amount to a “deprivation of constitutional rights.”³⁰ To determine whether an injury amounts to a deprivation of constitutional rights, the Supreme Court in *Farmer v. Brennan*,³¹ required that the proponent demonstrate, from an objective point of view, that the action resulted in a “sufficiently serious” deprivation.³² A “sufficiently serious” deprivation is one that fails to provide “minimal civilized measure[s] of life’s necessities.”³³ In *Rodriguez*, the plaintiff failed to specify a legitimate deprivation of a constitutional right and the

²⁶ *Id.* at 640 (acknowledging two elements set forth by the statutory language).

²⁷ See Symposium, *PLI Section 1983* (2011) (transcript on file with author).

²⁸ *Farmer v. Brennan*, 511 U.S. 825, 834 (1994).

²⁹ *Rodriguez*, 929 N.Y.S.2d at 214-15.

³⁰ *Alfaro Motors, Inc. v. Ward*, 814 F.2d 883, 887 (2d Cir. 1987) (“[T]o state a civil rights claim under § 1983, a complaint must contain specific allegations of fact which indicate a deprivation of constitutional rights”); see also *Koch v. Yunich*, 533 F.2d 80, 85 (2d Cir. 1976) (“Complaints relying on the civil rights statutes are plainly insufficient unless they contain some specific allegations of fact indicating a deprivation of civil rights, rather than state simple conclusions.”).

³¹ 511 U.S. 825 (1994).

³² *Id.* at 834 (citing *Wilson v. Seiter*, 501 U.S. 294, 298 (1991) (acknowledging the objective components relied upon)).

³³ *Rhodes*, 452 U.S. at 347.

court denied recovery under Section 1983.³⁴

b. The Second Element: “Deliberate Indifference” of the State actor

The second element requires that the proponent show the “defendants acted with ‘deliberate indifference.’”³⁵ Accordingly, for the prison official to have “deliberate indifference,” his “state of mind [must be] more blameworthy than negligence” yet “less than acts or omissions for the very purpose of causing harm or with knowledge that harm will result.”³⁶ In *Farmer*, the Supreme Court held that:

[A] prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.³⁷

In *Rodriguez*, although the plaintiff alleged that the Warden had notice of the wet floors but failed to fix them the court relied on case law that has established such allegations do not satisfy a Section 1983 claim.³⁸

For a plaintiff to successfully bring a claim under Section 1983, he must first make specific allegations of a deprivation of constitutional rights and a showing that the prison official’s state of mind amounted to a “deliberate indifference.” Because the plaintiff in *Rodriguez* failed to satisfy these threshold elements his claim was properly denied.

³⁴ *Rodriguez*, 929 N.Y.S.2d at 214-15.

³⁵ *Id.* at 214. See generally *Farmer*, 511 U.S. at 828-29 (defining ‘deliberate indifference’ throughout).

³⁶ *Farmer*, 511 U.S. at 835.

³⁷ *Id.* at 837.

³⁸ *Rodriguez*, 929 N.Y.S.2d at 215 (citing *Edwards v. City of New York*, No. 08 Civ. 05787(PGG), 2009 WL 259695, at *3 (S.D.N.Y. Aug. 24, 2009)).

c. Alternative Remedy: Negligence

Although the plaintiff in *Rodriguez* failed to satisfy the requirements for a Section 1983 claim, he was not precluded from recovering under a claim of negligence. It is feasible that a tort may also constitute a constitutional violation.³⁹ However, it is well established that violations of tort law do not automatically rise to the level of a constitutional violation.⁴⁰ For instance, the Supreme Court in *Screws v. United States*⁴¹ stated, “[t]he fact that a prisoner is assaulted, injured, or even murdered by state officials does not necessarily mean that he is deprived of any right protected or secured by the Constitution or laws of the United States.”⁴² Accordingly, a failure to specifically articulate a constitutional violation lends itself to the theory of tort law, as opposed to constitutional law.

Case law elicits a trend of failed Section 1983 claims resulting in negligence claims. Such cases are applicable to the facts set forth in *Rodriguez* and provide a potential remedy. For instance, in *Here-dia v. Doe*,⁴³ one court found that the plaintiff’s allegation did not satisfy a claim for relief under Section 1983, although it did satisfy a negligence claim.⁴⁴ The plaintiff, an inmate, slipped and fell just outside of his cell and did not receive medical treatment until the following day.⁴⁵ The court found that the plaintiff’s allegation did not satisfy the requirements of specificity and state of mind set forth by federal decisions such as *Farmer*.⁴⁶ Accordingly, the plaintiff was denied recovery under Section 1983.⁴⁷ Several other cases have also found that claims involving a slip and fall failed to satisfy the requirements necessary to bring a claim under Section 1983 for depri-

³⁹ See *Wallace v. Kato*, 549 U.S. 384, 387 (2007) (applying the statute of limitations regarding false imprisonment to claims under Section 1983); Symposium, *supra* note 27.

⁴⁰ *Paul v. Davis*, 424 U.S. 693, 701 (1976) (rejecting the argument that the Fourteenth Amendment’s Due Process Clause allowed for recovery every time “the State may be characterized as the tortfeasor”); see also Symposium, *supra* note 27.

⁴¹ 325 U.S. 91 (1945).

⁴² *Id.* at 108-09.

⁴³ 473 F. Supp. 2d 462 (S.D.N.Y. 2007).

⁴⁴ *Id.* at 463 (“Further, Plaintiff’s allegations do not establish a § 1983 claim based on deliberate indifference of jail officials.”).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

vation of constitutional rights.⁴⁸ Therefore, even if the plaintiff is barred from recovering under Section 1983, such allegations may still satisfy a claim for negligence.⁴⁹

V. NEW YORK CASE LAW

Courts in New York have followed an approach very similar to that set forth by federal precedent regarding a violation of Eighth Amendment rights.⁵⁰ Cases mirroring the same fact pattern as *Rodriguez* have continuously held that slip and fall cases do not constitute claims recoverable under Section 1983.⁵¹ For instance, in *Carr v. Canty*,⁵² an inmate at the Center alleged that the flooding in the corridors of his facility, that lasted four months, constituted a deprivation of his constitutional rights under the Eighth Amendment.⁵³ To determine whether this flooding did amount to a constitutional violation, the court applied the two requirements set forth by *Farmer*.⁵⁴ The court first found that the allegations did not satisfy a showing of “an objectively excessive risk.”⁵⁵ Further, the court found that slip

⁴⁸ See *Graham v. Poole*, 476 F. Supp. 2d 257, 260 (W.D.N.Y. 2007) (finding that slip and fall cases satisfy a claim of negligence which is not recoverable under Section 1983).

⁴⁹ *Rodriguez*, 929 N.Y.S.2d at 215.

⁵⁰ See *Wooley v. New York State Dep’t of Corr. Servs.*, 934 N.E.2d 310, 315 (N.Y. 2010) (“A violation of the Eighth Amendment can be proven only if an inmate can demonstrate that prison officials have acted with ‘deliberate indifference . . .’ comprised of an objective component and a subjective component.” (quoting *Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976))); see also *Matter of Davis v. Fischer*, 925 N.Y.S.2d 910, 910 (App. Div. 3d Dep’t 2011) (finding a failure to satisfy the deliberate indifference standard).

⁵¹ See *Carr v. Canty*, No. 10 Civ. 3829(BSJ)(KNF), 2011 WL 309667, at *2 (S.D.N.Y. Jan. 19, 2011); *Johnson v. New York City*, No. 10 Civ. 6193, (PKC) (JLC), 2011 WL 1795284, at *6 (S.D.N.Y. Apr. 30, 2011) (finding the allegations did not amount to a deprivation of constitutional rights afforded to prisoners under the Eighth Amendment).

⁵² No. 10 Civ. 3829(BSJ) (KNF), 2011 WL 309667 (S.D.N.Y. Jan. 19, 2011).

⁵³ *Id.* at *1;

Carr alleges that he slipped because “a busted pipe” flooded the corridor, as it had done for at least four months. Prior to his slip-and-fall, *Carr* contends that he complained about the flooding to certain “housing officers,” who, in turn, notified their supervisors—the defendants. The defendants ordered that blankets be put over the water, according to *Carr*, but did not repair the pipe for months.

Id.

⁵⁴ See *Farmer*, 511 U.S. at 834.

⁵⁵ *Sylla v. City of New York*, No. 04-cv-5693(ILG), 2005 WL 3336460, at *3 (E.D.N.Y. Dec. 8, 2005) (“Courts have regularly held that a wet or slippery floor does not pose an ob-

and fall claims are typically not actionable under Section 1983, even where officials have notice of flooding and fail to remedy it.⁵⁶ Therefore, in *Carr*, the court found that the plaintiff failed to allege a claim that amounted to “inhumane or unreasonably risky” conditions necessary for recovery under Section 1983.⁵⁷

Similarly, in *Johnson v. New York City*,⁵⁸ the plaintiff, also an inmate at the Center, alleged that he “slipped and fell on July 26, 2009 while walking with crutches across a wet floor”⁵⁹ The plaintiff fell again approximately one month later.⁶⁰ The plaintiff sustained “neck, back and foot pain” during the first fall and these injuries were aggravated by the subsequent fall.⁶¹ The court in *Johnson* found that the plaintiff failed to satisfy the elements necessary to show a constitutional deprivation.⁶² Additionally, the court found that the plaintiff failed to show a “substantial risk of serious harm.”⁶³

From these two cases it becomes evident that allegations of harm sustained by slipping and falling on water caused by leaks within the Center do not satisfy the requirements necessary to recover under Section 1983. At best, these facts patterns satisfy a claim for negligence, as noted by *Edwards v. The City of New York*,⁶⁴ stating:

Courts considering claims such as Plaintiff’s have routinely found that similar allegations—*i.e.* allegations of wet floor conditions that caused a prisoner to slip and fall—at most support a finding of simple negligence, and therefore do not support a claim that either the Eighth Amendment or Fourteenth Amendment was

jectively excessive risk to prisoners.”).

⁵⁶ *Edwards*, 2009 WL 259695, at *3 (“Moreover, courts have held that allegations of wet conditions leading to a slip-and-fall will not support a Section 1983 claim even where, . . . plaintiff also alleges that the individual defendants had notice of the wet condition but failed to address it.”).

⁵⁷ *Carr*, 2011 WL 309667, at *2.

⁵⁸ No. 10. Civ. 6193(PKC)(JLC), 2011 WL 1795284 (S.D.N.Y. Apr. 30, 2011).

⁵⁹ *Id.* at *1.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* at *4-5.

⁶³ *Johnson*, 2011 WL 1795284, at *4.

⁶⁴ No. 08 Civ. 05787(PGG), 2009 WL 259695 (S.D.N.Y. Aug. 24, 2009).

violated.⁶⁵

This finding reflects precedent set forth by federal cases such as *County of Sacramento v. Lewis*,⁶⁶ which have found that negligence does not satisfy a constitutional inquiry.⁶⁷

The facts from *Rodriguez* are virtually indistinguishable from cases such as *Heredia* and *Carr*. Accordingly it is problematic to discern why the plaintiff in *Rodriguez* should be entitled to recovery for constitutional violations when the court has systematically denied similar claims. Leading scholars in the area of Section 1983 have commented on the necessity for additional requirements in analyzing Section 1983 claims.⁶⁸ Additional factors, such as causation, would further heighten the burden of proof necessary to satisfy a Section 1983 claim. Consequently, it is even less likely that the plaintiff in *Rodriguez* would be able to satisfy the requirements for a Section 1983 claim. This creates a gray area because the Eighth Amendment has continuously been expanded. However, even under contemporary standards, the facts of *Rodriguez* do not specify a constitutional violation. But, it is likely that the plaintiff in *Rodriguez* would be able to recover under a theory of negligence. This does not deprive the plaintiff of proper redress nor does it subordinate his rights to recover damages for injuries sustained. However, to allow a slip and fall to rise to the level of a constitutional deprivation would overly extend the Eighth Amendment to frivolous allegations. Perhaps if the plaintiff had substantiated his claim to further exemplify the effect flooded hallways had on his conditions of confinement he would have been satisfied the requirements of a Section 1983 claim. However, as progressive as decisions regarding the Eighth Amendment have been, determinations of constitutional violations still require a substantial deprivation of rights.

⁶⁵ *Id.* at *2.

⁶⁶ 523 U.S. 833 (1998).

⁶⁷ *Id.* at 848-49;

We have accordingly rejected the lowest common denominator of customary tort liability as any mark of sufficiently shocking conduct, and have held that the Constitution does not guarantee due care on the part of state officials; liability for negligently inflicted harm is categorically beneath the threshold of constitutional due process.

Id.

⁶⁸ See Symposium, *supra* note 27.

VI. FURTHER ANALYSIS

a. Conditions of Confinement

Although the Eighth Amendment is meant to be interpreted liberally, it is necessary to establish the parameters of its protection. Cases involving grossly subpar conditions of confinement pose legitimate claims that violate “cruel and unusual punishment.”⁶⁹ Conditions of confinement fall under the protections granted by the Eighth Amendment due to the theory that imprisonment revokes a prisoner’s ability to provide for himself.⁷⁰ In contrast to allegations of slip and fall, the following cases involving conditions of confinement illustrate hazardous, unhealthy situations which deprive inmates of basic necessities. However, certain factors need to be considered to provide a standard that establishes what conditions are considered to be unconstitutional. Accordingly, an analysis of these cases establishes the level of deprivation that amounts to a constitutional violation and is lacking in cases such as *Rodriguez*.

The parameters established by this decision are crucial to the determination of whether cases involving slip and fall cases may be considered a deprivation of constitutional rights. In *Rhodes v. Chapman*,⁷¹ two prisoners brought an action for deprivation of constitutional rights due to “double celling.”⁷² The Supreme Court consi-

⁶⁹ See *Hutto v. Finney*, 437 U.S. 678, 685 (1978) (finding that confinement as “a form of punishment [is] subject to scrutiny under [the] Eighth Amendment standards”); *Helling v. McKinney*, 509 U.S. 25, 31 (1993) (finding that conditions of confinement are also “subject to scrutiny under the Eighth Amendment” standards).

⁷⁰ *DeShaney*, 489 U.S. at 200;

The rationale for this principle is simple enough: when the State by the affirmative exercise of its power so restrains an individual’s liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs—*e.g.*, food, clothing, shelter, medical care, and reasonable safety—it transgresses the substantive limits on state action set by the Eighth Amendment and the Due Process Clause.

Id.

⁷¹ 452 U.S. 337 (1981).

⁷² *Id.* at 339-40 (“Respondents . . . are inmates at the Southern Ohio Correctional Facility (SOCF), a maximum-security state prison in Lucasville, Ohio. They were housed in the same cell . . . [and] contended that ‘double celling’ at SOCF violated the Constitution. The gravamen of their complaint was that double celling confined cellmates too closely.”).

dered factors such as the impact double celling had on food, medical care, cleanliness, violence, work and education availability before concluding that double celling did not amount to a constitutional deprivation.⁷³ Additionally, the inmates in *Rhodes*, were subjected to double celling in an effort to deal with overcrowding.⁷⁴ The process of double celling was not in response to a particular infraction and served no penalogical purpose.⁷⁵ Accordingly, the Supreme Court found that because double celling did not result in any consequences that could be defined as “punishment,” double celling did not constitute a deprivation egregious enough to satisfy recovery for an Eighth Amendment claim under Section 1983.⁷⁶ Further, *Rhodes* established one of the most significant standards applicable to “conditions of confinement” cases, the distinction between safety and comfort.⁷⁷ Therefore, although conditions of confinement may be so horrific as to amount to a deprivation of constitutional rights, mere issues of comfort will likely never satisfy such a claim.

Thus far, the shortcomings of cases have illustrated what is required to demonstrate a constitutional violation of Eighth Amendment rights. Accordingly, when conditions of confinement deprive prisoners of basic human needs, surpassing mere comfort, the court is likely to consider those facilities unconstitutional. For instance, in *Holt v. Sarver*,⁷⁸ the United States District Court found that “there are limits to the rigor and discomfort of close confinement which a State

⁷³ *Id.* at 348.

The double celling made necessary by the unanticipated increase in prison population did not lead to deprivations of essential food, medical care, or sanitation. Nor did it increase violence among inmates or create other conditions intolerable for prison confinement. Although job and educational opportunities diminished marginally as a result of double celling, limited work hours and delay before receiving education do not inflict pain, much less unnecessary and wanton pain; deprivations of this kind simply are not punishments.

Id. (internal citation omitted).

⁷⁴ *Id.*

⁷⁵ *Rhodes*, 452 U.S. at 348-50.

⁷⁶ *Id.* at 348 (“Although job and educational opportunities diminished marginally as a result of double celling, limited work hours and delay before receiving education do not inflict pain, much less unnecessary and wanton pain; deprivations of this kind simply are not punishments.”).

⁷⁷ *Id.* at 349 (“But the Constitution does not mandate comfortable prisons . . .”).

⁷⁸ 300 F. Supp. 825 (E.D. Ark. 1969).

may not constitutionally exceed.”⁷⁹ In *Holt*, inmates were subjected to cells described as “dirty and unsanitary.”⁸⁰ These cells were also “substantially overcrowded” and the prisoners inhabiting them were subjected to sharing mattresses that were uncovered and exposed to various venereal and infectious diseases.⁸¹ The court found that the totality of the circumstances regarding those prisoners confinement amounted to a deprivation of constitutional rights because they were so traumatic, hazardous and degrading.⁸² The court acknowledged that the space was physically uncomfortable, but found that the additional circumstances, such as the bare mattresses capable of transmitting diseases, qualified the conditions of confinement as cruel and unusual punishment.⁸³ Moreover, the prisoners in *Holt*, were held in isolation cells away from the general prison population due to their bad behavior.⁸⁴ Therefore, unlike *Rhodes*, the conditions of confinement were in response to a particular infraction and were meant to serve a penalogical purpose amounting to punishment.⁸⁵ This distinction is a likely factor in the court’s finding of unconstitutionality.

From these decisions it appears that the constitutionality surrounding conditions of confinement requires basic necessities and prohibits degrading, hazardous conditions.⁸⁶ Implicit within *Holt* is

⁷⁹ *Id.* at 833.

⁸⁰ *Id.* at 832 (“[T]he isolation cells are dirty and unsanitary, . . . are pervaded by bad odors from the toilets, and . . . the plain cotton mattresses on which the inmates sleep are uncovered and dirty.”).

⁸¹ *Id.* (“Thus an inmate has no assurance that the mattress allotted [sic] to him on any night is the same one that he had the night before That problem is aggravated by the fact that some of the inmates of the cells suffer from infectious diseases.”).

⁸² *Id.* at 833.

The Court finds that the prolonged confinement of numbers of men in the same cell under the conditions that have been described is mentally and emotionally traumatic as well as physically uncomfortable. It is hazardous to health. It is degrading and debasing; it offends modern sensibilities, and, in the Court’s estimation, amounts to cruel and unusual punishment.

Holt, 300 F. Supp. at 833.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ Compare *Rhodes*, 452 U.S. at 348 (finding that double celling did not amount to punishment), with *Holt*, 300 F. Supp. at 833 (finding that isolation cells are forms of punishment for dangerous inmates).

⁸⁶ Compare *Rhodes*, 452 U.S. at 348 (requiring a deprivation of basic necessities such as “food, medical care, [and] sanitation”), with *Holt*, 300 F. Supp. at 833 (finding that because

the potential for prisons to be liable for conditions that may deprive its inhabitants of basic necessities.⁸⁷ The factors provided by the Supreme Court, such as food, cleanliness and freedom from violence, are exemplary but not exhaustive. Accordingly, in *Rodriguez*, an issue of safety is raised regarding the flooded hallways of the Center.⁸⁸ It is plausible that a duty to provide basic necessities would include a duty to provide an environment free from the hazardous situations that may result in injury. However, the courts have been reluctant to accept such an argument.⁸⁹

Further, in determining to what extent courts will be willing to apply Eighth Amendment protections, one must determine whether punishment encompasses general imprisonment or a particular occurrence resulting from a specific infraction taking place during imprisonment.⁹⁰ In *Rodriguez* the plaintiff was walking in a common area when he sustained his injury.⁹¹ At that time, the plaintiff was imprisoned for an act committed outside of the prison for which he was tried and sentenced.⁹² There is no indication in the record that the plaintiff was walking down the hallway as a result of a prison official's discipline for an infraction occurring during imprisonment. Additionally, there is no indication that the flooding was caused or allowed to continue to serve a penalogical purpose or to directly target particular inmates to increase the chances of them falling and injuring themselves.⁹³ It is just as likely that the Warden could have walked down the same common hallway and sustained an injury similar to that of the inmates. Just as the Supreme Court in *Rhodes* determined that double celling served no penalogical purpose, the

the totality of the circumstances amounted to such minimal care as to subject prisoners to health hazards, overcrowded isolation cells did amount to unconstitutional conditions of confinement).

⁸⁷ *Holt*, 300 F. Supp. at 834.

⁸⁸ *Rodriguez*, 929 N.Y.S.2d at 214.

⁸⁹ *Sylla*, No. 2005 WL 3336460, at *3.

⁹⁰ *See Estelle*, 429 U.S. at 103 (referring to general imprisonment as a form of punishment in and of itself). In contemplation of this line of cases it becomes apparent that one must come to terms with what form of punishment, be it general imprisonment or something more specific, is at issue.

⁹¹ *Rodriguez*, 929 N.Y.S.2d at 214.

⁹² *Id.*

⁹³ *Id.*

flooded hallways in *Rodriguez* also served no penological purpose.⁹⁴ Therefore, although the facts of *Rodriguez* may fall under the umbrella of conditions of confinement in its plain meaning, the circumstances simply do not rise to the level of a serious deprivation of basic necessities.

b. Medical Treatment

Cases involving a deprivation of immediate medical attention may potentially violate the Eighth Amendment.⁹⁵ In *Rodriguez*, the plaintiff alleged that “defendants failed to provide him with immediate medical attention after he slipped and fell.”⁹⁶ However, the case is silent on the determination of that allegation—perhaps that is a result of the lack of specificity in the claim.⁹⁷ Although the decision is lacking in information that could be compared to precedent, it is necessary to acknowledge medical treatment as another area rife with potential for constitutional violations.

The decision in *Estelle v. Gamble*⁹⁸ is important and applicable because it demonstrates another avenue for recovery under Section 1983 and also reiterates the requirements necessary to satisfy such recovery.⁹⁹ In *Estelle*, the Supreme Court dealt with the issue of alleged “cruel and unusual punishment” regarding the denial of medical treatment over the course of several months.¹⁰⁰ The facts state that the plaintiff was originally injured while working and was prescribed medications for a lower back strain.¹⁰¹ The pain persisted and the plaintiff was supposed to be afforded certain accommodations, but these accommodations were ignored.¹⁰² At one point the prison

⁹⁴ Compare *Rhodes*, 452 U.S. at 348, with *Rodriguez*, 929 N.Y.S.2d at 214.

⁹⁵ See *Estelle*, 429 U.S. at 103-04 (“We therefore conclude that deliberate indifference to serious medical needs of prisoners constitutes the ‘unnecessary and wanton infliction of pain,’ . . .”) (quoting *Gregg v. Georgia*, 428 U.S. 153, 173 (1976) (joint opinion)).

⁹⁶ *Rodriguez*, 929 N.Y.S.2d at 214.

⁹⁷ *Id.* at 215.

⁹⁸ 429 U.S. 97 (1976).

⁹⁹ *Id.* at 103-05.

¹⁰⁰ *Id.* at 99-101 (outlining the progression of the plaintiff’s injuries from the time of the initial injury on November 9, 1973 through February 11, 1974 when the plaintiff filed his complaint).

¹⁰¹ *Id.* at 99.

¹⁰² *Id.* (“He also ordered that respondent be moved from an upper to a lower bunk for one

staff even lost the plaintiff's prescribed medication, delaying his treatment.¹⁰³ While still in pain, the plaintiff was brought before the prison for disciplinary review for his refusal to work.¹⁰⁴ When the plaintiff was once more brought before the prison for disciplinary review he was placed in solitary confinement.¹⁰⁵ The plaintiff began to experience chest pains at the beginning of February and was repeatedly denied medical treatment.¹⁰⁶ Subsequently, the plaintiff sought to recover damages for a violation of his Eighth Amendment rights to protect him from "cruel and unusual punishment."¹⁰⁷

In *Estelle*, the Supreme Court took into account the policy considerations for the Eighth Amendment, noting that one of the main objectives is to avoid "unnecessary and wanton infliction of pain."¹⁰⁸ Based on the purpose behind the Eighth Amendment, the Supreme Court concluded: "These elementary principles establish the government's obligation to provide medical care for those whom it is punishing by incarceration. 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."¹⁰⁹ The Supreme Court noted the range of harm denial of medical treatment could cause, from prolonging death to imposing pain that serves no penalogical purpose.¹¹⁰ Ultimately, any "deliberate indifference" regarding a prisoner's medical treat-

week, but the prison authorities did not comply with that directive.").

¹⁰³ *Estelle*, 429 U.S. at 100.

¹⁰⁴ *Id.* at 101.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

On February 7, respondent again experienced pain in his chest, left arm, and back and asked to see a doctor. The guards refused. He asked again the next day. The guards again refused. Finally, on February 9, he was allowed to see Dr. Heaton, who ordered the Quinidine [heart medication] continued for three more days.

Id.

¹⁰⁷ *Estelle*, 429 U.S. at 101-02.

¹⁰⁸ *Id.* at 102-03 (quoting *Gregg*, 428 U.S. at 173).

¹⁰⁹ *Id.* at 103.

¹¹⁰ *Id.* This is an interesting interpretation of "punishment," especially following cases such as *Rhodes* and *Holt*. In *Estelle*, the Supreme Court refers to incarceration as punishment which renders prisoners dependent on prison officials for medical needs. *Id.* The Supreme Court rationalized the necessity of medical treatment to avoid punishment that served no penalogical purpose. *Estelle*, 429 U.S. at 103. This illustrates the varying applications of the term "punishment" in varying contexts.

ment, whether by doctor or prison guard, satisfies the requirements for recovery under Section 1983.¹¹¹ However, the Supreme Court did acknowledge that accidents, malpractice or misdiagnosis did not satisfy a claim under Section 1983.¹¹² Applying these standards to the plaintiff filing suit, the Supreme Court found that the plaintiff did not satisfy a claim recoverable under Section 1983 since he had been seen by doctors and treated for varying ailments.¹¹³ Ultimately, the facts set forth in the complaint amounted to a matter of “medical judgment.”¹¹⁴

VII. CONCLUSION

In light of precedent set forth by both federal and state cases it is evident that slip and fall cases do not constitute a deprivation of a constitutional right under the Eighth Amendment.¹¹⁵ To recover under Section 1983, the plaintiff must first state with specificity a “deprivation of constitutional rights.”¹¹⁶ They must then satisfy an objective and subjective test regarding the “deliberate indifference” of the prison official regarding the alleged deprivation.¹¹⁷ Although the plaintiff in *Rodriguez* failed to satisfy these requirements, case law has demonstrated an evolution of Eighth Amendment protection, and it may be a matter of time before slip and fall cases are recoverable under Section 1983. The question is not only when and if that will happen, but whether it should happen. Such an issue will be decided in cases to come, but the decision in *Rodriguez*, remains consistent with precedent.¹¹⁸ Presently, on a federal and a state level, slip and fall cases do not amount to a constitutional deprivation of a right to be free from “cruel and unusual punishment” as a result of conditions

¹¹¹ *Id.* at 104-05.

¹¹² *Id.* at 105-06.

¹¹³ *Id.* at 107.

¹¹⁴ *Id.*

¹¹⁵ See *Heredia*, 473 F. Supp. 2d at 463; *Carr*, 2011 WL 309667, at *2 (finding that slip and fall cases satisfy claims of negligence, not violations of Eighth Amendment rights).

¹¹⁶ *Alfaro*, 814 F.2d at 887 (requiring specificity in claims brought to recover under Section 1983).

¹¹⁷ See *Wilson*, 501 U.S. at 298; *Farmer*, 511 U.S. at 834 (establishing the objective and subjective burdens).

¹¹⁸ See *Sylla*, 2005 WL 3336460, at *3 (noting a trend of slip and fall claims being recoverable under negligence rather than under Section 1983).

of confinement.

The purpose of this paper was not only to compare *Rodriguez* to precedent, but to set the bar for requirements a plaintiff alleging a constitutional violation based on a slip and fall would need to satisfy an Eighth Amendment claim through Section 1983 claim. Accordingly, while the plaintiff in *Rodriguez* failed to satisfy these requirements future petitioners may fare better if they meet these requirements from the outset. To limit the plaintiff in *Rodriguez* to recovery under negligence does not deprive him of fairness or damages, nor does it restrict the application of the Eighth Amendment. Although the Eighth Amendment is meant to be construed from a progressive standpoint it is not without necessary standards that maintain its legitimacy. Therefore, unless plaintiffs satisfy these requirements, they will have to recover under negligence.

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