

9.37 Particular Rights—Fourteenth Amendment— Due Process—Civil Commitment

Comment

In *King v. County of Los Angeles*, 885 F.3d 548 (9th Cir. 2018), the Ninth Circuit recognized a substantive due process constitutional claim for individuals confined pursuant to a civil commitment, if the conditions of confinement “amount to punishment.” *Id.* at 557. In determining whether the conditions of confinement amount to punishment, a comparison is made between the conditions of confinement of the civil detainee and the conditions of confinement of the “criminal counterparts” of a civil detainee. *Id.*

Relying on the court’s prior decision in *Jones v. Blanas*, 393 F.3d 918 (9th Cir. 2004), the court reiterated that “under the Due Process Clause of the Fourteenth Amendment, an individual detained under civil process cannot be subjected to conditions that amount to punishment.” *King*, 885 F.3d at 556-57. Conditions of confinement are presumed to be punitive if: (1) they are “identical to, similar to, or more restrictive than, those in which a civil pretrial detainee’s criminal counterparts are held,” or (2) they are “more restrictive than those the individual would face following SVPA commitment.” *Id.* at 557. “If either presumption applies, the burden shifts to the defendant to show (1) legitimate, non-punitive interests justifying the conditions of the detainee’s confinement; and (2) that the restrictions imposed are not excessive in relation to those interests.” *Id.* Legitimate interests may include “ensuring a detainee’s presence at trial, maintaining jail security, and effective management of a detention facility.” *Id.* at 558. However, conditions of confinement may still be considered punitive if “alternative and less harsh” methods exist to achieve the specified interests. *Id.*; see also *Fraihat v. U.S. Immigration & Customs Enf’t*, 16 F.4th 613, 648-49 (9th Cir. 2021) (assuming without deciding that *King v. County of Los Angeles* and *Jones v. Blanas* would “be appropriate to invoke that presumption in the immigration context” but ultimately stating that the “record lacks evidence from which to draw any relevant comparisons between the overall conditions of confinement of ICE detainees as compared to those in criminal custody”).

For a pretrial detainee, violations arise under the Due Process Clause of the Fourteenth Amendment. For such instances, use Instructions 9.33 (Particular Rights—Fourteenth Amendment—Pretrial Detainee’s Claim of Excessive Force), 9.34 (Particular Rights—Fourteenth Amendment— Pretrial Detainee’s Claim re Conditions of Confinement/Medical Care), and 9.35 (Particular Rights—Fourteenth Amendment—Pretrial Detainee’s Claim of Failure to Protect).

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