



Update to Pregnancy and Child Related Legal and Policy Issues Concerning Justice Involved Women, National Institute of Corrections, Accession Number 027701.

The above titled bulletin discusses the trial court's decision in *Villegas v. Metropolitan Government of Davidson County*, 789 F.Supp.2d 895 (M.D.Tenn. 2011), which granted partial summary judgment to the Plaintiff on the claim that she was shackled during her active final stages of labor and post partum, and was denied the use of a breast pump. The Section 1983 action relied on the Eighth Amendment which is applicable to pretrial detainees under 14th Amendment due process clause. After a trial on the issue of damages, a jury awarded her \$200,000. Recently, in *Villegas v. Metropolitan Government of Nashville*, 709 F.3d 563 (6th Cir. 2013), the Sixth Circuit reversed the trial court's summary judgment on these issues and remanded the case.

The Sixth Circuit found the typical framework for analyzing Eighth Amendment claims as either involving a serious medical need or related to conditions of confinement did not fit well with shackling cases, and therefore relied on general indifference principles articulated in *Estelle v. Gamble*, 429 U.S. 97 (1976). This analysis has both an objective and subjective component. The majority agreed that objectively the shackling of pregnant detainees while in labor offends contemporary standards of human decency and poses a substantial risk of serious harm. In reaching this result it relied not only on decisions from other courts mentioned in the bulletin, but also on policies of organizations such as the American Medical Association, the American College of Obstetricians and Gynecologists, the United Nations, and Amnesty International. However, the court noted that the right to be free from shackling during labor is not unqualified, and is defeated if there is clear evidence the detainee is a flight or security risk. Because *Villegas* was classified as a medium security inmate because of her immigration status, and a defense expert testified this classification was consistent with ACA policy, the court found that a factual issue existed that could not be determined on summary judgment. In other words, a jury could find she was not actually a flight risk, despite the jail's conformity with its classification procedures.

Similarly, as to the subjective element of the claim, because of questions as to whether the officers had any knowledge that the hospital ordered the restraints removed, and there was conflicting expert testimony about the ill effects of Plaintiff's shackling, the court found these factual issues precluded summary judgment. As a result, a jury will need to determine whether Plaintiff actually posed a flight risk and whether the Defendant had knowledge of the substantial risk, recognized the serious harm that such a risk could cause, and, nonetheless, disregarded it. In this context, obviousness of the risk can establish knowledge.

The dissent argued that Villegas' security designation was automatic because of her immigration detainer, since no evidence of flight or security risk was presented, she was shackled post-partum despite a physician ordering the removal of restraints prior to birth, and she did not misbehave before or during childbirth, the objective element was satisfied. In addition, the dissent would also have found the subjective element was met because the Defendant's experts did not address serious medical risks raised by the Plaintiff's experts or rebut that shackling posed serious medical risks to the plaintiff and her unborn child.

The Sixth Circuit analyzed the breast pump claim under its "medical needs" jurisprudence. Because a breast pump was not prescribed, the Plaintiff failed to demonstrate the medical need was so obvious that a lay person would have recognized it, and therefore did not meet the objective element of the claim. Thus, this also poses a factual issue for trial. Given that the court reversed the liability determination, it declined to reach the Defendant's allegations of error concerning damages at trial. Similarly, while the decision did not discuss the issue of attorneys fees, the trial judge's award in *Villegas v. Metropolitan Government of Nashville*, No. 3:09-00219, 2012 WL 4329235 (M.D. Tenn. Sep. 20, 2012) would be not be justified, unless a later trial resulted in a favorable verdict for the plaintiff. While summary judgment was not upheld, the decision clearly signals that unless the Defendant can demonstrate a reason for shackling, these claims will be likely be decided at trial. As previously discussed in the bulletin, the issue of qualified immunity becomes more difficult for Defendants to demonstrate as time goes by given the number of cases finding shackling can meet the objective element. Thus, regulations jail and prison regulations concerning shackling should be reviewed to ensure they comply with current legislation and judicial decisions.