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Caroline Kish

**Deliberate Indifference: An Impossible Standard**

A critique of Fifth Circuit’s Unpublished Opinion Denying 1983 Relief to a Prisoner Locked in a Cage. Case No. 22-40276 *Guzman v. Sturgis*

Procedural Posture

Uvaldo Guzman appealed the southern district of Texas’s decision in *Guzman v. Fuentez* in which the district court granted summary judgment to warden Fuentez for Guzman’s failure to state a deliberate indifference claim.<sup>1</sup> Guzman alleged prison guards acted with deliberate indifference to his health and well-being while locked in a “shakedown cage” for 19 hours without food and water.<sup>2</sup>

Facts

In 2019, guards at the Texas Department of Criminal Justice McConnell Unit placed Uvaldo Guzman, a non-English speaking prisoner in his late sixties, in a shakedown cage “approximately seven feet high, and the floor space is three feet wide and two-to-three feet long” with no running water or toilet for 19 hours.<sup>3</sup> Lieutenant Sturgis—the ‘head guard’--testified that the prison rarely used the ‘shakedown cage’ but in Guzman’s case found such segregation necessary after Guzman allegedly assaulted a prison guard.<sup>4</sup> Even though Sturgis allegedly checked on Guzman multiple times and insisted he would be released shortly, Guzman did not see anyone for more than ten hours.<sup>5</sup> 19 hours later, after finally being released from a tiny cage, another inmate helped Guzman file a complaint against Warden Fuentez, Lieutenant Sturgis and Sergeant Tommy West.<sup>6</sup> A *Spears* hearing—where Guzman articulated his *pro se* complaints—

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<sup>1</sup> *Guzman v. Sturgis*, No. 22-40276, 2023 U.S. App. LEXIS 6062, at \*2 (5th Cir. Mar. 14, 2023)

<sup>2</sup> *Id.*

<sup>3</sup> *Guzman v. Fuentez*, Civil Action No. 2: 18-CV-00432, 2022 U.S. Dist. LEXIS 59586, at \*4 (S.D. Tex. Mar. 31, 2022).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 2.

<sup>6</sup> *Id.* at 6.

found Warden Fuentez uninvolved.<sup>7</sup> Guzman however insisted the supervisors, Sturgis and West, should be held accountable for holding Guzman in horrifying conditions.<sup>8</sup> Once appointed counsel for his claims, defendants responded with claims of qualified immunity.<sup>9</sup> Both the district court and Fifth Circuit court found in favor of the defendants for Guzman's failure to state a claim of deliberate indifference.

Law:

Because courts consider incarceration to be inherently dangerous and violent, succeeding on a claim of deliberate indifference is purposefully burdensome. The deliberate indifference test is both objective and subjective.<sup>10</sup> "To establish deliberate indifference, the prisoner must show that the prison officials (1) were aware of facts from which the inference could be drawn that a substantial risk of serious harm existed, (2) subjectively drew the inference that the risk existed, and (3) then disregarded that risk."<sup>11</sup> The Fifth Circuit held that because "defendants periodically checked on Guzman while he was in the cage, [they] did not believe he was at risk of being harmed, and that Sturgis told his staff to remove Guzman from the cage and believed that task had been accomplished" there is no deliberate indifference.<sup>12</sup>

Additionally, when defendants claim qualified immunity, the usual summary-judgment standard shifts the burden to the plaintiff to prove defendant's conduct violated a clearly established constitutional right.<sup>13</sup> Guzman thus must prove the guards acted in an objectively unreasonable manner as to violate his constitutional rights.<sup>14</sup> In this case, the Fifth Circuit found

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<sup>7</sup> *Id.* at 2.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 4.

<sup>10</sup> *Id.* at 7. Citing *Farmer v. Brennan*, 114 S. Ct. 1980 (1994).

<sup>11</sup> *Id.* at 3. Citing *Cleveland v. Bell* 938 F.3d 672, 675–76 (5th Cir. 2019).

<sup>12</sup> *Id.* at 4.

<sup>13</sup> *Sturgis 2*, citing *Williams v. City of Cleveland*, 736 F.3d 684, 688 (5th Cir. 2013).

<sup>14</sup> *Id.*

that even though Sturgis made teasing comments towards Guzman, the defendants lacked subjective awareness of any risk to Guzman.<sup>15</sup>

Finally, a prisoner can only succeed on a claim of retaliation if guards' actions prevented a reasonable person from exercising constitutional rights.<sup>16</sup> Here, the holding of Guzman in the 'shakedown cage' prevented him from eating three normal meals and use of toilet facilities.

#### Analysis/Critique

This ruling sends the message that prison guards can treat prisoners as less than human. Initially deemed rehabilitative, prisons have now become purely punitive. Incarcerated individuals are provided the bare minimum with few if any restorative offers. As long as guards can attest they checked up on inmates, prisoners can be left without food and water. The Fifth Circuit effectively codifies inmate abuse. To meet the deliberate indifference standard, harm need only be inferred—whether real harm occurred is rendered moot. According to this opinion, a superior cannot be held accountable for the action or in this case inaction if they believed action would be taken.

As if hiding behind its shameful decision, the Fifth Circuit did not publish this opinion. Knowing the decision would cause backlash, the court chose to cower behind an unpublished opinion that would receive little coverage. The court mentions that the door to the 'shakedown cage' remained open for some time but the policy required inmates to be shackled before leaving.<sup>17</sup> The judges' unawareness to the realities of incarceration left Guzman on his own

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<sup>15</sup> *Id.* at 5, citing *Aguirre v. City of San Antonio*, 995 F.3d 395, 421 (5th Cir. 2021).

<sup>16</sup> *Fuentez*, 5. Citing *Bibbs v. Early* 541 F.3d 267, 270 (5th Cir. 2008).

<sup>17</sup> *Id.*

volition would certainly be met with violent retaliation. Guzman may not have sustained any physical harm but he endured mental and emotional humiliation.

Qualified immunity allows for horrific and abusive misconduct to be protected as long as not “plainly incompetent.”<sup>18</sup> If keeping an inmate in a literal cage for 19 hours without food, water, or a toilet, does not amount to incompetency, then what does?

The Prison Litigation Reform Act (42 USC 1997(e)(e)) allows for compensatory damages for such harm without proof of physical harm.<sup>19</sup> Guzman can only recover punitive damages if he can overcome the intentionally-difficult-for-plaintiffs-to-overcome doctrine of qualified immunity.<sup>20</sup> Without having to read the facts of the case, one can assume that qualified immunity will not be subverted. Even if one believes the court when it says the guards’ miscoordination is the only reason Guzman remained in the cage, should not Guzman be entitled to some sort of relief for the trauma he endured? Because of the recency of the decision, I am unaware as to whether Guzman will further appeal the Fifth Circuit’s decision up to the Supreme Court.

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<sup>18</sup> *Id.* Citing *Stanton v. Sims*, 517 U.S. 3, 6, 134 S. Ct. 3, 5, 187 L. Ed. 2d 341 (2013).

<sup>19</sup> *Id.* at 3.

<sup>20</sup> *Id.* at 4.