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CASE SUMMARY

NORDSTROM V. RYAN: INMATE'S LEGAL CORRESPONDENCE BETWEEN HIS OR HER ATTORNEY IS STILL CONSTITUTIONALLY PROTECTED

CHRISTINA ONTIVEROS*

INTRODUCTION

The United States Constitution guarantees certain enumerated (and unenumerated) fundamental rights¹ to its citizens, regardless of socioeconomic status, religion, race, or gender.² However, these constitutional rights are not absolute. This means that the federal, state, and local government can place restrictions on these constitutional rights so long as those restrictions are constitutionally valid. For a law that infringes on a fundamental right to be considered valid under the U.S. Constitution, it must pass the strict scrutiny test.³ This is the highest legal standard that the courts apply to legal questions related to fundamental rights. They do

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¹ Fundamental rights are “rights that have been recognized by the [U.S.] Supreme Court as requiring a high degree of protection from government encroachment.” CORNELL L. SCH., *Fundamental Right*, LEGAL INFO. INSTITUTE, https://www.law.cornell.edu/wex/fundamental_right (last visited Nov. 4, 2017).

² U.S. CONST. amends. I-VIII, XIV.

³ A law or regulation will be held constitutionally valid if there is a compelling state interest and the law or regulation in question is narrowly tailored to achieve said interest, meaning that there are “no less restrictive means available.” CORNELL L. SCH., *Strict Scrutiny*, LEGAL INFO. INSTITUTE, https://www.law.cornell.edu/wex/strict_scrutiny (last visited Nov. 4, 2017).

so because fundamental rights are regarded as those that define individuals and are related to their very core; that when the government tries to take that right away or limit it, there is an automatic heightened degree of protection to ensure these rights are not taken away without adequate reason.⁴

Yet there are instances in which a fundamental right allegedly is being infringed, but because there are two compelling interests at stake, the strict scrutiny analysis becomes inapplicable. One such instance is that of prisoners' constitutional rights. Historically, the courts have focused more on the accused individuals' rights rather than those afforded to convicted individuals,⁵ in part because the courts have acknowledged that they are "ill equipped to deal with the increasingly urgent problems of the prison administration and reform . . . [because] the problems of prisons in America are complex and intractable, and more to the point, they are not readily susceptible of resolution by decree."⁶ As such, prison administrations have been given much deference as to the limitations of prisoners' rights.⁷ Still, even though the courts have shown regard to the prison administration, they have also recognized that there are two important interests at play: those of the prison administration and that of the prisoners' constitutional rights. Because there are two important interests at play when an issue arises as to a prison's regulation and its effect on a prisoner's constitutional right, the courts turn to the *Turner* standard⁸ to determine the regulation's constitutionality. Recently, the Ninth Circuit used this standard in *Nordstrom v. Ryan*⁹ to determine whether an Arizona Department of Corrections ("ADOC") prison official reading an inmate's outgoing legal correspondence to his attorney was a violation of both his First Amendment and Sixth Amendment rights.¹⁰ The court found that both of the prisoner's constitutional rights were in fact violated.

⁴ Fundamental rights are "rights that have been recognized by the [U.S.] Supreme Court as requiring a high degree of protection from government encroachment." CORNELL L. SCH., *Fundamental Right*, LEGAL INFO. INSTITUTE, https://www.law.cornell.edu/wex/fundamental_right (last visited Nov. 4, 2017).

⁵ Richard P. Vogelmann, *The Journal of Criminal Law, Criminology, and Police Science: Prison Restrictions – Prisoner Rights*, Vol. 59, NW. SCH. OF L. 386, 387 (1968).

⁶ *Turner v. Safley*, 482 U.S. 78, 84 (1987).

⁷ Richard P. Vogelmann, *The Journal of Criminal Law, Criminology, and Police Science: Prison Restrictions – Prisoner Rights*, Vol. 59, NW. SCH. OF L. 386, 387 (1968).

⁸ *Turner*, 482 U.S. at 89-91.

⁹ *Nordstrom v. Ryan*, 856 F.3d 1265 (9th Cir. 2017).

¹⁰ *Id.* at 1269.

I. BACKGROUND

A. FACTUAL BACKGROUND

Plaintiff Scott D. Nordstrom is a Caucasian male¹¹ who was sentenced in 2009 to the death penalty after he was found guilty of killing a total of six individuals in two separate robberies.¹² As such, he was and is an inmate in a prison run by ADOC.¹³ Nordstrom alleged during an otherwise normal routine mailing, he tried to mail a letter containing confidential information to his attorney; instead of simply inspecting the letter (or scanning it) for unauthorized communication of illegal activities or contraband,¹⁴ the prison official read the letter. After about fifteen seconds, Nordstrom asked the prison official to stop reading his letter, to which the officer responded, “Don’t tell me how to do my job; I am authorized to search legal mail for contraband as well as scan the content of the material to ensure it is of legal subject matter.”¹⁵ After Nordstrom’s repeated requests, the officer stopped reading his letter.¹⁶ Based on this interaction, Nordstrom sued the Arizona Department of Corrections as well as the prison officer in federal court.¹⁷

B. PROCEDURAL HISTORY

Before filing with the District Court of Arizona, Nordstrom filed a formal grievance with ADOC.¹⁸ The complaint was denied, based on the fact that ADOC had the “authority to scan [mail] and is not prohibited from reading [legal] mail to establish the absence of contraband and ensure the content of the mail is of legal subject matter.”¹⁹ The only limitation was that the inspection must be “only to the extent necessary” to

¹¹ *Arizona Department of Corrections Inmate ID No.: 086114*, ARIZ. DEP’T. OF CORRECTIONS, <https://corrections.az.gov/public-resources/death-row> (last visited Nov. 5, 2017).

¹² Howard Fischer, Capitol Media Services, *Arizona Prisons Use Illegal Methods to Check Inmates’ Mail, Court Rules*, ARIZ. CAPITOL TIMES, Nov. 5, 2017, http://tucson.com/news/local/govt-and-politics/arizona-prisons-use-illegal-methods-to-check-inmates-mail-court/article_9b8d1c11-00b4-5a49-863f-2f619aa53055.html.

¹³ *Arizona Department of Corrections Inmate ID No.: 086114*, ARIZ. DEP’T. OF CORRECTIONS, <https://corrections.az.gov/public-resources/death-row> (last visited Nov. 5, 2017).

¹⁴ Howard Fischer, Capitol Media Services, *Arizona Prisons Use Illegal Methods to Check Inmates’ Mail, Court Rules*, ARIZ. CAPITOL TIMES, Nov. 5, 2017, http://tucson.com/news/local/govt-and-politics/arizona-prisons-use-illegal-methods-to-check-inmates-mail-court/article_9b8d1c11-00b4-5a49-863f-2f619aa53055.html.

¹⁵ Nordstrom v. Ryan, 856 F.3d 1265, 1268 (9th Cir. 2017).

¹⁶ *Id.*

¹⁷ *Id.* at 1269.

¹⁸ *Id.*

¹⁹ *Id.*

ensure that the mail correspondence contained no contraband and/or to determine that the legal mail did not contain any talk of illegal activity.²⁰

Due to the denial, Nordstrom filed his lawsuit in federal court against ADOC and the prison officer pursuant to Title 42 of the United States Code, Section 1983,²¹ seeking a declaratory judgment and injunction against ADOC's legal mail policy, stating that ADOC violated his Sixth and First Amendment rights.²² The district court dismissed the complaint, stating that Nordstrom failed to state a claim.²³ The case reached the Ninth Circuit in 2014 (referred to as *Nordstrom I*)²⁴ and the Ninth Circuit reversed the District Court of Arizona's dismissal of Nordstrom's lawsuit for failure to state a claim.²⁵ It also distinguished between reading legal mail and inspecting the mail in the presence of an inmate.²⁶ The case was remanded back to the district court for further proceedings.

In 2016, the district court, in adherence to the Ninth Circuit's decision, looked over Nordstrom's claim and decided in favor of ADOC, concluding that its legal mail policy and implementation was constitutionally valid.²⁷ In other words, the district court determined again that the policy did not violate Nordstrom's Sixth or First Amendment rights.²⁸ Fast-forward to 2017, and following Nordstrom's timely appeal to the Ninth Circuit, the court once again analyzed and determined the constitutionality of ADOC's legal mail policy.

II. THE NINTH CIRCUIT'S LEGAL ANALYSIS IN NORDSTROM V. RYAN

The Ninth Circuit addressed three important points concerning Nordstrom's lawsuit. First, the court determined whether Nordstrom had standing in federal court.²⁹ It then analyzed his claim of a Sixth Amendment violation by ADOC; and finally, the court focused on Nordstrom's claim of a First Amendment violation by ADOC.³⁰ Heard before a three-judge panel, the Ninth Circuit reversed the district court's dismissal of

²⁰ *Id.*

²¹ 42 U.S.C. § 1983.

²² *Nordstrom*, 856 F.3d at 1269.

²³ *Id.*

²⁴ *Nordstrom v. Ryan*, 762 F.3d 903 (9th Cir. 2014).

²⁵ *Id.* at 906.

²⁶ *Id.*

²⁷ *Nordstrom v. Ryan*, 856 F.3d 1265, 1269 (9th Cir. 2017).

²⁸ Howard Fischer, Capitol Media Services, *Arizona Prisons Use Illegal Methods to Check Inmates' Mail, Court Rules*, ARIZ. CAPITOL TIMES, Nov. 5, 2017, http://tucson.com/news/local/govt-and-politics/arizona-prisons-use-illegal-methods-to-check-inmates-mail-court/article_9b8d1c11-00b4-5a49-863f-2f619aa53055.html.

²⁹ *Nordstrom*, 856 F.3d at 1269.

³⁰ *Id.*

Nordstrom’s Sixth and First Amendment claims, holding that ADOC’s legal mail policy did not satisfy *Nordstrom I*’s standard or the *Turner* standard, and was therefore unconstitutional. The court further remanded for the “district court to craft a decree based on the evidence of actual risks in Arizona state prisons.”³¹

A. THE NINTH CIRCUIT CONCLUDES NORDSTROM HAS STANDING TO BRING HIS SIXTH AND FIRST AMENDMENT CONSTITUTIONAL CLAIMS

First, the Ninth Circuit focused on whether Nordstrom had standing to bring his claim to federal court.³² Standing is one of the justiciability limits that needs to be satisfied in order for the federal court to hear a plaintiff’s case.³³ Specifically, it determines whether a specific person is the proper party to bring a matter to the court for adjudication.³⁴ A plaintiff will be able to show sufficient stake in the controversy only if he can show an injury in fact, caused by the government that will be remedied by a decision in his favor.³⁵ In *Nordstrom I*, the Ninth Circuit concluded that Nordstrom had standing because it arose from an interest in “enjoining a practice that chilled his Sixth Amendment rights.”³⁶

On remand, ADOC argued that Nordstrom did not have standing because given his post-conviction proceedings, he had no constitutional right to an attorney under Arizona Rule of Criminal Procedure 32.³⁷ As such, there was no Sixth Amendment violation and therefore an injunction would not remedy an injury, given that an injury did not exist.³⁸ The district court determined Nordstrom had standing at the time the complaint was filed because Nordstrom was involved in criminal proceedings, which attaches the Sixth Amendment right.³⁹ Though the Ninth Circuit agreed with the district court’s decision on standing, it noted that what is vital when considering standing of a plaintiff is not whether he or she had standing at the time the original complaint was filed but rather whether he or she has a live controversy (standing) at the present time.⁴⁰

³¹ *Id.* at 1274.

³² *Id.* at 1271.

³³ CORNELL L. SCH., *Justiciable*, LEGAL INFO. INSTITUTE, <https://www.law.cornell.edu/wex/justiciable> (last visited Nov. 4, 2017).

³⁴ CORNELL L. SCH., *Standing*, LEGAL INFO. INSTITUTE, <https://www.law.cornell.edu/wex/standing> (last visited Nov. 4, 2017).

³⁵ *Id.*

³⁶ *Nordstrom*, 856 F.3d at 1269.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

Because the case came back to the Ninth Circuit procedurally the same, the prior conclusion that Nordstrom had standing carried over to this Ninth Circuit case.

The Ninth Circuit also determined that Nordstrom had standing for his First Amendment claim, which was not discussed in *Nordstrom I*.⁴¹ Nordstrom had a First Amendment right to “send and receive mail” while imprisoned.⁴² That right was being infringed upon by ADOC, thereby creating an injury.⁴³ A decision in favor of the plaintiff (invalidating ADOC’s legal mail policy) would redress Nordstrom’s alleged injury.⁴⁴

B. THE NINTH CIRCUIT CONCLUDES THAT ADOC’S LEGAL MAIL POLICY VIOLATES INMATES’ SIXTH AMENDMENT RIGHT

Criminal defendants have the right to assistance of counsel under the Sixth Amendment of the United State Constitution.⁴⁵ The right to counsel is violated when the “the government deliberately interferes with the confidential relationship between a criminal defendant and the defense counsel; and the interference ‘substantially prejudices’ the criminal defendant.”⁴⁶ It is important for the prisoner to be able to *candidly* speak to his or her attorney. This is why prison officials cannot read an inmate’s outgoing legal correspondence, but they can *inspect* it to the “extent necessary” to determine if the legal mail correspondence contains anything illegal.⁴⁷

Usually when a prison official inspects inmates’ mail, it is to confirm that the correspondence does not have a “map of the prison yard, the time of guards’ shift changes, escape plans, or contraband.”⁴⁸ The courts have found that this is appropriate to do⁴⁹ in order to ensure the safety of inmates and prison officials and the efficiency of the prison system.⁵⁰ In this case, however, the term ‘contraband’ was broadly defined by ADOC as “any non-legal written correspondence or communication.”⁵¹ The broad definition of the word ‘contraband’ allowed for an inspection im-

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ U.S. CONST. amend. VI (“ . . . have the Assistance of Counsel for his defense.”).

⁴⁶ *Nordstrom*, 856 F.3d at 1271.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Turner v. Safley*, 482 U.S. 78, 79 (1987).

⁵¹ *Nordstrom*, 856 F.3d at 1271.

permissible under *Nordstrom I*.⁵² Instead of limiting the inspection scope to actual security threats, such as dangerous or illegal items that are hidden in legal correspondence (i.e. drugs, or handmade weapons), ADOC's legal mail policy extended *Nordstrom I*'s permissible inspection of inmates' mail.⁵³ As a result, it violated the Sixth Amendment rights of an inmate.

Concerning Nordstrom, the court found that the ADOC deliberately interfered with Nordstrom's attorney-client relationship with his criminal defense attorney.⁵⁴ The inspection was a page-by-page read of Nordstrom's legal letter,⁵⁵ which essentially made the original confidential information between an inmate and his attorney non-confidential. The court also found that this interference was substantially prejudicial to Nordstrom, a criminal defendant.⁵⁶ For the foregoing reasons, the Ninth Circuit determined that an inmate's Sixth Amendment rights are violated by ADOC's legal mail policy.

C. THE NINTH CIRCUIT DETERMINES THAT ADOC'S LEGAL MAIL POLICY ALSO VIOLATES INMATES' FIRST AMENDMENT RIGHT⁵⁷

Case law demonstrates that the courts have not applied the strict scrutiny legal standard when it comes to "prisoners' rights" cases.⁵⁸ The court instead follows the four-factor test established in *Turner v. Safley*⁵⁹ when determining whether a prison regulation violates the prisoners' constitutional rights. To determine the constitutionality of a prison regulation that is infringing upon an inmate's constitutional rights,⁶⁰ the court must ask whether there is a

valid, rational connection between the prison regulation and the legitimate governmental interest put forward to justify it . . . whether there are alternative means of exercising the right that remain open to prison inmates . . . what impact accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.* at 1271.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ U.S. CONST. amend. I ("Congress shall make no law . . . abridging the freedom of speech.").

⁵⁸ *Turner v. Safley*, 482 U.S. 78, 87 (1987).

⁵⁹ *Id.* at 89.

⁶⁰ *Id.*

prison resources generally . . . and whether there is an absence of ready alternatives.⁶¹

Concerning the First Amendment, inmates have the right to “send and receive mail,”⁶² but this right can be restricted as long as the regulation satisfies the *Turner* standard.

Contrary to the district court’s minimal analysis, the Ninth Circuit considered all four *Turner* factors to determine whether Nordstrom’s First Amendment rights were violated.⁶³ The Ninth Circuit agreed with the district court that legal mail had the potential of enabling illegal activity.⁶⁴ This potential security threat constituted a legitimate “penological interest.”⁶⁵ However, ADOC was only able to demonstrate that *incoming* legal mail could potentially pose a threat to the prison.⁶⁶ It failed to procure any evidence that proved *outgoing* legal mail had been abused and was being used to further criminal activity.⁶⁷ In addition, the court pointed out that outgoing legal mail itself does not create a serious threat to “prison order and security.”⁶⁸ Furthermore, ADOC could have used less restrictive means⁶⁹ to ensure that the outgoing legal mail did not constitute a high threat to its prison facility.

ADOC prison officials could have confirmed if the legal mail was addressed to an existing attorney by cross-referencing the attorney’s name and address via the state attorney search website.⁷⁰ Prison officials could also limit their inspections to drawings or maps rather than read the letter page-by-page.⁷¹ Additionally, the court recognized that though inmates did have other means of communication with their attorneys (phone calls and in-person meetings),⁷² these alternatives did not diminish an inmate’s legal right to have his confidential legal mail “free from unreasonable censorship and the chilling effect of excessive monitoring.”⁷³ Because the Ninth Circuit could not find outgoing legal mail as a serious threat, it could not reasonably conclude that limiting the prison

⁶¹ *Nordstrom*, 856 F.3d at 1272 (“Additionally, ‘[w]hen a prison regulation affects outgoing mail as opposed to incoming mail, there must be a closer fit between the regulation and the purpose it serves.’”).

⁶² *Nordstrom v. Ryan*, 856 F.3d 1265, 1271 (9th Cir. 2017).

⁶³ *Id.* at 1273.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.* at 1274.

⁷⁰ *Id.* at 1273.

⁷¹ *Id.* at 1272.

⁷² *Id.* at 1274.

⁷³ *Id.*

officials' authority to only inspecting legal mail would have an adverse effect on prison staff, facility, and security as a whole.⁷⁴ Thus, the Ninth Circuit determined that ADOC's legal mail policy "unreasonably intrudes" on an inmate's First Amendment rights.⁷⁵

D. NINTH CIRCUIT'S OVERALL CONCLUSION

The Ninth Circuit in its 2017 decision determined that ADOC's legal mail policy violated both Nordstrom's Sixth and First Amendment rights. As such, the court reversed the district court's dismissal of Nordstrom's claim, and remanded for the "district court to craft a decree based on the evidence of actual risks in Arizona state prisons."⁷⁶

III. IMPLICATIONS OF THIS DECISION

A. OUTGOING LEGAL MAIL SHOULD BE PROTECTED BY STRICT SCRUTINY AND NOT THE *TURNER* FOUR-FACTOR TEST BECAUSE THE LESSER STANDARD DOES NOT PROTECT PRISONERS' CONSTITUTIONAL RIGHTS

The Ninth Circuit made it clear that it understood the necessity of applying the *Turner* standard to prison regulations infringing on prisoners' constitutional rights. The constitutional framework allows for deference to prison administrations and their policies where appropriate, while simultaneously taking into account prisoners' constitutional rights.⁷⁷ In other words, the legal standard applied to prison regulations affecting prisoners' constitutional rights takes into account the tension that arises between two legitimate interests, that of the prison administration and the other of the prisoner. Case law has also demonstrated that this legal standard is a favored framework,⁷⁸ one that will most likely not change anytime soon.

It is important to note that the *Turner* standard itself is not flawed; instead, it is the broad application of the standard to inmates' Sixth and First Amendment rights when it comes to *outgoing* legal mail that is flawed. To begin with, the four-factor test is not protective enough of an inmate's constitutional rights. When applying the standard, the courts do not distinguish⁷⁹ between a prison regulation *limiting* a prisoner's consti-

⁷⁴ *Id.* at 1273.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Turner v. Safley*, 482 U.S. 78, 79 (1987).

⁷⁸ *Id.* at 87.

⁷⁹ *Id.* at 88.

tutional right(s)⁸⁰ and a prison regulation *completely taking*⁸¹ away a prisoner's constitutional right(s).⁸² Rather than hold the prison regulation that completely deprives the inmate of his constitutional right to the strict scrutiny standard, the 'complete deprivation' aspect is taken into consideration not as an element but only as a factor under *Turner*.⁸³ Courts have thus influenced, albeit indirectly, and intensified the common misconception within the prisons that prisoners have no rights. By declining to apply the strict scrutiny standard to these instances, the United States Supreme Court inadvertently protected prison systems at a higher degree than prisoners' constitutional rights. The lower courts are thus bound to follow a constitutional framework that alleviates the natural tension between the prison administrations need for strict regulations and prisoners' constitutional rights, but does so at the expense of prisoners and their rights.

Nevertheless, the distinction that the Ninth Circuit made between *inspecting* and *reading* outgoing legal mail is an imperative distinction,⁸⁴ which serves as a protective layer for prisoners' constitutional rights under the *Turner* standard. Though prison officials can still inspect outgoing legal mail, this clarification that reading an inmate's outgoing legal mail is impermissible offers a restriction that the prison administrations were not providing, or possibly did not think necessary to fortify the protection of a prisoner's Sixth and First Amendment rights. At least with this distinction, a prison official will think twice before reading an inmate's outgoing legal mail simply to exert authority over the inmate. What is more, it acknowledges that an inmate has a right to protect his confidential information, and simply being imprisoned does not equate to losing that right. It is important to note that this legal distinction is not as easily enforced in practice as it is in the court, given the complexities of the prison system.⁸⁵ Still, allowing inmates to hold prison officials accountable further conveys the notion that they matter and have rights that cannot be easily taken away from them.

Additionally, though the Sixth and First Amendment rights pertaining to outgoing legal mail were protected in *Nordstrom v. Ryan*, it is important to recognize that the inspections prison officials make may still curtail and chill these very rights if prison officials are not properly monitored or regulated. Inspecting legal mail inevitably allows a prison

⁸⁰ William M. Roth, *Turner v. Safley: The Supreme Court Further Confuses Prisoners' Constitutional Rights*, 22 LOY. L.A. L. REV. 667, 692 (1989).

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Nordstrom v. Ryan*, 762 F.3d 903, 906 (9th Cir. 2016).

⁸⁵ *Turner v. Safley*, 482 U.S. 78, 84 (1987).

official to have physical possession of the outgoing legal mail. He or she is able to glance over the mail, and as was briefly mentioned above, there is no safeguard as to whether this prison official will actually follow the legal distinction. As such, it could very well be that inmates experienced a situation such as rape, violence, abuse, that they wish to speak to their attorney about, and having a prison official inspect a letter containing such content could not only endanger that prisoner if the prison official inspecting his or her mail was the aggressor, but could also chill the disclosure of confidential information because the inmate does not feel free to speak candidly with his or her attorney. It will be interesting to see if and when a similar case reaches the Ninth Circuit, if the court will provide examples of safeguards or find itself in a position in which it will have to rule on a safeguard and whether it is constitutional.

IV. CONCLUSION

The current constitutional framework established in *Turner* is the governing legal standard when it comes to determining whether a prison regulation is constitutionally valid.⁸⁶ As the nation slowly moves toward a pro-prisoners' rights stance, it seems that in due time the Ninth Circuit, as well as the United States Supreme Court, will have to accommodate for that culture change and reevaluate *Turner*. When that time comes, both courts will have to decide whether strict scrutiny will be a favorable legal standard to apply. The *Turner* standard, though highly important, adds more questions than it provides solutions for the protection of a prisoner's constitutional rights. With strict scrutiny as the legal standard, at least the burden of proof will automatically fall on the prison administrations, and as such, maybe having a heightened legal standard to satisfy will provide for a greater self-assessment when implementing prison regulations and contemplating their effects on prisoners' constitutional rights.

⁸⁶ Nordstrom v. Ryan, 856 F.3d 1265, 1272 (9th Cir. 2017).

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