

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
INDIANA

Danny L. Saintignon, Jr. v. Yarber Lt. and Ivy Sgt.

No. 2:24-cv-00027-JPH-MJD (S.D. Ind. Mar. 31, 2026) · No. No. 2:24-cv-00027-JPH-MJD · Decided March 31, 2026

SUMMARY

The United States District Court for the Southern District of Indiana granted summary judgment to correctional officers Lt. Yarber and Sgt. Ivy on Danny L. Saintignon, Jr.'s Eighth Amendment deliberate-indifference claim arising from exposure to pepper spray and alleged denial of medical care and decontamination. The court also granted defendants' motion to strike the plaintiff's surreply and granted motions seeking a decision and a response. Summary judgment was based on qualified immunity, and final judgment was ordered to issue separately.

CASE DETAILS

COURT	United States District Court for the Southern District of Indiana
WRITING FOR THE COURT	James Patrick Hanlon
JURISDICTION	United States District Court for the Southern District of Indiana
DECIDED	March 31, 2026
DOCKET	No. 2:24-cv-00027-JPH-MJD
DISPOSITION	other
PROCEDURAL POSTURE	Defendants moved for summary judgment on Plaintiff's 42 U.S.C. § 1983 Eighth Amendment deliberate-indifference claim. Plaintiff also moved for a decision on the summary-judgment motion and moved to compel a response; Defendants moved to strike Plaintiff's surreply.
STANDARD OF REVIEW	Summary judgment is appropriate when there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court viewed the evidence and drew reasonable inferences in Plaintiff's favor, could not weigh evidence or make credibility determinations, and considered only materials cited by the parties. Qualified immunity was assessed under the two-part inquiry whether the facts show a constitutional violation and whether the right was clearly established.

PRECEDENTIAL VALUE	Nonprecedential federal district-court order; unpublished and not reported in a standard reporter.
PARTIES	Danny L. Saintignon, Jr. v. Yarber Lt., Ivy Sgt.

TOPICS

qualified immunity section 1983 prisoners rights cruel and unusual punishment summary judgment

PRACTICE AREAS

civil rights litigation prisoner civil rights constitutional torts federal civil procedure

QUESTIONS PRESENTED

1. Whether Defendants were entitled to summary judgment on Saintignon's Eighth Amendment deliberate-indifference claim based on their refusal to provide medical attention or a decontamination shower after his exposure to chemical agents.
2. Whether Defendants were entitled to qualified immunity because Saintignon failed to identify clearly established precedent showing that their conduct violated the Eighth Amendment.
3. Whether Saintignon's surreply should be stricken under Southern District of Indiana Local Rule 56-1(d).
4. Whether the delay in decontaminating cell 402 could support liability against Defendants absent evidence of their personal involvement.

HOLDINGS

1. Defendants were entitled to qualified immunity because Saintignon failed to show that their alleged refusal to provide medical care or a decontamination shower violated a clearly established constitutional right.
2. The alleged delay in decontaminating cell 402 could not support liability against Yarber or Ivy because the designated evidence did not show that either officer was personally involved in the timing of that decontamination.
3. The court granted Defendants' motion to strike Saintignon's surreply because it was not limited to new evidence or evidentiary objections as required by Local Rule 56-1(d).

KEY QUOTATIONS

“As Mr. Saintignon bears the burden to show why qualified immunity does not apply and he has failed to do so, the Court finds that Sgt. Ivy and Lt. Yarber are entitled to qualified immunity.” (Discussion section)

“Defendants’ motion for summary judgment is GRANTED. Dkt. [46]. Final judgment will issue in a separate entry.” (Conclusion)

FACTUAL BACKGROUND

While incarcerated at Wabash Valley Correctional Facility, Saintignon, who had breathing problems following COVID-19 and used an inhaler, was exposed to pepper spray and pepperball rounds during a cell extraction of another inmate. He alleged that the chemical entered his cell, causing coughing, choking, vomiting, breathing difficulty, pain, and prolonged respiratory symptoms, and that he repeatedly asked Yarber and Ivy for medical attention and a decontamination shower. The officers allegedly refused those requests, although the evidence showed that neither officer was personally responsible for the delayed decontamination of the other inmate's cell.

PROCEDURAL HISTORY

The action was screened under 28 U.S.C. § 1915A, and the surviving claim alleged that Lieutenant Yarber and Sergeant Ivy were deliberately indifferent to Plaintiff's serious medical need after exposure to pepper spray and pepperball rounds. The district court granted Defendants' motion for summary judgment, granted the motion to strike the surreply, granted Plaintiff's motions for a decision and to compel a response, and stated that final judgment would issue separately.

DISPOSITION

other

CASES CITED

- *Khungar v. Access Cmty. Health Network*, 985 F.3d 565, 572-73 (7th Cir. 2021)
- *Miller v. Gonzalez*, 761 F.3d 822, 827 (7th Cir. 2014)
- *Grant v. Trs. of Ind. Univ.*, 870 F.3d 562, 573-74 (7th Cir. 2017)
- *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)
- *Mullenix v. Luna*, 577 U.S. 7, 11 (2015)
- *Pearson v. Callahan*, 555 U.S. 223, 231-32 (2009)
- *Smith v. Finkley*, 10 F.4th 725, 737 (7th Cir. 2021)
- *Tolan v. Cotton*, 572 U.S. 650, 655-56 (2014) (per curiam)
- *Jewett v. Anders*, 521 F.3d 818, 823 (7th Cir. 2008)
- *Jones v. Clark*, 630 F.3d 677, 682 (7th Cir. 2011)
- *Reichle v. Howards*, 566 U.S. 658, 664 (2012)
- *Anderson v. Creighton*, 483 U.S. 635, 641, 646 (1987)
- *District of Columbia v. Wesby*, 583 U.S. 48, 63-64 (2018)
- *Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011)
- *White v. Pauly*, 580 U.S. 73, 79 (2017)
- *Taylor v. Barkes*, 575 U.S. 822, 825 (2015)
- *Campbell v. Kallas*, 936 F.3d 536, 546 (7th Cir. 2019)
- *Kisela v. Hughes*, 138 S. Ct. 1148, 1152 (2018)
- *Boyce v. Moore*, 314 F.3d 884, 889 (7th Cir. 2002)
- *Estelle v. Gamble*, 429 U.S. 97, 103 (1976)

- Thomas v. Blackard, 2 F.4th 716, 721-22 (7th Cir. 2021)
- Johnson v. Dominguez, 5 F.4th 818, 824 (7th Cir. 2021)
- Whiting v. Wexford Health Sources, Inc., 839 F.3d 658, 662 (7th Cir. 2016)
- Oliver v. Deen, 77 F.3d 156, 158-61 (7th Cir. 1996)
- Henderson v. Sheahan, 196 F.3d 839, 846 (7th Cir. 1999)
- Whitfield v. Spiller, 76 F.4th 698, 706 (7th Cir. 2023)
- Gentry v. Duckworth, 65 F.3d 555, 561 (7th Cir. 1995)
- Trotter v. Kingston, No. 05-C-1032, 2007 WL 984089, at *2, *6 (E.D. Wis. Mar. 27, 2007)
- Kadamovas v. Caraway, No. 2:17-cv-00050-WTL-MJD, 2018 WL 6415588, at *7 (S.D. Ind. Dec. 6, 2018), aff'd, 775 F. App'x 242 (7th Cir. 2019)
- Villalobos v. Picicco, 168 F.4th 1057, 1062-63 (7th Cir. 2026)
- Thomas v. Carmichael, 164 F.4th 1058, 1067 (7th Cir. 2026)
- Estate of Simpson v. Gorbett, 863 F.3d 740, 746 (7th Cir. 2017)
- Scott v. Edinburg, 346 F.3d 752, 760 (7th Cir. 2003)
- Coy v. Yarber, No. 1:23-cv-1920-JPH-KMB, 2025 WL 2782829, at *2, *4 (S.D. Ind. Sept. 30, 2025)
- McCloud v. Vanschoyck, No. 2:21-cv-0049-JPH-MKK, 2024 WL 229740, at *7 (S.D. Ind. Jan. 19, 2024)

OPINION

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF INDIANA TERRE HAUTE DIVISION DANNY L. SAINTIGNON, JR.,)) Plaintiff,)) v.) No. 2:24-cv-00027-JPH-MJD) YARBER Lt.,) IVY Sgt.,)) Defendants.) ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, GRANTING MOTION TO STRIKE, GRANTING MOTION FOR DECISION AND DENYING MOTION TO COMPEL This cause of action is pending on Plaintiff Danny L. Saintignon, Jr.'s claim that Defendants Lt.

Yarber and Sgt. Ivy were deliberately indifferent to his serious medical need in violation of the Eighth Amendment. See Dkt. 8 at 3 (Screening Order). Lt. Yarber and Sgt. Ivy have moved for summary judgment. Dkt. [46].

For the reasons below, that motion is GRANTED. I. MOTION FOR DECISION AND MOTION TO COMPEL Mr. Saintignon filed a motion asking the Court to issue a decision on the pending motion for summary judgment, dkt. [67], and a motion to compel a response to the motion for a decision, dkt.

[72]. Because this order resolves the motion for summary judgment, those motions are granted. II. MOTION TO STRIKE Lt. Yarber and Sgt. Ivy filed a motion to strike Mr. Saintignon's surreply. Dkt. 63. Southern District of Indiana Local Rule 56-1(d) permits surreplies only when movants cite new evidence in their reply briefs or object to the admissibility of evidence in a response brief.

Any such surreply "must be limited to the new evidence and objections." S.D. Ind. L.R. 56-1(d). Lt. Yarber and Sgt. Ivy argue that while Mr. Saintignon could have filed a surreply limited to their objections to evidence he submitted in his response brief, he did not address those evidentiary objections and instead raised arguments outside the scope permitted by the local rule.

Dkt. 63 at 2. Because Mr. Saintignon's surreply is not limited to new evidence and objections, the motion to strike is granted and the Court does not consider the surreply. Dkt. [63]. III. MOTION FOR SUMMARY JUDGMENT A. Summary Judgment Standard A motion for summary judgment asks the Court to find that a trial is unnecessary because there is no genuine dispute as to any material fact and, instead, the movant is entitled to judgment as a matter of law.

See Fed. R. Civ. P. 56(a). When reviewing a motion for summary judgment, the Court views the record and draws all reasonable inferences from it in the light most favorable to the nonmoving party. *Khungar v. Access Cmty. Health Network*, 985 F.3d 565, 572–73 (7th Cir. 2021). It cannot weigh evidence or make credibility determinations on summary judgment because those tasks are left to the fact-finder.

Miller v. Gonzalez, 761 F.3d 822, 827 (7th Cir. 2014). A court only has to consider the materials cited by the parties, see Fed. R. Civ. P. 56(c)(3); it need not "scour the record" for evidence that might be relevant. *Grant v. Trs. of Ind. Univ.*, 870 F.3d 562, 573–74 (7th Cir. 2017) (cleaned up). A party seeking summary judgment must inform the district court of the basis for its motion and identify the record evidence it contends demonstrates the absence of a genuine issue of material fact.

Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Whether a party asserts that a fact is undisputed or genuinely disputed, the party must support the asserted fact by citing to particular parts of the record, including depositions, documents, or affidavits. Fed. R. Civ. P. 56(c)(1)(A). Failure to properly support a fact in opposition to a movant's factual assertion can result in the movant's fact being considered undisputed, and potentially in the grant of summary judgment.

Fed. R. Civ. P. 56(e). B. Factual Background Because Defendants have moved for summary judgment under Rule 56(a), the Court views and recites the evidence in the light most favorable to Mr. Saintignon and draws all reasonable inferences in his favor. *Khungar*, 985 F.3d at 572–73. Mr. Saintignon was incarcerated in cell 409 of the A East 400 range, a segregation unit of the Wabash Valley Correctional Facility ("Wabash").

Dkt. 52- 1 at 23. Id. Sgt. Ivy was a correctional sergeant at Wabash. Dkt. 47-2 ¶ 1. Lt. Yarber was a correctional lieutenant at Wabash. Dkt. 47-3 ¶ 3. Mr. Saintignon tested positive for COVID in December 2020 and has had breathing issues since that time, for which he has been prescribed inhalers to use as needed, which is "[p]robably at least once a day." Dkt.

47-1 at 14–16. He had his inhaler with him during the events at issue. Id. at 16. On July 14, 2023, incarcerated individuals in the A East 400 range were "banging and making a lot of noise" because they were not getting recreation time that day, but Mr. Saintignon had nothing to do with it. Dkt. 52-1 at 23. Sgt. Ivy came on the range, yelling that the inmates needed to "shut the fuck up or he would cell extract" the entire range.

Id. He started cell extraction at cell 402 with inmate Jonah Henderson. Id. at 23, 30. Cell 402 was on the floor below Cell 409 and two cells over. Dkt. 47-1 at 23–24. Sgt. Ivy used a "fogger" a couple of times with 2-3 second bursts of "pepper spray"—Oleoresin Capsicum. Dkt. 52-1 at 23, 27; dkt. 47-3 ¶ 8.

After the first burst, the entire range was "engulfed" with the chemical. Dkt. 52-1 at 23–24. The cell doors are not solid but have numerous small holes in a grid-like pattern that allowed the chemical to enter Mr. Saintignon's cell "as though [he] was directly hit with the spray as well." Id. at 24. Mr. Saintignon was coughing and choking, felt like he was being smothered, vomited, and scratched his skin to the point of bleeding.

Id. He was in a great deal of pain. Id. He told Sgt. Ivy that he had lingering effects from COVID and needed fresh air due to his difficulty breathing, to which Sgt. Ivy responded "deal with it Saintignon, you are the one who started all this bullshit." Id. Sgt. Ivy then sprayed cell 402 again. Id. He then used a pepperball gun to shoot at least 20 pepperball rounds into the cell.

Id. Mr. Saintignon told Sgt. Ivy that he uses an inhaler for his COVID side effects and that he couldn't breathe, and he asked to see medical. Id. Sgt. Ivy told him "I don't give a fuck," and "you get what you deserve." Id. at 24, 28. Mr. Saintignon asked for a decontamination shower, which Sgt. Ivy refused. Id. at 25. Lt. Yarber was present for some of the above exchanges, and Mr. Saintignon got Lt.

Yarber's attention, explained that he could not breathe, and asked for medical and a decontamination shower. Id. Mr. Saintignon explained his COVID side effects to Lt. Yarber. Id. at 27–28. Lt. Yarber said "who gives a shit," threatened to cell extract the rest of the range, and blamed Mr. Saintignon for the actions of others. Id. at 25. Lt. Yarber said "nobody is seeing medical."

Id. at 31. Later, Mr. Saintignon again told Sgt. Ivy and Lt. Yarber that he could not breathe due to the "excess amounts" of chemical agents in the air and coming through the air vents and requested to see medical or to receive a decontamination shower. Id. at 25. Sgt. Ivy and Lt. Yarber refused. Id. After the cell extraction, Mr. Saintignon again asked Sgt.

Ivy for a decontamination shower, which was refused.¹ Dkt. 52-1 at 28. The air was "heavily mixed with the chemical agents" for at least three hours. Id. at 27. Other people on the range, even

those without breathing problems, experienced uncontrollable coughing, choking, shortness of breath, tearing up, and burning sensations on skin, eyes, lungs, and throat.

Id. at 27, 32. 1 Sgt. Ivy contests this, but the Court considers the designated evidence in the light most favorable to Mr. Saintignon. Mr. Saintignon put in a medical slip and was seen three to four days later, which was around the time when he began to feel better. Id. at 25. Neither Sgt. Ivy nor Lt. Yarber cleaned or decontaminated cell 402. Id. The chemicals lingered in A East 400 range until late on July 18, 2024.

Id. The humidity in the air mixed with the lingering chemical "is not a pleasant mixture," and the humidity "reactivates" the chemical. Id. at 26, 28. Mr. Saintignon had four days and nights of "difficulty breathing[,] again feeling as if I'm drowning and/or being smothered, on top of scratching my body until I bleed." Id. at 26. His inhaler relieved some of the lung pain, but he was in pain for four days before his lungs began to feel better.

Dkt. 52 at 9. Neither Sgt. Ivy nor Lt. Yarber were involved in the decontamination process of cell 402. Dkt. 47-2 ¶ 49, dkt. 47-3 ¶ 33. Decontamination procedures can only begin once the situation requiring use of pepper spray is under control. Dkt. 47-3 ¶ 14. Lt. Yarber left the range before the cell extraction team arrived. Id. ¶ 25. He is generally not involved in the decontamination process as a correctional lieutenant.

Id. ¶ 32. When Sgt. Ivy was completing his paperwork, he told the night shift sergeant that cell 402 still needed to be decontaminated and was told it would be taken care of. Dkt. 47-2 ¶ 49. The air handler remained on during the events and was blowing the air and pepper spray into every cell.² Dkt. 52 at 5.

The exterior door on the range was opened to circulate fresh, outside air. Dkt. 47-3 ¶ 21. 2 Sgt. Ivy and Lt. Yarber contest this, but the Court considers the designated evidence in the light most favorable to Mr. Saintignon. During the relevant events, Sgt. Ivy and Lt. Yarber never came to Mr. Saintignon's cell, but they both answered questions from him and addressed him by name.

Dkt. 52 at 8. C. Discussion Mr. Saintignon's only claim is whether Sgt. Ivy and Lt. Yarber were deliberately indifferent to his serious medical need in violation of the Eighth Amendment.³ See dkts. 8, 65. Additionally, to the extent that Mr. Saintignon bases his claim on the timing of cell 402's decontamination, there is no designated evidence that Sgt. Ivy or Lt.

Yarber were personally involved in that timing. See dkt. 47-2 ¶ 49, dkt. 47-3 ¶ 33. After Sgt. Ivy informed the night shift sergeant that the cell needed to be decontaminated, Sgt. Ivy "was told it would be taken care of," so the multiple-day delay in the cell's decontamination is not attributable to Sgt. Ivy or Lt. Yarber for § 1983's purposes. See *Whitfield v. Spiller*, 76 F.4th 698, 706 (7th Cir.

2023) ("To recover damages under § 1983, a plaintiff must establish that a defendant was personally responsible for the deprivation of a constitutional right." (quoting *Gentry v. Duckworth*, 65 F.3d 555, 561 (7th Cir. 1995))). Mr. Saintignon's Eighth Amendment medical care claim is therefore cabined to Sgt. Ivy's and Lt. Yarber's refusals to take Mr. Saintignon to medical or give him a decontamination shower on July 14, 2023.

3 When the Court screened Mr. Saintignon's complaint under 28 U.S.C. § 1915A, the Court provided him an opportunity to identify other claims that he believed he alleged in his complaint. See *dk. 8*. Mr. Saintignon did not identify any other claim before his deadline to do so expired. Sgt. Ivy and Lt. Yarber argue that they did not violate Mr. Saintignon's Eighth Amendment rights by refusing medical attention or a shower and, alternatively, that they are protected by qualified immunity.

Dkt. 48 at 18–27. "[Q]ualified immunity shields officials from civil liability so long as their conduct 'does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Mullenix v. Luna*, 577 U.S. 7, 11 (2015) (quoting *Pearson v. Callahan*, 555 U.S. 223, 232 (2009)). "Whether qualified immunity applies turns on two questions: first, whether the facts presented, taken in the light most favorable to the plaintiff, describe a violation of a constitutional right; and second, whether the federal right at issue was clearly established at the time of the alleged violation."

Smith v. Finkley, 10 F.4th 725, 737 (7th Cir. 2021) (citing *Tolan v. Cotton*, 572 U.S. 650, 655–56 (2014) (per curiam)). Once the defense is raised, the burden is on the plaintiff to defeat it. *Id.* (citing *Jewett v. Anders*, 521 F.3d 818, 823 (7th Cir. 2018)).

The Court may take up either question first. *Id.* (citing *Jones v. Clark*, 630 F.3d 677, 682 (7th Cir. 2011)). This "clearly established" standard ensures "that officials can 'reasonably... anticipate when their conduct may give rise to liability for damages.'" *Reichle v. Howards*, 566 U.S. 658, 664 (2012) (quoting *Anderson v. Creighton*, 483 U.S. 635, 646 (1987)).

To be "clearly established," a constitutional right "must have a sufficiently clear foundation in then-existing precedent." *District of Columbia v. Wesby*, 583 U.S. 48, 63 (2018). Given this emphasis on notice, clearly established law cannot be framed at a "high level of generality." *Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011). "A rule is too general if the unlawfulness of the officer's conduct 'does not follow immediately from the conclusion that [the rule] was firmly established.'" *Wesby*, 583 U.S. at 64 (quoting *Anderson*, 483 U.S. at 641).

While "a case directly on point" is not required, "precedent must have placed the... constitutional question beyond debate." *White v. Pauly*, 580 U.S. 73, 79 (2017) (cleaned up). Put slightly differently, a right is clearly established only if "every reasonable official would have understood that what he is doing violates that right." *Taylor v. Barkes*, 575 U.S. 822, 825 (2015).

"The Supreme Court's message is unmistakable: Frame the constitutional right in terms granular enough to provide fair notice because qualified immunity 'protects all but the plainly incompetent or those who knowingly violate the law.'" *Campbell v. Kallas*, 936 F.3d 536, 546 (7th Cir. 2019) (quoting *Kisela v. Hughes*, 138 S. Ct. 1148, 1152 (2018) (quotation marks omitted)).

Qualified immunity thus "balances two important interests—the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officers from harassment, distraction, and liability when they perform their duties reasonably." *Pearson*, 555 U.S. at 231.

Here, Mr. Saintignon has not met his burden to show that the right at issue was clearly established. The Eighth Amendment's prohibition against cruel and unusual punishment imposes a duty on the states, through the Fourteenth Amendment, "to provide adequate medical care to incarcerated individuals." *Boyce v. Moore*, 314 F.3d 884, 889 (7th Cir. 2002) (citing *Estelle v. Gamble*, 429 U.S. 97, 103 (1976)).

"Prison officials can be liable for violating the Eighth Amendment when they display deliberate indifference towards an objectively serious medical need." *Thomas v. Blackard*, 2 F.4th 716, 721–22 (7th Cir. 2021). "Thus, to prevail on a deliberate indifference claim, a plaintiff must show '(1) an objectively serious medical condition to which (2) a state official was deliberately, that is subjectively, indifferent.'" *Johnson v. Dominguez*, 5 F.4th 818, 824 (7th Cir.

2021) (quoting *Whiting v. Wexford Health Sources, Inc.*, 839 F.3d 658, 662 (7th Cir. 2016)). Sgt. Ivy and Lt. Yarber assert that they are entitled to qualified immunity because it was not clearly established that their actions violated the Constitution.

In their brief in support of summary judgment, they identify cases where the effects of air-borne irritants on inmates with lung issues were held to not be serious medical conditions. In *Oliver v. Deen*, the Seventh Circuit concluded that aggravation of asthma from second-hand smoke exposure, including chest pains, difficulty breathing, dizziness, and nausea, did not demonstrate a serious medical need for a non-smoking environment.

77 F.3d 156, 158–61 (7th Cir. 1996). The Court affirmed that decision on similar facts in *Henderson v. Sheahan*, 196 F.3d 839, 846 (7th Cir. 1999) ("[T]he injuries of which Henderson complains—breathing problems, chest pains, dizziness, sinus problems, headaches and a loss of energy—are, objectively speaking, relatively minor. While we do not doubt that these ailments caused him some distress and discomfort, they are not the sort of objectively serious injury or medical need that amounts to a denial of the minimal civilized measure of life's necessities necessary to state a [constitutional] violation." (quotation marks, citations omitted)).

Several district courts within the Seventh Circuit have taken similar approaches. In *Trotter v. Kingston*, the Eastern District of Wisconsin found that the plaintiff's asthmatic attacks with

shortness of breath, difficulty in breathing, nausea, and tightness in the chest after being exposed to pepper spray that was directed toward other inmates was "not sufficiently serious to be constitutionally actionable" even though he was denied a decontamination shower.

No. 05-C- 1032, 2007 WL 984089, at *2, *6 (E.D. Wis. Mar. 27, 2007). In *Kadamovas v. Caraway*, this district found that no reasonable jury would find that the plaintiff's asthma and breathing problems were an objectively serious medical need despite evidence of "breathing problems, diarrhea, vomiting, crying, sneezing, psychological anguish, headache, fear of death, high blood pressure, accelerated heartbeat, respiratory stress, wheezing, chest pains, and excessive sweating" from exposure to pepper spray and smoke fumes.

No. 2:17-cv-00050- WTL-MJD, 2018 WL 6415588, *7 (S.D. Ind. Dec. 6, 2018), *aff'd*, 775 F. App'x 242 (7th Cir. 2019).⁴ In his response in opposition to summary judgment, Mr. Saintignon does not address qualified immunity at all. See *dk. 52*; *Villalobos v. Picicco*, 168 F.4th 1057, 1062 (7th Cir. 2026) ("Importantly, the plaintiff bears the burden of proving the law is clearly established—not the defendant.").

And he does not cite any binding precedent about medical care after exposure to lung irritants. See 4 In affirming, the Seventh Circuit assumed for purposes of the decision that a serious medical need existed. *dk. 52*. But meeting the burden to overcome qualified immunity "is a 'do or die' requirement for the plaintiff's suit. If a plaintiff fails to identify analogous precedent clearly establishing the law, the district court must grant summary judgment for the defendant."

Villalobos, 168 F.4th at 1063; accord *Thomas v. Carmichael*, 164 F.4th 1058, 1067 (7th Cir. 2026). Instead, Mr. Saintignon identifies a decontamination policy that he believes was not followed, but a violation of policy by itself is insufficient to establish a constitutional violation. "Section 1983 protects against 'constitutional violations, not violations of... departmental regulation and... practices[.]'" *Estate of Simpson v. Gorbett*, 863 F.3d 740, 746 (7th Cir.

2017) (quoting *Scott v. Edinburg*, 346 F.3d 752, 760 (7th Cir. 2003)). As Mr. Saintignon bears the burden to show why qualified immunity does not apply and he has failed to do so, the Court finds that Sgt. Ivy and Lt. Yarber are entitled to qualified immunity.⁵ 5 Also, this Court issued an order on summary judgment a few months ago regarding this same use-of-force incident and likewise found that Sgt.

Ivy and Lt. Yarber were protected by qualified immunity for the deliberate indifference claims brought against them in that case. See *Coy v. Yarber*, No. 1:23-cv-1920-JPH-KMB, 2025 WL 2782829, at *4 (S.D. Ind. Sept. 30, 2025). There, plaintiff produced evidence that he experienced coughing, choking, shortness of breath, chest burning, tearing up, dizziness, and lightheadedness and had a history of heart palpitations.

Id. at *2. The Court granted summary judgment in favor of the defendants on the constitutional violation prong of the qualified immunity analysis, noting that "whether the effects of pepper spray rise to the level of deliberate indifference is a fact-intensive inquiry" and determined that the plaintiff had "not proven that his exposure rose to the level of objective seriousness."

Id. at *4 (citing McCloud v. Vanschoyck, No. 2:21-cv-0049-JPH-MKK, 2024 WL 229740, at *7 (S.D. Ind. Jan. 19, 2024)). IV. CONCLUSION The Court GRANTS the motions to issue a decision and to compel a response. Dkt. [67]; dkt.

[72]. The Court GRANTS the motion to strike surreply, dkt. [63], and did not consider the surreply, dkt. 61. Defendants' motion for summary judgment is GRANTED. Dkt. [46]. Final judgment will issue in a separate entry. SO ORDERED. Date: 3/31/2026 omnis tanbove James Patrick Hanlon United States District Judge Southern District of Indiana Distribution: DANNY L. SAINTIGNON, JR. 978030 WABASH VALLEY - CF WABASH VALLEY CORRECTIONAL FACILITY - Inmate Mail/Parcels 6908 S. Old US Hwy 41 P.O.

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