**[Blackmun Notes Before Oral Argument 10/29/91 HAB591F40026][[1]](#footnote-1)**

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90-1279 Collins v. Harker Heights

Petitioner’s husband died while attempting to fix a sewer line. He worked for city

§1983 action alleging a policy of deliberate indifference

Western District of Texas dismissed under Rule 12(b)(6)

Fifth Circuit affirmed

Causation between a municipal corporation and constitutional deprivation is not per se sufficient

In Fifth Circuit, there must also be an abuse of governmental power

There was no abuse of governmental power here

I would

Only two requirements for 1983 claim: 1) Defendant deprived plaintiff of a right secured by the Constitution and/or laws of the US, and 2) such was under color of state law.

Nothing in legislative history suggests that employees as a class are to be denied 1983 federal remedy.

Fifth Circuit has overreacted to this Court’s use of “abuse of governmental power” language.

We have never limited [§ 1983] to harm by the government in the role of government

There is no dispute that the actions here were under color of law.

Fifth Circuit no reach issue whether plaintiff deprived of a constitutional right. Remand for that.

11-4-91

We have to affirm

I was *downed* in DeShaney

*Nothing* more here than negligence

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If we consider that issue: Plaintiff’s complaint focuses on right to be free from unreasonable risks of harm. (had she pleaded loss of life, she meets the constitutional threshold.)

Respondent claims no violation of Due Process rights if government is an employer.

DeShaney[[2]](#footnote-2) is not adverse: Here, per city policy, city sent decedent into a gas-filled sewer, *probably[[3]](#footnote-3)*owned by the city, sans a mask[[4]](#footnote-4) or knowledge of the danger. Therefore, played a part in the causation of the danger.

Let us have no additional barriers to 1983 litigation.

City is immune under Texas law and thus is really not asking to be treated as a private employer.

Procedural Due Process—Allegations are sufficient to survive a 12(b)(6) motion

A liberty interest in a safe work place under Texas Act.

? Reverse 29 October 1991

1. Words added by the editor for clarity are enclosed in brackets as are editor comments. Interpretations of which the editor is particularly uncertain are indicated in italics and alternative interpretations may be indicated in footnotes. Red and blue underlining appears to have been added in those colors later. Text in the left margin is placed approximately where it appears in the document itself. [↑](#footnote-ref-1)
2. Presumably *DeShaney v. Winnebago County,* 489 U.S. 189 (1989) which held that there was no constitutional violation when state employees failed to intervene to prevent the beating death of a child. Blackmun vigorously dissented in the case in an opinion that famously began, “Poor Joshua!” [↑](#footnote-ref-2)
3. The abbreviation here could also mean “presumably” or some other word. [↑](#footnote-ref-3)
4. The word mask is re-written in pencil above the original word. [↑](#footnote-ref-4)