

United States Court of Appeals
FOR THE SECOND CIRCUIT

August Term 2012

(Argued: September 19, 2012)

Decided: June 20, 2013)

No. 11-617

STEVEN SPAVONE,
Plaintiff-Appellee,

-V.-

NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES, BRIAN FISCHER,
Commissioner (DOCS), NICK CHALK, Temporary Release Chairman (WCF),
DEBORAH JOY, Director Temporary Release (DOCS),
Defendants-Appellants.

Before: LEVAL, KATZMANN and LIVINGSTON, *Circuit Judges*.

Appeal from an order of the District Court for the Southern District of New York (Patterson, *J.*), denying Defendants' motion for summary judgment. The individual Defendants-Appellants contend they are entitled to qualified immunity in connection with Plaintiff-Appellee's claim for money damages pursuant to 42 U.S.C. § 1983, a claim stemming from alleged violations of Plaintiff-Appellee's Equal Protection and Eighth Amendment rights. We hold that the facts shown by Plaintiff-Appellee do not support a finding that a reasonable public official would have known that the conduct challenged here violated clearly established rights. The individual Defendants-Appellants are therefore entitled to qualified immunity as a matter of law.

REVERSED and REMANDED.

1 BENJAMIN N. GUTMAN, Deputy Solicitor General
2 (Cecelia C. Chang, Assistant Solicitor General, *on*
3 *the brief*), for Eric T. Schneiderman, Attorney
4 General of the State of New York, New York, NY,
5 *for Defendants-Appellants*.

6
7 HANNAH Y.S. CHANOINE, Mayer Brown LLP, New
8 York, NY, *for Plaintiff-Appellee*.

9
10 DEBRA ANN LIVINGSTON, *Circuit Judge*:

11 This case concerns how the New York State Department of Correctional
12 Services¹ ("DOCS") determines when an inmate receives temporary medical
13 leave from prison for the treatment of mental illness. Plaintiff-Appellee Steven
14 Spavone ("Spavone") requested a leave of absence from prison in order to obtain
15 additional treatment for his post-traumatic stress disorder ("PTSD"). DOCS
16 officials Brian Fischer, Deborah Joy, and Nick Chalk (collectively, with DOCS,
17 "Defendants-Appellants") denied his request. Spavone then brought suit under
18 42 U.S.C. § 1983 and the Americans with Disabilities Act ("ADA"), 42 U.S.C.
19 § 12101 *et seq.*, alleging, among other things, that Defendants-Appellants' denial
20 of his leave request violated his Fourteenth Amendment right to equal protection
21 of the law and his Eighth and Fourteenth Amendment right to be free of cruel
22 and unusual punishment. In a January 21, 2011 opinion and order, the District

¹We note that after this case began DOCS merged with the New York State Division of Parole to form the Department of Corrections and Community Supervision ("DOCCS"). We will refer to the Department as it was named when the underlying events of this case took place.

1 Court for the Southern District of New York (Patterson, *J.*) denied Defendants-
2 Appellants' motion for summary judgment.

3 Fischer, Joy, and Chalk, the individual Defendants-Appellants, argue on
4 appeal that the district court erred in rejecting their contention that they are
5 entitled to qualified immunity from Spavone's § 1983 claims as a matter of law.
6 We agree, and now reverse the district court's decision.²

7 BACKGROUND

8 9 *1. Factual Background*

10
11 New York, like many states, allows some of its inmates to obtain
12 temporary release from prison. Sections 851 through 861 of the New York
13 Correction Law provide for several types of temporary release. Relevant here,
14 a "leave of absence" permits an inmate to leave prison in order to visit a dying
15 relative, attend a relative's funeral, or receive absolutely necessary medical
16 treatment. N.Y. Correct. Law § 851(6). The Correction Law specifies that a
17 medical leave of absence ("MLOA") is available for the period of time necessary
18 for an inmate
19 to undergo surgery or to receive medical or dental
20 treatment not available in the correctional institution

²Though DOCS is listed in both the case caption and Defendants-Appellants' notice of appeal as an additional party to the appeal, the Defendants-Appellants have not raised any argument here as to whether DOCS is entitled to sovereign immunity. Accordingly, we do not consider the district court's denial of summary judgment insofar as it applies to DOCS on this interlocutory appeal.

1 only if deemed absolutely necessary to the health
2 and well-being of the inmate and whose approval is
3 granted by the commissioner or his designated
4 representative.

5
6 *Id.* § 851(6)(c). Regulations promulgated by DOCS reiterate this standard. *See*
7 N.Y. Comp. Codes R. & Regs. tit. 7, § 1900.3(a)(3).

8 DOCS regulations establish the procedure for obtaining temporary release.
9 *See* N.Y. Correct. Law § 852; N.Y. Comp. Codes R. & Regs. tit. 7, §§ 1900.1 *et seq.*
10 Each correctional facility with inmates that could qualify for temporary release
11 must have a three-member “temporary release committee” to review
12 applications. N.Y. Comp. Codes R. & Regs. tit. 7, § 1900.2(a). Inmates apply to
13 the committee by completing a form that states the type of temporary release
14 they seek and their reasons for applying. *Id.* § 1900.4(a). After an inmate
15 applies, a prison official checks the inmate’s file and interviews him or her to
16 ensure that the inmate is “statutorily or otherwise eligible for temporary
17 release.” *Id.* § 1900.4(b), (c). Besides meeting the standard established in § 851,
18 an inmate seeking a leave of absence typically must, among other requirements,
19 be within two years of parole eligibility and not be currently committed for
20 certain violent offenses. *Id.* § 1900.4(c). The inmate’s application must also
21 receive a sufficiently high score based on a point system that takes into account
22 factors such as criminal history and behavior while incarcerated. *Id.* § 1900.4(e).

1 For medical leaves of absence, the Commissioner may waive these non-statutory
2 eligibility requirements. *Id.* § 1900.3(a)(3). But temporary release of any sort
3 is apparently rare within New York’s correctional system. In 2008, for example,
4 DOCS granted only 19 leaves for a prison population of over 60,000.

5 Mental health treatment in the New York correctional system is provided
6 by the New York State Office of Mental Health (“OMH”), a state agency charged
7 by law with providing such care. *See* N.Y. Correct. Law § 401. A Memorandum
8 of Understanding (“MOU”) between OMH and DOCS establishes the various
9 levels of care that OMH is obligated to offer within different DOCS facilities. At
10 some prisons, mostly maximum security, OMH provides a “satellite unit” that
11 employs a full-time psychiatric staff. Satellite units provide crisis treatment
12 programs with 24-hour observation, outpatient services, and “intermediate care
13 programs.” MOU at 2–5. Outpatient services include “individual and group
14 therapy and psychiatric services” that are “similar to mental health clinic
15 services in the community.” *Id.* at 4. Intermediate care programs provide
16 patients with housing separate from the general prison population “similar to
17 day treatment and residential programs which exist in the community.” *Id.*

18 Pursuant to the MOU, DOCS and OMH “mutually agree upon the amount
19 and level of mental health services required at each correctional facility.” *Id.* at
20 2. In contrast to a satellite unit, at some prisons OMH operates a “mental

1 health unit” that staffs “[a] minimum of eight hours of psychiatric services a
2 week” and provides outpatient services, but not crisis treatment or intermediate
3 care programs. *Id.* at 5–6. Still other prisons afford fewer options. *Id.* at 6–9.
4 Finally, OMH also provides in-patient services at the Central New York
5 Psychiatric Center (“CNYPC”), a secure psychiatric hospital, for inmates
6 requiring more intensive treatment. *Id.* at 17–18; *see also* N.Y. Correct. Law §
7 402. According to the MOU, “[i]nmates are assessed to determine the level of
8 mental health services they will require and are assigned to facilities which have
9 at least the identified level of services needed.” MOU at 2.

10 Plaintiff-Appellee Spavone suffers from PTSD, which he attributes to two
11 experiences. First, Spavone traveled to Nicaragua in the 1980s to join the
12 Contra rebel forces and saw combat while fighting with them in that country’s
13 civil war. Second, Spavone worked on the scaffolding of a building across the
14 street from the World Trade Center on September 11, 2001. Credited with
15 risking his life to rescue several of his coworkers, Spavone witnessed victims of
16 the attack jump from the towers. Symptoms of Spavone’s PTSD include anxiety,
17 headaches, and vivid nightmares and flashbacks.³ Spavone takes several
18 medications to treat the symptoms of his PTSD, and he claims that his PTSD
19 greatly interferes with his daily functioning.

³In addition to PTSD, Spavone has also been diagnosed as suffering from depression.

1 Spavone was convicted in 2003 of one count of robbery and four counts of
2 attempted robbery in the first degree. He received ten-year concurrent
3 sentences on all counts. From 2005 to 2007, Spavone was incarcerated at
4 Eastern Correctional Facility (“Eastern”), a maximum-security prison with a
5 mental health unit. In 2007 he was transferred to Woodbourne Correctional
6 Facility (“Woodbourne”), a medium-security prison that also contains a mental
7 health unit. Spavone was released from prison in 2011.

8 While he was at Eastern, Spavone received treatment for his PTSD from
9 a psychologist, Dr. Edward Rudder (“Rudder”), and a psychiatrist, Dr.
10 Venkateswara R. Inaganti (“Inaganti”). Spavone’s treatment at Eastern
11 included both psychiatric medication and group and individual therapy sessions.
12 When Spavone learned that he would be transferred to Woodbourne, he
13 informed Rudder and Inaganti that he would soon be eligible for a medical leave
14 of absence and asked them to write a letter in support.⁴ The two sent a letter to
15 Woodbourne dated April 27, 2007 in which they “strongly recommend[ed]” that
16 Spavone obtain exposure therapy, cognitive behavioral therapy, and group
17 therapy, without specifying where such treatment could or should be provided.
18 They asserted only that these treatments, “especially if provided in a community
19 inpatient program,” would be of “great benefit” to Spavone.

⁴Spavone apparently believed that he was ineligible for medical leave until within two years of his anticipated release date.

1 Spavone was transferred in May 2007. According to him, Woodbourne did
2 not initially provide him with the same level of care he had received at Eastern.
3 Spavone's primary therapist was at first a social worker, not a psychologist,⁵ and
4 Spavone claims he was forced to organize his own group therapy sessions. After
5 Spavone's transfer to Woodbourne and in response to Spavone's concerns about
6 his PTSD treatment there, Dr. Al Shimkunas ("Shimkunas"), CNYPC's Chief
7 Psychologist for Outpatient Services, interviewed Spavone, reviewed his
8 diagnostic test results, and conducted a full psychological evaluation of him.

9 In August 2008 Spavone wrote to both Shimkunas and Dr. Donald Sawyer,
10 CNYPC's Executive Director, from Woodbourne to elicit their assistance in
11 obtaining temporary release. In a letter dated September 2, 2008, Shimkunas
12 responded on behalf of both of them. Shimkunas noted that while Spavone's
13 correspondence "implies that Central New York Psychiatric Center and Office
14 of Mental Health Staff recommend that you be given temporary release in order
15 to pursue further treatment in a residential program," this was not a
16 recommendation that Shimkunas and Sawyer were "at liberty to make."
17 Shimkunas continued, however, that they strongly recommended that Spavone's
18 treatment continue and Shimkunas stated they were willing to "indicate that

⁵Spavone did eventually receive cognitive therapy from a psychologist while at Woodbourne.

1 treatment in a community residential or inpatient program [could] be of great
2 benefit” to Spavone. Shimkunas further noted that the treatment Spavone was
3 receiving at Woodbourne “has proved to be an effective treatment for [PTSD],
4 including for patients who are incarcerated.”

5 Shimkunas thereafter wrote a letter to Defendant-Appellant Joy, the
6 Director of Temporary Release Programs for DOCS, informing her that Spavone
7 had been treated by OMH staff for his PTSD since 2004, that his current
8 treatment included both psychiatric medication and cognitive behavioral
9 therapy, and that Spavone was receiving “evidence-based therapeutic
10 interventions . . . designed to reduce the intensity of his emotional distress.” The
11 letter further noted that Spavone was applying for a medical leave of absence.

12 Shimkunas explained:

13 Mr. Spavone's request for medical leave of absence in a
14 community inpatient or residential trauma treatment
15 program represents a continuation of his desire to
16 resolve the effects of his traumatic experiences.
17 Treatment effectiveness in such a program as in his
18 current therapy depends on his intrinsic motivation to
19 address painful memories which is essential for a
20 successful outcome. Inpatient hospitalization at
21 Central New York Psychiatric Center is not indicated
22 for his degree of psychiatric disability, as he does not
23 suffer from a psychotic disorder and he is not a danger
24 to himself.

25
26 Joy responded to Shimkunas with a letter stating that a leave of absence is
27 available to seek medical treatment “not available in the correctional institution

1 only if deemed absolutely necessary to the health and well being of the inmate.”
2 She explained that Spavone “would not appear to meet this statutory definition,”
3 but that “if and when he applied, his application [would] be evaluated.” Joy
4 concluded by stating that “[i]n the mean time, I hope that Spavone continues to
5 avail himself of mental health services available in general confinement.”

6 Spavone applied for a leave of absence directly to Defendant-Appellant and
7 then-DOCS Commissioner Fischer on September 11, 2008. After Fischer’s office
8 informed Spavone that he had to apply at the facility where he was incarcerated,
9 Spavone submitted an application to the temporary release committee at
10 Woodbourne, which was headed by Defendant-Appellant Chalk. Spavone’s
11 stated reason for seeking a leave of absence was “[t]o obtain a community based
12 residential/inpatient program to provide essential medical care that cannot be
13 provided to me while or during my incarceration for PTSD.” Spavone’s
14 application, however, did not include material from a medical provider indicating
15 that Spavone’s ongoing PTSD treatment was ineffective, nor did Spavone’s
16 application identify either the community program he proposed to attend or the
17 form of PTSD treatment currently unavailable to him but “absolutely necessary”
18 to his care. The temporary release committee denied Spavone’s application on
19 the ground that his violent and recidivist history, including “the instant offense

1 with 4 counts of robbery 1st in which you robbed the proprietor at gunpoint,”
2 meant his release posed a risk to the community.⁶

3 Spavone appealed the denial of medical leave to Joy, and attached to the
4 appeal his correspondence with Drs. Shimkunas, Rudder, and Inaganti, as well
5 as a letter from a residential treatment facility providing him with information
6 about its program and inviting him to apply. On November 24, 2008, Joy denied
7 the appeal, explaining:

8 After careful review and consultation with NYSDOCS
9 counsel's office there are no provisions in the temporary
10 release rules and regulations that allow a medical leave
11 of absence for mental health reasons. Therefore your
12 current application for a medical leave of absence is
13 denied based on eligibility criteria.

14 After Spavone asked for reconsideration of his appeal, Joy wrote in a letter that
15 “the requested purpose did not meet statutory criteria for MLOA.” She further
16 explained to Spavone, “MLOAs are considered for medical treatment not
17 available in the facility. Your request was for an OMH placement. You are
18 receiving OMH services at your facility and are encouraged to continue these
19 services.” Joy later explained in an affidavit that her decision was based on the
20 “understanding that all of an inmate’s mental health care needs are met in the
21 correctional facility setting through the comprehensive services provided by

⁶Spavone maintained before the district court that the robbery and attempted robberies of which he was convicted were nonviolent and committed with a toy gun.

1 OMH,” and that “[n]othing in the papers submitted in connection with plaintiff’s
2 application raised a substantial challenge to that understanding.”

3 *2. Procedural History*

4 Spavone filed a complaint in the Southern District of New York on
5 January 5, 2009, naming DOCS, Fischer, Joy, and Chalk as defendants.
6 Spavone sought damages under 42 U.S.C. § 1983 for alleged violations of the
7 Eighth Amendment and of the Equal Protection and Due Process Clauses of the
8 Fourteenth Amendment, as well as for alleged violations of the ADA. DOCS and
9 the individual Defendants-Appellants moved for summary judgment on June 14,
10 2010.

11 In a January 21, 2011 opinion and order, Judge Patterson denied the
12 motion for summary judgment, rejecting, *inter alia*, the individual Defendants-
13 Appellants’ claim that they are entitled to qualified immunity. He explained
14 that “[a] decision denying participation in the [temporary release program] on
15 the ground that the statute, N.Y. Correction Law 851(6), and the regulations do
16 not mention mental health care as distinguished from medical care . . .
17 discriminate[s] against inmates suffering from mental health issues such as
18 PTSD.” *Spavone v. N.Y. State Dep’t of Corr. Servs.*, No. 09-cv-969, 2011 WL
19 253958, at *5 (S.D.N.Y. Jan. 21, 2011). Judge Patterson concluded that
20 Spavone had raised three issues of material fact: (1) “whether the mental health

1 treatment [Spavone] seeks is ‘deemed absolutely necessary to the health and
2 well-being of the inmate’ as provided in 7 NYCRR 1900.3(a)(3)”; (2) “whether the
3 present practices and policies of DOCS are being administered in accordance
4 with the purposes of Section 851 and regulations which DOCS itself adopted”;
5 and (3) “whether, under the present regulations of DOCS, MLOA is not available
6 for mental health treatment even if it is absolutely necessary to the ‘health and
7 well being’ of persons such as the Plaintiff.” *Id.* at *5–6.

8 Defendants-Appellants timely appealed.

9 DISCUSSION

10 1. *Jurisdiction*

11 Denials of motions for summary judgment are typically not “final
12 decisions” appealable under 28 U.S.C. § 1291. An exception exists for denials of
13 summary judgment motions premised on qualified immunity, which are
14 appealable under the collateral order doctrine. *See Mitchell v. Forsyth*, 472 U.S.
15 511, 530 (1985). This is because qualified immunity entails “an *immunity from*
16 *suit* rather than a mere defense to liability; and like an absolute immunity, it is
17 effectively lost if a case is erroneously permitted to go to trial.” *Id.* at 526.

18 The collateral order doctrine, however, only permits appellate review of
19 a “claim of right separable from, and collateral to, rights asserted in the action.”
20 *Id.* at 527 (quoting *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546

(1949)) (internal brackets omitted). For this reason, appellate courts may review denials of claims of qualified immunity “only to the narrow extent they turn on questions of law.” *Bolmer v. Oliveira*, 594 F.3d 134, 140 (2d Cir. 2010). While an appellate court may reconsider a district court’s determination that an issue is material, it may not reconsider the district court’s determination that an issue is genuine. *Id.* at 140–41. The result is that we may find that defendants are entitled to qualified immunity only “on stipulated facts, or on the facts that the plaintiff alleges are true, or on the facts favorable to the plaintiff that the trial judge concluded the jury might find.” *Salim v. Proulx*, 93 F.3d 86, 90 (2d Cir. 1996). The reasonableness of a defendant’s actions, however, remains a question of law, so long as the underlying facts are undisputed. *See Winfield v. Trottier*, 710 F.3d 49, 53–54 (2d Cir. 2013).

The district court below found three genuine issues of fact. First, the district court found a genuine issue as to whether a leave of absence was “absolutely necessary to the health and well being” of Spavone. Second, it found an issue as to whether DOCS’s practices and its policies concerning leaves of absence were “being administered in accordance with the purposes of Section 851” and DOCS’s own regulations. Third, the district court found an issue as to whether DOCS’s policies would ever allow a leave of absence for mental health treatment, even when that treatment was absolutely necessary for the health

1 and well being of the applicant. We must accept these findings as true for
2 purposes of this appeal.

3 For issues that do fall within our jurisdiction, we review the district
4 court's denial of summary judgment *de novo*. See *Amore v. Novarro*, 624 F.3d
5 522, 529 (2d Cir. 2010); *Bolmer*, 594 F.3d at 141. Summary judgment is
6 appropriate "if the movant shows that there is no genuine dispute as to any
7 material fact and the movant is entitled to judgment as a matter of law." Fed.
8 R. Civ. P. 56(a). The court construes all evidence, draws all inferences, and
9 resolves all ambiguities in favor of the non-moving party. See, e.g., *Novarro*, 624
10 F.3d at 529.

11 2. *Spavone's Constitutional Claims*

12 Spavone alleges that Defendants-Appellants Fischer, Joy, and Chalk
13 violated two of his constitutional rights: his right to equal protection of the laws
14 under the Fourteenth Amendment, and his right to be free of cruel and unusual
15 punishment under the Eighth and Fourteenth Amendments.⁷ He argues on
16 appeal that Defendants-Appellants violated these rights through "DOCS' policy
17 of carving out mental health treatment from the statutory safety valve for
18 necessary but unavailable medical treatment" under § 851(6). Appellee's Br. at

⁷Spavone's complaint also alleged a violation of his procedural due process rights, but he has abandoned that claim on appeal. Spavone's ADA claims are not before us on this interlocutory appeal.

1 24. Defendants-Appellants contend on appeal that they are entitled to qualified
2 immunity.

3 Qualified immunity protects federal and state officials from both civil
4 damages and “unnecessary and burdensome discovery or trial proceedings.”
5 *Crawford-El v. Britton*, 523 U.S. 574, 598 (1998). It is “an affirmative defense
6 that the defendants have the burden of raising in their answer and establishing
7 at trial or on a motion for summary judgment.” *Coollick v. Hughes*, 699 F.3d
8 211, 219 (2d Cir. 2012) (internal quotation marks omitted). Its purpose, as we
9 have repeatedly said, is to serve the public good by shielding public officials from
10 potentially disabling threats of liability. *See, e.g., Novarro*, 624 F.3d at 530;
11 *Provost v. City of Newburgh*, 262 F.3d 146, 160 (2d Cir. 2001); *see also Malley v.*
12 *Briggs*, 475 U.S. 335, 341 (1986). Qualified immunity therefore extends to
13 circumstances where an official’s conduct “does not violate clearly established
14 statutory or constitutional rights of which a reasonable person would have
15 known,” and applies “regardless of whether the government official’s error is a
16 mistake of law, a mistake of fact, or a mistake based on mixed questions of law
17 and fact.” *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (internal quotation
18 marks omitted). So long as a defendant “has an objectively reasonable belief
19 that his actions are lawful,” he “is entitled to qualified immunity.” *Swartz v.*
20 *Insogna*, 704 F.3d 105, 109 (2d Cir. 2013) (internal quotation marks omitted).

1 Even assuming, *arguendo*, that on Spavone's version of the facts a
2 reasonable jury could find a violation of his Fourteenth or Eighth Amendment
3 rights, we conclude that the individual Defendants-Appellants are entitled to
4 qualified immunity. *See Pearson*, 555 U.S. at 236. No reasonable jury could
5 conclude, on the record here, that it would have been objectively unreasonable
6 for a public official in the position of these Defendants-Appellants to believe that
7 he or she was acting in a manner consistent with Spavone's rights to equal
8 protection and to be free of cruel and unusual punishment. We therefore hold
9 that individual Defendants-Appellants have qualified immunity from Spavone's
10 constitutional claims.

11 A. Personal Involvement of Nick Chalk

12 At the start, and even before reaching the merits of Spavone's claims, we
13 first conclude that there is no genuine issue as to whether Defendant-Appellant
14 Nick Chalk, the chairman of the temporary release committee at Woodbourne,
15 was personally involved in the alleged violations of Spavone's constitutional
16 rights. "It is well settled in this Circuit that personal involvement of defendants
17 in alleged constitutional deprivations is a prerequisite to an award of damages
18 under § 1983." *Colon v. Coughlin*, 58 F.3d 865, 873 (2d Cir. 1995) (internal
19 quotation marks omitted). On appeal, Spavone premises his equal protection
20 and cruel and unusual punishment claims on DOCS's alleged policy of denying

1 leaves of absence for absolutely necessary mental health treatment while
2 affording such leaves for the provision of other absolutely necessary medical
3 care. Chalk, however, denied Spavone's application due to Spavone's criminal
4 history. It was only when Spavone appealed the committee's decision to Deborah
5 Joy that he was told "there are no provisions in the temporary release rules and
6 regulations that allow a medical leave of absence for mental health reasons."

7 We recognize (consistent with the district court's finding that a genuine
8 issue of fact exists as to whether DOCS's present practices and policies "are
9 being administered in accordance with the purposes of Section 851 and [DOCS's]
10 regulations") that there may be a factual dispute as to whether Chalk followed
11 proper procedure in evaluating Spavone's application for medical leave.
12 Spavone, however, has not alleged before this Court that any failure by DOCS
13 to comply with its own regulations was what denied him equal protection of the
14 law or subjected him to cruel and unusual punishment. Rather, he focuses solely
15 on the alleged policy of denying all leaves of absence for mental health
16 treatment. Since there is no evidence that Chalk had any involvement in the
17 promulgation or application of such a policy, he is entitled to qualified
18 immunity.⁸

⁸We also have doubts about whether Commissioner Fischer had sufficient personal involvement in the alleged violation of Spavone's rights. While Fischer, as Commissioner of DOCS, was charged with promulgating the regulations that govern

1 B. Equal Protection

2 We next conclude that, even accepting Spavone’s version of the facts,
3 Spavone has failed to raise a genuine issue as to whether a public official in the
4 position of Fischer or Joy could reasonably have understood that his or her
5 actions were consistent with Spavone’s equal protection rights. Simply put, a
6 reasonable jury could not deem such an understanding objectively *unreasonable*
7 on the sparse record before this Court. In such circumstances, Fischer and Joy
8 are entitled to the protection of qualified immunity. *See Farid v. Ellen*, 593 F.3d
9 233, 244 (2d Cir. 2010).

10 When a party challenges a government classification that does not involve
11 a suspect class or burden fundamental rights, courts apply rational basis
12 scrutiny. The classification will be constitutional so long as “there is any
13 reasonably conceivable state of facts that could provide a rational basis for the
14 classification.” *Bryant v. N.Y. State Educ. Dep’t*, 692 F.3d 202, 219 (2d Cir. 2012)
15 (citing *FCC v. Beach Commc’ns, Inc.*, 508 U.S. 307, 313 (1993)). Challenged
16 classifications are entitled to “a strong presumption of validity.” *Beach*

temporary release, *see* N.Y. Correct. Law § 852, there is no evidence in the record that he was aware that Joy allegedly interpreted those regulations to not allow leaves of absence for mental health treatment. Still, out of an abundance of caution we decline to hold that there is no genuine issue as to whether Fischer was personally involved in the alleged constitutional violations. *See Sealey v. Giltner*, 116 F.3d 47, 51 (2d Cir. 1997) (listing the various situations in which a supervisory official may be liable for constitutional violations).

1 *Commc’ns*, 508 U.S. at 314–15. The party attacking a classification’s rationality
2 bears the burden “to negative every conceivable basis which might support it.”
3 *Armour v. City of Indianapolis*, 132 S. Ct. 2073, 2080–81 (2012) (internal citation
4 and quotation marks omitted).

5 Spavone does not contend that a suspect group or fundamental right is
6 involved in this case. Still, he urges us to apply the standard of review used in
7 *Turner v. Safley*, 482 U.S. 78 (1987), which would invalidate any prison
8 regulation “where the logical connection between the regulation and the asserted
9 goal is so remote as to render the policy arbitrary or irrational,” *id.* at 89–91. We
10 disagree that *Turner* applies to this case. *Turner* involved prison regulations
11 that were claimed to infringe upon both the fundamental right to marry and
12 First Amendment freedom of speech. *Id.* at 83. The standard adopted by the
13 Supreme Court was a compromise between the strict scrutiny standard that
14 usually would apply to such constitutional claims and the “inordinately difficult
15 undertaking” of running a prison. *Id.* at 84–85; *see also Shakur v. Selsky*, 391
16 F.3d 106 (2d Cir. 2004) (applying *Turner* to freedom of speech claim); *Benjamin*
17 *v. Coughlin*, 905 F.2d 571 (2d Cir. 1990) (applying *Turner* to free exercise and
18 religious discrimination claims). We thus join the Seventh Circuit in holding
19 that *Turner* does not govern equal protection claims brought by prisoners that
20 do not involve suspect groups or fundamental rights. *See Hatch v. Sharp*, 919

1 F.2d 1266, 1268–69 (7th Cir. 1990). This is consistent with our previous
2 treatment of such claims. *See Benjamin v. Jacobson*, 172 F.3d 144, 165 (2d Cir.
3 1999) (en banc) (applying traditional rational basis review).

4 The district court determined that a genuine factual dispute exists as to
5 whether DOCS’s policies would ever permit a leave of absence for mental health
6 treatment. Accepting this finding, as we must, the question on rational basis
7 review at the summary judgment stage is clear: whether a reasonable jury could
8 conclude that no reasonably conceivable set of facts could have provided a
9 rational basis for DOCS to deny all medical leaves of absence for the treatment
10 of mental illness, while affording such leaves (albeit in narrow circumstances)
11 for other medical care. Fischer and Joy argue that at the time they acted on
12 Spavone’s application for medical leave, it was reasonably conceivable that all
13 “absolutely necessary” mental health treatment was available within the New
14 York correctional system pursuant to the MOU between OMH and DOCS.⁹ They
15 assert that this, in turn, permitted a rational distinction to be drawn between

⁹Fischer and Joy properly focus on the state of affairs existing at the time they acted on Spavone’s application for medical leave. Spavone’s equal protection claim seeks only money damages for a government classification that no longer applies to him. In the more typical equal protection case, where a party challenges a classification that applies to him or her, a court will ask what currently reasonably conceivable facts could provide a rational basis for the classification. *See, e.g., United States v. Thomas*, 628 F.3d 64, 71 (2d Cir. 2010). In rational basis challenges to *past* classifications, however, such as the one here, we ask what facts were reasonably conceivable at the time of the classification. *See, e.g., Cobb v. Pozzi*, 363 F.3d 89, 110 (2d Cir. 2004).

1 treatment for mental illness and other types of medical treatment not available
2 in the prison system. Spavone contests this assertion.

3 We conclude that this is a question we need not reach. For even assuming,
4 *arguendo*, that New York’s alleged distinction between medical leave for physical
5 ailments and mental illness could fail to survive even “highly deferential”
6 rational basis review, *Hayden v. Paterson*, 594 F.3d 150, 170 (2d Cir. 2010), it
7 is clear that Spavone has not raised an issue as to whether a public official in
8 Fischer’s or Joy’s position could reasonably have believed that such a distinction
9 passed constitutional muster. Even on Spavone’s version of the facts, the
10 arrangements between DOCS and OMH set forth in the MOU provided a basis
11 for concluding that basic mental health treatment—including even residential
12 programs (albeit secure ones) of the sort Spavone sought—was available within
13 the correctional system. And Spavone—who conducted no discovery into how the
14 MOU operates in practice—has not shown that either he or any other inmate
15 presented Fischer or Joy with reason to believe that necessary mental health
16 care was unavailable at any time, with regard to any inmate.

17 The district court found that a genuine issue exists as to whether the
18 treatment sought by Spavone was, in fact, absolutely necessary to his health and
19 well being, a finding that binds us here. This factual issue, however, does not
20 provide a sufficient basis on which a jury could conclude that Fischer and Joy

1 could not reasonably have believed that DOCS's alleged policy had a rational
2 basis. Even if Spavone was in need of absolutely necessary medical care, the
3 record is clear that neither Fischer nor Joy had reason to conclude that such care
4 was not available to him in prison. While Spavone stated in his application for
5 medical leave that such leave was "to provide essential medical care that cannot
6 be provided to me while or during my incarceration," he offered little to no
7 information as to the nature of this care or his basis for deeming it essential.
8 Moreover, none of the doctors who had treated or seen Spavone in prison (or any
9 other doctors, for that matter) corroborated his claim that treatment outside
10 prison was required. Indeed, Dr. Shimkunas affirmed in the correspondence
11 submitted to Joy (and in response to Spavone's suggestion that he was unlikely
12 to receive effective treatment while incarcerated) that the therapy being
13 provided to Spavone at Woodbourne "has proved to be an effective treatment for
14 [PTSD], including for patients who are incarcerated."

15 Simply put, the record reveals no basis on which to conclude that Fischer
16 and Joy could not reasonably have believed, as Joy has affirmed, that the mental
17 health needs of DOCS inmates were being met "in the correctional facility
18 setting through the comprehensive services provided by OMH." This conclusion
19 means that a reasonable public official in the position of Fischer or Joy could
20 reasonably have believed there was a rational basis for distinguishing between

1 leaves of absence for the treatment of mental illness as opposed to other sorts of
2 illness. And this conclusion, in turn, entitles Fischer and Joy to qualified
3 immunity.

4 c. Eighth Amendment

5 A similar analysis governs Spavone's Eighth Amendment claim. The
6 Eighth Amendment forbids "deliberate indifference to serious medical needs of
7 prisoners," *Estelle v. Gamble*, 429 U.S. 97, 104 (1976), which includes needs for
8 mental health care, see *Langley v. Coughlin*, 888 F.2d 252, 254 (2d Cir. 1989).

9 A deliberate indifference claim contains two requirements. The first
10 requirement is objective: "the alleged deprivation of adequate medical care must
11 be 'sufficiently serious.'" *Salahuddin v. Goord*, 467 F.3d 263, 279 (2d Cir. 2006)
12 (quoting *Farmer v. Brennan*, 511 U.S. 825, 834 (1994)). The second requirement
13 is subjective: the charged officials must be subjectively reckless in their denial
14 of medical care. *Id.* at 280. This means "that the charged official [must] act or
15 fail to act while *actually aware* of a substantial risk that serious inmate harm
16 will result." *Id.* (emphasis added). Officials need only be aware of the risk of
17 harm, not intend harm. *Id.* And awareness may be proven "from the very fact
18 that the risk was obvious." *Farmer*, 511 U.S. at 842.

19 Spavone's version of the facts raises no genuine issue as to this second,
20 subjective element, because there is no evidence that Fischer or Joy thought that

1 denying Spavone's request for a leave of absence would cause him serious harm.
2 Though Spavone stated in his application that he was seeking "essential medical
3 care," he never stated what that care was. Moreover, the letters accompanying
4 Spavone's application did not suggest that he would be seriously harmed if not
5 afforded a medical leave. Based on these letters, Joy had no reason to doubt that
6 Spavone was receiving effective treatment at Woodbourne, much less to think
7 that he would face serious harm if not granted access to outside mental health
8 treatment. Fischer, whose only interaction with Spavone was to instruct Joy to
9 inform Spavone that he had to apply for a leave of absence at the facility where
10 he was incarcerated, would have had even less reason to know of any risk of
11 harm. Nor did the materials Spavone sent to Fischer suggest a more obvious
12 risk of harm to Spavone than did the materials Spavone sent to Joy.

13 The district court's determination that a genuine issue exists as to
14 whether a leave of absence is "not available for mental health treatment even if
15 it is absolutely necessary to the 'health and well being'" of the inmate does not
16 significantly change this analysis. Spavone argues that "Ms. Joy's apparent
17 unwillingness to make an individualized determination in light of the policy"
18 renders "her awareness of risk . . . a proper jury question." Appellee's Br. at 33.
19 But there is no evidence that Fischer or Joy had actual knowledge that
20 restricting leaves of absence for mental health treatment would cause serious

1 harm to inmates, nor is there a basis on which to conclude that the risk of harm
2 was both substantial and obvious.

3 At any rate, we need not decide whether implementing a policy that
4 categorically distinguishes between leaves of absence for mental illness and for
5 other health-related needs might, on a different record, pose a risk of harm
6 sufficiently obvious as to establish a defendant's subjective awareness of it. For
7 on the record here, Spavone has failed to raise a genuine issue that Fischer or
8 Joy knew that such a policy would cause him serious harm, much less harm so
9 serious that it would be objectively unreasonable for them to believe that the
10 policy was consistent with Spavone's right to be free of cruel and unusual
11 punishment. This entitles Fischer and Joy to qualified immunity. *See McKenna*
12 *v. Wright*, 386 F.3d 432, 437 (2d Cir. 2004).

13 CONCLUSION

14 For the foregoing reasons, we reverse the judgment of the district court,
15 direct dismissal of the § 1983 claims against the individual Defendants-
16 Appellants, and remand for further proceedings.