To: The Chief Justice
Justice Blackmun
Justice O'Connor
Justice Scalia
Justice Kennedy
Justice Souter
Justice Thomas
Justice Ginsburg

From: **Justice Stevens**

Circulated: _____

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 92–7247

DEE FARMER, PETITIONER *v.* EDWARD BRENNAN, WARDEN, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[March ___, 1994]

JUSTICE STEVENS, concurring.

While I continue to believe that a state official may inflict cruel and unusual punishment without any improper subjective motivation, see *Estelle* v. *Gamble*, 429 U. S. 97, 116–117 (1976) (dissenting opinion); *Wilson* v. *Seiter*, 111 S. Ct. 2321, 2328–2331 (1991) (White, J. concurring), I join Justice Souter's thoughtful opinion because it is faithful to our precedents.

/

HAB

Pre-check changes only.

Withdrawn

To: The Chief Justice
Justice Blackmun
Justice Stevens
Justice O'Connor
Justice Kennedy
Justice Souter
Justice Thomas
Justice Ginsburg

From: **Justice Scalia**

Circulated: _____

Recirculated: Apr. 13, 1994

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 92–7247

DEE FARMER, PETITIONER *v.* EDWARD BRENNAN, WARDEN, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[April ___, 1994]

JUSTICE SCALIA, dissenting.

I disagree in some respects with the Court's reasoning, and entirely with its disposition.

I

I think it clear that the Eighth Amendment was meant to forbid the imposition of sadistic sentences, not the maladministration of prisons. See *Hudson* v. *McMillian*, 503 U. S. 1, ___ (1992) (THOMAS, J., dissenting). That being so, there are no historical guides, and few logical ones, to govern the application of this provision to matters it was not meant to cover. Since something cannot conceivably be a "punishment" unless it is willfully inflicted, I agree with the proposition that "a prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety," *ante*, at 10. I am not sure why the test of whether punishment is being inflicted should be the same as the criminal-law recklessness standard of *mens rea*, see *ante*, at 13; but since we are essentially legislating an Eighth Amendment Prison Administration Code, and since that test seems as narrow as any we are

likely to agree upon, I vote yes. As I understand the Court's opinion, that standard, like the "deliberate indifference" standard it illuminates (or replaces), requires actual, subjective knowledge of a risk of serious harm, coupled with an unreasonable failure to eliminate or reduce the risk. See *ante*, at 18–19.

In one significant respect, however, I must vote against the Court's proposal. A mere two paragraphs after confirming the necessity of subjective knowledge, the opinion repudiates that requirement for suits seeking only prospective relief. "[I]n a suit seeking an injunction to prevent harm yet to have occurred, . . . the subjective requirement can . . . be satisfied by knowledge acquired through the defendant's exposure to evidence introduced in the course of the litigation." *Ante*, at 19. In other words, a complaint that has no merit (because of the defendant's ignorance of the complained-of risk) can be retroactively validated by an official's subsequent "exposure" to an inmate's case. This might be called the "I'm My Own Grandpaw" theory of constitutional litigation, whereby a suit utterly unfounded at the outset gives life to itself via the strange device of imputing knowledge initially acquired by a defendant during the course of litigation to that same defendant at some time in the past, so as to verify an (otherwise false) allegation, the truth of which should have been necessary to commence the litigation in the first place!*

---

*The "I'm My Own Grandpaw" reference is of course an allusion to the immortal Latham and Jaffe tune, the lyrics of which (slightly abridged below) bear an unmistakable resemblance to the Court's reasoning:

"Many, many years ago when I was twenty-three
I was married to a widow who was pretty as could be.
This widow had a grown up daughter who had hair of red
My father fell in love with her and soon they too were wed.

Even this degree of incoherence would not suffice to sustain the action, were it not for the Court's unexplained (and inexplicable) suspension of the second prong of deliberate indifference: the requirement that prison officials have been unreasonable in their response to the threat faced by the inmate. Upon discovering for the first time—based on evidence adduced at trial—that an inmate faces a serious risk to his welfare, the defendant officials should be able to move for immediate dismissal on the ground that they cannot possibly be found to have behaved unreasonably in light of the fact that they have only just become aware that the risk even exists. It surely is not "deliberate indifference" to have failed to counteract a threat the very existence of which has, until this moment, been unknown. The Court's confused reaction to this incongruity is to caution that a "district court *may* appropriately exercise its discretion, for example, by giving prison officials time to rectify the situation before issuing an injunction." *Ante*, at 20 (emphasis added). In other words, upon realizing that the plaintiff has no case, the district court should retain

---

[Chorus:]

"I'm my own grandpaw, I'm my own grandpaw.
It sounds funny I know, but it really is so.
Oh, I'm my own grandpaw.

"This made my dad my son-in-law and changed my very life
For my daughter was my mother 'cause she was my father's wife.

. . . . .

"My wife is now my mother's mother and it makes me blue
Because although she is my wife she's my grandmother too.

[Repeat Chorus]

"Now if my wife is my grandmother, then I'm her grandchild
And ev'ry time I think of it, it nearly drives me wild.
For now I have become the strangest case you ever saw
As husband of my grandmother I am my own grandpaw."

[Repeat Chorus]

jurisdiction to see whether or not a case eventually develops. We might think of this as the "Sweet By and By" prong of the Court's "I'm My Own Grandpaw" jurisprudence.

The Court feels compelled to produce this jurisprudential slapstick in order to meet "petitioner's argument that a subjective deliberate indifference test . . . will result in leaving objectively inhumane prison conditions uncorrected." *Ante*, at 19. The Court responds by inviting all prisoners to bring their health and safety concerns to federal court where, by the device of a lawsuit, they can "expos[e]" prison officials to the existence of dangerous prison conditions. This is astounding. The sensible (and obvious) response to petitioner's argument is that an inmate faced with dangerous prison conditions need only take advantage of internal prison procedures to notify the relevant authorities; if they are unreasonable in their response, the inmate can *then* seek court-ordered relief. If he does not take that course, and chooses instead to come directly to federal court, he will get immediate relief (assuming the conditions warrant) *if* the defendant officials were aware of the conditions and had unreasonably failed to correct them; otherwise, his case will be dismissed and he will be able to refile if and when an unreasonable failure to correct occurs. This places the incarcerated felon in exactly the same position as the law-abiding citizen, insofar as vindication of his constitutional rights are concerned: his suit will lie as soon as (but no sooner than) a constitutional violation occurs.

The Court is correct that (under our Prison Reform branch of Eighth Amendment jurisprudence) prior notice by an inmate is not necessary for liability—only knowledge by the official, in whatsoever manner knowledge might have been obtained. But it is one thing to reject a notice requirement, and something else positively to discourage notice *by waiving the knowledge requirement.*

I am simply baffled by the Court's suggestion that an inmate's *first* reaction to a perceived threat can properly be to sue in federal court, alleging a constitutional violation that he does not know has occurred (since he does not know prison officials are aware of the threat's existence). I cannot imagine how this new doctrine can be reconciled with the requirement that the signatory of every pleading make a reasonable investigation into the factual basis for it, see Fed. Rule Civ. Proc. 11.

II

I find no basis for the Court's conclusion that the District Court erred in its disposition of this case. The reason assigned for vacating the judgment below is that "the District Court['s] err[or] in requiring [prior] notification . . . may have affected its ruling on petitioner's [Federal Rule of Civil Procedure] 56(f) motion" for discovery. *Ante*, at 24. This cannot be reconciled with the text of the District Court's order, which shows that denial of petitioner's Rule 56(f) motion had nothing whatever to do with prior notification. The District Court stated:

> "An amended scheduling order was entered in the above entitled matter on December 20, 1991 requiring dispositive motions to be filed not later than February 15, 1992. Defendants timely moved for summary judgment pursuant to Federal Rules of Civil Procedure, Rule 56, on February 18, 1992[,] the first work day after February 15, 1992. The defendants submitted proposed findings of fact and conclusions of law, affidavits and a brief in support of the motion.
>
> "Plaintiff's response to defendants' motion for summary judgment was to be filed not later than March 9, 1992. On March 9, 1992 defendants received a document entitled, 'Rule 56(f) motion in response to defendants' untimely motion for summa-

> ry judgment[.'] This document which was not received by the Court until March 18, 1992 requests that defendants' motion for summary judgment be denied until plaintiff receives defendant Quinlan's response to his second request for documents which was to be filed not later than March 14, 1992. Since these documents, not shown by plaintiff to be necessary to oppose defendants' motion for summary judgment, were not to be filed until after both plaintiff's dispositive motion and brief in opposition to defendants' motion for summary judgment, plaintiff's Rule 56(f) motion will be denied." App. 120–121.

As far as appears from this, petitioner's Rule 56(f) motion was denied because of a timing problem: by the terms of petitioner's own discovery request, respondents' response to petitioner's second request for documents was not due until after the date on which petitioner was required to file his response to respondents' summary judgment motion. Thus, the requested documents would have been of no use. Although petitioner twice previously had filed motions for extension of time (both of which had been granted in part), none was sought in connection with the summary judgment motion.

The Court, however, seizes on the District Court's observation that requested documents had not been "shown by [petitioner] to be necessary" as reflecting the District Court's belief that "petitioner's failure to notify respondents of an impending danger [was] fatal to petitioner's claim." *Ante*, at 24. But that is neither the only possible, nor even the most plausible, interpretation of the statement. Petitioner's second request for production of documents contained 11 separate requests amounting to a demand that respondents produce almost every scrap of paper relating to the administration of USP-Terre Haute, in addition to almost all documentation pertaining to petitioner's own prison disciplinary

history. Although petitioner stated in his motion and accompanying affidavit that the requested documents would establish virtually every element of his cause of action, he nowhere explained to the court *why* such a broad demand was necessary, or even useful, for that purpose. See App. 105–106. His averments amounted to little more than an expression of hope that if he could only get his hands on enough documentation, he would somewhere come across something that would prove respondents' "know[ledge] that [he] would be sexually assaulted." But such a "'hope' or 'hunch' that evidence creating an issue of fact will emerge at trial is insufficient under" Rule 56(f). 10A C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure §2741, p. 561 (2d ed. 1983). Particularly in light of the fact that petitioner timed his second document request to be inconsistent with his duties under the court's amended scheduling order, it was surely within the court's discretion to require a greater showing of necessity by petitioner than is present in his wishfully conclusory affidavit.

The District Court's analysis of petitioner's Rule 56(f) motion says absolutely nothing about prior notification, and precedes by several pages the court's only reference to notification, contained in its discussion of the legal principles dispositive of the case. An examination of that discussion demonstrates that it is disingenuous to accuse the District Court of "placing decisive weight on petitioner's failure to notify respondents of a danger." *Ante*, at 21. Here is what the District Court actually said:

> "Prison officials are liable under the Eighth Amendment if they had actual knowledge of a threat to an inmate's safety and failed to take action to prevent the danger. A prisoner *normally* proves actual knowledge of impending harm by showing that he complained to prison officials about a specific threat to his safety. The officials' failure to

prevent an attack of an inmate must be deliberate or reckless in a criminal sense.

"Defendants did not know that plaintiff would be in imminent danger of attack if he were transferred to USP-Terre Haute. Plaintiff never expressed any concern for his safety to any of the defendants. Since defendants had no knowledge of any potential danger to plaintiff, they were not deliberately indifferent to his safety. Accordingly plaintiff's Eighth Amendment rights were not violated and defendants' motion for summary judgment will be granted." App. 124 (citations omitted; emphasis added).

The use of the qualifier "normally" utterly disproves the Court's contention that the District Court required petitioner to prove prior notification as a "necessary element" of his claim, *ante*, at 22. The District Court merely stated the obvious—that notification is, as a general matter, the clearest evidence of official knowledge. It was perfectly natural for the court to comment on the absence of such evidence in the course of expressing its conclusion that the record before it established that respondents "did not know" of the risk that petitioner would be attacked. Nor did the law of the Seventh Circuit require the District Court to assume that notification was essential. "A prisoner *normally* proves actual knowledge of impending harm by showing that he alerted prison officials to an identifiable threat to his safety. *Alternatively*, a plaintiff can show . . . the existence of so substantial a risk of harm that the defendants' knowledge of the risk can be inferred." *James* v. *Milwaukee County*, 956 F. 2d 696, 700 (CA7), cert. denied, 506 U. S. ___ (1992) (emphasis added; citations and internal quotation marks omitted).

Thus, even if the District Court's real reason for denying petitioner's Rule 56(f) motion was not (as its order suggested) the timing difficulty, *nothing*—neither

in its discussion of the discovery motion, nor in its discussion of the summary-judgment motion, nor even in the law of the Seventh Circuit—suggests that the reason could possibly have been the error alleged (and found by the Court) here: the belief that prior notification was an element of an Eighth Amendment claim. To the contrary, there is every reason to conclude that the District Court properly understood its task. In fact, the District Court's description of the law of deliberate indifference, with its emphasis on subjective knowledge and incorporation of criminal recklessness, is strikingly similar to that of the Court itself.

* * *

Because today's opinion emasculates the deliberate-indifference requirement with respect to suits for prospective relief, and vacates the judgment below by falsely imputing error to the District Court, I respectfully dissent.

HAB

To: The Chief Justice
Justice Blackmun
Justice Stevens
Justice O'Connor
Justice Kennedy
Justice Souter
Justice Thomas
Justice Ginsburg

From: **Justice Scalia**

Circulated: April 12, 1994

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 92–7247

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[April ___, 1994]

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I

I think it clear that the Eighth Amendment was meant to forbid the imposition of sadistic sentences, not the maladministration of prisons. See *Hudson* v. *McMillian*, 503 U. S. ___, ___ (1992) (THOMAS, J., dissenting). That being so, there are no historical guides, and few logical ones, to govern the application of this provision to matters it was not meant to cover. Since something cannot conceivably be a "punishment" unless it is willfully inflicted, I agree with the proposition "that a prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety," *ante*, at 10. I am not sure why the test of whether punishment is being inflicted should be the same as the criminal-law recklessness standard of mens rea, see *ante*, at 13; but since we are essentially legislating an Eighth Amendment Prison Administration Code, and since that test seems as narrow as any we are

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Refrain:
I'm my own grandpaw, I'm my own grandpaw.
It sounds funny I know, but it really is so.
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This made my dad my son-in-law and changed my very life
For my daughter was my mother 'cause she was my father's wife.
My wife is now my mother's mother and it makes me blue
Because although she is my wife she's my grandmother too.
[Refrain]

Oh if my wife is my grandmother, then I'm her grandchild
And ev'ry time I think of it, it nearly drives me wild.
For now I have become the strangest case you ever saw
As husband of my grandmother I am my own grandpaw.
[Refrain]

(emphasis added). In other words, upon realizing that the plaintiff has no case, the district court should retain jurisdiction to see whether or not a case eventually develops. We might think of this as the "Sweet By and By" prong of the Court's "I'm My Own Grandpaw" jurisprudence.

The Court feels compelled to produce this jurisprudential slapstick in order to meet "petitioner's argument that a subjective deliberate indifference test . . . will result in leaving objectively inhumane prison conditions uncorrected." *Ante*, at 19. The Court responds by inviting all prisoners to bring their health and safety concerns to federal court where, by the device of a lawsuit, they can "expos[e]" prison officials to the existence of dangerous prison conditions. This is astounding. The sensible (and obvious) response to petitioner's argument is that an inmate faced with dangerous prison conditions need only take advantage of internal prison procedures to notify the relevant authorities; if they are unreasonable in their response, the inmate can *then* seek court-ordered relief. If he does not take that course, and chooses instead to come directly to federal court, he will get immediate relief (assuming the conditions warrant) *if* the defendant officials were aware of the conditions and had unreasonably failed to correct them; otherwise, his case will be dismissed and he will be able to refile if and when an unreasonable failure to correct occurs. This places the incarcerated felon in exactly the same position as the law-abiding citizen, insofar as vindication of his constitutional rights are concerned: his suit will lie as soon as (but no sooner than) a constitutional violation occurs.

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I find no basis for the Court's conclusion that the District Court erred in its disposition of this case. The reason assigned for vacating the judgment below is that "the District Court['s] err[or] in requiring [prior] notification . . . may have affected its ruling on petitioner's [Fed. R. Civ. P.] 56(f) motion" for discovery. *Ante*, at 24. This cannot be reconciled with the text of the District Court's order, which shows that denial of petitioner's Rule 56(f) motion had nothing whatever to do with prior notification. The District Court stated:

> "An amended scheduling order was entered in the above entitled matter on December 20, 1991 requiring dispositive motions to be filed not later than February 15, 1992. Defendants timely moved for summary judgment pursuant to Federal Rules of Civil Procedure, Rule 56, on February 18, 1992[,] the first work day after February 15, 1992. The defendants submitted proposed findings of fact and conclusions of law, affidavits and a brief in support of the motion.
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> "Plaintiff's response to defendants' motion for summary judgment was to be filed not later than March 9, 1992. On March 9, 1992 defendants received a document entitled, 'Rule 56(f) motion in

> response to defendants' untimely motion for summary judgment[.'] This document which was not received by the Court until March 18, 1992 requests that defendants' motion for summary judgment be denied until plaintiff receives defendant Quinlan's response to his second request for documents which was to be filed not later than March 14, 1992. Since these documents, not shown by plaintiff to be necessary to oppose defendants' motion for summary judgment, were not to be filed until after both plaintiff's dispositive motion and brief in opposition to defendants' motion for summary judgment, plaintiff's Rule 56(f) motion will be denied." App. 120–121 (emphasis added).

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The Court, however, seizes on the District Court's observation that requested documents had not been "shown by [petitioner] to be necessary" as reflecting the District Court's belief that "petitioner's failure to notify respondents of an impending danger [was] fatal to petitioner's claim." *Ante*, at 24. But that is neither the only possible, nor even the most plausible, interpretation of the statement. Petitioner's second request for production of documents contained eleven separate requests amounting to a demand that respondents produce almost every scrap of paper relating to the administration of USP-Terre Haute, in addition to

almost all documentation pertaining to petitioner's own prison disciplinary history. Although petitioner stated in his motion and accompanying affidavit that the requested documents would establish virtually every element of his cause of action, he nowhere explained to the court *why* such a broad demand was necessary, or even useful, for that purpose. See App. 105–106. His averments amounted to little more than an expression of hope that if he could only get his hands on enough documentation, he would somewhere come across something that would prove respondents' "know[ledge] that [he] would be sexually assaulted." But such a "'hope' or 'hunch' that evidence creating an issue of fact will emerge at trial is insufficient under" Rule 56(f). 10A Wright & Miller §2741, p. 561. Particularly in light of the fact that petitioner timed his second document request to be inconsistent with his duties under the court's amended scheduling order, it was surely within the court's discretion to require a greater showing of necessity by petitioner than is present in his wishfully conclusory affidavit.

The District Court's analysis of petitioner's Rule 56(f) motion says absolutely nothing about prior notification, and precedes by several pages the court's only reference to notification, contained in its discussion of the legal principles dispositive of the case. An examination of that discussion demonstrates that it is disingenuous to accuse the District Court of "placing decisive weight on petitioner's failure to notify respondents of a danger." *Ante*, at 21. Here is what the District Court actually said:

> "Prison officials are liable under the Eighth Amendment if they had actual knowledge of a threat to an inmate's safety and failed to take action to prevent the danger. A prisoner *normally* proves actual knowledge of impending harm by showing that he complained to prison officials about a

specific threat to his safety. The officials' failure to prevent an attack on an inmate must be deliberate or reckless in a criminal sense.

"Defendants did not know that plaintiff would be in imminent danger of attack if he were transferred to USP-Terre Haute. Plaintiff never expressed any concern for his safety to any of the defendants. Since defendants had no knowledge of any potential danger to plaintiff, they were not deliberately indifferent to his safety. Accordingly plaintiff's Eighth Amendment rights were not violated and defendants' motion for summary judgment will be granted." App. 124 (citations omitted) (emphasis added).

The use of the qualifier "normally" utterly disproves the Court's contention that the District Court required petitioner to prove prior notification as a "necessary element" of his claim, *ante*, at 22. The District Court merely stated the obvious—that notification is, as a general matter, the clearest evidence of official knowledge. It was perfectly natural for the court to comment on the absence of such evidence in the course of expressing its conclusion that the record before it established that respondents "did not know" of the risk that petitioner would be attacked. Nor did the law of the Seventh Circuit require the District Court to assume that notification was essential. "A prisoner *normally* proves actual knowledge of impending harm by showing that he alerted prison officials to an identifiable threat to his safety. *Alternatively*, a plaintiff can show . . . the existence of so substantial a risk of harm that the defendants' knowledge of the risk can be inferred." *James* v. *Milwaukee County*, 956 F. 2d 696, 700 (CA7 1992) (emphasis added) (citations and internal quotations omitted).

Thus, even if the District Court's real reason for denying petitioner's Rule 56(f) motion was not (as its

order suggested) the timing difficulty, *nothing*—neither in its discussion of the discovery motion, nor in its discussion of the summary-judgment motion, nor even in the law of the Seventh Circuit—suggests that the reason could possibly have been the error alleged (and found by the Court) here: the belief that prior notification was an element of an Eighth Amendment claim. To the contrary, there is every reason to conclude that the District Court properly understood its task. In fact, the District Court's description of the law of deliberate indifference, with its emphasis on subjective knowledge and incorporation of criminal recklessness, is strikingly similar to that of the Court itself.

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/

Precheck changes only.

HAB

To: The Chief Justice
Justice Blackmun
Justice Stevens
Justice O'Connor
Justice Scalia
Justice Kennedy
Justice Souter
Justice Ginsburg

From: **Justice Thomas**

Circulated: 5/18/94

Recirculated: 5/25/94

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 92-7247

DEE FARMER, PETITIONER *v.* EDWARD BRENNAN, WARDEN, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[May ___, 1994]

JUSTICE THOMAS, concurring in the judgment.

Prisons are necessarily dangerous places; they house society's most antisocial and violent people in close proximity with one another. Regrettably, "[s]ome level of brutality and sexual aggression among [prisoners] is inevitable no matter what the guards do . . . unless all prisoners are locked in their cells 24 hours a day and sedated." *McGill* v. *Duckworth*, 944 F. 2d 344, 348 (CA7 1991). Today, in an attempt to rectify such unfortunate conditions, the Court further refines the "National Code of Prison Regulation," otherwise known as the Cruel and Unusual Punishments Clause. *Hudson* v. *McMillian*, 503 U. S. ___, ___ (1992) (slip op., at 12) (THOMAS, J., dissenting).

I adhere to my belief, expressed in *Hudson* and *Helling* v. *McKinney*, 509 U. S. ___ (1993) (THOMAS, J., dissenting), that "judges or juries—but not jailers—impose 'punishment.'" *Id.*, at ___ (slip op., at 4). "Punishment," from the time of the Founding through the present day, "has always meant a 'fine, penalty, or confinement inflicted upon a person by the authority of the law and the judgment and sentence of a court, for some crime or offense committed by him.'" *Id.*, at ___ (slip op., at 2) (quoting Black's Law Dictionary 1234 (6th ed. 1990)). See also 2 T. Sheridan, A General Dictio-

nary of the English Language (1780) (defining "punishment" as "[a]ny infliction imposed in vengeance of a crime"). Conditions of confinement are not punishment in any recognized sense of the term, unless imposed as part of a sentence. See *Helling*, *supra*, at ___ (slip op., at 6) (THOMAS, J., dissenting). As an original matter, therefore, this case would be an easy one for me: because the unfortunate attack that befell petitioner was not part of his sentence, it did not constitute "punishment" under the Eighth Amendment.

When approaching this case, however, we do not write on a clean slate. Beginning with *Estelle* v. *Gamble*, 429 U. S. 97 (1976), the Court's prison condition jurisprudence has been guided, not by the text of the Constitution, but rather by "evolving standards of decency that mark the progress of a maturing society." *Id.*, at 102 (internal quotation marks omitted). See also *ante*, at 6; *Helling, supra*; *Hudson, supra*. I continue to doubt the legitimacy of that mode of constitutional decisionmaking, the logical result of which, in this context, is to transform federal judges into superintendents of prison conditions nationwide. See *Helling*, *supra*, at ___ (slip op., at 4–6) (THOMAS, J., dissenting). Although *Estelle* loosed the Eighth Amendment from its historical moorings, the Court is now unwilling to accept the full consequences of its decision and therefore resorts to the "subjective" (state of mind) component of post-*Estelle* Eighth Amendment analysis in an attempt to contain what might otherwise be unbounded liability for prison officials under the Cruel and Unusual Punishments Clause. Cf. *McGill*, *supra*, at 348.

Although I disagree with the constitutional predicate of the Court's analysis, I share the Court's view that petitioner's theory of liability—that a prison official can be held liable for risks to prisoner safety of which he was ignorant but should have known—fails under even "a straightforward application of *Estelle*." *Helling*,

supra, at ___ (slip op., at 6) (THOMAS, J., dissenting). In adopting the "deliberate indifference" standard for challenges to prison conditions, *Estelle* held that mere "inadverten[ce]" or "negligen[ce]" does not violate the Eighth Amendment. 429 U. S., at 105–106. "From the outset, thus, we specified that the Eighth Amendment does not apply to every deprivation, or even every unnecessary deprivation, suffered by a prisoner, but *only* that narrow class of deprivations involving 'serious' injury inflicted by prison officials acting with a culpable state of mind." *Hudson, supra*, at ___ (slip op., at 4) (THOMAS, J., dissenting). We reiterated this understanding in *Wilson* v. *Seiter*, 501 U. S. 294, 305 (1991), holding that "mere negligence" does not constitute deliberate indifference under *Estelle*. See also, *e. g.*, *Whitley* v. *Albers*, 475 U. S. 312, 319 (1986). Petitioner's suggested "should have known" standard is nothing but a negligence standard, as the Court's discussion implicitly assumes. *Ante*, at 10–12. Thus, even under *Estelle*, petitioner's theory of liability necessarily fails.

The question remains, however, what state of mind *is* sufficient to constitute deliberate indifference under *Estelle*. Given my serious doubts concerning the correctness of *Estelle* in extending the Eighth Amendment to cover challenges to conditions of confinement, I believe the scope of the *Estelle* "right" should be confined as narrowly as possible. Cf. *Helling*, *supra*, at ___ (slip op., at 6) (THOMAS, J., dissenting). In *Wilson*, the Court has already held that the highest subjective standard known to our Eighth Amendment jurisprudence—"maliciou[s] and sadisti[c]" action "for the very purpose of causing harm," *Whitley*, *supra*, at 320–321 (internal quotation marks omitted)—"does not apply to prison conditions cases." *Wilson, supra*, at 303. The Court today adopts the next highest level of subjective intent, actual knowledge of the type sufficient to constitute recklessness in the criminal law, *ante*, at 10, 13, noting that

"due regard" is appropriate "for prison officials' 'unenviable task of keeping dangerous men in safe custody under humane conditions.'"[1] *Ante*, at 18 (quoting *Spain* v. *Procunier*, 600 F. 2d 189, 193 (CA9 1979) (Kennedy, J.)).

Even though the Court takes a step in the right direction by adopting a restrictive definition of deliberate indifference, I cannot join the Court's opinion. For the reasons expressed more fully in my dissenting opinions in *Hudson* and *Helling*, I remain unwilling to subscribe to the view, adopted by *ipse dixit* in *Estelle*, that the Eighth Amendment regulates prison conditions not imposed as part of a sentence. Indeed, "[w]ere the issue squarely presented, . . . I might vote to overrule *Estelle*." *Helling*, *supra*, at ___ (slip op., at 6) (THOMAS, J., dissenting). Nonetheless, the issue is not squarely presented in this case. Respondents have not asked us to revisit *Estelle*, and no one has briefed or argued the question. In addition to these prudential concerns, *stare decisis* counsels hesitation in overruling even dubious precedents. See *ibid.* For these reasons, I concur in the Court's judgment.[2] In doing so, however, I remain

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[1]The facts of this case demonstrate how difficult that task can be. When petitioner was taken out of general prison population for security reasons at USP-Lewisburg, he asserted that he "d[id] not need extra security precautions" and filed suit alleging that placing him in solitary confinement was unconstitutional. See *Farmer* v. *Carlson*, 685 F. Supp. 1335, 1342 (MD Pa. 1988). Petitioner's present claim, oddly enough, is essentially that *leaving him* in general prison population was unconstitutional because it subjected him to a risk of sexual assault.

[2]I do not read the remand portion of the Court's opinion to intimate that the courts below reached the wrong result, especially because the Seventh Circuit has long followed the rule of law the Court lays down today. See *McGill* v. *Duckworth*, 944 F. 2d 344 (CA7 1991); *Duckworth* v. *Franzen*, 780 F. 2d 645 (CA7 1985). Rather, I regard it as a cautionary measure undertaken merely to give the Court of Appeals an opportunity to decide in the first

hopeful that in a proper case the Court will reconsider *Estelle* in light of the constitutional text and history.

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instance whether the District Court erroneously gave dispositive weight to petitioner's failure to complain to prison officials that he believed himself at risk of sexual assault in general prison population. *Ante*, at 23–24. If, on remand, the Seventh Circuit concludes that the District Court did not, nothing in the Court's opinion precludes the Seventh Circuit from summarily affirming the entry of summary judgment in respondents' favor.

HAB

To: The Chief Justice
Justice Blackmun
Justice Stevens
Justice O'Connor
Justice Scalia
Justice Kennedy
Justice Souter
Justice Ginsburg

From: **Justice Thomas**

Circulated: May 18, 1994

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 92-7247

DEE FARMER, PETITIONER *v.* EDWARD BRENNAN, WARDEN, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[May ___, 1994]

JUSTICE THOMAS, concurring in the judgment.

Prisons are necessarily dangerous places; they house society's most antisocial and violent people in close proximity with one another. Regrettably, "[s]ome level of brutality and sexual aggression among [prisoners] is inevitable no matter what the guards do . . . unless all prisoners are locked in their cells 24 hours a day and sedated." *McGill* v. *Duckworth*, 944 F. 2d 344, 348 (CA7 1991). Today, in an attempt to rectify such unfortunate conditions, the Court further refines the "National Code of Prison Regulation," otherwise known as the Cruel and Unusual Punishments Clause. *Hudson* v. *McMillian*, 503 U. S. ___, ___ [112 S. Ct. 995, 1010] (1992) (slip op., at __) (THOMAS, J., dissenting).

I adhere to my belief, expressed in *Hudson* and *Helling* v. *McKinney*, 509 U. S. ___ [113 S. Ct. 2475] (1993) (THOMAS, J., dissenting), that "judges or juries—but not jailers—impose 'punishment.'" *Id.*, at ___ [113 S. Ct. at 2484] (slip op., at __). "Punishment," from the time of the Founding through the present day, "has always meant a 'fine, penalty, or confinement inflicted upon a person by the authority of the law and the judgment and sentence of a court, for some crime or offense committed by him.'" *Id.*, at ___ [113 S. Ct. at 2483] (quoting Black's Law Dictionary 1234 (6th ed.

1990)). See also 2 T. Sheridan, A General Dictionary of the English Language (1780) (defining "punishment" as "[a]ny infliction imposed in vengeance of a crime"). Conditions of confinement are not punishment in any recognized sense of the term, unless imposed as part of a sentence. See *Helling*, *supra*, at ___ [113 S. Ct. at 2485]. As an original matter, therefore, this case would be an easy one for me: because the unfortunate attack that befell petitioner was not part of his sentence, it did not constitute "punishment" under the Eighth Amendment.

When approaching this case, however, we do not write on a clean slate. Beginning with *Estelle* v. *Gamble*, 429 U. S. 97 (1976), the Court's prison condition jurisprudence has been guided, not by the text of the Constitution, but rather by "evolving standards of decency that mark the progress of a maturing society." *Id.*, at 102 (internal quotation marks omitted). See also *ante*, at 6; *Helling, supra*; *Hudson, supra*. I continue to doubt the legitimacy of that mode of constitutional decisionmaking, the logical result of which, in this context, is to transform federal judges into superintendents of prison conditions nationwide. See *Helling*, *supra*, at ___—___ [113 S. Ct. at 2484–2485] (slip op., at __-__) (THOMAS, J., dissenting). Although *Estelle* loosed the Eighth Amendment from its historical moorings, the Court is now unwilling to accept the full consequences of its decision and therefore resorts to the "subjective" (state of mind) component of post-*Estelle* Eighth Amendment analysis in an attempt to contain what might otherwise be unbounded liability for prison officials under the Cruel and Unusual Punishments Clause. Cf. *McGill*, *supra*, at 348.

Although I disagree with the constitutional predicate of the Court's analysis, I share the Court's view that petitioner's theory of liability—that a prison official can be held liable for risks to prisoner safety of which he

was ignorant but should have known—fails under even "a straightforward application of *Estelle*." *Helling*, *supra*, at ___ [113 S. Ct. at 2485] (THOMAS, J., dissenting). In adopting the "deliberate indifference" standard for challenges to prison conditions, *Estelle* held that mere "inadverten[ce]" or "negligen[ce]" does not violate the Eighth Amendment. 429 U. S., at 104. "From the very outset, thus, we specified that the Eighth Amendment does not apply to every deprivation, or even every unnecessary deprivation, suffered by a prisoner, but *only* that narrow class of deprivations involving 'serious' injury inflicted by prison officials acting with a culpable state of mind." *Hudson*, *supra*, at ___ [112 S. Ct., at 1006] (slip op., at __) (THOMAS, J., dissenting). We reiterated this understanding in *Wilson* v. *Seiter*, 501 U. S. 294, 305 (1991), holding that "mere negligence" does not constitute deliberate indifference under *Estelle*. See also, *e. g.*, *Whitley* v. *Albers*, 475 U. S. 312, 319 (1986). Petitioner's suggested "should have known" standard is nothing but a negligence standard, as the Court's discussion implicitly assumes. *Ante*, at 10–12. Thus, even under *Estelle*, petitioner's theory of liability necessarily fails.

The question remains, however, what state of mind *is* sufficient to constitute deliberate indifference under *Estelle*. Given my serious doubts concerning the correctness of *Estelle* in extending the Eighth Amendment to cover challenges to conditions of confinement, I believe the scope of the *Estelle* "right" should be confined as narrowly as possible. Cf. *Helling*, *supra*, at ___ [113 S. Ct. at 2485] (slip op., at __) (THOMAS, J., dissenting). In *Wilson*, the Court has already held that the highest subjective standard known to our Eighth Amendment jurisprudence—"malicious and sadistic" action "for the very purpose of causing harm," *Whitley*, *supra*, at 320–321—"does not apply to prison condition cases." *Wilson*, *supra*, at 303. The Court today adopts the next

highest level of subjective intent, actual knowledge of the type sufficient to constitute recklessness in the criminal law, *ante*, at 10, 13, noting that "due regard" is appropriate "for prison officials' 'unenviable task of keeping dangerous men safe in custody under humane conditions.'"[1] *Id.*, at 18 (quoting *Spain* v. *Procunier*, 600 F. 2d 189, 193 (CA9 1979) (Kennedy, J.)).

Even though the Court takes a step in the right direction by adopting a restrictive definition of deliberate indifference, I cannot join the Court's opinion. For the reasons expressed more fully in my dissenting opinions in *Hudson* and *Helling*, I remain unwilling to subscribe to the view, adopted by *ipse dixit* in *Estelle*, that the Eighth Amendment regulates prison conditions not imposed as part of a sentence. Indeed, "[w]ere the issue squarely presented, . . . I might vote to overrule *Estelle*." *Helling*, *supra*, at ___ [113 S. Ct. at 2485] (slip op., at __) (THOMAS, J., dissenting). Nonetheless, the issue is not squarely presented in this case. Respondents have not asked us to revisit *Estelle*, and no one has briefed or argued the question. In addition to these prudential concerns, *stare decisis* counsels hesitation in overruling even dubious precedents. See *ibid.* For these reasons, I concur in the Court's judgment.[2] In doing so, howev-

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[1]The facts of this case demonstrate how difficult that task can be. When petitioner was taken out of general prison population for security reasons at USP-Lewisburg, he asserted that he "d[id] not need extra security precautions" and filed suit alleging that placing him in solitary confinement was unconstitutional. See *Farmer* v. *Carlson*, 685 F. Supp. 1335, 1342 (MD Pa 1988). Petitioner's present claim, oddly enough, is essentially that *leaving him* in general prison population was unconstitutional because it subjected him to a risk of sexual assault.

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er, I remain hopeful that in a proper case the Court will reconsider *Estelle* in light of the constitutional text and history.

(CA7 1991); *Duckworth* v. *Franzen*, 780 F. 2d 645 (CA7 1985). Rather, I regard it as a cautionary measure undertaken merely to give the Court of Appeals an opportunity to decide in the first instance whether the District Court erroneously gave dispositive weight to petitioner's failure to complain to prison officials that he believed himself at risk of sexual assault in general prison population. *Ante*, at 23–24. If, on remand, the Seventh Circuit concludes that the District Court did not, nothing in the Court's opinion precludes the Seventh Circuit from summarily affirming the entry of summary judgment in respondents' favor.

Draft

To: The Chief Justice
Justice Stevens
Justice O'Connor
Justice Scalia
Justice Kennedy
Justice Souter
Justice Thomas
Justice Ginsburg

From: **Justice Blackmun**

Circulated: _____

Recirculated: _____

Ward: please attach the [illegible]

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 92–7247

DEE FARMER, PETITIONER *v.* EDWARD BRENNAN, WARDEN, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[June ___, 1994]

JUSTICE BLACKMUN, concurring.

I agree with Justice Stevens that inhumane prison conditions violate the Eighth Amendment even if no prison official has an improper, subjective state of mind. This Court's holding in *Wilson* v. *Seiter*, 501 U. S. 294 (1991), to the effect that barbaric prison conditions may be beyond the reach of the Eighth Amendment if no prison official can be deemed individually culpable, in my view is insupportable in principle and is inconsistent with our precedents interpreting the Cruel and Unusual Punishments Clause. Whether the Constitution has been violated "should turn on the character of the punishment rather than the motivation of the individual who inflicted it." *Estelle* v. *Gamble*, 429 U. S. 97, 116 (1976) (STEVENS, J., dissenting). *Wilson* v. *Seiter* should be overruled.

Although I do not go along with the Court's reliance on *Wilson* in defining the "deliberate indifference" standard, I join the Court's opinion, because it creates no new obstacles for prison inmates to overcome, and it sends a clear message to prison officials that their affirmative duty under the Constitution to provide for the safety of inmates is not to be taken lightly. Under the Court's decision today, prison officials may be held liable for failure to remedy a risk so obvious and

Draft

To: The Chief Justice
Justice Stevens
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[June ___, 1994]

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substantial that the officials must have known about it, see *ante*, at 16, and prisoners need not "'await a tragic event [such as an] actua[l] assaul[t] before obtaining relief,'" *ante*, at 19.

I

Petitioner is a transsexual who is currently serving a 20–year sentence in an all-male federal prison for credit-card fraud. Although a biological male, petitioner has undergone treatment for silicone breast implants and unsuccessful surgery to have his testicles removed. Despite his overtly feminine characteristics, and his previous segregation at a different federal prison because of safety concerns, see *Farmer* v. *Carlson*, 685 F. Supp. 1335, 1342 (MD Pa. 1988), prison officials at the United States Penitentiary in Terre Haute, Indiana, housed him in the general population of that maximum-security prison. Less than two weeks later, petitioner was brutally beaten and raped by another inmate in petitioner's cell.

Homosexual rape or other violence among prison inmates serves absolutely no penological purpose. See *Rhodes* v. *Chapman*, 452 U. S. 337, 345–346 (1981), citing *Gregg* v. *Georgia*, 428 U. S. 155, 183 (1976) (joint opinion) (the Eighth Amendment prohibits all punishment, physical and mental, which is "totally without penological justification"). "Such brutality is the equivalent of torture, and is offensive to any modern standard of human dignity." *United States* v. *Bailey*, 444 U. S. 394, 423 (1980) (BLACKMUN, J., dissenting). The horrors experienced by many young inmates, particularly those who, like petitioner, are convicted of nonviolent offenses, border on the unimaginable. Prison rape not only threatens the lives of those who fall prey to their aggressors, but is potentially devastating to the human spirit. Shame, depression, and a shattering loss of self-esteem, accompany the perpetual terror the victim

thereafter must endure. See Note, Rape in Prison and AIDS: A Challenge for the Eighth Amendment Framework of *Wilson* v. *Seiter*, 44 Stan. L. Rev. 1541, 1545 (1992). Unable to fend for himself without the protection of prison officials, the victim finds himself at the mercy of larger, stronger, and ruthless inmates. Although formally sentenced to a term of incarceration, many inmates discover that their punishment, even for nonviolent offenses like credit-card fraud or tax evasion, is punished by a reign of terror unmitigated by the protection supposedly afforded by prison officials.[1]

The fact that our prisons are badly overcrowded and understaffed ~~undoubtedly~~ may well explain many of the shortcomings of our penal systems. But our Constitution sets minimal standards governing the administration of punishment in this country, see *Rhodes*, 452 U. S., at 347, and thus it is no answer to the complaints of the brutalized inmate that the resources are unavailable to protect him from what, in reality, is nothing less than torture. I stated in dissent in *United States* v. *Bailey*:

> "It is society's responsibility to protect the life and health of its prisoners. '[W]hen a sheriff or a marshall [sic] takes a man from the courthouse in

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[1] Numerous court opinions document the pervasive violence among inmates in our state and federal prisons. See, *e.g.*, *United States* v. *Bailey*, 444 U. S. 394, 421 (1980) (BLACKMUN, J., dissenting); *McGill* v. *Duckworth*, 944 F. 2d 344, 348 (CA7 1991), cert. denied, ___ U. S. ___ (1992); *Redman* v. *County of San Diego*, 942 F. 2d 1435 (CA9 1991) (en banc), cert. denied, ___ U. S. ___ (1992); *Hassine* v. *Jeffes*, 846 F. 2d 169, 172 (CA3 1988); *Alberti* v. *Klevenhagen*, 790 F. 2d 1220, 1222 (CA5), clarified, 799 F. 2d 992 (CA5 1986); *Jones* v. *Diamond*, 636 F. 2d 1364, 1372 (CA5 1981), overruled on other grounds, 790 F. 2d 1174 (CA5 1986); *Withers* v. *Levine*, 615 F. 2d 158, 161 (CA4), cert. denied, 449 U. S. 849 (1980); *Little* v. *Walker*, 552 F. 2d 193, 194 (CA7 1977), cert. denied, 435 U. S. 932 (1978); *Holt* v. *Sarver*, 442 F. 2d 304, 308 (CA8 1971), later proceeding *sub. nom.*, *Hutto* v. *Finney*, 437 U. S. 678 (1978).

a prison van and transports him to confinement for two or three or ten years, *this is our act. We* have tolled the bell for him. And whether we like it or not, we have made him our collective responsibility. We are free to do something about him; he is not" (emphasis in original). Address by THE CHIEF JUSTICE, 25 Record of the Assn. of the Bar of the City of New York 14, 17 (Mar. 1970 Supp.)." 444 U. S., at 423.

The Court in *Wilson* v. *Seiter*, 501 U. S. 294 (1991), held that pain and suffering endured by a prisoner, no matter how severe or unnecessary, will not be held violative of the Cruel and Unusual Punishments Clause unless the prisoner establishes that some prison official intended the harm. The Court justified this remarkable conclusion by asserting that only pain that is intended by a state actor to be punishment is punishment. See *Wilson*, 501 U. S., at 300 ("The source of the intent requirement is not the predilections of this Court, but the Eighth Amendment itself, which bans only cruel and unusual *punishment*. If the pain inflicted is not formally meted out as *punishment* by the statute or the sentencing judge, some mental element must be attributed to the inflicting officer before it can qualify") (emphasis in original).

The Court's analysis is fundamentally misguided; indeed it defies common sense. "Punishment" does not necessarily imply a culpable state of mind on the part of an identifiable punisher. A ~~person~~ may experience punishment when he suffers "severe, rough, or disastrous treatment," see, *e.g.* ., Webster's Third New International Dictionary 1843 (1961), regardless of whether a state actor intended the cruel treatment to chastise or deter ~~the prisoner~~. See also Webster's New International Dictionary of the English Language 1736 (1923) (defining punishment as "[a]ny pain, suffering, or loss

inflicted on *or suffered by* a person because of a crime or evil-doing") (emphasis supplied); cf. *Wilson*, 501 U. S., at 300, quoting *Duckworth* v. *Franzen*, 780 F. 2d 645, 652 (CA7 1985), cert. denied, 479 U. S. 816 (1986) ("'The infliction of punishment is a deliberate act intended to chastise or deter").[2]

Wilson's myopic focus on the intentions of *prison officials* is also mistaken. Where a legislature refuses to fund a prison adequately, the resulting barbaric conditions should not be immune from constitutional scrutiny simply because no prison official acted culpably. *Wilson* failed to recognize that "state-sanctioned punishment consists not so much of specific acts attributable to individual state officials, but more of a cumulative agglomeration of action (and inaction) on an institutional level." The Supreme Court—Leading Cases, 105 Harv. L. Rev. 177, 243 (1991). The responsibility for subminimal conditions in any prison inevitably is diffuse, and often borne, at least in part, by the legislature. Yet, regardless of what state actor or institution caused the harm and with what intent, the experience of the inmate is the same. A punishment is simply no less cruel or unusual because its harm is unintended. In view of this obvious fact, there is no reason to believe that, in adopting the Eighth Amendment, the Framers

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[2] Consider, for example, a situation in which one individual is sentenced to a period of confinement at a relatively safe, well-managed prison, complete with tennis courts and cable television, while another is sentenced to a prison characterized by rampant violence and terror. Under such circumstances, it is natural to say that the latter individual was subjected to a more extreme punishment. It matters little that the sentencing judge did not specify to which prison the individuals would be sent; nor is it relevant that the prison officials did not intend either individual to suffer any attack. The conditions of confinement, whatever the reason for them, resulted in differing punishment for the two convicts.

intended to prohibit cruel and unusual punishments only when they were ~~intentional~~. As Judge Noonan has observed:

> "The Framers were familiar from their wartime experience of British prisons with the kind of cruel punishment administered by a warden with the mentality of a Captain Bligh. *But they were also familiar with the cruelty that came from bureaucratic indifference to the conditions of confinement.* The Framers understood that cruel and unusual punishment can be administered by the failure of those in charge to give heed to the impact of their actions on those within their care." *Jordan* v. *Gardner*, 986 F. 2d 1521, 1544 (CA9 1993) (~~Noonan, J.~~, concurring) (citations omitted) (emphasis supplied).

Before *Wilson*, it was assumed, if not established, that the conditions of confinement are themselves part of the punishment, even if not specifically "meted out" by a statute or judge. See *Wilson*, 501 U. S., 306–309 (White, J., concurring), citing *Hutto* v. *Finney*, 437 U. S. 678 (1978); *Rhodes* v. *Chapman*, 452 U. S. 337 (1981). We examined only the objective severity of the conditions of confinement in the pre-*Wilson* cases, not the subjective intent of government officials, as we found that "[a]n express intent to inflict unnecessary pain is not required. . . . *[H]arsh 'conditions of confinement' may constitute cruel and unusual punishment* unless such conditions 'are part of the penalty that criminal offenders pay for their offenses against society." *Whitley* v. *Albers*, 475 U. S. 312, 319 (1986), quoting *Rhodes*, 452 U. S., at 347 (emphasis added). This initial approach, which employed an objective standard to chart the boundaries of the Eighth Amendment, reflected the practical reality that "intent simply is not very meaningful when considering a challenge to an institution, such

as a prison system," *Wilson*, 501 U. S., at 310 (White, J., concurring), it also, however, demonstrated a commitment to the principles underlying the Eighth Amendment. The Cruel and Unusual Punishments Clause was not adopted to protect prison officials with arguably benign intentions from lawsuits. The Eighth Amendment guarantees each prisoner that reasonable measures will be taken to ensure his safety. Where a prisoner can prove that no such reasonable steps were taken and, as a result, he experienced severe pain or suffering without any penological justification, the Eighth Amendment is violated regardless of whether there is an easily identifiable wrongdoer with poor intentions.

II

Though I believe *Wilson* v. *Seiter* should be overruled, and disagree with the Court's reliance upon that case in defining the "deliberate indifference" standard, I nonetheless join the Court's opinion. Petitioner never challenged this Court's holding in *Wilson* or sought reconsideration of the theory upon which that decision is based. More importantly, the Court's opinion does not extend *Wilson* beyond its ill-conceived boundaries or erect any new obstacles for prison inmates to overcome in seeking to remedy cruel and unusual conditions of confinement. The Court specifically recognizes that "[h]aving incarcerated people with demonstrated proclivities for criminally antisocial and, in many cases, violent conduct, [and] having stripped them of virtually every means of self-protection and foreclosed their access to outside aid, the government and its officials are not free to let the state of nature take its course." *Ante*, at 6. The Court further acknowledges that prison rape is not constitutionally tolerable, see *ibid.*, ("[b]eing violently assaulted in prison is simply not 'part of the penalty that criminal offenders pay for their offenses against society'"), and it clearly states that prisoners can obtain

relief before being victimized, see *ante*, at 19 ("a subjective approach to deliberate indifference does not require a prisoner seeking 'a remedy for unsafe conditions [to] await a tragic event [such as an] actua[l] assaul[t] before obtaining relief'"). Finally, under the Court's holding, prison officials may be held liable for failure to remedy a risk of harm so obvious and substantial that the prison officials must have known about it, see *ante*, at 16. The opinion's clear message is that prison officials must fulfill their affirmative duty under the Constitution to prevent inmate assault, including prison rape, or otherwise face a serious risk of being held liable for damages, see *ante*, at 15–18, or being required by a court to rectify the hazardous conditions, see *ante*, at 19–21. As much as is possible within the constraints of *Wilson* v. *Seiter*, the Court seeks to ensure that the conditions in our Nation's prisons in fact comport with the "contemporary standard of decency" required by the Eighth Amendment. See *DeShaney* v. *Winnebago Cty. Dept. of Social Services*, 489 U. S. 189, 198–200 (1989). Short of overruling *Wilson* v. *Seiter*, the Court could do no better.

To: The Chief Justice
Justice Stevens
Justice O'Connor
Justice Scalia
Justice Kennedy
Justice Souter
Justice Thomas
Justice Ginsburg

From: **Justice Blackmun**

Circulated: June 1, 1994

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 92–7247

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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The Court in *Wilson* v. *Seiter*, 501 U. S. 294 (1991), held that any pain and suffering endured by a prisoner which is not formally a part of his sentence—no matter how severe or unnecessary— will not be held violative of the Cruel and Unusual Punishments Clause unless the prisoner establishes that some prison official intended the harm. The Court justified this remarkable conclusion by asserting that only pain that is intended by a state actor to be punishment is punishment. See *Wilson*, 501 U. S., at 300 ("The source of the intent requirement is not the predilections of this Court, but the Eighth Amendment itself, which bans only cruel and unusual *punishment*. If the pain inflicted is not formally meted out as *punishment* by the statute or the sentencing judge, some mental element must be attributed to the inflicting officer before it can qualify") (emphasis in original).

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The Court's unduly narrow definition of punishment blinds it to the reality of prison life. Consider, for example, a situation in which one individual is sentenced to a period of confinement at a relatively safe, well-managed prison, complete with tennis courts and cable television, while another is sentenced to a prison characterized by rampant violence and terror. Under such circumstances, it is natural to say that the latter individual was subjected to a more extreme punishment. It matters little that the sentencing judge did not specify to which prison the individuals would be sent; nor is it relevant that the prison officials did not intend either individual to suffer any attack. The conditions of confinement, whatever the reason for them, resulted in differing punishment for the two convicts.

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> "The Framers were familiar from their wartime experience of British prisons with the kind of cruel punishment administered by a warden with the mentality of a Captain Bligh. *But they were also familiar with the cruelty that came from bureaucratic indifference to the conditions of confinement.* The Framers understood that cruel and unusual punishment can be administered by the failure of those in charge to give heed to the impact of their actions on those within their care." *Jordan* v. *Gardner*, 986 F. 2d 1521, 1544 (CA9 1993) (concurring opinion) (citations omitted) (emphasis supplied).

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II

Though I believe *Wilson* v. *Seiter* should be overruled, and disagree with the Court's reliance upon that case in defining the "deliberate indifference" standard, I nonetheless join the Court's opinion. Petitioner never challenged this Court's holding in *Wilson* or sought reconsideration of the theory upon which that decision is based. More importantly, the Court's opinion does not extend *Wilson* beyond its ill-conceived boundaries or erect any new obstacles for prison inmates to overcome in seeking to remedy cruel and unusual conditions of confinement. The Court specifically recognizes that

"[h]aving incarcerated people with demonstrated proclivities for criminally antisocial and, in many cases, violent conduct, [and] having stripped them of virtually every means of self-protection and foreclosed their access to outside aid, the government and its officials are not free to let the state of nature take its course." *Ante*, at 6. The Court further acknowledges that prison rape is not constitutionally tolerable, see *ibid.*, ("[b]eing violently assaulted in prison is simply not 'part of the penalty that criminal offenders pay for their offenses against society'"), and it clearly states that prisoners can obtain relief before being victimized, see *ante*, at 19 ("a subjective approach to deliberate indifference does not require a prisoner seeking 'a remedy for unsafe conditions [to] await a tragic event [such as an] actua[l] assaul[t] before obtaining relief'"). Finally, under the Court's holding, prison officials may be held liable for failure to remedy a risk of harm so obvious and substantial that the prison officials must have known about it, see *ante*, at 16. The opinion's clear message is that prison officials must fulfill their affirmative duty under the Constitution to prevent inmate assault, including prison rape, or otherwise face a serious risk of being held liable for damages, see *ante*, at 15–18, or being required by a court to rectify the hazardous conditions, see *ante*, at 19–21. As much as is possible within the constraints of *Wilson* v. *Seiter*, the Court seeks to ensure that the conditions in our Nation's prisons in fact comport with the "contemporary standard of decency" required by the Eighth Amendment. See *DeShaney* v. *Winnebago Cty. Dept. of Social Services*, 489 U. S. 189, 198–200 (1989). Short of overruling *Wilson* v. *Seiter*, the Court could do no better.

Fixed for next time. wsm

To: The Chief Justice
Justice Stevens
Justice O'Connor
ıstice Scalia
stice Kennedy
stice Souter
tice Thomas
tice Ginsburg

n: **Justice Blackmun**

lated: June 1, 1994

ulated:

OK for release? I fixed a few things as marked on the second copy attached. I've asked MA if she has changes. (No need to recirculate.) wsm

SUPRE **'ATES**

DEI ..ER, PETITIONER *v.* EDWARD BRENNAN, WARDEN, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[June ___, 1994]

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I agree with Justice Stevens that inhumane prison conditions violate the Eighth Amendment even if no prison official has an improper, subjective state of mind. This Court's holding in *Wilson* v. *Seiter*, 501 U. S. 294 (1991), to the effect that barbaric prison conditions may be beyond the reach of the Eighth Amendment if no prison official can be deemed individually culpable, in my view is insupportable in principle and is inconsistent with our precedents interpreting the Cruel and Unusual Punishments Clause. Whether the Constitution has been violated "should turn on the character of the punishment rather than the motivation of the individual who inflicted it." *Estelle* v. *Gamble*, 429 U. S. 97, 116 (1976) (STEVENS, J., dissenting). *Wilson* v. *Seiter* should be overruled.

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Justice O'Connor
Justice Scalia
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Justice Souter
Justice Thomas
Justice Ginsburg

From: **Justice Blackmun**

Circulated: June 1, 1994

Recirculated: _____

1st DRAFT

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HAB

To: The Chief Justice
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Justice O'Connor
Justice Scalia
Justice Kennedy
Justice Souter
Justice Thomas
Justice Ginsburg

From: **Justice Blackmun**

Circulated: June 1, 1994

Recirculated: _____

1st DRAFT

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*Numerous court opinions document the pervasive violence among inmates in our state and federal prisons. See, *e.g.*, *United States* v. *Bailey*, 444 U. S. 394, 421 (1980) (BLACKMUN, J., dissenting); *McGill* v. *Duckworth*, 944 F. 2d 344, 348 (CA7 1991), cert. denied, ___ U. S. ___ (1992); *Redman* v. *County of San Diego*, 942 F. 2d 1435 (CA9 1991) (en banc), cert. denied, ___ U. S. ___ (1992); *Hassine* v. *Jeffes*, 846 F. 2d 169, 172 (CA3 1988); *Alberti* v. *Klevenhagen*, 790 F. 2d 1220, 1222 (CA5), clarified, 799 F. 2d 992 (CA5 1986); *Jones* v. *Diamond*, 636 F. 2d 1364, 1372 (CA5 1981), overruled on other grounds, 790 F. 2d 1174 (CA5 1986); *Withers* v. *Levine*, 615 F. 2d 158, 161 (CA4), cert. denied, 449 U. S. 849 (1980); *Little* v. *Walker*, 552 F. 2d 193, 194 (CA7 1977), cert. denied, 435 U. S. 932 (1978); *Holt* v. *Sarver*, 442 F. 2d 304, 308 (CA8 1971), later proceeding *sub. nom.*, *Hutto* v. *Finney*, 437 U. S. 678 (1978).

from what, in reality, is nothing less than torture. I stated in dissent in *United States* v. *Bailey*:

> "It is society's responsibility to protect the life and health of its prisoners. '[W]hen a sheriff or a marshall [sic] takes a man from the courthouse in a prison van and transports him to confinement for two or three or ten years, *this is our act. We* have tolled the bell for him. And whether we like it or not, we have made him our collective responsibility. We are free to do something about him; he is not' (emphasis in original). Address by THE CHIEF JUSTICE, 25 Record of the Assn. of the Bar of the City of New York 14, 17 (Mar. 1970 Supp.)." 444 U. S., at 423.

The Court in *Wilson* v. *Seiter*, 501 U. S. 294 (1991), held that any pain and suffering endured by a prisoner which is not formally a part of his sentence—no matter how severe or unnecessary— will not be held violative of the Cruel and Unusual Punishments Clause unless the prisoner establishes that some prison official intended the harm. The Court justified this remarkable conclusion by asserting that only pain that is intended by a state actor to be punishment is punishment. See *Wilson*, 501 U. S., at 300 ("The source of the intent requirement is not the predilections of this Court, but the Eighth Amendment itself, which bans only cruel and unusual *punishment*. If the pain inflicted is not formally meted out as *punishment* by the statute or the sentencing judge, some mental element must be attributed to the inflicting officer before it can qualify") (emphasis in original).

The Court's analysis is fundamentally misguided; indeed it defies common sense. "Punishment" does not necessarily imply a culpable state of mind on the part of an identifiable punisher. A prisoner may experience

punishment when he suffers "severe, rough, or disastrous treatment," see, *e.g.* ., Webster's Third New International Dictionary 1843 (1961), regardless of whether a state actor intended the cruel treatment to chastise or deter. See also Webster's New International Dictionary of the English Language 1736 (1923) (defining punishment as "[a]ny pain, suffering, or loss inflicted on *or suffered by* a person because of a crime or evil-doing") (emphasis supplied); cf. *Wilson*, 501 U. S., at 300, quoting *Duckworth* v. *Franzen*, 780 F. 2d 645, 652 (CA7 1985), cert. denied, 479 U. S. 816 (1986) ("'The infliction of punishment is a deliberate act intended to chastise or deter").

The Court's unduly narrow definition of punishment blinds it to the reality of prison life. Consider, for example, a situation in which one individual is sentenced to a period of confinement at a relatively safe, well-managed prison, complete with tennis courts and cable television, while another is sentenced to a prison characterized by rampant violence and terror. Under such circumstances, it is natural to say that the latter individual was subjected to a more extreme punishment. It matters little that the sentencing judge did not specify to which prison the individuals would be sent; nor is it relevant that the prison officials did not intend either individual to suffer any attack. The conditions of confinement, whatever the reason for them, resulted in differing punishment for the two convicts.

Wilson's myopic focus on the intentions of *prison officials* is also mistaken. Where a legislature refuses to fund a prison adequately, the resulting barbaric conditions should not be immune from constitutional scrutiny simply because no prison official acted culpably. *Wilson* failed to recognize that "state-sanctioned punishment consists not so much of specific acts attributable to individual state officials, but more of a cumulative agglomeration of action (and inaction) on an institutional

level." The Supreme Court—Leading Cases, 105 Harv. L. Rev. 177, 243 (1991). The responsibility for subminimal conditions in any prison inevitably is diffuse, and often borne, at least in part, by the legislature. Yet, regardless of what state actor or institution caused the harm and with what intent, the experience of the inmate is the same. A punishment is simply no less cruel or unusual because its harm is unintended. In view of this obvious fact, there is no reason to believe that, in adopting the Eighth Amendment, the Framers intended to prohibit cruel and unusual punishments only when they were inflicted intentionally. As Judge Noonan has observed:

> "The Framers were familiar from their wartime experience of British prisons with the kind of cruel punishment administered by a warden with the mentality of a Captain Bligh. *But they were also familiar with the cruelty that came from bureaucratic indifference to the conditions of confinement.* The Framers understood that cruel and unusual punishment can be administered by the failure of those in charge to give heed to the impact of their actions on those within their care." *Jordan* v. *Gardner*, 986 F. 2d 1521, 1544 (CA9 1993) (concurring opinion) (citations omitted) (emphasis supplied).

Before *Wilson*, it was assumed, if not established, that the conditions of confinement are themselves part of the punishment, even if not specifically "meted out" by a statute or judge. See *Wilson*, 501 U. S., 306–309 (White, J., concurring), citing *Hutto* v. *Finney*, 437 U. S. 678 (1978); *Rhodes* v. *Chapman*, 452 U. S. 337 (1981). We examined only the objective severity of the conditions of confinement in the pre-*Wilson* cases, not the subjective intent of government officials, as we found that "[a]n express intent to inflict unnecessary pain is

not required. . . . *[H]arsh 'conditions of confinement' may constitute cruel and unusual punishment* unless such conditions 'are part of the penalty that criminal offenders pay for their offenses against society." *Whitley* v. *Albers*, 475 U. S. 312, 319 (1986), quoting *Rhodes*, 452 U. S., at 347 (emphasis added). This initial approach, which employed an objective standard to chart the boundaries of the Eighth Amendment, reflected the practical reality that "intent simply is not very meaningful when considering a challenge to an institution, such as a prison system," *Wilson*, 501 U. S., at 310 (White, J., concurring). It also, however, demonstrated a commitment to the principles underlying the Eighth Amendment. The Cruel and Unusual Punishments Clause was not adopted to protect prison officials with arguably benign intentions from lawsuits. The Eighth Amendment guarantees each prisoner that reasonable measures will be taken to ensure his safety. Where a prisoner can prove that no such reasonable steps were taken and, as a result, he experienced severe pain or suffering without any penological justification, the Eighth Amendment is violated regardless of whether there is an easily identifiable wrongdoer with poor intentions.

II

Though I believe *Wilson* v. *Seiter* should be overruled, and disagree with the Court's reliance upon that case in defining the "deliberate indifference" standard, I nonetheless join the Court's opinion. Petitioner never challenged this Court's holding in *Wilson* or sought reconsideration of the theory upon which that decision is based. More importantly, the Court's opinion does not extend *Wilson* beyond its ill-conceived boundaries or erect any new obstacles for prison inmates to overcome in seeking to remedy cruel and unusual conditions of confinement. The Court specifically recognizes that

"[h]aving incarcerated people with demonstrated proclivities for criminally antisocial and, in many cases, violent conduct, [and] having stripped them of virtually every means of self-protection and foreclosed their access to outside aid, the government and its officials are not free to let the state of nature take its course." *Ante*, at 6. The Court further acknowledges that prison rape is not constitutionally tolerable, see *ibid.*, ("[b]eing violently assaulted in prison is simply not 'part of the penalty that criminal offenders pay for their offenses against society'"), and it clearly states that prisoners can obtain relief before being victimized, see *ante*, at 19 ("a subjective approach to deliberate indifference does not require a prisoner seeking 'a remedy for unsafe conditions [to] await a tragic event [such as an] actua[l] assaul[t] before obtaining relief'"). Finally, under the Court's holding, prison officials may be held liable for failure to remedy a risk of harm so obvious and substantial that the prison officials must have known about it, see *ante*, at 16. The opinion's clear message is that prison officials must fulfill their affirmative duty under the Constitution to prevent inmate assault, including prison rape, or otherwise face a serious risk of being held liable for damages, see *ante*, at 15–18, or being required by a court to rectify the hazardous conditions, see *ante*, at 19–21. As much as is possible within the constraints of *Wilson* v. *Seiter*, the Court seeks to ensure that the conditions in our Nation's prisons in fact comport with the "contemporary standard of decency" required by the Eighth Amendment. See *DeShaney* v. *Winnebago Cty. Dept. of Social Services*, 489 U. S. 189, 198–200 (1989). Short of overruling *Wilson* v. *Seiter*, the Court could do no better.

Draft: May 26, 1994

92-7247

Farmer v. Brennan

JUSTICE BLACKMUN, concurring.

With Justice Stevens, I agree that inhumane prison conditions violate the Eighth Amendment even if no prison official has an improper, subjective state of mind. This Court's holding in Wilson v. Seiter, 501 U. S. 294 (1991), that barbaric prison conditions may be beyond the reach of the Eighth Amendment if no prison official can be deemed individually culpable, is insupportable in principle and inconsistent with our precedents interpreting the Cruel and Unusual Punishments Clause. Whether the Constitution has been violated "should turn on the character of the punishment rather than the motivation of the individual who inflicted it." Estelle v. Gamble, 429 U. S. 97, 116 (1976)

(STEVENS, J., dissenting). ~~In my view,~~ Wilson v. Seiter should be overruled.

Although I ~~disagree~~ do not go along with the Court's reliance on Wilson in defining the "deliberate indifference" standard, I join the Court's opinion, ~~as~~ because it creates no new obstacles for prison inmates to overcome, and it sends a clear message to prison officials that their affirmative duty under the Constitution to provide for the safety of inmates is not to be taken lightly. Under the Court's decision today, prison officials may be held liable for failure to remedy a risk so obvious and substantial that the ~~prison~~ officials must have known about it, see ante, at 16, and prisoners need not "'await a tragic event' [such as an] 'actual [] assault [] before obtaining relief,'" ~~see~~ ante, at 19.

I

Petitioner is a transsexual who is currently serving a 20-year sentence in an all-male federal prison for credit-card fraud. Although a biological male, petitioner has undergone

treatment for silicone breast implants and unsuccessful surgery to have his testicles removed. Despite his overtly feminine characteristics, and his previous segregation at another federal prison because of safety concerns, see Farmer v. Carlson, 685 F. Supp. 1335, 1342 (MD Pa. 1988), federal prison officials at the United States Penitentiary in Terre Haute, Indiana, housed him in the general population of that maximum security prison. No less than two weeks later, petitioner was brutally beaten and raped by another inmate in petitioner's cell.

Homosexual rape or other violence among prison inmates serves absolutely no penological purpose. See Rhodes v. Chapman, 452 U. S. 337, 345 (1981), quoting Gregg v. Georgia, 428 U. S. 155, 183 (1976) (joint opinion) (the Eighth Amendment prohibits all punishment, physical and mental, which is "totally without penological justification"). "Such brutality is the equivalent of torture, and is offensive to any modern standard of human dignity." United States v. Bailey, 444 U. S. 394, 423 (1980)

(BLACKMUN, J., dissenting). The horrors experienced by many young inmates, particularly those who, like petitioner, are convicted of non-violent offenses, border on the unimaginable. Prison rape not only threatens the lives of those who fall prey to their aggressors, but is potentially devastating to the human spirit. Shame, depression, and a shattering loss of self-esteem, accompany the perpetual terror the victim thereafter must endure. See Note, Rape in Prison and AIDS: A Challenge for the Eighth Amendment Framework of Wilson v. Seiter, 44 Stan. L. Rev. 1541, 1545 (1992). Unable to fend for himself without the protection of prison officials, the victim finds himself at the mercy of larger, stronger, and ruthless inmates. ~~See id.~~ Although formally sentenced to a term of incarceration, many inmates discover that their punishment, even for non-violent offenses like credit-card fraud, tax evasion, or narcotics possession, is

punished by a reign of terror unmitigated by the protection supposedly afforded by prison officials.[1]

The fact that our prisons are badly overcrowded and understaffed undoubtedly explains many of the shortcomings of our penal systems. But our Constitution sets minimal standards governing the administration of punishment in this country, see Rhodes, 452 U. S., at 347, and thus it is no answer to the complaints of the brutalized inmate that the resources are unavailable to protect him from what, in reality, is nothing less than torture. As I stated in dissent in United States v. Bailey:

> "It is society's responsibility to protect the life and health of its prisoners. '[W]hen a sheriff or a marshall [sic] takes a man from the courthouse in a prison van and transports him to confinement for two or three or ten years, this is our act. We have tolled

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[1] Numerous court opinions document the pervasive violence among inmates in our state and federal prisons. See, e.g., United States v. Bailey, 444 U. S. 394, 421 (1980) (BLACKMUN, J., dissenting); McGill v. Duckworth, 944 F.2d 344, 348 (CA7 1991), cert. denied, 112 S.Ct. 1265 (1992); Redman v. County of San Diego, 942 F.2d 1435 (CA9 1991) (en banc), cert. denied, 112 S.Ct. 972 (1992); Hassine v. Jeffes, 846 F.2d 169, 172 (CA3 1988); Alberti v. Klevenhagen, 790 F.2d 1220, 1222 (CA5), clarified, 799 F.2d 992 (CA5 1986); Jones v. Diamond, 636 F.2d 1364, 1372 (CA5 1981), overruled on other grounds, 790 F.2d 1174 (CA5 1986); Withers v. Levine, 615 F.2d 158, 161 (CA4), cert. denied, 449 U. S. 849 (1980); Little v. Walker, 552 F.2d 193, 194 (CA7 1977), cert. denied, 435 U. S. 932 (1978); Holt v. Sarver, 442 F.2d 304, 308 (CA8 1971), later proceeding sub. nom., Hutto v. Finney, 437 U. S. 678 (1978).

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The Court in Wilson v. Seiter, 501 U. S. 294 (1991), held that pain and suffering endured by a prisoner, no matter how severe or unnecessary, will not be held violative of the Cruel and Unusual Punishments Clause unless the prisoner establishes that some prison official intended the harm. The Court justified this remarkable conclusion by asserting that only pain that is intended by a state actor to be punishment is punishment. See Wilson, 501 U. S., at 300 ("The source of the intent requirement is not the predilections of this Court, but the Eighth Amendment itself, which bans only cruel and unusual punishment. If the pain inflicted is not formally meted out as punishment by the statute or the sentencing judge, some mental element must be attributed to the inflicting officer before it can qualify") (emphasis in original).

The Court's analysis is fundamentally misguided; indeed it defies common sense. "Punishment" does not necessarily imply a culpable state of mind on the part of an identifiable punisher. A person may experience punishment when he suffers "severe, rough, or disastrous treatment," see, e.g., Webster's Third New International Dictionary 1843 (1981), regardless of whether a state actor intended the cruel treatment to chastise or deter the prisoner. See also Webster's New International Dictionary of the English Language 1736 (1923) (defining punishment as "[a]ny pain, suffering, or loss inflicted on or suffered by a person because of a crime or evil-doing"); cf. Wilson, 501 U. S., at 300, quoting Duckworth v. Franzen, 780 F.2d 645, 652 (CA7 1985), cert. denied, 479 U. S. 816 (1986) ("'The infliction of punishment is a deliberate act intended to chastise or deter").[2]

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[2] Consider, for example, a situation in which one individual is sentenced to a period of confinement at a relatively safe, well-managed prison, complete with tennis courts and cable television, while another individual is sentenced to a prison characterized by rampant violence and terror. Under such circumstances, it is natural to say that the latter individual was subjected to a more extreme punishment. It matters little that the sentencing judge did not specify to which prison the individuals would be sent; nor is it relevant that the prison officials did not intend either

Wilson's myopic focus on the intentions of prison officials is also mistaken. Where a legislature refuses to fund adequately a prison, the resulting barbaric conditions should not be immune from constitutional scrutiny simply because no prison official acted culpably. Wilson failed to recognize that "state-sanctioned punishment consists not as much of specific acts attributable to individual state officials, but more of a cumulative agglomeration of action (and inaction) on an institutional level." The Supreme Court—Leading Cases, 105 Harv. L. Rev. 177, 243 (1991). The responsibility for subminimal conditions in any prison inevitably is diffuse, and often borne, at least in part, by the the legislature. Id. Yet, regardless of what state actor or institution caused the harm and with what intent, the experience of the inmate is the same. A punishment is simply no less cruel or unusual because its harm is unintended. In view of this obvious fact, there is no reason to

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individual to suffer any attacks. The conditions of confinement, whatever the reason for them, resulted in differing punishment for the two convicts.

believe that, in adopting the Eighth Amendment, the Framers intended to prohibit cruel and unusual punishments only when they were intentionally ~~so~~. As Judge Noonan observed:

> "The Framers were familiar from their wartime experience of British prisons with the kind of cruel punishment administered by a warden with the mentality of a Captain Bligh. But they were also familiar with the cruelty that came from bureaucratic indifference to the conditions of confinement. The Framers understood that cruel and unusual punishment can be administered by the failure of those in charge to give heed to the impact of their actions on those within their care." Jordan v. Gardner, 986 F.2d 1521, 1544 (CA9 1993) (Noonan, J., concurring) (citations omitted) (emphasis supplied).

Before Wilson it was assumed, if not established, that the conditions of confinement are themselves part of the punishment, even if not specifically "meted out" by a statute or judge. See Wilson, 501 U. S., 306-309 (White, J., concurring), citing Hutto v. Finney, 437 U. S. 678 (1978); Rhodes v. Chapman, 452 U. S. 337 (1981). We examined only the objective severity of the conditions of confinement in the pre-Wilson cases, not the subjective intent of government officials, as we found that "[a]n express intent to inflict unnecessary pain is not required. . . . [H]arsh 'conditions of confinement' may constitute cruel and

unusual punishment unless such conditions 'are part of the penalty that criminal offenders pay for their offenses against society." Whitley v. Albers, 475 U. S. 312, 319 (1986), quoting Rhodes, 452 U. S., at 347 (emphasis added). This initial approach, which employed an objective standard to chart the boundaries of the Eighth Amendment, reflected the practical reality that "intent simply is not very meaningful when considering a challenge to an institution, such as a prison system," Wilson, 501 U. S., at 310 (White, J., concurring); it also, however, demonstrated a commitment to the principles underlying the Eighth Amendment. The Cruel and Unusual Punishments Clause was not adopted to protect prison officials with arguably benign intentions from lawsuits. The Eighth Amendment guarantees each prisoner that reasonable measures will be taken to ensure his ~~or her~~ safety. Where a prisoner can prove that no such reasonable steps were taken and, as a result, he experienced severe pain or suffering without any penological

justification, the Eighth Amendment is violated regardless of whether there is an easily identifiable wrongdoer with poor intentions.

II

Though I believe Wilson v. Seiter, supra, should be overruled, and disagree with the Court's reliance upon that case in defining the "deliberate indifference" standard, I nonetheless join the Court's opinion. Petitioner never challenged this Court's holding in Wilson or sought reconsideration of the theory upon which that decision is based. More importantly, the Court's opinion does not extend Wilson beyond its ill-conceived boundaries or erect any new obstacles for prison inmates to overcome in seeking to remedy cruel and unusual conditions of confinement. The Court specifically recognizes that "[h]aving incarcerated people with demonstrated proclivities for criminally antisocial and, in many cases, violent conduct, [and] having stripped them of virtually every means of self-protection and

foreclosed their access to outside aid, the government and its officials are not free to let the state of nature take its course." See ante, at 6. The Court further acknowledges that prison rape is not constitutionally tolerable, see id., ("[b]eing violently assaulted in prison is simply not 'part of the penalty that criminal offenders pay for their offenses against society'"), and it clearly states that prisoners can obtain relief before being victimized, see ante, at 19 ("a subjective approach to deliberate indifference does not require a prisoner seeking 'a remedy for unsafe conditions [to] await a tragic event [such as an] actual assault before obtaining relief'"). Finally, under the Court's holding, prison officials may be held liable for failure to remedy a risk of harm so obvious and substantial that the prison officials must have known about it, see ante, at 16. The opinion's clear message is that prison officials must fulfill their affirmative duty under the Constitution to prevent inmate assault, including prison rape, or

otherwise face a serious risk of being held liable for damages, see ante, at 15-18, or being required by a court to rectify the hazardous conditions, see ante, at 19-21. As much as is possible within the constraints of Wilson v. Seiter, supra, the Court seeks to ensure that the conditions in our nation's prisons in fact comport with the "contemporary standard of decency" required by the Eighth Amendment. See DeShaney v. Winnebago Cty. Dept. of Social Services, 489 U. S. 189, 198-200 (1989). Short of overruling Wilson v. Seiter, the Court could do no better.

MA #1

Draft: May 25, 1994

92-7247

Farmer v. Brennan

JUSTICE BLACKMUN, concurring.

With Justice Stevens, I agree that inhumane prison conditions violate the Eighth Amendment even if no prison official has an improper, subjective state of mind. This Court's holding in Wilson v. Seiter, 501 U. S. 294 (1991), that barbaric prison conditions may be beyond the reach of the Eighth Amendment if no prison official can be deemed individually culpable, is insupportable in principle and inconsistent with our precedents interpreting the Cruel and Unusual Punishments Clause. Whether the Constitution has been violated "should turn on the character of the punishment rather than the motivation of the individual

who inflicted it." Estelle v. Gamble, 429 U. S. 97, 116 (1976) (STEVENS, J., dissenting). In my view, Wilson v. Seiter should be overruled.

Although I disagree with the Court's reliance on Wilson in defining the "deliberate indifference" standard, I join the Court's opinion, as it creates no new obstacles for prison inmates to overcome, and it sends a clear message to prison officials that their affirmative duty under the Constitution to provide for the safety of inmates is not to be taken lightly. Under the Court's decision today, prison officials may be held liable for failure to remedy a risk so obvious and substantial that the prison officials must have known about it, see ante, at 16, and prisoners need not "'await a tragic event' such as an 'actual assault before obtaining relief,'" see ante, at 19.

I

Petitioner is a transsexual who is currently serving a 20-year sentence in an all-male federal prison for credit-card

fraud. Although a biological male, petitioner has undergone treatment for silicone breast implants and unsuccessful surgery to have his testicles removed. Despite his overtly feminine characteristics, and his previous segregation at another federal prison because of safety concerns, see Farmer v. Carlson, 685 F. Supp. 1335, 1342 (MD Pa. 1988), federal prison officials at the United States Penitentiary in Terre Haute, Indiana (USP-Terre Haute), housed him in the general population of that maximum security prison. No less than two weeks later, petitioner was brutally beaten and raped by another inmate in petitioner's cell.

Homosexual rape or other violence among prison inmates serves absolutely no penological purpose. See Rhodes v. Chapman, 452 U. S. 337, 345 (1981) (the Eighth Amendment prohibits all punishment, physical and mental, which is "totally without penological justification"). "Such brutality is the equivalent of torture, and is offensive to any modern standard of human dignity." United States v. Bailey, 444 U. S. 394, 423 (1980)

(BLACKMUN, J., dissenting). The horrors experienced by many young inmates who, like petitioner, are convicted of non-violent offenses, border on the unimaginable. Prison rape not only threatens the lives of those who fall prey to their aggressors, but is potentially devastating to the human spirit. Shame, depression, and a shattering loss of self-esteem, accompany the perpetual terror the victim thereafter must endure. Note, Rape in Prison and AIDS: A Challenge for the Eighth Amendment Framework of Wilson v. Seiter, 44 Stan. L. Rev. 1541, 1545 (1992). Unable to fend for himself without the protection of prison officials, the victim finds himself at the mercy of larger, stronger, and ruthless inmates. See id. Although formally sentenced to a term of incarceration, many inmates discover that their punishment for credit-card fraud, tax evasion or narcotics possession, is punished by a reign of terror unmitigated by the protection supposedly afforded by prison officials.[1]

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[1] Numerous court opinions describe the pervasive violence among inmates in our state and federal prisons. See, e.g., United States v. Bailey, 44 U. S. 394, 421 (1980) (BLACKMUN, J., dissenting);

The fact that our prisons are badly overcrowded and understaffed undoubtedly explains many of the shortcomings of our penal systems. But our Constitution sets minimal standards governing the administration of punishment in this country, and thus it is no answer to the complaints of the brutalized inmate that the resources are unavailable to protect him from what, in reality, is nothing less than torture. As I stated in dissent in United States v. Bailey

> "It is society's responsibility to protect the life and health of its prisoners. '[W]hen a sheriff or a marshall [sic] takes a man from the courthouse in a prison van and transports him to confinement for two or three or ten years, this is our act. We have tolled the bell for him. And whether we like it or not, we have made him our collective responsibility. We are free to do something about him; he is not" (emphasis in original). Address by THE CHIEF JUSTICE, 25 Record of the Assn. of the Bar of the City of New York 14, 17 (Mar. 1970 Supp.)." Bailey, 444 U. S., at 423 (1980) (BLACKMUN, J., dissenting).

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A person may experience punishment when he suffers "severe, rough, or disastrous treatment," see, e.g.., Webster's Third New International Dictionary, 1981, regardless of whether a state actor actually intended the cruel treatment because of a desire to chastise or deter. See also Webster's New International Dictionary of the English Language (1923) (defining punishment as "[a]ny pain, suffering, or loss inflicted on or suffered by a person because of a crime or evil-doing"); cf. Wilson, 501 U. S., at 300, quoting Duckworth v. Franzen, 780 F.2d 645, 652 (CA7 1985), cert. denied, 479 U. S. 816 (1986) ("'The infliction of punishment is a deliberate act intended to chastise or deter"). Certainly, it can hardly be disputed that if one individual is sentenced to a period of confinement at a relatively safe, well-managed prison, while another individual is sentenced to a prison characterized by rampant violence and terror, it is fair to say that the latter individual was subjected to a more extreme punishment. It matters little that the sentencing judge did not

specify to which prison the individuals would be sent, nor is it relevant that the prison officials did not intend either individual to suffer any attacks; the conditions of confinement, whatever the reason for them, resulted in differing punishment for the two convicts.

Use of an objective standard for the evaluation of Eighth Amendment claims of cruel and unusual punishment does not risk transformation of every-day accidents or unpredictable assaults into constitutional violations. Rather, it is the "failure to use reasonable measures to protect an inmate from violence inflicted by other inmates" that constitutes cruel and unusual punishment. Bailey, 444 U. S., at 423 (BLACKMUN, J., dissenting). Whether the unreasonable failure to protect inmates from predictable violence is the result of indifference and apathy, or an intent to harm, the consequences are the same for the same for the inmate. A punishment is simply no less cruel or unusual because its harm is unintended. In view of this obvious truism,

there is no reason to believe that, in adopting the Eighth Amendment, the Framers intended to prohibit cruel and unusual punishments only when they were intentionally so. As Judge Noonan observed:

> "The Framers were familiar from their wartime experience of British prisons with the kind of cruel punishment administered by a warden with the mentality of a Captain Bligh. But they were also familiar with the cruelty that came from bureaucratic indifference to the conditions of confinement. The Framers understood that cruel and unusual punishment can be administered by the failure of those in charge to give heed to the impact of their actions on those within their care." Jordan v. Gardner, 986 F.2d 1521, 1544 (CA9 1993) (Noonan, J., concurring) (citations omitted).

Before Wilson, it was assumed, if not established, that the conditions of confinement are themselves part of the punishment, even if not specifically "meted out" by a statute or judge. See Wilson, 501 U. S., 306-309 (White, J., concurring), citing Hutto v. Finney, 437 U. S. 678 (1978); Rhodes v. Chapman, 452 U. S. 337 (1981). We examined only the objective severity of the conditions of confinement in the pre-Wilson cases, not the subjective intent of government officials, as we found that "[a]n express intent to inflict unnecessary pain is not required . . .

. [H]arsh 'conditions of confinement' may constitute cruel and unusual punishment unless such conditions 'are part of the penalty that criminal offenders pay for their offenses against society." Whitley v. Albers, 475 U. S. 312, 319 (1986), quoting Rhodes, 452 U. S., at 347 (emphasis added). This initial approach, utilizing an objective standard to chart the boundaries of the Eighth Amendment, reflected the practical reality that "intent simply is not very meaningful when considering a challenge to an institution, such as a prison system," Wilson, 501 U. S., at 310 (White, J., concurring); it also, however, demonstrated a commitment to the principles underlying the Eighth Amendment. The Cruel and Unusual Punishments Clause was not adopted to protect prison officials with arguably benign intentions from lawsuits. The Eighth Amendment guarantees each prisoner that reasonable measures will be taken to ensure his or her safety; where a prisoner can prove that no such reasonable steps were taken and, as a result, he experienced severe pain or

suffering without any penological justification, the Eighth Amendment is violated regardless of whether there is an easily identifiable wrongdoer with poor intentions.

Wilson v. Seiter, being plainly inconsistent with this Court's prior precedents, and contrary to the most basic principles underlying the Eighth Amendment, in my view, should be overruled. Cf. Oregon v. Mitchell, 400 U. S. 112, 218-219 (1971) (opinion by Harlan, J.); Desist v. United States, 394 U. S. 244, 258.

II

Though I disagree with its premise, I join the Court's opinion. Petitioner never challenged this Court's holding in Wilson or sought reconsideration of the theory upon which that decision is based. More importantly, the Court's opinion does not extend Wilson beyond its ill-conceived boundaries or erect any new obstacles for prison inmates to overcome in seeking to remedy cruel and unusual conditions of confinement. The Court

specifically recognizes that "[h]aving incarcerated people with demonstrated proclivities for criminally antisocial and, in many cases, violent conduct, [and] having stripped them of virtually every means of self-protection and foreclosed their access to outside aid, the government and its officials are not free to let the state of nature take its course." See ante, at 6. The Court further acknowledges that prison rape is not constitutionally tolerable, see id., ("[b]eing violently assaulted in prison is simply not 'part of the penalty that criminal offenders pay for their offenses against society'"), and it clearly states that prisoners can obtain relief before being victimized, see ante, at 19 ("a subjective approach to deliberate indifference does not require a prisoner seeking 'a remedy for unsafe conditions [to] await a tragic event' such as and 'actual assault before obtaining relief'"). The opinion's clear message is that prison officials must fulfill their affirmative duty under the Constitution to prevent inmate assault, including prison rape, or

P. 16.
Minor changes at pp. 2, 4, 8, 11, 17, 18
Precheck & style

To: The Chief Justice
Justice Blackmun
Justice Stevens
Justice O'Connor
Justice Scalia
Justice Kennedy
Justice Thomas
Justice Ginsburg

From: **Justice Souter**

Circulated: _____

Recirculated: 5/26/94

6th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 92–7247

DEE FARMER, PETITIONER *v.* EDWARD BRENNAN, WARDEN, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[May ___, 1994]

JUSTICE SOUTER delivered the opinion of the Court.

A prison official's "deliberate indifference" to a substantial risk of serious harm to an inmate violates the Eighth Amendment. See *Helling* v. *McKinney* 509 U. S. __ (1993); *Wilson* v. *Seiter*, 501 U. S. 294 (1991); *Estelle* v. *Gamble*, 429 U. S. 97 (1976). This case requires us to define the term "deliberate indifference," as we do by requiring a showing that the official was subjectively aware of the risk.

I

The dispute before us stems from a civil suit brought by petitioner, Dee Farmer, alleging that respondents, federal prison officials, violated the Eighth Amendment by their deliberate indifference to petitioner's safety. Petitioner, who is serving a federal sentence for credit card fraud, has been diagnosed by medical personnel of the Bureau of Prisons as a transsexual, one who has "[a] rare psychiatric disorder in which a person feels persistently uncomfortable about his or her anatomical sex," and who typically seeks medical treatment, including hormonal therapy and surgery, to bring about a permanent sex change. American Medical Association, Encyclopedia of Medicine 1006 (1989); see also American Psychiatric Association, Diagnostic and Statistical

11, 17, 18

To: The Chief Justice
Justice Blackmun
Justice Stevens

Manual of Mental Disorders 74–75 (3d rev. ed. 1987). For several years before being convicted and sentenced in 1986 at the age of 18, petitioner, who is biologically male, wore women's clothing (as petitioner did at the 1986 trial), underwent estrogen therapy, received silicone breast implants, and submitted to unsuccessful "black market" testicle-removal surgery. See *Farmer* v. *Haas*, 990 F. 2d 319, 320 (CA7 1993). Petitioner's precise appearance in prison is unclear from the record before us, but petitioner claims to have continued hormonal treatment while incarcerated by using drugs smuggled into prison, and apparently wears clothing in a feminine manner, as by displaying a shirt "off one shoulder," App. 112. The parties agree that petitioner "projects feminine characteristics." *Id.*, at 51, 74.

The practice of federal prison authorities is to incarcerate preoperative transsexuals with prisoners of like biological sex, see *Farmer* v. *Haas*, *supra*, at 320, and over time authorities housed petitioner in several federal facilities, sometimes in the general male prison population but more often in segregation. While there is no dispute that petitioner was segregated at least several times because of violations of prison rules, neither is it disputed that in at least one penitentiary petitioner was segregated because of safety concerns. See *Farmer* v. *Carlson*, 685 F. Supp. 1335, 1342 (MD Pa. 1988).

On March 9, 1989, petitioner was transferred for disciplinary reasons from the Federal Correctional Institute in Oxford, Wisconsin (FCI-Oxford), to the United States Penitentiary in Terre Haute, Indiana (USP-Terre Haute). Though the record before us is unclear about the security designations of the two prisons in 1989, penitentiaries are typically higher security facilities that house more troublesome prisoners than federal correctional institutes. See generally Federal Bureau of Prisons, Facilities 1990. After an initial stay in administrative segregation, petitioner was

placed in the USP-Terre Haute general population. Petitioner voiced no objection to any prison official about the transfer to the penitentiary or to placement in its general population. Within two weeks, according to petitioner's allegations, petitioner was beaten and raped by another inmate in petitioner's cell. Several days later, after petitioner claims to have reported the incident, officials returned petitioner to segregation to await, according to respondents, a hearing about petitioner's HIV-positive status.

Acting without counsel, petitioner then filed a *Bivens* complaint, alleging a violation of the Eighth Amendment. See *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U. S. 388 (1971); *Carlson* v. *Green*, 446 U. S. 14 (1980). As defendants, petitioner named respondents: the warden of USP-Terre Haute and the Director of the Bureau of Prisons (sued only in their official capacities); the warden of FCI-Oxford and a case manager there; and the director of the Bureau of Prisons North Central Region Office and an official in that office (sued in their official and personal capacities). As later amended, the complaint alleged that respondents either transferred petitioner to USP-Terre Haute or placed petitioner in its general population despite knowledge that the penitentiary had a violent environment and a history of inmate assaults, and despite knowledge that petitioner, as a transsexual who "projects feminine characteristics," would be particularly vulnerable to sexual attack by some USP-Terre Haute inmates. This allegedly amounted to a deliberately indifferent failure to protect petitioner's safety, and thus to a violation of petitioner's Eighth Amendment rights. Petitioner sought compensatory and punitive damages, and an injunction

barring future confinement in any penitentiary, including USP-Terre Haute.[1]

Respondents filed a motion for summary judgment supported by several affidavits, to which petitioner responded with an opposing affidavit and a cross-motion for summary judgment; petitioner also invoked Federal Rule of Civil Procedure 56(f), asking the court to delay its ruling until respondents had complied with petitioner's pending request for production of documents. Respondents then moved for a protective order staying discovery until resolution of the issue of qualified immunity, raised in respondents' summary judgment motion.

Without ruling on respondents' request to stay discovery, the District Court denied petitioner's Rule 56(f) motion and granted summary judgment to respondents, concluding that there had been no deliberate indifference to petitioner's safety. The failure of prison officials to prevent inmate assaults violates the Eighth Amendment, the court stated, only if prison officials were "reckless in a criminal sense," meaning that they had "actual knowledge" of a potential danger. App. 124. Respondents, however, lacked the requisite knowledge, the court found. "[Petitioner] never expressed any concern for his safety to any of [respondents]. Since [respondents] had no knowledge of any potential danger to [petitioner], they were not deliberately indifferent to his safety." *Ibid.*

The United States Court of Appeals for the Seventh Circuit summarily affirmed without opinion. We granted certiorari, 510 U. S. __ (1993), because Courts of

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[1]Petitioner also sought an order requiring the Bureau of Prisons to place petitioner in a "co-correctional facility" (*i.e.*, one separately housing male and female prisoners but allowing coeducational programming). Petitioner tells us, however, that the Bureau no longer operates such facilities, and petitioner apparently no longer seeks this relief.

Appeals had adopted inconsistent tests for "deliberate indifference." Compare, for example, *McGill* v. *Duckworth*, 944 F. 2d 344, 348 (CA7 1991) (holding that "deliberate indifference" requires a "subjective standard of recklessness"), cert. denied, 503 U. S. __ (1992), with *Young* v. *Quinlan*, 960 F. 2d 351, 360–361 (CA3 1992) ("[A] prison official is deliberately indifferent when he knows or should have known of a sufficiently serious danger to an inmate").

II

A

The Constitution "does not mandate comfortable prisons," *Rhodes* v. *Chapman*, 452 U. S. 337, 349 (1981), but neither does it permit inhumane ones, and it is now settled that "the treatment a prisoner receives in prison and the conditions under which he is confined are subject to scrutiny under the Eighth Amendment." *Helling*, 509 U. S., at __ (slip op., at 5). In its prohibition of "cruel and unusual punishments," the Eighth Amendment places restraints on prison officials, who may not, for example, use excessive physical force against prisoners. See *Hudson* v. *McMillian*, 503 U. S. 1 (1992). The Amendment also imposes duties on these officials, who must provide humane conditions of confinement; prison officials must ensure that inmates receive adequate food, clothing, shelter and medical care, and must "take reasonable measures to guarantee the safety of the inmates," *Hudson* v. *Palmer*, 468 U. S. 517, 526–527 (1984). See *Helling*, *supra*, at __ (slip op., at 5); *Washington* v. *Harper*, 494 U. S. 210, 225 (1990); *Estelle*, 429 U. S., at 103. Cf. *DeShaney* v. *Winnebago County Dept. of Social Services*, 489 U. S. 189, 198–199 (1989).

In particular, as the lower courts have uniformly held, and as we have assumed, "[p]rison officials have a duty . . . to protect prisoners from violence at the hands of

other prisoners." *Cortes-Quinones* v. *Jimenez-Nettleship*, 842 F. 2d 556, 558 (CA1) (internal quotation marks and citation omitted), cert. denied, 488 U. S. 823 (1988);[2] see also *Wilson* v. *Seiter*, 501 U. S., at 303 (describing "the protection [an inmate] is afforded against other inmates" as a "conditio[n] of confinement" subject to the strictures of the Eighth Amendment). Having incarcerated people with demonstrated proclivities for criminally antisocial and, in many cases, violent conduct, having stripped them of virtually every means of self-protection and foreclosed their access to outside aid, the government and its officials are not free to let the state of nature take its course. Cf. *DeShaney*, *supra*, at 199–200; *Estelle*, *supra*, at 103–104. Prison conditions may be "restrictive and even harsh," *Rhodes*, *supra*, at 347, but gratuitously allowing the beating or rape of one prisoner by another serves no "legitimate penological objectiv[e]," *Hudson* v. *Palmer*, *supra*, at 548 (STEVENS, J., concurring in part and dissenting in part), any more than it squares with "'evolving standards of decency,'" *Estelle*, *supra*, at 102 (quoting *Trop* v. *Dulles*, 356 U. S. 86, 101 (1958) (plurality opinion)). Being violently assaulted in prison is simply not "part of the penalty that criminal offenders pay for their offenses against society." *Rhodes*, *supra*, at 347.

It is not, however, every injury suffered by one prisoner at the hands of another that translates into

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[2] Other Court of Appeals decisions to the same effect include *Villante* v. *Department of Corrections*, 786 F. 2d 516, 519 (CA2 1986); *Young* v. *Quinlan*, 960 F. 2d 351, 361–362 (CA3 1992); *Pressly* v. *Hutto*, 816 F. 2d 977, 979 (CA4 1987); *Alberti* v. *Klevenhagen*, 790 F. 2d 1220, 1224 (CA5 1986); *Roland* v. *Johnson*, 856 F. 2d 764, 769 (CA6 1988); *Goka* v. *Bobbitt*, 862 F. 2d 646, 649–650 (CA7 1988); *Martin* v. *White*, 742 F. 2d 469, 474 (CA8 1984); *Berg* v. *Kincheloe*, 794 F. 2d 457, 459 (CA9 1986); *Ramos* v. *Lamm*, 639 F. 2d 559, 572 (CA10 1980), cert. denied, 450 U. S. 1041 (1981); *LaMarca* v. *Turner*, 995 F. 2d 1526, 1535 (CA11 1993); and *Morgan* v. *District of Columbia*, 824 F. 2d 1049, 1057 (CADC 1987).

constitutional liability for prison officials responsible for the victim's safety. Our cases have held that a prison official violates the Eighth Amendment only where two requirements are met. First, the deprivation alleged must be, objectively, "sufficiently serious," *Wilson*, *supra*, at 298; see also *Hudson* v. *McMillian*, *supra*, at __ (slip op., at 5); a prison official's act or omission must result in the denial of "the minimal civilized measure of life's necessities," *Rhodes*, *supra*, at 347. For a claim (like the one here) based on a failure to prevent harm, the inmate must show that he is incarcerated under conditions posing a substantial risk of serious harm. See *Helling*, *supra*, at __ (slip op., at 8).[3]

The second requirement follows from the principle that "only the unnecessary and wanton infliction of pain implicates the Eighth Amendment." *Wilson*, 501 U. S., at 297 (internal quotation marks, emphasis and citations omitted). To violate the Cruel and Unusual Punishments Clause, a prison official must have a "sufficiently culpable state of mind." *Ibid.*; see also *id.*, at 302–303; *Hudson* v. *McMillian*, *supra*, at __ (slip op., at 5). In prison-conditions cases, we have said, that state of mind is one of "deliberate indifference" to inmate health or safety, *Wilson*, *supra*, at 302–303; see also *Helling*, *supra*, at __ (slip op., at 6–7); *Hudson* v. *McMillian*, *supra*, at ___ (slip op., at 5); *Estelle*, *supra*, at 106, a standard the parties agree governs the claim in this case. The parties disagree, however, on the proper test for deliberate indifference, which we must therefore undertake to define.

B

1

[3] At what point a risk of inmate assault becomes sufficiently substantial for Eighth Amendment purposes is a question this case does not present, and we do not address it.

Although we have never paused to explain the meaning of the term "deliberate indifference," the case law is instructive. The term first appeared in the United States Reports in *Estelle* v. *Gamble*, 429 U. S., at 104, and its use there shows that deliberate indifference describes a state of mind more blameworthy than negligence. In considering the inmate's claim in *Estelle* that inadequate prison medical care violated the Cruel and Unusual Punishments Clause, we distinguished "deliberate indifference to serious medical needs of prisoners," *ibid.*, from "negligen[ce] in diagnosing or treating a medical condition," *id.*, at 106, holding that only the former violates the Clause. We have since read *Estelle* for the proposition that Eighth Amendment liability requires "more than ordinary lack of due care for the prisoner's interests or safety." *Whitley* v. *Albers*, 475 U. S. 312, 319 (1986).

While *Estelle* establishes that deliberate indifference entails something more than mere negligence, the cases are also clear that it is satisfied by something less than acts or omissions for the very purpose of causing harm or with knowledge that harm will result. That point underlies the ruling that "application of the deliberate indifference standard is inappropriate" in one class of prison cases: when "officials stand accused of using excessive physical force." *Hudson* v. *McMillian*, 503 U. S., at __ (slipop., at 3–4); see also *Whitley*, *supra*, 320. In such situations, where the decisions of prison officials are typically made "'in haste, under pressure, and frequently without the luxury of a second chance,'" *Hudson* v. *McMillian*, *supra*, at __ (slip op., at 3) (quoting *Whitley*, *supra*, at 320), an Eighth Amendment claimant must show more than "indifference," deliberate or otherwise. The claimant must show that officials applied force "maliciously and sadistically for the very purpose of causing harm," 503 U. S., at __ (internal quotation marks and citations omitted), or, as the Court

also put it, that officials used force with "a knowing willingness that [harm] occur," 503 U. S., at __ (slip op., at 5) (internal quotation marks and citation omitted). This standard of purposeful or knowing conduct is not, however, necessary to satisfy the *mens rea* requirement of deliberate indifference for claims challenging conditions of confinement; "the very high state of mind prescribed by *Whitley* does not apply to prison conditions cases." *Wilson*, *supra*, at 302–303.

With deliberate indifference lying somewhere between the poles of negligence at one end and purpose or knowledge at the other, the Courts of Appeals have routinely equated deliberate indifference with recklessness.[4] See, *e.g.*, *LaMarca* v. *Turner*, 995 F. 2d 1526, 1535 (CA11 1993); *Manarite* v. *Springfield*, 957 F. 2d 953, 957 (CA1), cert. denied, 506 U. S. __ (1992); *Redman* v. *County of San Diego*, 942 F. 2d 1435, 1443 (CA9 1991), cert. denied, 506 U. S. __ (1992); *McGill* v. *Duckworth*, 944 F. 2d, at 347; *Miltier* v. *Beorn*, 896 F. 2d 848, 851–852 (CA4 1990); *Martin* v. *White*, 742 F. 2d 469, 474 (CA8 1984); see also *Springfield* v. *Kibbe*, 480 U. S. 257, 269 (1987) (O'CONNOR, J., dissenting). It is, indeed, fair to say that acting or failing to act with deliberate indifference to a substantial risk of serious harm to a prisoner is the equivalent of recklessly disregarding that risk.

That does not, however, fully answer the pending question about the level of culpability deliberate indifference entails, for the term recklessness is not self-defining. The civil law generally calls a person reckless

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[4]Between the poles lies "gross negligence" too, but the term is a "nebulous" one, in practice typically meaning little different from recklessness as generally understood in the civil law (which we discuss later in the text). See W. Keeton, D. Dobbs, R. Keeton & D. Owen, Prosser and Keeton on Law of Torts § 34, p. 212 (5th ed. 1984) (hereinafter Prosser and Keeton).

who acted or (if the person had a duty to act) failed to act in the face of an unjustifiably high risk of harm that was either known or so obvious that it should have been known. See Prosser and Keeton § 34, pp. 213–214; Restatement (Second) of Torts § 500 (1965). The criminal law, however, generally permits a finding of recklessness only when a person has disregarded a risk of harm of which he was aware. See R. Perkins & R. Boyce, Criminal Law 850–851 (3d ed. 1982); J. Hall, General Principles of Criminal Law 115–116, 120, 128 (2d ed. 1960) (hereinafter Hall); American Law Institute, Model Penal Code § 2.02(2)(c), and Comment 3 (1985); but see *Commonwealth* v. *Pierce*, 138 Mass. 165, 175–178 (1884) (Holmes, J.) (adopting an objective approach to criminal recklessness). The standards proposed by the parties in this case track the two approaches (though the parties do not put it that way): petitioner asks us to define deliberate indifference as what we have called civil-law recklessness,[5] and respondents urge us to adopt an approach consistent with recklessness in the criminal law.[6]

We reject petitioner's invitation to adopt an objective test for deliberate indifference. We hold instead that a prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference

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[5] See Reply Brief for Petitioner 5 (suggesting that a prison official is deliberately indifferent if he "knew facts which rendered an unreasonable risk obvious; under such circumstances, the defendant should have known of the risk and will be charged with such knowledge as a matter of law"); see also Brief for Petitioner 20–21.

[6] See Brief for Respondents 16 (asserting that deliberate indifference requires that a prison "official must know of the risk of harm to which an inmate is exposed").

could be drawn that a substantial risk of serious harm exists, and he must also draw the inference. This approach comports best with the text of the Amendment as our cases have interpreted it. The Eighth Amendment does not outlaw cruel and unusual "conditions"; it outlaws cruel and unusual "punishments." An act or omission unaccompanied by knowledge of a significant risk of harm might well be something society wishes to discourage, and if harm does result society might well wish to assure compensation. The common law reflects such concerns when it imposes tort liability on a purely objective basis. See Prosser and Keeton §§ 2, 34, pp. 6, 213–214; see also Federal Tort Claims Act, 28 U. S. C. §§ 2671–2680; *United States* v. *Muniz*, 374 U. S. 150 (1963). But an official's failure to alleviate a significant risk that he should have perceived but did not, while no cause for commendation, cannot under our cases be condemned as the infliction of punishment.

In *Wilson* v. *Seiter*, we rejected a reading of the Eighth Amendment that would allow liability to be imposed on prison officials solely because of the presence of objectively inhumane prison conditions. See 501 U. S., at 299–302. As we explained there, our "cases mandate inquiry into a prison official's state of mind when it is claimed that the official has inflicted cruel and unusual punishment." *Id.*, at 299. Although "state of mind," like "intent," is an ambiguous term that can encompass objectively defined levels of blameworthiness, see 1 W. LaFave & A. Scott, Substantive Criminal Law §§ 3.4, 3.5, pp. 296–300, 313–314 (1986) (hereinafter LaFave & Scott); *United States* v. *Bailey*, 444 U. S. 394, 404 (1980), it was no accident that we said in *Wilson* and repeated in later cases that Eighth Amendment suits against prison officials must satisfy a "subjective" requirement. See *Wilson*, *supra*, at 298; see also *Helling*, 509 U. S., at __ (slip op., at 9); *Hudson* v. *McMillian*, 503 U. S., at __ (slip op., at 4–5). It is true,

as petitioner points out, that *Wilson* cited with approval Court of Appeals decisions applying an objective test for deliberate indifference to claims based on prison officials' failure to prevent inmate assaults. See 501 U. S., at 303 (citing *Cortes-Quinones* v. *Jimenez-Nettleship*, 842 F. 2d, at 560; and *Morgan* v. *District of Columbia*, 824 F. 2d 1049, 1057–1058 (CADC 1987)). But *Wilson* cited those cases for the proposition that the deliberate-indifference standard applies to all prison-conditions claims, not to undo its holding that the Eighth Amendment has a "subjective component." 501 U. S., at 298. Petitioner's purely objective test for deliberate indifference is simply incompatible with *Wilson*'s holding.

To be sure, the reasons for focusing on what a defendant's mental attitude actually was (or is), rather than what it should have been (or should be), differ in the Eighth Amendment context from that of the criminal law. Here, a subjective approach isolates those who inflict punishment; there, it isolates those against whom punishment should be inflicted. But the result is the same: to act recklessly in either setting a person must "consciously disregar[d]" a substantial risk of serious harm. Model Penal Code, *supra*, §2.02(2)(c).

At oral argument, the Deputy Solicitor General advised against frank adoption of a criminal-law *mens rea* requirement, contending that it could encourage triers of fact to find Eighth Amendment liability only if they concluded that prison officials acted like criminals. See Tr. of Oral Arg. 39–40. We think this concern is misdirected. *Bivens* actions against federal prison officials (and their §1983 counterparts against state officials) are civil in character, and a court should no more allude to the criminal law when enforcing the Cruel and Unusual Punishments Clause than when applying the Free Speech and Press Clauses, where we have also adopted a subjective approach to recklessness. See *Harte-Hanks Communications, Inc.* v. *Connaughton*,

491 U. S. 657, 688 (1989) (holding that the standard for "reckless disregard" for the truth in a defamation action by a public figure "is a subjective one," requiring that "the defendant in fact entertained serious doubts as to the truth of his publication," or that "the defendant actually had a high degree of awareness of . . . probable falsity") (internal quotation marks and citations omitted).[7] That said, subjective recklessness as used in the criminal law is a familiar and workable standard that is consistent with the Cruel and Unusual Punishments Clause as interpreted in our cases, and we adopt it as the test for "deliberate indifference" under the Eighth Amendment.

2

Our decision that Eighth Amendment liability requires consciousness of a risk is thus based on the Constitution and our cases, not merely on a parsing of the phrase "deliberate indifference." And we do not reject petitioner's arguments for a thoroughly objective approach to deliberate indifference without recognizing that on the crucial point (whether a prison official must know of a risk, or whether it suffices that he should know) the term does not speak with certainty. Use of "deliberate," for example, arguably requires nothing more than an act (or omission) of indifference to a serious risk that is voluntary, not accidental. Cf. *Estelle*, 429 U. S., at 105 (distinguishing "deliberate indifference" from "accident" or "inadverten[ce]"). And even if "deliberate" is better read as implying knowledge of a risk, the concept of constructive knowledge is familiar enough that the term "deliberate indifference" would not, of its own force,

[7] Appropriate allusions to the criminal law would, of course, be proper during criminal prosecutions under, for example, 18 U. S. C. § 242, which sets criminal penalties for deprivations of rights under color of law.

preclude a scheme that conclusively presumed awareness from a risk's obviousness.

Because "deliberate indifference" is a judicial gloss, appearing neither in the Constitution nor in a statute, we could not accept petitioner's argument that the test for "deliberate indifference" described in *Canton* v. *Harris*, 489 U. S. 378 (1989), must necessarily govern here. In *Canton*, interpreting 42 U. S. C. § 1983, we held that a municipality can be liable for failure to train its employees when the municipality's failure shows "a deliberate indifference to the rights of its inhabitants." 489 U. S., at 389 (internal quotation marks omitted). In speaking to the meaning of the term, we said that "it may happen that in light of the duties assigned to specific officers or employees the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need." *Id.*, at 390; see also *id.*, at 390, n. 10 (elaborating). JUSTICE O'CONNOR's separate opinion for three Justices agreed with the Court's "obvious[ness]" test and observed that liability is appropriate when policymakers are "on actual or constructive notice" of the need to train, *id.*, at 396 (opinion concurring in part and dissenting in part). It would be hard to describe the *Canton* understanding of deliberate indifference, permitting liability to be premised on obviousness or constructive notice, as anything but objective.

Canton's objective standard, however, is not an appropriate test for determining the liability of prison officials under the Eighth Amendment as interpreted in our cases. Section 1983, which merely provides a cause of action, "contains no state-of-mind requirement independent of that necessary to state a violation of the underlying constitutional right." *Daniels* v. *Williams*, 474 U. S. 327, 330 (1986). And while deliberate indiffer-

ence serves under the Eighth Amendment to ensure that only inflictions of punishment carry liability, see *Wilson*, 501 U. S., at 299–300, the "term was used in the *Canton* case for the quite different purpose of identifying the threshold for holding a city responsible for the constitutional torts committed by its inadequately trained agents," *Collins* v. *Harker Heights*, 503 U. S. __, __ (1992), a purpose the *Canton* Court found satisfied by a test permitting liability when a municipality disregards "obvious" needs. Needless to say, moreover, considerable conceptual difficulty would attend any search for the subjective state of mind of a governmental entity, as distinct from that of a governmental official. For these reasons, we cannot accept petitioner's argument that *Canton* compels the conclusion here that a prison official who was unaware of a substantial risk of harm to an inmate may nevertheless be held liable under the Eighth Amendment if the risk was obvious and a reasonable prison official would have noticed it.

We are no more persuaded by petitioner's argument that, without an objective test for deliberate indifference, prison officials will be free to ignore obvious dangers to inmates. Under the test we adopt today, an Eighth Amendment claimant need not show that a prison official acted or failed to act believing that harm actually would befall an inmate; it is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm. Cf. 1 C. Torcia, Wharton's Criminal Law §27, p. 141 (14th ed. 1978); Hall 115. We doubt that a subjective approach will present prison officials with any serious motivation "to take refuge in the zone between 'ignorance of obvious risks' and 'actual knowledge of risks.'" Brief for Petitioner 27. Whether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence, cf. Hall 118

(cautioning against "confusing a mental state with the proof of its existence"), and a factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious. Cf. LaFave & Scott §3.7, p. 335 ("[I]f the risk is obvious, so that a reasonable man would realize it, we might well infer that [the defendant] did in fact realize it; but the inference cannot be conclusive, for we know that people are not always conscious of what reasonable people would be conscious of"). For example, if an Eighth Amendment plaintiff presents evidence showing that a substantial risk of inmate attacks was "longstanding, pervasive, well-documented, or expressly noted by prison officials in the past, and the circumstances suggest that the defendant-official being sued had been exposed to information concerning the risk and thus 'must have known' about it, then such evidence could be sufficient to permit a trier of fact to find that the defendant-official had actual knowledge of the risk." Brief for Respondents 22.[8]

Nor may a prison official escape liability for deliberate indifference by showing that, while he was aware of an

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[8] While the obviousness of a risk is not conclusive and a prison official may show that the obvious escaped him, see *infra*, at 18, he would not escape liability if the evidence showed that he merely refused to verify underlying facts that he strongly suspected to be true, or declined to confirm inferences of risk that he strongly suspected to exist (as when a prison official is aware of a high probability of facts indicating that one prisoner has planned an attack on another but resists opportunities to obtain final confirmation; or when a prison official knows that some diseases are communicable and that a single needle is being used to administer flu shots to prisoners but refuses to listen to a subordinate who he strongly suspects will attempt to explain the associated risk of transmitting disease). When instructing juries in deliberate indifference cases with such issues of proof, courts should be careful to ensure that the requirement of subjective culpability is not lost. It is not enough merely to find that a reasonable person would have known, or that the defendant should have known, and juries should be instructed accordingly.

obvious, substantial risk to inmate safety, he did not know that the complainant was especially likely to be assaulted by the specific prisoner who eventually committed the assault. The question under the Eighth Amendment is whether prison officials, acting with deliberate indifference, exposed a prisoner to a sufficiently substantial "risk of serious damage to his future health," *Helling*, 509 U. S., at __ (slip op., at 9), and it does not matter whether the risk comes from a single source or multiple sources, any more than it matters whether a prisoner faces an excessive risk of attack for reasons personal to him or because all prisoners in his situation face such a risk. See Brief for Respondents 15 (stating that a prisoner can establish exposure to a sufficiently serious risk of harm "by showing that he belongs to an identifiable group of prisoners who are frequently singled out for violent attack by other inmates"). If, for example, prison officials were aware that inmate "rape was so common and uncontrolled that some potential victims dared not sleep [but] instead . . . would leave their beds and spend the night clinging to the bars nearest the guards' station," *Hutto* v. *Finney*, 437 U. S., 678, 681–682 n. 3 (1978), it would obviously be irrelevant to liability that the officials could not guess beforehand precisely who would attack whom. Cf. *Helling*, *supra*, at __ (slip op., at 6–7) (observing that the Eighth Amendment requires a remedy for exposure of inmates to "infectious maladies" such as hepatitis and venereal disease "even though the possible infection might not affect all of those exposed"); *Commonwealth* v. *Welansky*, 316 Mass. 383, 55 N. E. 2d 902 (1944) (affirming conviction for manslaughter under a law requiring reckless or wanton conduct of a nightclub owner who failed to protect patrons from a fire, even though the owner did not know in advance who would light the match that ignited the fire or which patrons would lose their lives); *State* v. *Julius*, 185 W. Va. 422,

431–432, 408 S. E. 2d 1, 10–11 (1991) (holding that a defendant may be held criminally liable for injury to an unanticipated victim).

Because, however, prison officials who lacked knowledge of a risk cannot be said to have inflicted punishment, it remains open to the officials to prove that they were unaware even of an obvious risk to inmate health or safety. That a trier of fact may infer knowledge from the obvious, in other words, does not mean that it must do so. Prison officials charged with deliberate indifference might show, for example, that they did not know of the underlying facts indicating a sufficiently substantial danger and that they were therefore unaware of a danger, or that they knew the underlying facts but believed (albeit unsoundly) that the risk to which the facts gave rise was insubstantial or nonexistent.

In addition, prison officials who actually knew of a substantial risk to inmate health or safety may be found free from liability if they responded reasonably to the risk, even if the harm ultimately was not averted. A prison official's duty under the Eighth Amendment is to ensure "reasonable safety," *Helling*, *supra*, at __ (slip op., at 7); see also *Washington* v. *Harper*, 494 U. S., at 225; *Hudson* v. *Palmer*, 468 U. S., at 526–527, a standard that incorporates due regard for prison officials' "unenviable task of keeping dangerous men in safe custody under humane conditions." *Spain* v. *Procunier*, 600 F. 2d 189, 193 (CA9 1979) (Kennedy, J.); see also *Bell* v. *Wolfish*, 441 U. S. 520, 547–548, 562 (1979). Whether one puts it in terms of duty or deliberate indifference, prison officials who act reasonably cannot be found liable under the Cruel and Unusual Punishments Clause.

We address, finally, petitioner's argument that a subjective deliberate indifference test will unjustly require prisoners to suffer physical injury before obtaining court-ordered correction of objectively inhumane

prison conditions. "It would," indeed, "be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them." *Helling*, 509 U. S., at __. But nothing in the test we adopt today clashes with that common sense. Petitioner's argument is flawed for the simple reason that "[o]ne does not have to await the consummation of threatened injury to obtain preventive relief." *Pennsylvania* v. *West Virginia*, 262 U. S. 553, 593 (1923). Consistently with this principle, a subjective approach to deliberate indifference does not require a prisoner seeking "a remedy for unsafe conditions [to] await a tragic event [such as an] actua[l] assaul[t] before obtaining relief." *Helling*, *supra* at __ (slip op., at 7).

In a suit such as petitioner's, insofar as it seeks injunctive relief to prevent a substantial risk of serious injury from ripening into actual harm, "the subjective factor, deliberate indifference, should be determined in light of the prison authorities' current attitudes and conduct," *Helling*, *supra*, at __ (slip op., at 10): their attitudes and conduct at the time suit is brought and persisting thereafter. An inmate seeking an injunction on the ground that there is "a contemporary violation of a nature likely to continue," *United States* v. *Oregon Medical Society*, 343 U. S. 326, 333 (1952), must adequately plead such a violation; to survive summary judgment, he must come forward with evidence from which it can be inferred that the defendant-officials were at the time suit was filed, and are at the time of summary judgment, knowingly and unreasonably disregarding an objectively intolerable risk of harm, and that they will continue to do so; and finally to establish eligibility for an injunction, the inmate must demonstrate the continuance of that disregard during the remainder of the litigation and into the future. In so doing, the inmate may rely, in the district court's discre-

tion, on developments that postdate the pleadings and pretrial motions, as the defendants may rely on such developments to establish that the inmate is not entitled to an injunction.[9] See Fed. Rule Civ. Proc. 15(d); 6A C. Wright, A. Miller & M. Kane, Federal Practice and Procedure §§1504–1510, pp. 177–211 (2d ed. 1990). If the court finds the Eighth Amendment's subjective and objective requirements satisfied, it may grant appropriate injunctive relief. See *Hutto* v. *Finney*, 437 U. S., at 685–688 and n. 9 (upholding order designed to halt "an ongoing violation" in prison conditions that included extreme overcrowding, rampant violence, insufficient food, and unsanitary conditions). Of course, a district court should approach issuance of injunctive orders with the usual caution, see *Bell* v. *Wolfish*, *supra*, at 562 (warning courts against becoming "enmeshed in the minutiae of prison conditions"), and may, for example, exercise its discretion if appropriate by giving prison officials time to rectify the situation before issuing an injunction.

That prison officials' "current attitudes and conduct," *Helling*, *supra*, at __ (slip op., at 10), must be assessed in an action for injunctive relief does not mean, of

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[9] If, for example, the evidence before a district court establishes that an inmate faces an objectively intolerable risk of serious injury, the defendants could not plausibly persist in claiming lack of awareness, any more than prison officials who state during the litigation that they will not take reasonable measures to abate an intolerable risk of which they are aware could claim to be subjectively blameless for purposes of the Eighth Amendment, and in deciding whether an inmate has established a continuing constitutional violation a district court may take such developments into account. At the same time, even prison officials who had a subjectively culpable state of mind when the lawsuit was filed could prevent issuance of an injunction by proving, during the litigation, that they were no longer unreasonably disregarding an objectively intolerable risk of harm and that they would not revert to their obduracy upon cessation of the litigation.

course, that inmates are free to bypass adequate internal prison procedures and bring their health and safety concerns directly to court. "An appeal to the equity jurisdiction conferred on federal district courts is an appeal to the sound discretion which guides the determinations of courts of equity," *Meredith* v. *Winter Haven*, 320 U. S. 228, 235 (1943), and any litigant making such an appeal must show that the intervention of equity is required. When a prison inmate seeks injunctive relief, a court need not ignore the inmate's failure to take advantage of adequate prison procedures, and an inmate who needlessly bypasses such procedures may properly be compelled to pursue them. Cf. 42 U. S. C. §1997e (authorizing district courts in §1983 actions to require inmates to exhaust "such plain, speedy, and effective administrative remedies as are available"). Even apart from the demands of equity, an inmate would be well advised to take advantage of internal prison procedures for resolving inmate grievances. When those procedures produce results, they will typically do so faster than judicial processes can. And even when they do not bring constitutionally required changes, the inmate's task in court will obviously be much easier.

Accordingly, we reject petitioner's arguments and hold that a prison official may be held liable under the Eighth Amendment for denying humane conditions of confinement only if he knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it.

III

A

Against this backdrop, we consider whether the District Court's disposition of petitioner's complaint, summarily affirmed without briefing by the Court of Appeals for the Seventh Circuit, comports with Eighth

Amendment principles. We conclude that the appropriate course is to remand.

In granting summary judgment to respondents on the ground that petitioner had failed to satisfy the Eighth Amendment's subjective requirement, the District Court may have placed decisive weight on petitioner's failure to notify respondents of a risk of harm. That petitioner "never expressed any concern for his safety to any of [respondents]," App. 124, was the only evidence the District Court cited for its conclusion that there was no genuine dispute about respondents' assertion that they "had no knowledge of any potential danger to [petitioner]," *ibid.* But with respect to each of petitioner's claims, for damages and for injunctive relief, the failure to give advance notice is not dispositive. Petitioner may establish respondents' awareness by reliance on any relevant evidence. See *supra*, at 16.

The summary judgment record does not so clearly establish respondent's entitlement to judgment as a matter of law on the issue of subjective knowledge that we can simply assume the absence of error below. For example, in papers filed in opposition to respondents' summary-judgment motion, petitioner pointed to respondents' admission that petitioner is a "non-violent" transsexual who, because of petitioner's "youth and feminine appearance" is "likely to experience a great deal of sexual pressure" in prison. App. 50–51, 73–74. And petitioner recounted a statement by one of the respondents, then warden of the penitentiary in Lewisburg, Pennsylvania, who told petitioner that there was "a high probability that [petitioner] could not safely function at USP-Lewisburg," *id.*, at 109, an incident confirmed in a published District Court opinion. See *Farmer* v. *Carlson*, 685 F. Supp., at 1342; see also *ibid.* ("Clearly, placing plaintiff, a twenty-one year old transsexual, into the general population at [USP-]Lewisburg, a [high-]security institution, could pose a signifi-

cant threat to internal security in general and to plaintiff in particular").

We cannot, moreover, be certain that additional evidence is unavailable to petitioner because in denying petitioner's Rule 56(f) motion for additional discovery the District Court may have acted on a mistaken belief that petitioner's failure to notify was dispositive. Petitioner asserted in papers accompanying the Rule 56(f) motion that the requested documents would show that "each defendant had knowledge that USP-Terre Haute was and is, a violent institution with a history of sexual assault, stabbings, etc., [and that] each defendant showed reckless disregard for my safety by designating me to said institution knowing that I would be sexually assaulted." App. 105–106. But in denying the Rule 56(f) motion, the District Court stated that the requested documents were "not shown by plaintiff to be necessary to oppose defendants' motion for summary judgment," App. 121, a statement consistent with the erroneous view that failure to notify was fatal to petitioner's complaint.

Because the District Court may have mistakenly thought that advance notification was a necessary element of an Eighth Amendment failure-to-protect claim, we think it proper to remand for reconsideration of petitioner's Rule 56(f) motion and, whether additional discovery is permitted or not, for application of the Eighth Amendment principles explained above.[10]

B

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[10] The District Court's opinion is open to the reading that it required not only advance notification of a substantial risk of assault, but also advance notification of a substantial risk of assault posed by a particular fellow prisoner. See App. 124 (referring to "a specific threat to [a prisoner's] safety"). The Eighth Amendment, however, imposes no such requirement. See *supra*, at 16–17.

Responents urge us to affirm for reasons not relied on below, but neither of their contentions is so clearly correct as to justify affirmance.

With respect to petitioner's damages claim, respondents argue that the officials sued in their individual capacities (officials at FCI-Oxford and the Bureau of Prisons North Central Region office), were alleged to be liable only for their transfer of petitioner from FCI-Oxford to USP-Terre Haute, whereas petitioner "nowhere alleges any reason for believing that these officials, who had no direct responsibility for administering the Terre Haute institution, would have had knowledge of conditions within that institution regarding danger to transsexual inmates." Brief for Respondents 27–28. But petitioner's Rule 56(f) motion alleged just that. Though respondents suggest here that petitioner offered no factual basis for that assertion, that is not a ground on which they chose to oppose petitioner's Rule 56(f) motion below and, in any event, is a matter for the exercise of the District Court's judgment, not ours. Finally, to the extent respondents seek affirmance here on the ground that officials at FCI-Oxford and the Bureau of Prisons regional office had no power to control prisoner placement at Terre Haute, the record gives at least a suggestion to the contrary; the affidavit of one respondent, the warden of USP-Terre Haute, states that after having been at USP-Terre Haute for about a month petitioner was placed in administrative segregation "pursuant to directive from the North Central Regional Office" and a "request . . . by staff at FCI-Oxford." App. 94–95. Accordingly, though we do not reject respondents' arguments about petitioner's claim for damages, the record does not permit us to accept them as a basis for affirmance when they were not relied upon below. Respondents are free to develop this line of argument on remand.

With respect to petitioner's claim for injunctive relief, respondents argued in their merits brief that the claim was "foreclosed by [petitioner's] assignment to administrative detention status because of his high-risk HIV-positive condition, . . . as well as by the absence of any allegation . . . that administrative detention status poses any continuing threat of physical injury to him." Brief for Respondents 28–29. At oral argument, however, the Deputy Solicitor General informed us that petitioner was no longer in administrative detention, having been placed in the general prison population of a medium-security prison. Tr. of Oral Arg. 25–26. He suggested that affirmance was nevertheless proper because "there is no present threat" that petitioner will be placed in a setting where he would face a "continuing threat of physical injury," *id.*, at 26, but this argument turns on facts about the likelihood of a transfer that the District Court is far better placed to evaluate than we are. We leave it to respondents to present this point on remand.

IV

The judgment of the Court of Appeals is vacated, and the case is remanded for further proceedings consistent with this opinion.

So ordered.

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To: The Chief Justice
Justice Blackmun
Justice Stevens
Justice O'Connor
Justice Scalia
Justice Kennedy
Justice Thomas
Justice Ginsburg

From: **Justice Souter**

Circulated: _____

Recirculated: 5/12/94

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 92–7247

DEE FARMER, PETITIONER *v.* EDWARD BRENNAN, WARDEN, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[May ___, 1994]

JUSTICE SOUTER delivered the opinion of the Court.

A prison official's "deliberate indifference" to a substantial risk of serious harm to an inmate violates the Eighth Amendment. See *Helling* v. *McKinney* 509 U. S. __ (1993); *Wilson* v. *Seiter*, 501 U. S. 294 (1991); *Estelle* v. *Gamble*, 429 U. S. 97 (1976). This case requires us to define the term "deliberate indifference," as we do by requiring a showing that the official was subjectively aware of the risk.

I

The dispute before us stems from a civil suit brought by petitioner, Dee Farmer, alleging that respondents, federal prison officials, violated the Eighth Amendment by their deliberate indifference to petitioner's safety. Petitioner, who is serving a federal sentence for credit card fraud, has been diagnosed by medical personnel of the Bureau of Prisons as a transsexual, one who has "[a] rare psychiatric disorder in which a person feels persistently uncomfortable about his or her anatomical sex," and who typically seeks medical treatment, including hormonal therapy and surgery, to bring about a permanent sex change. American Medical Association, Encyclopedia of Medicine 1006 (1989); see also American Psychiatric Association, Diagnostic and Statistical

Manual of Mental Disorders 74–75 (3d rev. ed. 1987). Though biologically male, petitioner lived as a woman for several years before being convicted and sentenced in 1986 at the age of 18, during which time petitioner wore women's clothing (as petitioner did at the 1986 trial), underwent estrogen therapy, received silicone breast implants, and submitted to unsuccessful "black market" testicle-removal surgery. See *Farmer* v. *Haas*, 990 F. 2d 319, 320 (CA7 1993). Petitioner's precise appearance in prison is unclear from the record before us, but petitioner claims to have continued hormonal treatment while incarcerated by using drugs smuggled into prison, and apparently wears clothing in the manner of a woman, as by displaying a shirt "off one shoulder," App. 112. The parties agree that petitioner "projects feminine characteristics." *Id.*, at 51, 74.

The practice of federal prison authorities is to incarcerate preoperative transsexuals with prisoners of like biological sex, see *Farmer* v. *Haas*, *supra*, at 320, and over time authorities housed petitioner in several federal facilities, sometimes in the general male prison population but more often in segregation. While there is no dispute that petitioner was segregated at least several times because of violations of prison rules, neither is it disputed that in at least one penitentiary petitioner was segregated because of safety concerns. See *Farmer* v. *Carlson*, 685 F. Supp. 1335, 1342 (MD Pa. 1988).

On March 9, 1989, petitioner was transferred for disciplinary reasons from the Federal Correctional Institute in Oxford, Wisconsin (FCI-Oxford), to the United States Penitentiary in Terre Haute, Indiana (USP-Terre Haute). Though the record before us is unclear about the security designations of the two prisons in 1989, penitentiaries are typically higher security facilities that house more troublesome prisoners than federal correctional institutes. See generally Federal Bureau of Prisons, Facilities 1990. After an

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Justice Blackmun

initial stay in administrative segregation, petitioner was placed in the USP-Terre Haute general population. Petitioner voiced no objection to any prison official about the transfer to the penitentiary or to placement in its general population. Within two weeks, according to petitioner's allegations, petitioner was beaten and raped by another inmate in petitioner's cell. Several days later, after petitioner claims to have reported the incident, officials returned petitioner to segregation to await, according to the government, a hearing about petitioner's HIV-positive status.

Acting without counsel, petitioner then filed a *Bivens* complaint, alleging a violation of the Eighth Amendment. See *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U. S. 388 (1971); *Carlson* v. *Green*, 446 U. S. 14 (1980). As defendants, petitioner named respondents: the warden of USP-Terre Haute and the Director of the Bureau of Prisons (sued only in their official capacities); the warden of FCI-Oxford and a case manager there; and the director of the Bureau of Prisons North Central Region Office and an official in that office (sued in their official and personal capacities). As later amended, the complaint alleged that respondents either transferred petitioner to USP-Terre Haute or placed petitioner in its general population despite knowledge that the penitentiary had a violent environment and a history of inmate assaults, and despite knowledge that petitioner, as a transsexual who "projects feminine characteristics," would be particularly vulnerable to sexual attack by USP-Terre Haute inmates. This allegedly amounted to a deliberately indifferent failure to protect petitioner's safety, and thus to a violation of petitioner's Eighth Amendment rights. Petitioner sought compensatory and punitive damages, and an injunction

barring future confinement in any penitentiary, including USP-Terre Haute.[1]

Respondents filed a motion for summary judgment supported by several affidavits, to which petitioner responded with an opposing affidavit and a cross-motion for summary judgment; petitioner also invoked Federal Rule of Civil Procedure 56(f), asking the court to delay its ruling until respondents had complied with petitioner's pending request for production of documents. Respondents then moved for a protective order staying discovery until resolution of the issue of qualified immunity, raised in respondents' summary-judgment motion.

The District Court denied petitioner's Rule 56(f) motion and granted summary judgment to respondents, concluding that there had been no deliberate indifference to petitioner's safety. The failure of prison officials to prevent inmate assaults violates the Eighth Amendment, the court stated, only if prison officials were "reckless in a criminal sense," meaning that they had "actual knowledge" of a potential danger. App. 124. Respondents, however, lacked the requisite knowledge, the court found. "[Petitioner] never expressed any concern for his safety to any of [respondents]. Since [respondents] had no knowledge of any potential danger to [petitioner], they were not deliberately indifferent to his safety." *Ibid.*

The United States Court of Appeals for the Seventh Circuit summarily affirmed without opinion. We granted certiorari, 510 U. S. __ (1993), because Courts of Appeals had adopted inconsistent tests for "deliberate

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[1]Petitioner also sought an order requiring the Bureau of Prisons to place petitioner in a "co-correctional facility" (*i.e.*, one separately housing male and female prisoners but allowing coeducational programming). Petitioner tells us, however, that the Bureau no longer operates such facilities, and petitioner apparently no longer seeks this relief.

indifference." Compare, for example, *McGill* v. *Duckworth*, 944 F. 2d 344, 348 (CA7 1991) (holding that "deliberate indifference" requires a "subjective standard of recklessness"), cert. denied, 503 U. S. __ (1992), with *Young* v. *Quinlan*, 960 F. 2d 351, 360–361 (CA3 1992) ("[A] prison official is deliberately indifferent when he knows or should have known of a sufficiently serious danger to an inmate").

II

A

The Constitution "does not mandate comfortable prisons," *Rhodes* v. *Chapman*, 452 U. S. 337, 349 (1981), but neither does it permit inhumane ones, and it is now settled that "the treatment a prisoner receives in prison and the conditions under which he is confined are subject to scrutiny under the Eighth Amendment." *Helling*, 509 U. S., at __. In its prohibition of "cruel and unusual punishments," the Eighth Amendment places restraints on prison officials, who may not, for example, use excessive physical force against prisoners. See *Hudson* v. *McMillian*, 503 U. S. 1 (1992). The Amendment also imposes duties on these officials, who must provide humane conditions of confinement; prison officials must ensure that inmates receive adequate food, clothing, shelter and medical care, and must "take reasonable measures to guarantee the safety of the inmates," *Hudson* v. *Palmer*, 468 U. S. 517, 526–527 (1984). See *Helling*, *supra*, at __ (slip op., at 5); *Washington* v. *Harper*, 494 U. S. 210, 225 (1990); *Estelle*, 429 U. S., at 103. Cf. *DeShaney* v. *Winnebago County Dept. of Social Services*, 489 U. S. 189, 198–199 (1989).

In particular, as the lower courts have uniformly held, and as we have assumed, "[p]rison officials have a duty . . . to protect prisoners from violence at the hands of other prisoners." *Cortes-Quinones* v. *Jimenez-Nettleship*, 842 F. 2d 556, 558 (CA1) (internal quotation marks and

citation omitted), cert. denied, 488 U. S. 823 (1988);[2] see also *Wilson* v. *Seiter*, 501 U. S., at 303 (describing "the protection [an inmate] is afforded against other inmates" as a "conditio[n] of confinement" subject to the strictures of the Eighth Amendment). Having incarcerated people with demonstrated proclivities for criminally antisocial and, in many cases, violent conduct, having stripped them of virtually every means of self-protection and foreclosed their access to outside aid, the government and its officials are not free to let the state of nature take its course. Cf. *DeShaney*, *supra*, at 199–200; *Estelle*, *supra*, at 103–104. Prison conditions may be "restrictive and even harsh," *Rhodes*, *supra*, at 347, but gratuitously allowing the beating or rape of one prisoner by another serves no "legitimate penological objectiv[e]," *Hudson* v. *Palmer*, *supra*, at 548, any more than it squares with "'evolving standards of decency,'" *Estelle*, *supra*, at 102 (quoting *Trop* v. *Dulles*, 356 U. S. 86, 101 (1958) (plurality opinion)). Being violently assaulted in prison is simply not "part of the penalty that criminal offenders pay for their offenses against society." *Rhodes*, *supra*, at 347.

It is not, however, every injury suffered by one prisoner at the hands of another that translates into constitutional liability for prison officials responsible for the victim's safety. Our cases have held that a prison official violates the Eighth Amendment only where two

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[2] Other Court of Appeals decisions to the same effect include *Villante* v. *Department of Corrections*, 786 F. 2d 516, 519 (CA2 1986); *Young* v. *Quinlan*, 960 F. 2d 351, 361–362 (CA3 1992); *Pressly* v. *Hutto*, 816 F. 2d 977, 979 (CA4 1987); *Alberti* v. *Klevenhagen*, 790 F. 2d 1220, 1224 (CA5 1986); *Roland* v. *Johnson*, 856 F. 2d 764, 769 (CA6 1988); *Goka* v. *Bobbitt*, 862 F. 2d 646, 649–650 (CA7 1988); *Martin* v. *White*, 742 F. 2d 469, 474 (CA8 1984); *Berg* v. *Kincheloe*, 794 F. 2d 457, 459 (CA9 1986); *Ramos* v. *Lamm*, 639 F. 2d 559, 572 (CA10 1980), cert. denied, 450 U. S. 1041 (1981); *LaMarca* v. *Turner*, 995 F. 2d 1526, 1535 (CA11 1993); and *Morgan* v. *District of Columbia*, 824 F. 2d 1049, 1057 (CADC 1987).

requirements are met. First, the deprivation alleged must be, objectively, "sufficiently serious," *Wilson*, *supra*, at 2324; see also *Hudson* v. *McMillian*, *supra*, at __ (slip op., at 5); a prison official's act or omission must result in the denial of "the minimal civilized measure of life's necessities," *Rhodes*, *supra*, at 347. For a claim (like the one here) based on a failure to prevent harm, the inmate must show that he is incarcerated under conditions posing a substantial risk of serious harm. See *Helling*, *supra*, at __ (slip op., at 8).[3]

The second requirement follows from the principle that "only the unnecessary and wanton infliction of pain implicates the Eighth Amendment." *Wilson*, 501 U. S., at 297 (internal quotation marks, emphasis and citations omitted). To violate the Cruel and Unusual Punishments Clause, a prison official must have a "sufficiently culpable state of mind." *Ibid.*; see also *id.*, at 302–303; *Hudson* v. *McMillian*, *supra*, at __ (slip op., at 5). In prison-conditions cases, we have said, that state of mind is one of "deliberate indifference" to inmate health or safety, *Wilson*, *supra*, at 2326–2327; see also *Helling*, *supra*, at __ (slip op., at 6–7); *Hudson* v. *McMillian*, *supra*, at 999; *Estelle*, *supra*, at 106, a standard the parties agree governs the claim in this case. The parties disagree, however, on the proper test for deliberate indifference, which we must therefore undertake to define.

B

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Although we have never paused to explain at any length the meaning of the term "deliberate indifference," the case law is instructive. The term first appeared in

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[3] At what point a risk of inmate assault becomes sufficiently substantial for Eighth Amendment purposes is a question this case does not present, and we do not address it.

the United States Reports in *Estelle* v. *Gamble*, 429 U. S., at 104, and its use there shows that deliberate indifference describes a state of mind more blameworthy than negligence. In considering the inmate's claim in *Estelle* that inadequate prison medical care violated the Cruel and Unusual Punishments Clause, we distinguished "deliberate indifference to serious medical needs of prisoners," *ibid.*, from "negligen[ce] in diagnosing or treating a medical condition," *id.*, at 106, holding that only the former violates the Clause. We have since read *Estelle* for the proposition that Eighth Amendment liability requires "more than ordinary lack of due care for the prisoner's interests or safety." *Whitley* v. *Albers*, 475 U. S. 312, 319 (1986).

While deliberate indifference entails something more than mere negligence, the cases are also clear that it is satisfied by something less than acts or omissions for the very purpose of causing harm or with knowledge that harm will result. That point underlies the ruling that "application of the deliberate indifference standard is inappropriate" in one class of prison cases: when "officials stand accused of using excessive physical force." *Hudson* v. *McMillian*, 503 U. S., at __; see also *Whitley*, *supra*, 320. In such situations, where the decisions of prison officials are typically made "'in haste, under pressure, and frequently without the luxury of a second chance,'" *Hudson* v. *McMillian*, *supra*, at __ (quoting *Whitley*, *supra*, at 320), an Eighth Amendment claimant must show more than "indifference," deliberate or otherwise. The claimant must show that officials applied force "'"maliciously and sadistically for the very purpose of causing harm"'" (rather than "in a good faith effort to maintain or restore discipline"), 503 U. S., at __ (quoting *Whitley*, *supra*, at 320–321) (in turn quoting *Johnson* v. *Glick*, 481 F. 2d 1028, 1033 (CA2), cert. denied, 414 U. S. 1033 (1973)), or, as the Court also put it, that officials used force with "'a knowing willingness

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that [harm] occur,'" 503 U. S., at __ (quoting *Whitley*, *supra*, at 321). This standard of purposeful or knowing conduct is not, however, necessary to satisfy the *mens rea* requirement of deliberate indifference for claims challenging conditions of confinement; "the very high state of mind prescribed by *Whitley* does not apply to prison condition cases." *Wilson*, *supra*, at 302–303.

With deliberate indifference lying somewhere between the poles of negligence at one end and purpose or knowledge at the other, the Courts of Appeals have routinely equated deliberate indifference with recklessness.[4] See, *e.g.*, *LaMarca* v. *Turner*, 995 F. 2d 1526, 1535 (CA11 1993); *Manarite* v. *Springfield*, 957 F. 2d 953, 957 (CA1), cert. denied, 506 U. S. __ (1992); *Redman* v. *County of San Diego*, 942 F. 2d 1435, 1443 (CA9 1991), cert. denied, 506 U. S. __ (1992); *McGill* v. *Duckworth*, 944 F. 2d, at 347; *Miltier* v. *Beorn*, 896 F. 2d 848, 851–852 (CA4 1990); *Martin* v. *White*, 742 F. 2d 469, 474 (CA8 1984); see also *Springfield* v. *Kibbe*, 480 U. S. 257, 269 (1987) (O'CONNOR, J., dissenting). It is, indeed, fair to say that acting or failing to act with deliberate indifference to a substantial risk of serious harm to a prisoner is the equivalent of recklessly disregarding that risk.

That does not, however, completely answer the pending question about the level of culpability deliberate indifference entails, for the term recklessness is not self-defining. The civil law generally calls a person reckless who acted or (if the person had a duty to act) failed to act in the face of an unjustifiably high risk of harm that

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[4]Between the poles lies "gross negligence" too, but the term is a "nebulous" one, in practice typically meaning little different from recklessness as typically understood in the civil law (which we discuss later in the text). See W. Keeton, D. Dobbs, R. Keeton, D. Owen, Prosser and Keeton on Torts § 34, p. 212 (5th ed. 1984) (hereinafter Prosser and Keeton).

was either known or so obvious that it should have been known. See Prosser and Keeton, § 34, pp. 213–214; Restatement (Second) of Torts § 500 (1965). The criminal law, however, generally permits a finding of recklessness only when a person has disregarded a risk of harm of which he was aware. See R. Perkins & R. Boyce, Criminal Law 850–851 (3d ed. 1982); J. Hall, General Principles of Criminal Law 115–116, 120, 128 (2d ed. 1960) (hereinafter Hall); American Law Institute, Model Penal Code § 2.02(2)(c), and Comment 3 (1985); but see *Commonwealth* v. *Pierce*, 138 Mass. 165, 175–178 (1884) (Holmes, J.) (adopting an objective approach to criminal recklessness). The standards proposed by the parties in this case track the two approaches (though the parties do not describe them that way): petitioner asks us to define deliberate indifference as what we have called civil-law recklessness,[5] and the government urges us to adopt an approach consistent with recklessness in the criminal law.[6]

We reject petitioner's invitation to adopt an objective test for deliberate indifference. We hold instead that a prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference. This

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[5] See Reply Brief for Petitioner 5 (suggesting that a prison official is deliberately indifferent if he "knew facts which rendered an unreasonable risk obvious; under such circumstances, the defendant should have known of the risk and will be charged with such knowledge as a matter of law"); see also Brief for Petitioner 20–21.

[6] See Brief for Respondents 16 (asserting that deliberate indifference requires that a prison "official must know of the risk of harm to which an inmate is exposed").

approach comports best with the text of the Amendment and our cases interpreting it. The Eighth Amendment does not outlaw cruel and unusual "conditions"; it outlaws cruel and unusual "punishments." An act or omission unaccompanied by knowledge of a significant risk of harm might well be something society wishes to discourage, and if harm does result society might well wish to assure compensation. The common law reflects such concerns when it imposes tort liability on a purely objective basis. See Prosser and Keeton §§ 2, 34 pp. 6, 213–214; see also Federal Tort Claims Act, 28 U. S. C. §§ 2671–2680; *United States* v. *Muniz*, 374 U. S. 150 (1963). But an official's failure to alleviate a significant risk that he should have perceived but did not, while no cause for commendation, cannot be condemned as the infliction of punishment.

In *Wilson* v. *Seiter*, we rejected a reading of the Eighth Amendment that would allow liability to be imposed on prison officials solely because of the presence of objectively inhumane prison conditions. See 501 U. S., at 299–302. As we explained there at length, our "cases mandate inquiry into a prison official's state of mind when it is claimed that the official has inflicted cruel and unusual punishment." *Id.*, at 299. Although "state of mind," like "intent," are ambiguous terms that can encompass objectively defined levels of blameworthiness, see 1 W. LaFave & A. Scott, Substantive Criminal Law §§ 3.4, 3.5, pp. 296–300, 313–314 (1986) (hereinafter LaFave & Scott); *United States* v. *Bailey*, 444 U. S. 394, 404 (1980), it was no accident that we said in *Wilson* and repeated in later cases that Eighth Amendment suits against prison officials must satisfy a "subjective" requirement. See *Wilson*, *supra*, at 298; see also *Helling*, 509 U. S., at __ (slip op., at 9); *Hudson* v. *McMillian*, 503 U. S., at __ (slip op., at 4–5). It is true, as petitioner points out, that *Wilson* cited with approval Court of Appeals decisions applying an objective test for

deliberate indifference to claims based on prison officials' failure to prevent inmate assaults. See 501 U. S., at 303 (citing *Cortes-Quinones* v. *Jimenez-Nettleship*, 842 F. 2d, at 560; and *Morgan* v. *District of Columbia*, 824 F. 2d, at 1057–1058). But *Wilson* cited those cases for the proposition that the deliberate-indifference standard applies to all prison-conditions claims, not to undo its holding that the Eighth Amendment has a "subjective component." 501 U. S., at 298. Petitioner's purely objective test for deliberate indifference is simply incompatible with that holding.

To be sure, the reasons for focusing on what a defendant's mental attitude actually was (or is), rather than what it should have been (or should be), differ in the Eighth Amendment context from that of the criminal law. Here, a subjective approach isolates those who inflict punishment; there, it isolates those against whom punishment should be inflicted. But the result is the same: to act recklessly in either setting a person must "consciously disregar[d]" a substantial risk of serious harm. Model Penal Code, *supra*, §2.02(2)(c).

At oral argument, the Deputy Solicitor General advised against frank adoption of a criminal-law *mens rea* requirement, contending that it could encourage triers of fact to find Eighth Amendment liability only if they concluded that prison officials acted like criminals. See Tr. of Oral Arg. 39–40. We think the government's concern is misdirected. *Bivens* actions against federal prison officials (and their §1983 counterparts against state officials) are civil in character, and a court should no more allude to the criminal law when enforcing the Cruel and Unusual Punishments Clause than when applying the Free Speech and Press Clauses, where we have also adopted a subjective approach to recklessness. See *Harte-Hanks Communications, Inc.* v. *Connaughton*, 491 U. S. 657, 688 (1989) (holding that the standard for "reckless disregard" for the truth in a defamation action

by a public figure "is a subjective one," requiring that "the defendant in fact entertained serious doubts as to the truth of his publication," or that "the defendant actually had a high degree of awareness of . . . probable falsity") (internal quotation marks and citations omitted).[7] That said, however, subjective recklessness as used in the criminal law is a familiar and workable standard that is consistent with the Cruel and Unusual Punishments Clause as interpreted in our cases, and we adopt it as the test for "deliberate indifference" under the Eighth Amendment.

2

Our decision that Eighth Amendment liability requires consciousness of a risk is thus based on the Constitution and our cases, not merely on a parsing of the phrase "deliberate indifference." And we do not reject petitioner's arguments for a thoroughly objective approach to deliberate indifference without recognizing that on the crucial point (whether a prison official must know of a risk, or whether it suffices that he should have known) the term does not speak with certainty. Use of "deliberate," for example, arguably requires nothing more than an act (or omission) of indifference to a serious risk that is voluntary, not accidental. Cf. *Estelle*, 429 U. S., at 105 (distinguishing "deliberate indifference" from "accident" or "inadverten[ce]"). And even if "deliberate" is better read as implying knowledge of a risk, the concept of constructive knowledge is familiar enough that the term "deliberate indifference" would not, of its own force, preclude a scheme that conclusively presumed awareness from a risk's obviousness.

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[7] Appropriate allusions to the criminal law would, of course, be proper during criminal prosecutions under, for example, 18 U. S. C. § 242, which sets criminal penalties for deprivations of rights under color of law.

Because "deliberate indifference" is a judicial gloss, appearing neither in the Constitution nor in a statute, we could not accept petitioner's argument that the test for "deliberate indifference" described in *Canton* v. *Harris*, 489 U. S. 378 (1989), must govern here. In *Canton*, interpreting 42 U. S. C. § 1983, we held that a municipality can be liable for failure to train its employees when the municipality's failure shows "a deliberate indifference to the rights of its inhabitants." 489 U. S., at 389 (internal quotation marks omitted). In speaking to the meaning of the term, we said that "it may happen that in light of the duties assigned to specific officers or employees the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need." *Id.*, at 390; see also *id.*, at 390, n. 10 (elaborating). JUSTICE O'CONNOR's separate opinion for three Justices agreed with the Court's "obvious[ness]" test and observed that liability is appropriate when policymakers are "on actual or constructive notice" of the need to train, *id.*, at 396 (opinion concurring in part and dissenting in part). It would be hard to describe the *Canton* understanding of deliberate indifference, permitting liability to be premised on obviousness or constructive notice, as anything but objective.

Canton's objective standard, however, is not an appropriate test for determining the liability of prison officials under the Eighth Amendment as interpreted in our cases. Section 1983, which merely provides a cause of action, "contains no state-of-mind requirement independent of that necessary to state a violation of the underlying constitutional right." *Daniels* v. *Williams*, 474 U. S. 327, 330 (1986). And while deliberate indifference serves under the Eighth Amendment to ensure that only inflictions of punishment carry liability, see *Wilson*,

501 U. S., at 299–300, the "term was used in the *Canton* case for the quite different purpose of identifying the threshold for holding a city responsible for the constitutional torts committed by its inadequately trained agents," *Collins* v. *Harker Heights*, 503 U. S. __, __ (1992), a purpose the *Canton* Court found satisfied by a test permitting liability when a municipality disregards "obvious" needs. Needless to say, moreover, considerable conceptual difficulty would attend any search for the subjective state of mind of a governmental entity, as distinct from that of a prison official. For these reasons, we cannot accept petitioner's argument that *Canton* compels the conclusion here that a prison official who was unaware of a substantial risk of harm to an inmate may nevertheless be held liable under the Eighth Amendment if the risk was obvious and a reasonable prison official would have noticed it.

We are no more persuaded by petitioner's argument that, without an objective test for deliberate indifference, prison officials will be free to ignore obvious dangers to inmates. Under the test we adopt today, an Eighth Amendment claimant need not show that a prison official acted or failed to act believing that harm actually would befall an inmate; it is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm. Cf. 1 C. Torcia, Wharton's Criminal Law §27, p. 141 (14th ed. 1978); Hall 115. We doubt that a subjective approach will present prison officials with any serious motivation "to take refuge in the zone between 'ignorance of obvious risks' and 'actual knowledge of risks.'" Brief for Petitioner 27. Whether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence, see Hall 118 (cautioning against "confusing a mental state with the proof of its existence"), and a factfinder may conclude

that a prison official knew of a substantial risk from the very fact that the risk was obvious. Cf. LaFave & Scott §3.7, p. 335 ("[I]f the risk is obvious, so that a reasonable man would realize it, we might well infer that [the defendant] did in fact realize it; but the inference cannot be conclusive, for we know that people are not always conscious of what reasonable people would be conscious of"). For example, if an Eighth Amendment plaintiff presents evidence showing that a substantial risk of inmate attacks was "longstanding, pervasive, well-documented, or expressly noted by prison officials in the past, and the circumstances suggest that the defendant-official being sued had been exposed to information concerning the risk and thus 'must have known' about it, then such evidence could be sufficient to permit a trier of fact to find that the defendant-official had actual knowledge of the risk." Brief for Respondents 22.[8]

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[8] The government calls our attention to the concept of willful blindness, under which a person is not ignorant of something, but knows it, if he is "aware of [a] 'high probability'" of its existence. *Turner* v. *United States*, 396 U. S. 398, 416 (1970); see also American Law Institute, Model Penal Code § 2.02(7) (1985). The criminal law allows liability to rest on proof that a defendant purposefully avoided obtaining final confirmation of what he strongly suspected to be true, see *ibid.*, and we see no reason the concept of willful blindness should be inapplicable under the Eighth Amendment. (We have assumed its applicability under the First. See *Masson* v. *New Yorker Magazine, Inc.*, 501 U. S. __, __ (1991) (stating that a public figure in a defamation case may establish "reckless disregard" for the truth by showing that the defendant "acted with a 'high degree of awareness of . . . probable falsity'") (citation omitted).) In deliberate indifference cases, willful blindness may be relevant both in establishing knowledge of the underlying facts (a prison official, for example, purposefully avoids confirming his reasons to believe that one prisoner has planned an attack on another), and also in establishing knowledge of the risk (a prison official, for example, knows that a single needle is being used to administer flu shots to prisoners but refuses to listen to a subordinate attempting to explain the associated risk of transmitting communicable diseases). We stress, however, that at least for Eighth Amendment purposes "[a] deliberate avoidance of

Nor may a prison official escape liability for deliberate indifference by showing that, while he was aware of an obvious, substantial risk to inmate safety, he did not know that the complainant was especially likely to be assaulted by the specific prisoner who eventually committed the assault. The question under the Eighth Amendment is whether prison officials, acting with deliberate indifference, exposed a prisoner to a sufficiently substantial "risk of serious damage to his future health," *Helling*, 509 U. S., at __, and it does not matter whether the risk came from a single source or multiple sources, any more than it matters whether a prisoner faced an excessive risk of attack for reasons personal to him or because all prisoners in his situation faced such a risk. See Brief for Respondents 15 (stating that a prisoner can establish exposure to a sufficiently serious risk of harm "by showing that he belongs to an identifiable group of prisoners who are frequently singled out for violent attack by other inmates"). If, for example, prison officials were aware that inmate "rape was so common and uncontrolled that some potential victims dared not sleep [but] instead . . . would leave their beds and spend the night clinging to the bars nearest the guards' station," *Hutto* v. *Finney*, 437 U. S., 678, 681–682 n. 3 (1978), it would obviously be irrelevant to liability that the officials could not have guessed beforehand precisely who would attack whom. Cf. *Helling*, *supra*, at __ (observing that the Eighth Amendment requires a remedy for exposure of inmates to

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knowledge is culpable only when coupled with a subjective awareness of high probability," *United States* v. *Valle-Valdez*, 554 F. 2d 911, 914 (CA9 1977), and courts should be careful to ensure that in its application the willful blindness rule does not dispense with the need for subjective awareness. It is not enough merely to find that a reasonable person would have known of the relevant fact or that the defendant should have known, and juries should be instructed accordingly.

"infectious maladies" such as hepatitis and venereal disease "even though the possible infection might not affect all of those exposed"); *Commonwealth* v. *Welansky*, 316 Mass. 383, 55 N. E. 2d 902 (1944) (affirming conviction for manslaughter under a law requiring reckless or wanton conduct of a nightclub owner who failed to protect patrons from a fire, even though the owner did not know in advance who would light the match that ignited the fire or which patrons would lose their lives).

Because, however, prison officials who lacked knowledge of a risk cannot be said to have inflicted punishment, it remains open to the officials to prove that they were unaware even of an obvious risk to inmate health or safety. That a trier of fact may infer knowledge from the obvious, in other words, does not mean that it must do so. Prison officials charged with deliberate indifference might show, for example, that they did not know of the underlying facts indicating a sufficiently substantial danger, or that they knew the underlying facts but believed (albeit unsoundly) that the risk to which the facts gave rise was insubstantial or nonexistent.

In addition, prison officials who actually knew of a substantial risk to inmate health or safety may be found free from liability if they responded reasonably to the risk, even if the harm ultimately was not averted. A prison official's duty under the Eighth Amendment is to ensure "reasonable safety," *Helling*, *supra*, at __ (slip op., at 7); see also *Washington* v. *Harper*, 494 U. S., at 225; *Hudson* v. *Palmer*, 468 U. S., at 526–527, a standard that incorporates due regard for prison officials' "unenviable task of keeping dangerous men in safe custody under humane conditions." *Spain* v. *Procunier*, 600 F. 2d 189, 193 (CA9 1979) (Kennedy, J.); see also *Bell* v. *Wolfish*, 441 U. S. 520, 547–548, 562 (1979). Whether one puts it in terms of duty or deliberate indifference, prison officials who act reasonably cannot

be found liable under the Cruel and Unusual Punishments Clause.

We address, finally, petitioner's argument that a subjective deliberate indifference test will unjustly require prisoners to suffer physical injury before obtaining court-ordered correction of objectively inhumane prison conditions. "It would," indeed, "be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them." *Helling*, 509 U. S., at __. But nothing in the test we adopt today clashes with that common sense. Petitioner's argument is flawed for the simple reason that "[o]ne does not have to await the consummation of a threatened injury to obtain preventive relief." *Pennsylvania* v. *West Virginia*, 262 U. S. 553, 593 (1923). Consistently with this principle, a subjective approach to deliberate indifference does not require a prisoner seeking "a remedy for unsafe conditions [to] await a tragic event" such as an "actua[l] assaul[t] before obtaining relief." *Helling*, *supra* at __.

In a suit such as petitioner's, insofar as it seeks injunctive relief to prevent a substantial risk of serious injury from ripening into actual harm, "the subjective factor, deliberate indifference, should be determined in light of the prison authorities' current attitudes and conduct," *Helling*, *supra*, at __: their attitudes and conduct at the time suit is brought and persisting thereafter. An inmate seeking an injunction on the ground that there is "a contemporary violation of a nature likely to continue," *United States* v. *Oregon Medical Society*, 343 U. S. 326, 333 (1952), must adequately plead such a violation; to survive summary judgment, he must come forward with evidence from which it can be inferred that the defendant-officials were at the time suit was filed, and are at the time of summary judgment, knowingly and unreasonably disregarding an objectively intolerable risk of harm, and

that they will continue to do so; and finally to establish eligibility for an injunction, the inmate must demonstrate the continuance of that disregard during the remainder of the litigation and into the future. In so doing, the inmate may rely, in the district court's discretion, on developments that postdate the pleadings and pretrial motions, as the defendants may rely on such developments to establish that the inmate is not entitled to an injunction.[9] See Fed. R. Civ. Proc. 15(d); 6A C. Wright, A. Miller & M. Kane, Federal Practice and Procedure §§1504–1510, pp. 177–211 (2d ed. 1990). If the court finds the Eighth Amendment's subjective and objective requirements satisfied, it may grant appropriate injunctive relief. See *Hutto* v. *Finney*, 437 U. S., at 685–688 & n. 9 (upholding order designed to halt "an ongoing violation" in prison conditions that included extreme overcrowding, rampant violence, insufficient food, and unsanitary conditions). Of course, a district court should approach issuance of injunctive orders with the usual caution, see *Bell* v. *Wolfish*, 441 U. S., at 562 (warning courts against becoming "enmeshed in the minutiae of prison conditions"), and may, for example, exercise its discretion if appropriate by giving prison

[9] If, for example, the evidence before a district court establishes that an inmate faces an objectively intolerable risk of serious injury, the defendants could not plausibly persist in claiming lack of awareness, any more than prison officials who state during the litigation that they will not take reasonable measures to abate an intolerable risk of which they are aware could claim to be subjectively blameless for purposes of the Eighth Amendment, and in deciding whether an inmate has established a continuing constitutional violation a district court may take such developments into account. At the same time, even prison officials who had a subjectively culpable state of mind when the lawsuit was filed could prevent issuance of an injunction by proving, during the litigation, that they were no longer unreasonably disregarding an objectively intolerable risk of harm and that they would not revert to their obduracy upon cessation of the litigation.

officials time to rectify the situation before issuing an injunction.

That prison officials' "current attitudes and conduct," *Helling*, *supra*, at __, must be assessed in an action for injunctive relief does not mean, of course, that inmates are free to bypass adequate internal prison procedures and bring their health and safety concerns directly to court. "An appeal to the equity jurisdiction conferred on federal district courts is an appeal to the sound discretion which guides the determinations of courts of equity," *Meredith* v. *Winter Haven*, 320 U. S. 228, 235 (1944), and any litigant making such an appeal must show that the intervention of equity is required. When a prison inmate seeks injunctive relief, a court need not ignore the inmate's failure to take advantage of adequate prison procedures, and an inmate who needlessly bypasses such procedures may properly be compelled to pursue them. Cf. 42 U. S. C. §1997e (authorizing district courts in §1983 actions to require inmates to exhaust "such plain, speedy and effective administrative remedies as are available"). Even apart from the demands of equity, an inmate would be well advised to take advantage of internal prison procedures for resolving inmate grievances. When those procedures produce results, they will typically do so faster than judicial processes can. And even when they do not bring constitutionally required changes, the inmate's task in court will obviously be much easier.

Accordingly, we reject petitioner's arguments and hold that a prison official may be held liable under the Eighth Amendment for denying humane conditions of confinement only if he knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it.

III

A

Against this backdrop, we consider whether the District Court's disposition of petitioner's complaint, summarily affirmed without briefing by the Court of Appeals for the Seventh Circuit, comports with Eighth Amendment principles. We conclude that the appropriate course is to remand.

In granting summary judgment to respondents on the ground that petitioner had failed to satisfy the Eighth Amendment's subjective requirement, the District Court may have placed decisive weight on petitioner's failure to notify respondents of a risk of harm. That petitioner "never expressed any concern for his safety to any of the [respondents]," App. 124, was the only evidence the District Court cited for its conclusion that there was no genuine dispute about respondents' assertion that they "had no knowledge of any potential danger to [petitioner]," *ibid.* But with respect to each of petitioner's claims, for damages and for injunctive relief, the failure to give advance notice is not dispositive. Petitioner may establish respondents' awareness by reliance on any relevant evidence. See *supra*, at 16.

The summary judgment record does not so clearly establish respondent's entitlement to judgment as a matter of law on the issue of subjective knowledge that we can simply assume the absence of error below. For example, in papers filed in opposition to respondents' summary-judgment motion, petitioner pointed to respondents' admission that petitioner is a "non-violent" transsexual who, because of petitioner's "youth and feminine appearance" is "likely to experience a great deal of sexual pressure" in prison. App. 50–51, 73–74. And petitioner recounted a statement by one of the respondents, then warden of the penitentiary in Lewisburg, Pennsylvania, who told petitioner that there was "a

high probability that [petitioner] could not safely function at USP-Lewisburg," App. 109, an incident confirmed in a published District Court opinion. See *Farmer* v. *Carlson*, 635 F.Supp., at 1342; see also *ibid.* ("Clearly, placing plaintiff, a twenty-one year old transsexual, into the general population at [USP-]Lewisburg, a [high-]security institution, could pose a significant threat to internal security in general and to plaintiff in particular").

We cannot, moreover, be certain that additional evidence is unavailable to petitioner because in denying the Rule 56(f) motion for additional discovery the District Court may have acted on a mistaken belief that petitioner's failure to notify was dispositive. Petitioner asserted in papers accompanying the Rule 56(f) motion that the requested documents would show that "each defendant had knowledge that USP-Terre Haute was and is, a violent institution with a history of sexual assault, stabbings, etc., [and that] each defendant showed reckless disregard for my safety by designating me to said institution knowing that I would be sexually assaulted." App. 105–106. But in denying the Rule 56(f) motion, the District Court stated that the requested documents were "not shown by plaintiff to be necessary to oppose defendants' motion for summary judgment," App. 121, a statement consistent with the erroneous view that failure to notify was fatal to petitioner's complaint.

Because the District Court may have mistakenly thought that advance notification was a necessary element of an Eighth Amendment failure-to-protect claim, we think it proper to remand for reconsideration of petitioner's Rule 56(f) motion and, whether additional

ery is permitted or not, for application of the
Amendment principles explained above.[10]

B

government urges us to affirm for reasons not
on below, but neither of the government's conten-
so clearly correct as to justify affirmance.
respect to petitioner's damages claim, the govern-
rgues that the officials sued in their individual
ties (officials at FCI-Oxford or the Bureau of
North Central Region office), were alleged to be
only for their transfer of petitioner from FCI-
to USP-Terre Haute, whereas petitioner "nowhere
any reason for believing that these officials, who
direct responsibility for administering the Terre
institution, would have had knowledge of condi-
within that institution regarding danger to trans-
inmates." Brief for Respondents 27–28. But
ner's Rule 56(f) motion alleged just that. Though
vernment suggests here that petitioner offered no
basis for that assertion, that is not a ground on
the government chose to oppose petitioner's Rule
notion below and, in any event, is a matter for the
e of the District Court's judgment, not ours.
, to the extent the government seeks affirmance
n the ground that officials at FCI-Oxford and the
u of Prisons regional office had no power to control
er placement at Terre Haute, the record gives at
a suggestion to the contrary; the affidavit of one
dent, the warden of USP-Terre Haute, states that
having been at USP-Terre Haute for about a

District Court's opinion is open to the reading that it required
advance notification of a substantial risk of assault, but also ad-
tification of a substantial risk of assault posed by a particular
risoner. See App. 124 (referring to "a specific threat to [a
's] safety"). The Eighth Amendment, however, imposes no such
ment. See *supra*, at 17.

month petitioner was placed in administrative segregation "pursuant to directive from the North Central Regional Office" and a "request . . . by staff at FCI-Oxford." App. 94–95. Accordingly, though we do not reject the government's arguments about petitioner's claim for damages, the record does not permit us to accept them as a basis for affirmance when they were not relied upon below. Respondents are free to develop this line of argument on remand.

With respect to petitioner's claim for injunctive relief, the government argued in its merits brief that the claim was "foreclosed by [petitioner's] assignment to administrative detention status because of his high-risk HIV-positive condition, . . . as well as by the absence of any allegation . . . that administrative detention status poses any continuing threat of physical injury to him." Brief for Respondents 28–29. At oral argument, however, the Deputy Solicitor General informed us that petitioner was no longer in administrative detention, having been placed in the general prison population of a medium-security prison. Tr. of Oral Arg. 25–26. He suggested that affirmance was nevertheless proper because "there is no present threat" that petitioner will be placed in a setting where he would face a "continuing threat of physical injury," *id.*, at 26, but this argument turns on facts about the likelihood of a transfer that the District Court is far better placed to evaluate than we are. We leave it to respondents to present this point on remand.

IV

The judgment of the Court of Appeals is vacated and the case is remanded for further proceedings consistent with this opinion.

So ordered.

14, 19-21, 22

HAB

To: The Chief Justice
Justice Blackmun
Justice Stevens
Justice O'Connor
Justice Scalia
Justice Kennedy
Justice Thomas
Justice Ginsburg

From: **Justice Souter**

Circulated: _____

Recirculated: 5/10/94

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 92–7247

DEE FARMER, PETITIONER *v.* EDWARD BRENNAN, WARDEN, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[May ___, 1994]

JUSTICE SOUTER delivered the opinion of the Court.

A prison official's "deliberate indifference" to a substantial risk of serious harm to an inmate violates the Eighth Amendment. See *Helling* v. *McKinney* 509 U. S. __ (1993); *Wilson* v. *Seiter*, 501 U. S. 294 (1991); *Estelle* v. *Gamble*, 429 U. S. 97 (1976). This case requires us to define the term "deliberate indifference," as we do by requiring a showing that the official was subjectively aware of the risk.

I

The dispute before us stems from a civil suit brought by petitioner, Dee Farmer, alleging that respondents, federal prison officials, violated the Eighth Amendment by their deliberate indifference to petitioner's safety. Petitioner, who is serving a federal sentence for credit card fraud, has been diagnosed by medical personnel of the Bureau of Prisons as a transsexual, one who has "[a] rare psychiatric disorder in which a person feels persistently uncomfortable about his or her anatomical sex," and who typically seeks medical treatment, including hormonal therapy and surgery, to bring about a permanent sex change. American Medical Association, Encyclopedia of Medicine 1006 (1989); see also American Psychiatric Association, Diagnostic and Statistical

HAB

To: The Chief Justice
Justice Blackmun
Justice Stevens
Justice O'Connor
Justice Scalia
Justice Kennedy
Justice Thomas
Justice Ginsburg

Manual of Mental Disorders 74–75 (3d rev. ed. 1987). Though biologically male, petitioner lived as a woman for several years before being convicted and sentenced in 1986 at the age of 18, during which time petitioner wore women's clothing (as petitioner did at the 1986 trial), underwent estrogen therapy, received silicone breast implants, and submitted to unsuccessful "black market" testicle-removal surgery. See *Farmer* v. *Haas*, 990 F. 2d 319, 320 (CA7 1993). Petitioner's precise appearance in prison is unclear from the record before us, but petitioner claims to have continued hormonal treatment while incarcerated by using drugs smuggled into prison, and apparently wears clothing in the manner of a woman, as by displaying a shirt "off one shoulder," App. 112. The parties agree that petitioner "projects feminine characteristics." *Id.*, at 51, 74.

The practice of federal prison authorities is to incarcerate preoperative transsexuals with prisoners of like biological sex, see *Farmer* v. *Haas*, *supra*, at 320, and over time authorities housed petitioner in several federal facilities, sometimes in the general male prison population but more often in segregation. While there is no dispute that petitioner was segregated at least several times because of violations of prison rules, neither is it disputed that in at least one penitentiary petitioner was segregated because of safety concerns. See *Farmer* v. *Carlson*, 685 F. Supp. 1335, 1342 (MD Pa. 1988).

On March 9, 1989, petitioner was transferred for disciplinary reasons from the Federal Correctional Institute in Oxford, Wisconsin (FCI-Oxford), to the United States Penitentiary in Terre Haute, Indiana (USP-Terre Haute). Though the record before us is unclear about the security designations of the two prisons in 1989, penitentiaries are typically higher security facilities that house more troublesome prisoners than federal correctional institutes. See generally Federal Bureau of Prisons, Facilities 1990. After an

To: The Chief Justice
Justice Blackmun
Justice Stevens
Justice O'Connor
Justice Scalia
Justice Kennedy
Justice Thomas
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initial stay in administrative segregation, petitioner was placed in the USP-Terre Haute general population. Petitioner voiced no objection to any prison official about the transfer to the penitentiary or to placement in its general population. Within two weeks, according to petitioner's allegations, petitioner was beaten and raped by another inmate in petitioner's cell. Several days later, after petitioner claims to have reported the incident, officials returned petitioner to segregation to await, according to the government, a hearing about petitioner's HIV-positive status.

Acting without counsel, petitioner then filed a *Bivens* complaint, alleging a violation of the Eighth Amendment. See *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U. S. 388 (1971); *Carlson* v. *Green*, 446 U. S. 14 (1980). As defendants, petitioner named respondents: the warden of USP-Terre Haute and the Director of the Bureau of Prisons (sued only in their official capacities); the warden of FCI-Oxford and a case manager there; and the director of the Bureau of Prisons North Central Region Office and an official in that office (sued in their official and personal capacities). As later amended, the complaint alleged that respondents either transferred petitioner to USP-Terre Haute or placed petitioner in its general population despite knowledge that the penitentiary had a violent environment and a history of inmate assaults, and despite knowledge that petitioner, as a transsexual who "projects feminine characteristics," would be particularly vulnerable to sexual attack by USP-Terre Haute inmates. This allegedly amounted to a deliberately indifferent failure to protect petitioner's safety, and thus to a violation of petitioner's Eighth Amendment rights. Petitioner sought compensatory and punitive damages, and an injunction

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barring future confinement in any penitentiary, including USP-Terre Haute.[1]

Respondents filed a motion for summary judgment supported by several affidavits, to which petitioner responded with an opposing affidavit and a cross-motion for summary judgment; petitioner also invoked Federal Rule of Civil Procedure 56(f), asking the court to delay its ruling until respondents had complied with petitioner's pending request for production of documents. Respondents then moved for a protective order staying discovery until resolution of the issue of qualified immunity, raised in respondents' summary-judgment motion.

The District Court denied petitioner's Rule 56(f) motion and granted summary judgment to respondents, concluding that there had been no deliberate indifference to petitioner's safety. The failure of prison officials to prevent inmate assaults violates the Eighth Amendment, the court stated, only if prison officials were "reckless in a criminal sense," meaning that they had "actual knowledge" of a potential danger. App. 124. Respondents, however, lacked the requisite knowledge, the court found. "[Petitioner] never expressed any concern for his safety to any of [respondents]. Since [respondents] had no knowledge of any potential danger to [petitioner], they were not deliberately indifferent to his safety." *Ibid.*

The United States Court of Appeals for the Seventh Circuit summarily affirmed without opinion. We granted certiorari, 510 U. S. __ (1993), because Courts of Appeals had adopted inconsistent tests for "deliberate

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[1]Petitioner also sought an order requiring the Bureau of Prisons to place petitioner in a "co-correctional facility" (*i.e.*, one separately housing male and female prisoners but allowing coeducational programming). Petitioner tells us, however, that the Bureau no longer operates such facilities, and petitioner apparently no longer seeks this relief.

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indifference." Compare, for example, *McGill* v. *Duckworth*, 944 F. 2d 344, 348 (CA7 1991) (holding that "deliberate indifference" requires a "subjective standard of recklessness"), cert. denied, 503 U. S. __ (1992), with *Young* v. *Quinlan*, 960 F. 2d 351, 360–361 (CA3 1992) ("[A] prison official is deliberately indifferent when he knows or should have known of a sufficiently serious danger to an inmate").

II

A

The Constitution "does not mandate comfortable prisons," *Rhodes* v. *Chapman*, 452 U. S. 337, 349 (1981), but neither does it permit inhumane ones, and it is now settled that "the treatment a prisoner receives in prison and the conditions under which he is confined are subject to scrutiny under the Eighth Amendment." *Helling*, 509 U. S., at __. In its prohibition of "cruel and unusual punishments," the Eighth Amendment places restraints on prison officials, who may not, for example, use excessive physical force against prisoners. See *Hudson* v. *McMillian*, 503 U. S. 1 (1992). The Amendment also imposes duties on these officials, who must provide humane conditions of confinement; prison officials must ensure that inmates receive adequate food, clothing, shelter and medical care, and must "take reasonable measures to guarantee the safety of the inmates," *Hudson* v. *Palmer*, 468 U. S. 517, 526–527 (1984). See *Helling*, *supra*, at __ (slip op., at 5); *Washington* v. *Harper*, 494 U. S. 210, 225 (1990); *Estelle*, 429 U. S., at 103. Cf. *DeShaney* v. *Winnebago County Dept. of Social Services*, 489 U. S. 189, 198–199 (1989).

In particular, as the lower courts have uniformly held, and as we have assumed, "[p]rison officials have a duty . . . to protect prisoners from violence at the hands of other prisoners." *Cortes-Quinones* v. *Jimenez-Nettleship*, 842 F. 2d 556, 558 (CA1) (internal quotation marks and

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citation omitted), cert. denied, 488 U. S. 823 (1988);[2] see also *Wilson* v. *Seiter*, 501 U. S., at 303 (describing "the protection [an inmate] is afforded against other inmates" as a "conditio[n] of confinement" subject to the strictures of the Eighth Amendment). Having incarcerated people with demonstrated proclivities for criminally antisocial and, in many cases, violent conduct, having stripped them of virtually every means of self-protection and foreclosed their access to outside aid, the government and its officials are not free to let the state of nature take its course. Cf. *DeShaney*, *supra*, at 199–200; *Estelle*, *supra*, at 103–104. Prison conditions may be "restrictive and even harsh," *Rhodes*, *supra*, at 347, but gratuitously allowing the beating or rape of one prisoner by another serves no "legitimate penological objectiv[e]," *Hudson* v. *Palmer*, *supra*, at 548, any more than it squares with "'evolving standards of decency,'" *Estelle*, *supra*, at 102 (quoting *Trop* v. *Dulles*, 356 U. S. 86, 101 (1958) (plurality opinion)). Being violently assaulted in prison is simply not "part of the penalty that criminal offenders pay for their offenses against society." *Rhodes*, *supra*, at 347.

It is not, however, every injury suffered by one prisoner at the hands of another that translates into constitutional liability for prison officials responsible for the victim's safety. Our cases have held that a prison official violates the Eighth Amendment only where two

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[2] Other Court of Appeals decisions to the same effect include *Villante* v. *Department of Corrections*, 786 F. 2d 516, 519 (CA2 1986); *Young* v. *Quinlan*, 960 F. 2d 351, 361–362 (CA3 1992); *Pressly* v. *Hutto*, 816 F. 2d 977, 979 (CA4 1987); *Alberti* v. *Klevenhagen*, 790 F. 2d 1220, 1224 (CA5 1986); *Roland* v. *Johnson*, 856 F. 2d 764, 769 (CA6 1988); *Goka* v. *Bobbitt*, 862 F. 2d 646, 649–650 (CA7 1988); *Martin* v. *White*, 742 F. 2d 469, 474 (CA8 1984); *Berg* v. *Kincheloe*, 794 F. 2d 457, 459 (CA9 1986); *Ramos* v. *Lamm*, 639 F. 2d 559, 572 (CA10 1980), cert. denied, 450 U. S. 1041 (1981); *LaMarca* v. *Turner*, 995 F. 2d 1526, 1535 (CA11 1993); and *Morgan* v. *District of Columbia*, 824 F. 2d 1049, 1057 (CADC 1987).

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requirements are met. First, the deprivation alleged must be, objectively, "sufficiently serious," *Wilson*, *supra*, at 2324; see also *Hudson* v. *McMillian*, *supra*, at __ (slip op., at 5); a prison official's act or omission must result in the denial of "the minimal civilized measure of life's necessities," *Rhodes*, *supra*, at 347. For a claim (like the one here) based on a failure to prevent harm, the inmate must show that he is incarcerated under conditions posing a substantial risk of serious harm. See *Helling*, *supra*, at __ (slip op., at 8).[3]

The second requirement follows from the principle that "only the unnecessary and wanton infliction of pain implicates the Eighth Amendment." *Wilson*, 501 U. S., at 297 (internal quotation marks, emphasis and citations omitted). To violate the Cruel and Unusual Punishments Clause, a prison official must have a "sufficiently culpable state of mind." *Ibid.*; see also *id.*, at 302–303; *Hudson* v. *McMillian*, *supra*, at __ (slip op., at 5). In prison-conditions cases, we have said, that state of mind is one of "deliberate indifference" to inmate health or safety, *Wilson*, *supra*, at 2326–2327; see also *Helling*, *supra*, at __ (slip op., at 6–7); *Hudson* v. *McMillian*, *supra*, at 999; *Estelle*, *supra*, at 106, a standard the parties agree governs the claim in this case. The parties disagree, however, on the proper test for deliberate indifference, which we must therefore undertake to define.

B

1

Although we have never paused to explain at any length the meaning of the term "deliberate indifference," the case law is instructive. The term first appeared in

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[3]At what point a risk of inmate assault becomes sufficiently substantial for Eighth Amendment purposes is a question this case does not present, and we do not address it.

the United States Reports in *Estelle* v. *Gamble*, 429 U. S., at 104, and its use there shows that deliberate indifference describes a state of mind more blameworthy than negligence. In considering the inmate's claim in *Estelle* that inadequate prison medical care violated the Cruel and Unusual Punishments Clause, we distinguished "deliberate indifference to serious medical needs of prisoners," *ibid.*, from "negligen[ce] in diagnosing or treating a medical condition," *id.*, at 106, holding that only the former violates the Clause. We have since read *Estelle* for the proposition that Eighth Amendment liability requires "more than ordinary lack of due care for the prisoner's interests or safety." *Whitley* v. *Albers*, 475 U. S. 312, 319 (1986).

While deliberate indifference entails something more than mere negligence, the cases are also clear that it is satisfied by something less than acts or omissions for the very purpose of causing harm or with knowledge that harm will result. That point underlies the ruling that "application of the deliberate indifference standard is inappropriate" in one class of prison cases: when "officials stand accused of using excessive physical force." *Hudson* v. *McMillian*, 503 U. S., at __; see also *Whitley*, *supra*, 320. In such situations, where the decisions of prison officials are typically made "'in haste, under pressure, and frequently without the luxury of a second chance,'" *Hudson* v. *McMillian*, *supra*, at __ (quoting *Whitley*, *supra*, at 320), an Eighth Amendment claimant must show more than "indifference," deliberate or otherwise. The claimant must show that officials applied force "'"maliciously and sadistically for the very purpose of causing harm"'" (rather than "in a good faith effort to maintain or restore discipline"), 503 U. S., at __ (quoting *Whitley*, *supra*, at 320–321) (in turn quoting *Johnson* v. *Glick*, 481 F. 2d 1028, 1033 (CA2), cert. denied, 414 U. S. 1033 (1973)), or, as the Court also put it, that officials used force with "'a knowing willingness

that [harm] occur,'" 503 U. S., at __ (quoting *Whitley*, *supra*, at 321). This standard of purposeful or knowing conduct is not, however, necessary to satisfy the *mens rea* requirement of deliberate indifference for claims challenging conditions of confinement; "the very high state of mind prescribed by *Whitley* does not apply to prison condition cases." *Wilson*, *supra*, at 302–303.

With deliberate indifference lying somewhere between the poles of negligence at one end and purpose or knowledge at the other, the Courts of Appeals have routinely equated deliberate indifference with recklessness.[4] See, *e.g.*, *LaMarca* v. *Turner*, 995 F. 2d 1526, 1535 (CA11 1993); *Manarite* v. *Springfield*, 957 F. 2d 953, 957 (CA1), cert. denied, 506 U. S. __ (1992); *Redman* v. *County of San Diego*, 942 F. 2d 1435, 1443 (CA9 1991), cert. denied, 506 U. S. __ (1992); *McGill* v. *Duckworth*, 944 F. 2d, at 347; *Miltier* v. *Beorn*, 896 F. 2d 848, 851–852 (CA4 1990); *Martin* v. *White*, 742 F. 2d 469, 474 (CA8 1984); see also *Springfield* v. *Kibbe*, 480 U. S. 257, 269 (1987) (O'CONNOR, J., dissenting). It is, indeed, fair to say that acting or failing to act with deliberate indifference to a substantial risk of serious harm to a prisoner is the equivalent of recklessly disregarding that risk.

That does not, however, completely answer the pending question about the level of culpability deliberate indifference entails, for the term recklessness is not self-defining. The civil law generally calls a person reckless who acted or (if the person had a duty to act) failed to act in the face of an unjustifiably high risk of harm that

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[4]Between the poles lies "gross negligence" too, but the term is a "nebulous" one, in practice typically meaning little different from recklessness as typically understood in the civil law (which we discuss later in the text). See W. Keeton, D. Dobbs, R. Keeton, D. Owen, Prosser and Keeton on Torts § 34, p. 212 (5th ed. 1984) (hereinafter Prosser and Keeton).

was either known or so obvious that it should have been known. See Prosser and Keeton, §34, pp. 213–214; Restatement (Second) of Torts §500 (1965). The criminal law, however, generally permits a finding of recklessness only when a person has disregarded a risk of harm of which he was aware. See R. Perkins & R. Boyce, Criminal Law 850–851 (3d ed. 1982); J. Hall, General Principles of Criminal Law 115–116, 120, 128 (2d ed. 1960) (hereinafter Hall); American Law Institute, Model Penal Code §2.02(2)(c), and Comment 3 (1985); but see *Commonwealth* v. *Pierce*, 138 Mass. 165, 175–178 (1884) (Holmes, J.) (adopting an objective approach to criminal recklessness). The standards proposed by the parties in this case track the two approaches (though the parties do not describe them that way): petitioner asks us to define deliberate indifference as what we have called civil-law recklessness,[5] and the government urges us to adopt an approach consistent with recklessness in the criminal law.[6]

We reject petitioner's invitation to adopt an objective test for deliberate indifference. We hold instead that a prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference. This

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[5]See Reply Brief for Petitioner 5 (suggesting that a prison official is deliberately indifferent if he "knew facts which rendered an unreasonable risk obvious; under such circumstances, the defendant should have known of the risk and will be charged with such knowledge as a matter of law"); see also Brief for Petitioner 20–21.

[6]See Brief for Respondents 16 (asserting that deliberate indifference requires that a prison "official must know of the risk of harm to which an inmate is exposed").

approach comports best with the text of the Amendment and our cases interpreting it. The Eighth Amendment does not outlaw cruel and unusual "conditions"; it outlaws cruel and unusual "punishments." An act or omission unaccompanied by knowledge of a significant risk of harm might well be something society wishes to discourage, and if harm does result society might well wish to assure compensation. The common law reflects such concerns when it imposes tort liability on a purely objective basis. See Prosser and Keeton §§2, 34 pp. 6, 213–214; see also Federal Tort Claims Act, 28 U. S. C. §§2671–2680; *United States* v. *Muniz*, 374 U. S. 150 (1963). But an official's failure to alleviate a significant risk that he should have perceived but did not, while no cause for commendation, cannot be condemned as the infliction of punishment.

In *Wilson* v. *Seiter*, we rejected a reading of the Eighth Amendment that would allow liability to be imposed on prison officials solely because of the presence of objectively inhumane prison conditions. See 501 U. S., at 299–302. As we explained there at length, our "cases mandate inquiry into a prison official's state of mind when it is claimed that the official has inflicted cruel and unusual punishment." *Id.*, at 299. Although "state of mind," like "intent," are ambiguous terms that can encompass objectively defined levels of blameworthiness, see 1 W. LaFave & A. Scott, Substantive Criminal Law §§3.4, 3.5, pp. 296–300, 313–314 (1986) (hereinafter LaFave & Scott); *United States* v. *Bailey*, 444 U. S. 394, 404 (1980), it was no accident that we said in *Wilson* and repeated in later cases that Eighth Amendment suits against prison officials must satisfy a "subjective" requirement. See *Wilson*, *supra*, at 298; see also *Helling*, 509 U. S., at __ (slip op., at 9); *Hudson* v. *McMillian*, 503 U. S., at __ (slip op., at 4–5). It is true, as petitioner points out, that *Wilson* cited with approval Court of Appeals decisions applying an objective test for

deliberate indifference to claims based on prison officials' failure to prevent inmate assaults. See 501 U. S., at 303 (citing *Cortes-Quinones* v. *Jimenez-Nettleship*, 842 F. 2d, at 560; and *Morgan* v. *District of Columbia*, 824 F. 2d, at 1057–1058). But *Wilson* cited those cases for the proposition that the deliberate-indifference standard applies to all prison-conditions claims, not to undo its holding that the Eighth Amendment has a "subjective component." 501 U. S., at 298. Petitioner's purely objective test for deliberate indifference is simply incompatible with that holding.

To be sure, the reasons for focusing on what a defendant's mental attitude actually was (or is), rather than what it should have been (or should be), differ in the Eighth Amendment context from that of the criminal law. Here, a subjective approach isolates those who inflict punishment; there, it isolates those against whom punishment should be inflicted. But the result is the same: to act recklessly in either setting a person must "consciously disregar[d]" a substantial risk of serious harm. Model Penal Code, *supra*, §2.02(2)(c).

At oral argument, the Deputy Solicitor General advised against frank adoption of a criminal-law *mens rea* requirement, contending that it could encourage triers of fact to find Eighth Amendment liability only if they concluded that prison officials acted like criminals. See Tr. of Oral Arg. 39–40. We think the government's concern is misdirected. *Bivens* actions against federal prison officials (and their §1983 counterparts against state officials) are civil in character, and a court should no more allude to the criminal law when enforcing the Cruel and Unusual Punishments Clause than when applying the Free Speech and Press Clauses, where we have also adopted a subjective approach to recklessness. See *Harte-Hanks Communications, Inc.* v. *Connaughton*, 491 U. S. 657, 688 (1989) (holding that the standard for "reckless disregard" for the truth in a defamation action

by a public figure "is a subjective one," requiring that "the defendant in fact entertained serious doubts as to the truth of his publication," or that "the defendant actually had a high degree of awareness of . . . probable falsity") (internal quotation marks and citations omitted).[7] That said, however, subjective recklessness as used in the criminal law is a familiar and workable standard that is consistent with the Cruel and Unusual Punishments Clause as interpreted in our cases, and we adopt it as the test for "deliberate indifference" under the Eighth Amendment.

2

Our decision that Eighth Amendment liability requires consciousness of a risk is thus based on the Constitution and our cases, not merely on a parsing of the phrase "deliberate indifference." And we do not reject petitioner's arguments for a thoroughly objective approach to deliberate indifference without recognizing that on the crucial point (whether a prison official must know of a risk, or whether it suffices that he should have known) the term does not speak with certainty. Use of "deliberate," for example, arguably requires nothing more than an act (or omission) of indifference to a serious risk that is voluntary, not accidental. Cf. *Estelle*, 429 U. S., at 105 (distinguishing "deliberate indifference" from "accident" or "inadverten[ce]"). And even if "deliberate" is better read as implying knowledge of a risk, the concept of constructive knowledge is familiar enough that the term "deliberate indifference" would not, of its own force, preclude a scheme that conclusively presumed awareness from a risk's obviousness.

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[7] Appropriate allusions to the criminal law would, of course, be proper during criminal prosecutions under, for example, 18 U. S. C. § 242, which sets criminal penalties for deprivations of rights under color of law.

Because "deliberate indifference" is a judicial gloss, appearing neither in the Constitution nor in a statute, we could not accept petitioner's argument that the test for "deliberate indifference" described in *Canton* v. *Harris*, 489 U. S. 378 (1989), must govern here. In *Canton*, interpreting 42 U. S. C. § 1983, we held that a municipality can be liable for failure to train its employees when the municipality's failure shows "a deliberate indifference to the rights of its inhabitants." 489 U. S., at 389 (internal quotation marks omitted). In speaking to the meaning of the term, we said that "it may happen that in light of the duties assigned to specific officers or employees the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need." *Id.*, at 390; see also *id.*, at 390, n. 10 (elaborating). JUSTICE O'CONNOR's separate opinion for three Justices agreed with the Court's "obvious[ness]" test and observed that liability is appropriate when policymakers are "on actual or constructive notice" of the need to train, *id.*, at 396 (opinion concurring in part and dissenting in part). It would be hard to describe the *Canton* understanding of deliberate indifference, permitting liability to be premised on obviousness or constructive notice, as anything but objective.

Canton's objective standard, however, is not an appropriate test for determining the liability of prison officials under the Eighth Amendment as interpreted in our cases. Section 1983, which merely provides a cause of action, "contains no state-of-mind requirement independent of that necessary to state a violation of the underlying constitutional right." *Daniels* v. *Williams*, 474 U. S. 327, 330 (1986). And while deliberate indifference serves under the Eighth Amendment to ensure that only inflictions of punishment carry liability, see *Wilson*,

501 U. S., at 299–300, the "term was used in the *Canton* case for the quite different purpose of identifying the threshold for holding a city responsible for the constitutional torts committed by its inadequately trained agents," *Collins* v. *Harker Heights*, 503 U. S. __, __ (1992), a purpose the *Canton* Court found satisfied by a test permitting liability when a municipality disregards "obvious" needs. Needless to say, moreover, considerable conceptual difficulty would attend any search for the subjective state of mind of a governmental entity, as distinct from that of a prison official. For these reasons, we cannot accept petitioner's argument that *Canton* compels the conclusion here that a prison official who was unaware of a substantial risk of harm to an inmate may nevertheless be held liable under the Eighth Amendment if the risk was obvious and a reasonable prison official would have noticed it.

We are no more persuaded by petitioner's argument that, without an objective test for deliberate indifference, prison officials will be free to ignore obvious dangers to inmates. Under the test we adopt today, an Eighth Amendment claimant need not show that a prison official acted or failed to act believing that harm actually would befall an inmate; it is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm. Cf. 1 C. Torcia, Wharton's Criminal Law §27, p. 141 (14th ed. 1978); Hall 115. We doubt that a subjective approach will present prison officials with any serious motivation "to take refuge in the zone between 'ignorance of obvious risks' and 'actual knowledge of risks.'" Brief for Petitioner 27. Whether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence, see Hall 118 (cautioning against "confusing a mental state with the proof of its existence"), and a factfinder may conclude

that a prison official knew of a substantial risk from the very fact that the risk was obvious. Cf. LaFave & Scott §3.7, p. 335 ("[I]f the risk is obvious, so that a reasonable man would realize it, we might well infer that [the defendant] did in fact realize it; but the inference cannot be conclusive, for we know that people are not always conscious of what reasonable people would be conscious of"). For example, if an Eighth Amendment plaintiff presents evidence showing that a substantial risk of inmate attacks was "longstanding, pervasive, well-documented, or expressly noted by prison officials in the past, and the circumstances suggest that the defendant-official being sued had been exposed to information concerning the risk and thus 'must have known' about it, then such evidence could be sufficient to permit a trier of fact to find that the defendant-official had actual knowledge of the risk." Brief for Respondents 22.[8]

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[8] The government calls our attention to the concept of willful blindness, under which a person is not ignorant of something, but knows it, if he is "aware of [a] 'high probability'" of its existence. *Turner* v. *United States*, 396 U. S. 398, 416 (1970); see also American Law Institute, Model Penal Code § 2.02(7) (1985). The criminal law allows liability to rest on proof that a defendant purposefully avoided obtaining final confirmation of what he strongly suspected to be true, see *ibid.*, and we see no reason the concept of willful blindness should be inapplicable under the Eighth Amendment. (We have assumed its applicability under the First. See *Masson* v. *New Yorker Magazine, Inc.*, 501 U. S. ___, ___ (1991) (stating that a public figure in a defamation case may establish "reckless disregard" for the truth by showing that the defendant "acted with a 'high degree of awareness of . . . probable falsity'") (citation omitted).) In deliberate indifference cases, willful blindness may be relevant both in establishing knowledge of the underlying facts (a prison official, for example, purposefully avoids confirming his reasons to believe that one prisoner has planned an attack on another), and also in establishing knowledge of the risk (a prison official, for example, knows that a single needle is being used to administer flu shots to prisoners but refuses to listen to a subordinate attempting to explain the associated risk of transmitting communicable diseases). We stress, however, that at least for Eighth Amendment purposes "[a] deliberate avoidance of

Nor may a prison official escape liability for deliberate indifference by showing that, while he was aware of an obvious, substantial risk to inmate safety, he did not know that the complainant was especially likely to be assaulted by the specific prisoner who eventually committed the assault. The question under the Eighth Amendment is whether prison officials, acting with deliberate indifference, exposed a prisoner to a sufficiently substantial "risk of serious damage to his future health," *Helling*, 509 U. S., at __, and it does not matter whether the risk came from a single source or multiple sources, any more than it matters whether a prisoner faced an excessive risk of attack for reasons personal to him or because all prisoners in his situation faced such a risk. See Brief for Respondents 15 (stating that a prisoner can establish exposure to a sufficiently serious risk of harm "by showing that he belongs to an identifiable group of prisoners who are frequently singled out for violent attack by other inmates"). If, for example, prison officials were aware that inmate "rape was so common and uncontrolled that some potential victims dared not sleep [but] instead . . . would leave their beds and spend the night clinging to the bars nearest the guards' station," *Hutto* v. *Finney*, 437 U. S., 678, 681–682 n. 3 (1978), it would obviously be irrelevant to liability that the officials could not have guessed beforehand precisely who would attack whom. Cf. *Helling*, *supra*, at __ (observing that the Eighth Amendment requires a remedy for exposure of inmates to

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knowledge is culpable only when coupled with a subjective awareness of high probability," *United States* v. *Valle-Valdez*, 554 F. 2d 911, 914 (CA9 1977), and courts should be careful to ensure that in its application the willful blindness rule does not dispense with the need for subjective awareness. It is not enough merely to find that a reasonable person would have known of the relevant fact or that the defendant should have known, and juries should be instructed accordingly.

"infectious maladies" such as hepatitis and venereal disease "even though the possible infection might not affect all of those exposed"); *Commonwealth* v. *Welansky*, 316 Mass. 383, 55 N. E. 2d 902 (1944) (affirming conviction for manslaughter under a law requiring reckless or wanton conduct of a nightclub owner who failed to protect patrons from a fire, even though the owner did not know in advance who would light the match that ignited the fire or which patrons would lose their lives).

Because, however, prison officials who lacked knowledge of a risk cannot be said to have inflicted punishment, it remains open to the officials to prove that they were unaware even of an obvious risk to inmate health or safety. That a trier of fact may infer knowledge from the obvious, in other words, does not mean that it must do so. Prison officials charged with deliberate indifference might show, for example, that they did not know of the underlying facts indicating a sufficiently substantial danger, or that they knew the underlying facts but believed (albeit unsoundly) that the risk to which the facts gave rise was insubstantial or nonexistent.

In addition, prison officials who actually knew of a substantial risk to inmate health or safety may be found free from liability if they responded reasonably to the risk, even if the harm ultimately was not averted. A prison official's duty under the Eighth Amendment is to ensure "reasonable safety," *Helling*, *supra*, at __ (slip op., at 7); see also *Washington* v. *Harper*, 494 U. S., at 225; *Hudson* v. *Palmer*, 468 U. S., at 526–527, a standard that incorporates due regard for prison officials' "unenviable task of keeping dangerous men in safe custody under humane conditions." *Spain* v. *Procunier*, 600 F. 2d 189, 193 (CA9 1979) (Kennedy, J.); see also *Bell* v. *Wolfish*, 441 U. S. 520, 547–548, 562 (1979). Whether one puts it in terms of duty or deliberate indifference, prison officials who act reasonably cannot

Footnote + text omitted, pp. 19-21

B

be found liable under the Cruel and Unusual Punishments Clause.

We address, finally, petitioner's argument that a subjective deliberate indifference test will unjustly require prisoners to suffer physical injury before obtaining court-ordered correction of objectively inhumane prison conditions. "It would," indeed, "be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them." *Helling*, 509 U. S., at __. But nothing in the test we adopt today clashes with that common sense. Petitioner's argument is flawed for the simple reason that "[o]ne does not have to await the consummation of a threatened injury to obtain preventive relief." *Pennsylvania* v. *West Virginia*, 262 U. S. 553, 593 (1923). Consistently with this principle, a subjective approach to deliberate indifference does not require a prisoner seeking "a remedy for unsafe conditions [to] await a tragic event" such as an "actua[l] assaul[t] before obtaining relief." *Helling*, *supra* at __.

In a suit such as petitioner's, insofar as it seeks injunctive relief to prevent a substantial risk of serious injury from ripening into actual harm, "the subjective factor, deliberate indifference, should be determined in light of the prison authorities' current attitudes and conduct," *Helling*, *supra*, at __: their attitudes and conduct at the time suit is brought and persisting thereafter. An inmate seeking an injunction on the ground that there is "a contemporary violation of a nature likely to continue," *United States* v. *Oregon Medical Society*, 343 U. S. 326, 333 (1952), must adequately plead such a violation; to survive summary judgment, he must come forward with evidence from which it can be inferred that the defendant-officials were at the time suit was filed, and are at the time of summary judgment, knowingly and unreasonably disregarding an objectively intolerable risk of harm, and

that they will continue to do so; and finally to establish eligibility for an injunction, the inmate must demonstrate the continuance of that disregard during the remainder of the litigation and into the future. In so doing, the inmate may rely, in the district court's discretion, on developments that postdate the pleadings and pretrial motions, as the defendants may rely on such developments to establish that the inmate is not entitled to an injunction.[9] See Fed. R. Civ. Proc. 15(d); 6A C. Wright, A. Miller & M. Kane, Federal Practice and Procedure §§1504–1510, pp. 177–211 (2d ed. 1990). If the court finds the Eighth Amendment's subjective and objective requirements satisfied, it may grant appropriate injunctive relief. See *Hutto* v. *Finney*, 437 U. S., at 685–688 & n. 9 (upholding order designed to halt "an ongoing violation" in prison conditions that included extreme overcrowding, rampant violence, insufficient food, and unsanitary conditions). Of course, a district court should approach issuance of injunctive orders with the usual caution, see *Bell* v. *Wolfish*, 441 U. S., at 562 (warning courts against becoming "enmeshed in the minutiae of prison conditions"), and may, for example, exercise its discretion if appropriate by giving prison officials time to rectify the situation before issuing an injunction.

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[9] If, for example, the evidence before a district court establishes that an inmate faces an objectively intolerable risk of serious injury, the defendants could not plausibly persist in claiming lack of awareness, any more than prison officials who state during the litigation that they will not take reasonable measures to abate an intolerable risk of which they are aware could claim to be subjectively blameless for purposes of the Eighth Amendment. At the same time, even prison officials who had a subjectively culpable state of mind when the lawsuit was filed could prevent issuance of an injunction by proving, during the litigation, that they were no longer unreasonably disregarding an objectively intolerable risk of harm and that they would not revert to their obduracy upon cessation of the litigation.

That prison officials' "current attitudes and conduct," *Helling*, *supra*, at __, must be assessed in an action for injunctive relief does not mean, of course, that inmates are free to bypass adequate int*ernal prison procedures and bring their health and safety concerns directly to court. "An appeal to the equity jurisdiction conferred on federal district courts is an appeal to the sound discretion which guides the determinations of courts of equity," *Meredith* v. *Winter Haven*, 320 U. S. 228, 235 (1944), and any litigant making such an appeal must show that the intervention of equity is required. When a prison inmate seeks injunctive relief, a court need not ignore the inmate's failure to take advantage of adequate prison procedures, and an inmate who needlessly bypasses such procedures may properly be compelled to pursue them. Cf. 42 U. S. C. §1997e (authorizing district courts in §1983 actions to require inmates to exhaust "such plain, speedy and effective administrative remedies as are available"). Even apart from the demands of equity, an inmate would be well advised to take advantage of internal prison procedures for resolving inmate grievances. When those procedures produce results, they will typically do so faster than judicial processes can. And even when they do not bring constitutionally required changes, the inmate's task in court will obviously be much easier.

Accordingly, we reject petitioner's arguments and hold that a prison official may be held liable under the Eighth Amendment for denying humane conditions of confinement only if he knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it.

III

A

1

Against this backdrop, we consider whether the District Court's disposition of petitioner's complaint, summarily affirmed without briefing by the Court of Appeals for the Seventh Circuit, comports with Eighth Amendment principles. The government does not defend the District Court's application of the Eighth Amendment to this case, see Brief for Respondents 10, 29, and, without expressing a view on the ultimate merit of petitioner's complaint, we conclude that the appropriate course is to remand.

Though properly stating that respondents could not be liable if they were unaware of a risk to inmate safety, the District Court erred in placing decisive weight on petitioner's failure to notify respondents of a danger. That petitioner "never expressed any concern for his safety to any of the [respondents]," App. 124, was the only evidence the District Court cited for its conclusion that there was no genuine dispute about respondents' contention that they "had no knowledge of any potential danger to [petitioner]," *ibid.* But with respect to each of petitioner's claims, for damages and for injunctive relief, the failure to give advance notice is not dispositive. Petitioner may establish respondents' awareness by reliance on any relevant evidence. See *supra*, at 16. To be sure, prior notification by a prisoner is a strong indication that a prison official had knowledge of a substantial risk of assault, whereas proving knowledge in the absence of notification may be difficult. But prior notification is not a necessary element of an Eighth Amendment failure-to-protect claim. Certainly, if a female inmate were raped after prison officials housed her with male sex offenders, her failure to have notified prison officials of the risk to her safety would not immunize the officials from constitutional liability.

Recognizing that specific notification is not required changes the complexion of the summary judgment record. In their answer to petitioner's complaint,

respondents admitted that petitioner is a "non-violent" transsexual "who projects feminine characteristics," and that because of petitioner's "youth and feminine appearance," petitioner "is likely to experience a great deal of sexual pressure." App. 50–51, 73–74. In papers filed in opposition to summary judgment, petitioner pointed to these facts, and also described an earlier case involving petitioner and, among others, respondent Calvin Edwards (then warden of the United States Penitentiary in Lewisburg, Pennsylvania), in which the District Court's opinion stated that "[c]learly, placing plaintiff, a twenty-one year old transsexual, into the general population at [USP-]Lewisburg, a [high-]security institution, could pose a significant threat to internal security in general and to plaintiff in particular." *Farmer* v. *Carlson*, 685 F. Supp., at 1342; see also App. 107–111. That opinion also quoted from a prison document appended to the declaration Edwards filed in the case, which explained that petitioner could not be released from administrative segregation because "'a situation exists which may endanger your [that is, petitioner's] life in the general population.' 685 F.Supp., at 1342 (quoting Attachment B to Edwards Declaration). As for the other defendants, petitioner's papers stated that respondents Edward Brennan (warden of FCI-Oxford) and J. Michael Quinlan (Director of the Bureau of Prisons) had previously filed court papers relying on *Farmer* v. *Carlson* and were therefore aware of the danger to petitioner's safety. And petitioner asserted that respondents Brennan, Dennis Kurzydlo (case manager at FCI-Oxford), Larry Dubois (Regional Director of the Bureau of Prisons North Central Region) and N. W. Smith (a correctional services administrator in the North Central Region office), each of whom participated in transfers of inmates from FCI-Oxford to USP-Terre Haute, knew that USP-Terre Haute was a "violent type institution" because "inmates who commit violent acts at FCI-Oxford are often transferred to USP-

Terre Haute." App. 117, 118. Petitioner also claimed witnessing an environment at USP-Terre Haute that was "much more aggressive and violent" than FCI-Oxford. *Id.*, at 117.

Whether, with respect to any of the defendants, this amounts to an adequate showing by a *pro se* plaintiff to survive a motion for summary judgment (on which the nonmoving party is entitled to have all reasonable inferences drawn in its favor, see *Anderson* v. *Liberty Lobby, Inc.*, 477 U. S. 242, 255 (1986)) is a question that needs no answer here because it is not clear that this is the only evidence available to petitioner. Petitioner's Rule 56(f) motion, filed in response to respondents' summary judgment motion and requesting the District Court not to rule until respondents complied with a pending discovery request, asserted that responsive documents would show that "each defendant had knowledge that USP-Terre Haute was and is, a violent institution with a history of sexual assault, stabbings, etc., [and that] each defendant showed reckless disregard for my safety by designating me to said institution knowing that I would be sexually assaulted." App. 105–106. In moving for a protective order staying discovery, respondents did not dispute petitioner's assertion about what the sought-after documents would reveal, arguing instead that the court should allow no more discovery until it decided whether respondents had qualified immunity. See Memorandum in Support of Federal Defendants' Motion for Protective Order Staying Discovery (Mar. 17, 1992). Without ruling on qualified immunity, however, the District Court denied petitioner's Rule 56(f) motion; it did so at least in part on the ground that the documents requested were "not shown by plaintiff to be necessary to oppose defendants' motion for summary judgment." App. 121. That would be so, however, only if petitioner's failure to notify respondents

of an impending danger were fatal to petitioner's claim, but as we have said, it is not.

Because the District Court erred in requiring notification, and because its error may have affected its ruling on petitioner's Rule 56(f) motion, we think it proper to remand for the District Court to reconsider its denial of that motion and, whether it allows additional discovery or not, to apply the Eighth Amendment principles explained above.[10]

2

Though agreeing that "prior notice by an inmate is not necessary for liability," *post*, at 4, the dissent castigates us for attributing a contrary view to the District Court, and offers an interpretation of the District Court's opinion that even the government has declined to advance. But even the dissent acknowledges that our reading of the District Court's opinion with respect to denial of petitioner's Rule 56(f) motion is a plausible one. See *id.*, at 6 (calling our reading "neither the only possible, nor even the most plausible, interpretation of [the court's] statement"). We fail to see how a reviewing court can ignore the colorable possibility that a trial court's decision rested on an erroneous view of the law. And where the error may have affected the exercise of a trial court's discretion, as it may have done here, the proper course is plainly to remand.

The dissent, moreover, has not offered a particularly plausible reading of the District Court's explanation for denying the Rule 56(f) motion. The dissent first asserts that the District Court denied the motion solely because

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[10] The District Court's opinion is open to the reading that it required not only advance notification of a substantial risk of assault, but also advance notification of a substantial risk of assault posed by a particular fellow prisoner. See App. 124 (referring to "a specific threat to [a prisoner's] safety"). The Eighth Amendment, however, imposes no such requirement. See *supra*, at 17.

of a "timing problem." *Post*, at 6. But this ignores the District Court's statement, in the same sentence in which it referred to a timing problem, that the documents petitioner sought to discover (which petitioner asserted, and which the government did not dispute, would show that the defendants had the requisite knowledge, see *supra*, at 26) were not shown to be "necessary to oppose defendants' motion for summary judgment." App. 121. The unavoidable implication of the language the District Court chose to employ in denying the Rule 56(f) motion is that if petitioner had shown the documents to be "necessary" the court's ruling may have been different. In apparent acknowledgement of the futility of resting alone on the "timing problem," the dissent offers a second rationale for the District Court's decision: that petitioner was improperly relying on a mere "'"hope" or "hunch" that evidence creating an issue of fact will emerge at trial." *Post*, at 7 (quoting 10A C. Wright, A. Miller & M. Kane, Federal Practice and Procedure §2741, p. 561 (2d ed. 1983)). That may be the dissent's hunch about what the District Court should have said, but it is not what the District Court actually stated. The court did not say that petitioner was seeking documents that (despite petitioner's hope or hunch) were nonexistent, but that petitioner was seeking documents that (existing or not) were not "necessary" to oppose the summary judgment motion. App. 121. That statement is indisputably more consistent with the conclusion that the District Court held the (erroneous) view that the material petitioner sought was "irrelevant to the issues to be adjudicated." 10A C. Wright, A. Miller & M. Kane, *supra*, §2741, p. 558.

The dissent further asserts that the District Court's understanding of Eighth Amendment rules was clearly without error. There is, however, a far greater likelihood of error here than, for example, in *Wilson* v. *Seiter*, 111 S.Ct., at 2328, where the Court vacated a published

Court of Appeals decision despite the fact that the Court of Appeals had explicitly stated that the prisoner's claim failed to meet a stricter standard than the one the *Wilson* Court held to be proper. *Ibid.* "Out of an abundance of caution," *ibid.*, and reflecting a proper respect for the respective roles of reviewing and trial courts in our system of justice, as well as the basic fairness that any litigant deserves, the Court in *Wilson* remanded. The same disposition is proper here.

Though petitioner cited evidence to the District Court to counter the summary judgment motion (summarized *supra*, at 24–25), the court mentioned none of it, instead deeming it sufficient to rest, exclusively, on petitioner's failure to produce a single item of evidence, notification of the defendants. App. 124. The dissent notes that the Seventh Circuit allows inmates to prove actual knowledge either by showing prior notification or by showing "'the existence of so substantial a risk of harm that the defendants' knowledge of the risk can be inferred,'" *post*, at 8 (quoting *James* v. *Milwaukee County*, 956 F. 2d 696, 700 (CA7 1992)), and would rest on the assumption that the District Court relied on the second alternative. But to do so would simply ignore the fact that the District Court chose not to mention that alternative anywhere in its opinion, even though it was the sole option available to the plaintiff before it, while instead mentioning only the notification alternative, which was obviously unavailable. We therefore can hardly agree that "*nothing*" (*post*, at 9 (emphasis in original)) suggests that the District Court placed decisive weight on petitioner's failure to notify prison authorities, and in light of the possibility of error the only just course is to remand. No doubt, any analysis of petitioner's summary judgment evidence would conclude that petitioner's position is by no means identical with respect to each defendant. But the District Court is clearly better situated than we are to review the evidence defendant

by defendant (even setting aside the possibility that a different ruling on the Rule 56(f) motion could lead to additional evidence).

B

The government urges us to affirm for reasons not relied on below, but neither of the government's contentions is so clearly correct as to justify affirmance.

With respect to petitioner's damages claim, the government argues that the officials sued in their individual capacities (respondents Brennan, Kurzydlo, DuBois, and Smith, each an official at FCI-Oxford or the Bureau of Prisons North Central Region office), were alleged to be liable only for their transfer of petitioner from FCI-Oxford to USP-Terre Haute, whereas petitioner "nowhere alleges any reason for believing that these officials, who had no direct responsibility for administering the Terre Haute institution, would have had knowledge of conditions within that institution regarding danger to transsexual inmates." Brief for Respondents 27–28. But petitioner's Rule 56(f) motion alleged just that. Though the government suggests here that petitioner offered no factual basis for that assertion, that is not a ground on which the government chose to oppose petitioner's Rule 56(f) motion below and, in any event, is a matter for the exercise of the District Court's judgment, not ours. Finally, to the extent the government seeks affirmance here on the ground that officials at FCI-Oxford and the Bureau of Prisons regional office had no power to control prisoner placement at Terre Haute, the record gives at least a suggestion to the contrary; respondent Edwards's affidavit states that, after having been at USP-Terre Haute for about a month, petitioner was placed in administrative segregation at Terre Haute "pursuant to directive from the North Central Regional Office" and a "request . . . by staff at FCI-Oxford." App. 94–95. Accordingly, though we do not reject the government's arguments about petitioner's claim for damages, the

record does not permit us to accept them as a basis for affirmance when they were not relied upon below. Respondents are free to develop this line of argument on remand.

With respect to petitioner's claim for injunctive relief, the government argued in its merits brief that the claim was "foreclosed by [petitioner's] assignment to administrative detention status because of his high-risk HIV-positive condition, . . . as well as by the absence of any allegation . . . that administrative detention status poses any continuing threat of physical injury to him." Brief for Respondents 28–29. At oral argument, however, the Deputy Solicitor General informed us that petitioner was no longer in administrative detention, having been placed in the general prison population of a medium-security prison. Tr. of Oral Arg. 25–26. He suggested that affirmance was nevertheless proper because "there is no present threat" that petitioner will be placed in a setting where he would face a "continuing threat of physical injury," *id.*, at 26, but this argument turns on facts about the likelihood of a transfer that the District Court is far better placed to evaluate than we are. We leave it to respondents to present this point on remand.

IV

The judgment of the Court of Appeals is vacated and the case is remanded for further proceedings consistent with this opinion.

So ordered.

Stylistic & technical changes throughout.
Also: pp. 14-15, 19-23

To: The Chief Justice
Justice Blackmun
Justice Stevens
Justice O'Connor
Justice Scalia
Justice Kennedy
Justice Thomas
Justice Ginsburg

From: **Justice Souter**

Circulated: March 4, 1994

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 92–7247

DEE FARMER, PETITIONER *v.* EDWARD BRENNAN, WARDEN, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[March ___, 1994]

JUSTICE SOUTER delivered the opinion of the Court.

A prison official's "deliberate indifference" to a substantial risk of serious harm to an inmate violates the Eighth Amendment. See *Helling* v. *McKinney* 509 U. S. __ (1993); *Wilson* v. *Seiter*, 501 U. S. 294 (1991); *Estelle* v. *Gamble*, 429 U. S. 97 (1976). This case requires us to define the term "deliberate indifference," as we do by requiring a showing that the official was subjectively aware of the risk.

I

The dispute before us stems from a civil suit brought by petitioner, Dee Farmer, alleging that respondents, federal prison officials, violated the Eighth Amendment by their deliberate indifference to petitioner's safety. Petitioner, who is serving a federal sentence for credit card fraud, has been diagnosed by medical personnel of the Bureau of Prisons as a transsexual, one who has "[a] rare psychiatric disorder in which a person feels persistently uncomfortable about his or her anatomical sex," and who typically seeks medical treatment, including hormonal therapy and surgery, to bring about a permanent sex change. American Medical Association, Encyclopedia of Medicine 1006 (1989); see also American Psychiatric Association, Diagnostic and Statistical

1 changes throughout. To: The Chief Justice

Manual of Mental Disorders 74–75 (3d rev. ed. 1987). Though biologically male, petitioner lived as a women for several years before being convicted and sentenced in 1986 at the age of 18, during which time petitioner wore women's clothing (as petitioner did at the 1986 trial), underwent estrogen therapy, received silicone breast implants, and submitted to unsuccessful "black market" testicle-removal surgery. See *Farmer* v. *Haas*, 990 F. 2d 319, 320 (CA7 1993). Petitioner's precise appearance in prison is unclear from the record before us, but petitioner claims to have continued hormonal treatment while incarcerated by having drugs smuggled into prison, and apparently wears clothing in the manner of a woman, as by displaying a shirt "off one shoulder," App. 112. The parties agree that petitioner "projects feminine characteristics." *Id.*, at 51, 74.

The practice of federal prison authorities is to incarcerate preoperative transsexuals with prisoners of like biological sex, see *Farmer* v. *Haas*, *supra*, at 320, and over time authorities housed petitioner in several federal facilities, sometimes in the general male prison population but more often in segregation. While there is no dispute that petitioner was segregated at least several times because of violations of prison rules, neither is it disputed that in at least one penitentiary petitioner was segregated because of safety concerns. See *Farmer* v. *Carlson*, 685 F. Supp. 1335, 1342 (MD Pa. 1988).

On March 9, 1989, petitioner was transferred for disciplinary reasons from the Federal Correctional Institute in Oxford, Wisconsin (FCI-Oxford), to the United States Penitentiary in Terre Haute, Indiana (USP-Terre Haute). Though the record before us is unclear about the security designations of the two prisons in 1989, penitentiaries are typically higher security facilities that house more troublesome prisoners than federal correctional institutes. See generally Federal Bureau of Prisons, Facilities 1990. After an

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initial stay in administrative segregation, petitioner was placed in the USP-Terre Haute general population. Petitioner voiced no objection to any prison official about the transfer to the penitentiary or to placement in its general population. Within two weeks, according to petitioner's allegations, petitioner was beaten and raped by another inmate in petitioner's cell. Several days later, after petitioner claims to have reported the incident, officials returned petitioner to segregation to await, according to the government, a hearing about petitioner's HIV-positive status.

Acting without counsel, petitioner then filed a *Bivens* complaint, alleging a violation of the Eighth Amendment. See *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U. S. 388 (1971); *Carlson* v. *Green*, 446 U. S. 14 (1980). As defendants, petitioner named respondents: the warden of USP-Terre Haute and the Director of the Bureau of Prisons (sued only in their official capacities); the warden of FCI-Oxford and a case manager there; and the director of the Bureau of Prisons North Central Region Office and an official in that office (sued in their official and personal capacities). As later amended, the complaint alleged that respondents either transferred petitioner to USP-Terre Haute or placed petitioner in its general population despite knowledge that the penitentiary had a violent environment and a history of inmate assaults, and despite knowledge that petitioner, as a transsexual who "projects feminine characteristics," would be particularly vulnerable to sexual attack by USP-Terre Haute inmates. This allegedly amounted to a deliberately indifferent failure to protect petitioner's safety, and thus to a violation of petitioner's Eighth Amendment rights. Petitioner sought compensatory and punitive damages, and an injunction

changes throughout.

To: The Chief Justice
Justice Blackmun

barring future confinement in any penitentiary, including USP-Terre Haute.[1]

Respondents filed a motion for summary judgment supported by several affidavits, to which petitioner responded with an opposing affidavit and a cross-motion for summary judgment; petitioner also invoked Federal Rule of Civil Procedure 56(f), asking the court to delay its ruling until respondents had complied with petitioner's pending request for production of documents. Respondents then moved for a protective order staying discovery until resolution of the issue of qualified immunity, raised in respondents' summary-judgment motion.

The District Court denied petitioner's Rule 56(f) motion and granted summary judgment to respondents, concluding that there had been no deliberate indifference to petitioner's safety. The failure of prison officials to prevent inmate assaults violates the Eighth Amendment, the court stated, only if prison officials were "reckless in a criminal sense," meaning that they had "actual knowledge" of a potential danger. App. 124. Respondents, however, lacked the requisite knowledge, the court found. "[Petitioner] never expressed any concern for his safety to any of [respondents]. Since [respondents] had no knowledge of any potential danger to [petitioner], they were not deliberately indifferent to his safety." *Ibid.*

The United States Court of Appeals for the Seventh Circuit summarily affirmed without opinion. We granted certiorari, 510 U. S. __ (1993), because Courts of Appeals had adopted inconsistent tests for "deliberate

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[1] Petitioner also sought an order requiring the Bureau of Prisons to place petitioner in a "co-correctional facility" (*i.e.*, one separately housing male and female prisoners but allowing coeducational programming). Petitioner tells us, however, that the Bureau no longer operates such facilities, and petitioner apparently no longer seeks this relief.

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indifference." Compare, for example, *McGill* v. *Duckworth*, 944 F. 2d 344, 348 (CA7 1991)(holding that "deliberate indifference" requires a "subjective standard of recklessness"), cert. denied, 503 U. S. __ (1992), with *Young* v. *Quinlan*, 960 F. 2d 351, 360–361 (CA3 1992) ("[A] prison official is deliberately indifferent when he knows or should have known of a sufficiently serious danger to an inmate").

II

A

The Constitution "does not mandate comfortable prisons," *Rhodes* v. *Chapman*, 452 U. S. 337, 349 (1981), but neither does it permit inhumane ones, and it is now settled that "the treatment a prisoner receives in prison and the conditions under which he is confined are subject to scrutiny under the Eighth Amendment." *Helling*, 509 U. S., at __. In its prohibition of "cruel and unusual punishments," the Eighth Amendment places restraints on prison officials, who may not, for example, use excessive physical force against prisoners. See *Hudson* v. *McMillian*, 503 U. S. 1 (1992). The Amendment also imposes duties on these officials, who must provide humane conditions of confinement; prison officials must ensure that inmates receive adequate food, clothing, shelter and medical care, and must "take reasonable measures to guarantee the safety of the inmates," *Hudson* v. *Palmer*, 468 U. S. 517, 526–527 (1984). See *Helling*, *supra*, at __ (slip op., at 5); *Washington* v. *Harper*, 494 U. S. 210, 225 (1990); *Estelle*, 429 U. S., at 103. Cf. *DeShaney* v. *Winnebago County Dept. of Social Services*, 489 U. S. 189, 198–199 (1989).

In particular, as the lower courts have uniformly held, and as we have assumed, "[p]rison officials have a duty . . . to protect prisoners from violence at the hands of other prisoners." *Cortes-Quinones* v. *Jimenez-Nettleship*, 842 F. 2d 556, 558 (CA1) (internal quotation marks and

changes throughout.

citation omitted), cert. denied, 488 U. S. 823 (1988) ;[2] see also *Wilson* v. *Seiter*, 501 U. S., at 303 (describing "the protection [an inmate] is afforded against other inmates" as a "conditio[n] of confinement" subject to the strictures of the Eighth Amendment). Having incarcerated people with demonstrated proclivities for criminally antisocial and, in many cases, violent conduct, having stripped them of virtually every means of self-protection and foreclosed their access to outside aid, the government and its officials are not free to let the state of nature take its course. Cf. *DeShaney*, *supra*, at 199–200; *Estelle*, *supra*, at 103–104. Prison conditions may be "restrictive and even harsh," *Rhodes*, *supra*, at 347, but gratuitously allowing the beating or rape of one prisoner by another serves no "legitimate penological objectiv[e]," *Hudson* v. *Palmer*, *supra*, at 548, any more than it squares with "'evolving standards of decency,'" *Estelle*, *supra*, at 102 (quoting *Trop* v. *Dulles*, 356 U. S. 86, 101 (1958) (plurality opinion)). Being violently assaulted in prison is simply not "part of the penalty that criminal offenders pay for their offenses against society." *Rhodes*, *supra*, at 347.

It is not, however, every injury suffered by one prisoner at the hands of another that translates into constitutional liability for prison officials responsible for the victim's safety. Our cases have held that a prison official violates the Eighth Amendment only where two

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[2] Other Court of Appeals decisions to the same effect include *Villante* v. *Department of Corrections*, 786 F. 2d 516, 519 (CA2 1986); *Young* v. *Quinlan*, 960 F. 2d 351, 361–362 (CA3 1992); *Pressly* v. *Hutto*, 816 F. 2d 977, 979 (CA4 1987); *Alberti* v. *Klevenhagen*, 790 F. 2d 1220, 1224 (CA5 1986); *Roland* v. *Johnson*, 856 F. 2d 764, 769 (CA6 1988); *Goka* v. *Bobbitt*, 862 F. 2d 646, 649–650 (CA7 1988); *Martin* v. *White*, 742 F. 2d 469, 474 (CA8 1984); *Berg* v. *Kincheloe*, 794 F. 2d 457, 459 (CA9 1986); *Ramos* v. *Lamm*, 639 F. 2d 559, 572 (CA10 1980), cert. denied, 450 U. S. 1041 (1981); *LaMarca* v. *Turner*, 995 F. 2d 1526, 1535 (CA11 1993); and *Morgan* v. *District of Columbia*, 824 F. 2d 1049, 1057 (CADC 1987).

changes throughout.

To: The Chief Justice
Justice Blackmun
Justice Stevens
Justice O'Connor
Scalia

requirements are met. First, the deprivation alleged must be, objectively, "sufficiently serious," *Wilson*, *supra*, at 2324; see also *Hudson* v. *McMillian*, *supra*, at __ (slip op., at 5); a prison official's act or omission must result in the denial of "the minimal civilized measure of life's necessities," *Rhodes*, *supra*, at 347. For a claim (like the one here) based on a failure to prevent harm, the inmate must show that he is incarcerated under conditions posing a substantial risk of serious harm. See *Helling*, *supra*, at __ (slip op., at 8).[3]

The second requirement follows from the principle that "only the unnecessary and wanton infliction of pain implicates the Eighth Amendment." *Wilson*, 501 U. S., at 297 (internal quotation marks, emphasis and citations omitted). To violate the Cruel and Unusual Punishments Clause, a prison official must have a "sufficiently culpable state of mind." *Ibid.*; see also *id.*, at 302–303; *Hudson* v. *McMillian*, *supra*, at __ (slip op., at 5). In prison-conditions cases, we have said, that state of mind is one of "deliberate indifference" to inmate health or safety, *Wilson*, *supra*, at 2326–2327; see also *Helling*, *supra*, at __ (slip op., at 6–7); *Hudson* v. *McMillian*, *supra*, at 999; *Estelle*, *supra*, at 106, a standard the parties agree governs the claim in this case. The parties disagree, however, on the proper test for deliberate indifference, which we must therefore undertake to define.

B

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Although we have never paused to explain at any length the meaning of the term "deliberate indifference," the case law is instructive. The term first appeared in

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[3]At what point a risk of inmate assault becomes sufficiently substantial for Eighth Amendment purposes is a question this case does not present, and we do not address it.

the United States Reports in *Estelle* v. *Gamble*, 429 U. S., at 104, and its use there shows that deliberate indifference describes a state of mind more blameworthy than negligence. In considering the inmate's claim in *Estelle* that inadequate prison medical care violated the Cruel and Unusual Punishments Clause, we distinguished "deliberate indifference to serious medical needs of prisoners," *ibid.*, from "negligen[ce] in diagnosing or treating a medical condition," *id.*, at 106, holding that only the former violates the Clause. We have since read *Estelle* for the proposition that Eighth Amendment liability requires "more than ordinary lack of due care for the prisoner's interests or safety." *Whitley* v. *Albers*, 475 U. S. 312, 319 (1986).

While deliberate indifference entails something more than mere negligence, the cases are also clear that it is satisfied by something less than acts or omissions for the very purpose of causing harm or with knowledge that harm will result. That point underlies the rule that "application of the deliberate indifference standard is inappropriate" in one class of prison cases: when "officials stand accused of using excessive physical force." *Hudson* v. *McMillian*, 503 U. S., at __; see also *Whitley*, *supra*, 320. In such situations, where the decisions of prison officials are typically made "'in haste, under pressure, and frequently without the luxury of a second chance,'" *Hudson* v. *McMillian*, *supra*, at __ (quoting *Whitley*, *supra*, at 320), an Eighth Amendment claimant must show more than "indifference," deliberate or otherwise. The claimant must show that officials applied force "'"maliciously and sadistically for the very purpose of causing harm"'" (rather than "in a good faith effort to maintain or restore discipline"), 503 U. S., at __ (quoting *Whitley*, *supra*, at 320–321) (in turn quoting *Johnson* v. *Glick*, 481 F. 2d 1028, 1033 (CA2), cert. denied, 414 U. S. 1033 (1973)), or, as the Court also put it, that officials used force with "'a knowing willingness

that [harm] occur,'" 503 U. S., at __ (quoting *Whitley*, *supra*, at 321). This standard of purposeful or knowing conduct is not, however, necessary to satisfy the *mens rea* requirement of deliberate indifference for claims challenging conditions of confinement; "the very high state of mind prescribed by *Whitley* does not apply to prison condition cases." *Wilson*, *supra*, at 302–303.

With deliberate indifference lying somewhere between the poles marked by negligence at one end and purpose or knowledge at the other, the Courts of Appeals have routinely equated deliberate indifference with recklessness.[4] See, *e.g.*, *LaMarca* v. *Turner*, 995 F. 2d 1526, 1535 (CA11 1993); *Manarite* v. *Springfield*, 957 F. 2d 953, 957 (CA1), cert. denied, 506 U. S. __ (1992); *Redman* v. *County of San Diego*, 942 F. 2d 1435, 1443 (CA9 1991), cert. denied, 506 U. S. __ (1992); *McGill* v. *Duckworth*, 944 F. 2d, at 347; *Miltier* v. *Beorn*, 896 F. 2d 848, 851–852 (CA4 1990); *Martin* v. *White*, 742 F. 2d 469, 474 (CA8 1984); see also *Springfield* v. *Kibbe*, 480 U. S. 257, 269 (1987) (O'CONNOR, J., dissenting). It is, indeed, fair to say that acting or failing to act with deliberate indifference to a substantial risk of serious harm to a prisoner is the equivalent of recklessly disregarding that risk.

That does not, however, completely answer the pending question about the level of culpability deliberate indifference entails, for the term recklessness is not self-defining. The civil law generally calls a person reckless who acted or (if the person had a duty to act) failed to act in the face of an unjustifiably high risk of harm that

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[4] "Gross negligence" occupies this territory too, but the term is a "nebulous" one, in practice typically meaning little different from recklessness as typically understood in the civil law (which we discuss later in the text). See W. Keeton, D. Dobbs, R. Keeton, D. Owen, Prosser and Keeton on Torts § 34, p. 212 (5th ed. 1984) (hereinafter Prosser and Keeton).

was either known or so obvious that it should have been known. See Prosser and Keeton, § 34, pp. 213–214; Restatement (Second) of Torts § 500 (1965). The criminal law, however, generally permits a finding of recklessness only when a person has disregarded a risk of harm of which he was aware. See R. Perkins & R. Boyce, Criminal Law 850–851 (3d ed. 1982); J. Hall, General Principles of Criminal Law 115–116, 120, 128 (2d ed. 1960) (hereinafter Hall); American Law Institute, Model Penal Code § 2.02(2)(c), and Comment 3 (1985); but see *Commonwealth* v. *Pierce*, 138 Mass. 165, 175–178 (1884) (Holmes, J.) (adopting an objective approach to criminal recklessness). The standards proposed by the parties in this case track the two approaches (though the parties do not describe them that way): petitioner asks us to define deliberate indifference as what we have called civil-law recklessness,[5] and the government urges us to adopt an approach consistent with recklessness in the criminal law.[6]

We reject petitioner's invitation to adopt an objective test for deliberate indifference. We hold instead that a prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference. This

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[5] See Reply Brief for Petitioner 5 (suggesting that a prison official is deliberately indifferent if he "knew facts which rendered an unreasonable risk obvious; under such circumstances, the defendant should have known of the risk and will be charged with such knowledge as a matter of law"); see also Brief for Petitioner 20–21.

[6] See Brief for Respondents 16 (asserting that deliberate indifference requires that a prison "official must know of the risk of harm to which an inmate is exposed").

approach comports best with the text of the Amendment and our cases interpreting it. The Eighth Amendment does not outlaw cruel and unusual "conditions"; it outlaws cruel and unusual "punishments." An act or omission unaccompanied by knowledge of a significant risk of harm might well be something society wishes to discourage, and if harm does result society might well wish to assure compensation. The common law reflects such concerns when it imposes tort liability on a purely objective basis. See Prosser and Keeton §§ 2, 34 pp. 6, 213–214; see also Federal Tort Claims Act, 28 U. S. C. §§ 2671–2680; *United States* v. *Muniz*, 374 U. S. 150 (1963). But an official's failure to alleviate a significant risk that he should have perceived but did not, while no cause for commendation, cannot be condemned as the infliction of punishment.

In *Wilson* v. *Seiter*, we rejected a reading of the Eighth Amendment that would allow liability to be imposed on prison officials solely because of the presence of objectively inhumane prison conditions. See 501 U. S., at 299–302. As we explained there at length, our "cases mandate inquiry into a prison official's state of mind when it is claimed that the official has inflicted cruel and unusual punishment." *Id.*, at 299. Although "state of mind," like "intent," are ambiguous terms that can encompass objectively defined levels of blameworthiness, see 1 W. LaFave & A. Scott, Substantive Criminal Law §§ 3.4, 3.5, pp. 296–300, 313–314 (1986) (hereinafter LaFave & Scott); *United States* v. *Bailey*, 444 U. S. 394, 404 (1980), it was no accident that we said in *Wilson* and repeated in later cases that Eighth Amendment suits against prison officials must satisfy a "subjective" requirement. See *Wilson*, *supra*, at 298; see also *Helling*, 509 U. S., at __ (slip op., at 9); *Hudson* v. *McMillian*, 503 U. S., at __ (slip op., at 4–5). It is true, as petitioner points out, that *Wilson* cited with approval Court of Appeals decisions applying an objective test for

deliberate indifference to claims based on prison officials' failure to prevent inmate assaults. See 501 U. S., at 303 (citing *Cortes-Quinones* v. *Jimenez-Nettleship*, 842 F. 2d, at 560; and *Morgan* v. *District of Columbia*, 824 F. 2d, at 1057–1058). But *Wilson* cited those cases for the proposition that the deliberate-indifference standard applies to all prison-conditions claims, not to undo its holding that the Eighth Amendment has a "subjective component." 501 U. S., at 298. Petitioner's purely objective test for deliberate indifference is simply incompatible with that holding.

To be sure, the reasons for focusing on what a defendant's mental attitude actually was (or is), rather than what it should have been (or should be), differ in the Eighth Amendment context from that of the criminal law. Here, a subjective approach isolates those who inflict punishment; there, it isolates those against whom punishment should be inflicted. But the result is the same: to act recklessly in either setting a person must "consciously disregar[d]" a substantial risk of serious harm. Model Penal Code, *supra*, §2.02(2)(c).

At oral argument, the Deputy Solicitor General advised against frank adoption of a criminal-law *mens rea* requirement, contending that it could encourage triers of fact to find Eighth Amendment liability only if they concluded that prison officials acted like criminals. See Tr. of Oral Arg. 39–40. We think the government's concern is misdirected. *Bivens* actions against federal prison officials (and their §1983 counterparts against state officials) are civil in character, and a court should no more allude to the criminal law when enforcing the Cruel and Unusual Punishments Clause than when applying the Free Speech and Press Clauses, where we have also adopted a subjective approach to recklessness. See *Harte-Hanks Communications, Inc.* v. *Connaughton*, 491 U. S. 657, 688 (1989) (holding that the standard for "reckless disregard" for the truth in a defamation action

by a public figure "is a subjective one," requiring that "the defendant in fact entertained serious doubts as to the truth of his publication," or that "the defendant actually had a high degree of awareness of . . . probable falsity") (internal quotation marks and citations omitted).[7] That said, however, subjective recklessness as used in the criminal law is a familiar and workable standard that is consistent with the Cruel and Unusual Punishments Clause as interpreted in our cases, and we adopt it as the test for "deliberate indifference" under the Eighth Amendment.

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Our decision that Eighth Amendment liability requires consciousness of a risk is thus based on the Constitution and our cases, not merely on a parsing of the phrase "deliberate indifference." And we do not reject petitioner's arguments for a thoroughly objective approach to deliberate indifference without recognizing that on the crucial point (whether a prison official must know of a risk, or whether it suffices that he should have known) the term does not speak with certainty. Use of "deliberate," for example, arguably requires nothing more than that an act (or omission) of indifference to a serious risk be voluntary, not accidental. Cf. *Estelle*, 429 U. S., at 105 (distinguishing "deliberate indifference" from "accident" or "inadverten[ce]"). And even if "deliberate" is better read as implying knowledge of a risk, the concept of constructive knowledge is familiar enough that the term "deliberate indifference" would not, of its own force, preclude a scheme that conclusively presumed awareness from a risk's obviousness.

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[7] Appropriate allusions to the criminal law would, of course, be proper during criminal prosecutions under, for example, 18 U. S. C. § 242, which sets criminal penalties for deprivations of rights under color of law.

Because "deliberate indifference" is a judicial gloss, appearing neither in the Constitution nor in a statute, we could not accept petitioner's argument that the test for "deliberate indifference" described in *Canton* v. *Harris*, 489 U. S. 378 (1989), must govern here. In *Canton*, interpreting 42 U. S. C. § 1983, we held that a municipality can be liable for failure to train its employees when the municipality's failure shows "a deliberate indifference to the rights of its inhabitants." 489 U. S., at 389 (internal quotation marks omitted). In speaking to the meaning of the term, we said that "it may happen that in light of the duties assigned to specific officers or employees the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need." *Id.*, at 390; see also *id.*, at 390, n. 10 (elaborating). JUSTICE O'CONNOR's separate opinion for three Justices agreed with the Court's "obvious[ness]" test and observed that liability is appropriate when policymakers are "on actual or constructive notice" of the need to train, *id.*, at 396 (opinion concurring in part and dissenting in part). It would be hard to describe the *Canton* understanding of deliberate indifference, permitting liability to be premised on obviousness or constructive notice, as anything but objective.

Canton's objective standard, however, is not an appropriate test for determining the liability of prison officials under the Eighth Amendment. Section 1983, which merely provides a cause of action, "contains no state-of-mind requirement independent of that necessary to state a violation of the underlying constitutional right." *Daniels* v. *Williams*, 474 U. S. 327, 330 (1986). And while deliberate indifference serves under the Eighth Amendment to ensure that only inflictions of punishment carry liability, see *Wilson*, 501 U. S., at

299–300, the "term was used in the *Canton* case for the quite different purpose of identifying the threshold for holding a city responsible for the constitutional torts committed by its inadequately trained agents," *Collins* v. *Harker Heights*, 503 U. S. __, __ (1992), a purpose the *Canton* Court found satisfied by a test permitting liability when a municipality disregards "obvious" needs. Needless to say, moreover, considerable conceptual difficulties would attend any search for the subjective state of mind of a governmental entity, as distinct from that of a prison official. For these reasons, we cannot accept petitioner's argument that *Canton* compels the conclusion here that a prison official who was unaware of a substantial risk of harm to an inmate may nevertheless be held liable under the Eighth Amendment if the risk was obvious and a reasonable prison official would have noticed it.

We are no more persuaded by petitioner's argument that, without an objective test for deliberate indifference, prison officials will be free to ignore obvious dangers to inmates. Under the test we adopt today, an Eighth Amendment claimant need not show that a prison official acted or failed to act believing that harm actually would befall an inmate; it is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm. Cf. 1 C. Torcia, Wharton's Criminal Law §27, p. 141 (14th ed. 1978); Hall 115. We doubt that a subjective approach will present prison officials with any serious motivation "to take refuge in the zone between 'ignorance of obvious risks' and 'actual knowledge of risks.'" Brief for Petitioner 27. Whether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence, see Hall 118 (cautioning against "confusing a mental state with the proof of its existence"), and a factfinder may conclude

that a prison official knew of a substantial risk from the very fact that the risk was obvious. Cf. LaFave & Scott §3.7, p. 335 ("[I]f the risk is obvious, so that a reasonable man would realize it, we might well infer that [the defendant] did in fact realize it; but the inference cannot be conclusive, for we know that people are not always conscious of what reasonable people would be conscious of"). For example, if an Eighth Amendment plaintiff presents evidence showing that a substantial risk of inmate attacks was "longstanding, pervasive, well-documented, or expressly noted by prison officials in the past, and the circumstances suggest that the defendant-official being sued had been exposed to information concerning the risk and thus 'must have known' about it, then such evidence could be sufficient to permit a trier of fact to find that the defendant-official had actual knowledge of the risk." Brief for Respondents 22.[8]

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[8]The government calls our attention to the concept of willful blindness, under which a person is not ignorant of something, but knows it, if he is "aware of [a] 'high probability' " of its existence. *Turner* v. *United States*, 396 U. S. 398, 416 (1970); see also American Law Institute, Model Penal Code § 2.02(7) (1985). The criminal law allows liability to rest on proof that a defendant purposefully avoided obtaining final confirmation of what he strongly suspected to be true, see *ibid.*, and we see no reason the concept of willful blindness should be inapplicable under the Eighth Amendment. (We have assumed its applicability under the First. See *Masson* v. *New Yorker Magazine, Inc.*, 501 U. S. __, __ (1991) (stating that a public figure in a defamation case may establish "reckless disregard" for the truth by showing that the defendant "acted with a 'high degree of awareness of . . . probable falsity' ") (citation omitted).) In deliberate indifference cases, willful blindness may be relevant both in establishing knowledge of the underlying facts (a prison official, for example, purposefully avoids confirming his reasons to believe that one prisoner has planned an attack on another), and also in establishing knowledge of the risk (a prison official, for example, knows that a single needle is being used to administer flu shots to prisoners but refuses to listen to a subordinate attempting to explain the associated risk of transmitting communicable diseases). We stress, however, that at least for Eighth Amendment purposes "[a] deliberate avoidance of knowledge

Nor may a prison official escape liability for deliberate indifference by showing that, while he was aware of an obvious, substantial risk to inmate safety, he did not know that the complainant was especially likely to be assaulted by the specific prisoner who eventually committed the assault. The question under the Eighth Amendment is whether prison officials, acting with deliberate indifference, exposed a prisoner to a sufficiently substantial "risk of serious damage to his future health," *Helling*, 509 U. S., at __, and it does not matter whether the risk came from a single source or multiple sources, any more than it matters whether a prisoner faced an excessive risk of attack for reasons personal to him or because all prisoners in his situation faced such a risk. See Brief for Respondents 15 (stating that a prisoner can establish exposure to a sufficiently serious risk of harm "by showing that he belongs to an identifiable group of prisoners who are frequently singled out for violent attack by other inmates"). If, for example, prison officials were aware that inmate "rape was so common and uncontrolled that some potential victims dared not sleep [but] instead . . . would leave their beds and spend the night clinging to the bars nearest the guards' station," *Hutto* v. *Finney*, 437 U. S., 678, 681–682 n. 3 (1978), it would be irrelevant to liability that the officials could not have guessed beforehand precisely who would attack whom. Cf. *Helling*, *supra*, at __ (observing that the Eighth Amendment requires a remedy for exposure of inmates to "infectious maladies"

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is culpable only when coupled with a subjective awareness of high probability," *United States* v. *Valle-Valdez*, 554 F. 2d 911, 914 (CA9 1977), and courts should be careful to ensure that in its application the willful blindness rule does not dispense with the need for subjective awareness. It is not enough merely to find that a reasonable person would have known of the relevant fact or that the defendant should have known, and juries should be instructed accordingly.

such as hepatitis and venereal disease "even though the possible infection might not affect all of those exposed"); *Commonwealth* v. *Welansky*, 316 Mass. 383, 55 N. E. 2d 902 (1944) (affirming conviction for manslaughter under a law requiring reckless or wanton conduct of a night-club owner who failed to protect patrons from a fire, even though the owner did not know in advance who would light the match that ignited the fire or which patrons would lose their lives).

Because, however, prison officials who lacked knowledge of a risk cannot be said to have inflicted punishment, it remains open to the officials to prove that they were unaware even of an obvious risk to inmate health or safety. That a trier of fact may infer knowledge from the obvious, in other words, does not mean that it must do so. Prison officials charged with deliberate indifference might show, for example, that they did not know of the underlying facts indicating a sufficiently substantial danger, or that they knew the underlying facts but believed (albeit unsoundly) that the risk to which the facts gave rise was insubstantial or nonexistent.

In addition, even prison officials who actually knew of a substantial risk to inmate health or safety may be found free from liability if they responded reasonably to the risk, even if the harm ultimately was not averted. A prison official's duty under the Eighth Amendment is to ensure "reasonable safety," *Helling*, *supra*, at __ (slip op., at 7); see also *Washington* v. *Harper*, 494 U. S., at 225; *Hudson* v. *Palmer*, 468 U. S., at 526–527, a standard that incorporates due regard for prison officials' "unenviable task of keeping dangerous men in safe custody under humane conditions." *Spain* v. *Procunier*, 600 F. 2d 189, 193 (CA9 1979) (Kennedy, J.); see also *Bell* v. *Wolfish*, 441 U. S. 520, 547–548, 562 (1979). Whether one puts it in terms of duty or deliberate indifference, prison officials who act reasonably cannot

be found liable under the Cruel and Unusual Punishments Clause.

We address, finally, petitioner's argument that a subjective deliberate indifference test is flawed because it will result in leaving objectively inhumane prison conditions uncorrected. "It would," indeed, "be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them." *Helling*, 509 U. S., at __. But nothing in the test we adopt today clashes with that common sense. Under even a subjective approach to deliberate indifference, "a remedy for unsafe conditions need not await a tragic event," and "a prisoner need not wait until he is actually assaulted before obtaining relief." *Ibid.* Petitioner's argument that a subjective test for deliberate indifference would foreclose prospective injunctive relief fails to apprehend that deliberate indifference is proven differently in actions for damages for past harm as compared with actions for injunctive relief to prevent future harm.

To meet the Eighth Amendment's subjective requirement in a suit seeking recompense for a previously experienced injury, an inmate must offer proof directed backwards; he must show that, before the injury occurred, the defendant-official knew of a substantial risk of serious harm and disregarded it by failing to take reasonable preventive measures. By contrast, in a suit seeking an injunction to prevent harm yet to have occurred, "the subjective factor, deliberate indifference, should be determined in light of the prison authorities' current attitudes and conduct," *id.*, at __, and the subjective requirement can accordingly be satisfied by knowledge acquired through the defendant's exposure to evidence introduced in the course of the litigation. If, for example, the evidence before a district court establishes that an inmate faces an objectively intolerable

risk of serious injury, it is hard to see how the defendant-official can claim lack of awareness. And once knowledge of such a risk is established, the defendant-official's refusal to take reasonable measures to alleviate it reveals a level of subjective blameworthiness that we have called deliberate indifference to inmate health and safety. With the Eighth Amendment's objective and subjective requirements satisfied, the district court may grant injunctive relief if it is appropriate, for example, to stop "an ongoing violation." *Hutto* v. *Finney*, 437 U. S., at 685–688 & n. 9 (upholding order intended to remedy unconstitutional prison conditions including extreme overcrowding, rampant violence, insufficient food, and unsanitary conditions). Of course, courts should approach issuance of injunctive orders with the usual caution. See *Bell* v. *Wolfish*, 441 U. S., at 562 (warning courts against becoming "enmeshed in the minutiae of prison conditions"). A district court may appropriately exercise its discretion, for example, by giving prison officials time to rectify the situation before issuing an injunction.[9]

Accordingly, we hold that a prison official may be held liable under the Eighth Amendment for denying humane conditions of confinement only if he knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it.

III

[9] This discussion assumes that an inmate seeks injunctive relief on the ground that there is an ongoing Eighth Amendment violation in prison officials' refusal to alleviate an existing, objectively intolerable risk of serious injury. If, instead, an inmate claims entitlement to injunctive relief solely because an Eighth Amendment violation has occurred in the past, then, of course, he must show a "cognizable danger of recurrent violation" in order to obtain an injunction. *United States* v. *W.T. Grant Co.*, 345 U. S. 629, 633 (1953).

A

Against this backdrop, we consider whether the District Court's disposition of petitioner's complaint, summarily affirmed by the Court of Appeals for the Seventh Circuit, comports with Eighth Amendment principles. The government does not defend the District Court's application of the Eighth Amendment to this case, see Brief for Respondents 10, 29, and we conclude that the appropriate course is to remand.

Though properly stating that respondents could not be liable if they were unaware of a risk to inmate safety, the District Court erred in placing decisive weight on petitioner's failure to notify respondents of a danger. That petitioner "never expressed any concern for his safety to any of the [respondents]," App. 124, was the only evidence the District Court cited for its conclusion that there was no genuine dispute about respondents' contention that they "had no knowledge of any potential danger to [petitioner]," *ibid.* But with respect to petitioner's claim for prospective injunctive relief, petitioner's failure to notify respondents prior to the alleged beating and rape is wholly irrelevant; the question is whether prison officials are now knowingly and unreasonably disregarding a substantial risk of serious harm to petitioner, see *supra*, at 19–20, a question the District Court did not address.

Even as to petitioner's damages claim, the failure to give advance notice is not dispositive. Although petitioner cannot obtain damages for the alleged rape without showing that respondents knew in advance that petitioner faced a sufficiently serious risk, that burden may be met by reliance on any relevant evidence. See *supra*, at 16. To be sure, prior notification by a prisoner is strong evidence that a prison official had knowledge of a substantial risk of assault, and proving knowledge in the absence of notification may be difficult. But prior

notification is not a necessary element of an Eighth Amendment failure-to-protect claim. Certainly, if a female inmate were raped after prison officials housed her with male sex offenders, her failure to have notified prison officials of the risk to her safety would not immunize the officials from constitutional liability.

Recognizing that specific notification is not required changes the complexion of the summary judgment record. In their answer to petitioner's complaint, respondents admitted that petitioner is a "non-violent" transsexual "who projects feminine characteristics," and that because of petitioner's "youth and feminine appearance," petitioner "is likely to experience a great deal of sexual pressure." App. 50–51, 73–74. In papers filed in opposition to summary judgment, petitioner pointed to these facts, and also described an earlier case involving petitioner and, among others, respondent Calvin Edwards (then warden of the United States Penitentiary in Lewisburg, Pennsylvania), in which the District Court's opinion stated that "[c]learly, placing plaintiff, a twenty-one year old transsexual, into the general population at [USP-]Lewisburg, a [high-]security institution, could pose a significant threat to internal security in general and to plaintiff in particular." *Farmer* v. *Carlson*, 685 F. Supp., at 1342; see also App. 107–111. That opinion also quoted from a prison document appended to the declaration Edwards filed in the case, which explained that petitioner could not be released from administrative segregation because "'a situation exists which may endanger your [that is, petitioner's] life in the general population.'" 685 F.Supp., at 1342 (quoting Attachment B to Edwards Declaration). As for the other defendants, petitioner's papers stated that respondents Edward Brennan (warden of FCI-Oxford) and J. Michael Quinlan (Director of the Bureau of Prisons) had previously filed court papers relying on *Farmer* v. *Carlson* and were therefore aware of the danger to petitioner's safety. And

petitioner asserted that respondents Brennan, Dennis Kurzydlo (case manager at FCI-Oxford), Larry Dubois (Regional Director of the Bureau of Prisons North Central Region) and N. W. Smith (a correctional services administrator in the North Central Region office), each of whom participated in transfers of inmates from FCI-Oxford to USP-Terre Haute, knew that USP-Terre Haute was a "violent type institution" because "inmates who commit violent acts at FCI-Oxford are often transferred to USP-Terre Haute." App. 117, 118. Petitioner also claimed witnessing an environment at USP-Terre Haute that was "much more aggressive and violent" than FCI-Oxford. *Id.*, at 117.

Whether, with respect to any of the defendants, this amounts to an adequate showing by a *pro se* plaintiff to survive a motion for summary judgment (on which the nonmoving party is entitled to have all reasonable inferences drawn in its favor, see *Anderson* v. *Liberty Lobby, Inc.*, 477 U. S. 242, 255 (1986)) is a question that needs no answer here because it is not clear that this is the only evidence available to petitioner. Petitioner's Rule 56(f) motion, filed in response to respondents' summary judgment motion and requesting the District Court not to rule until respondents complied with a pending discovery request, asserted that responsive documents would show that "each defendant had knowledge that USP-Terre Haute was and is, a violent institution with a history of sexual assault, stabbings, etc., [and that] each defendant showed reckless disregard for my safety by designating me to said institution knowing that I would be sexually assaulted." App. 105–106. In moving for a protective order staying discovery, respondents did not dispute petitioner's assertion about what the sought-after documents would reveal, arguing instead that the court should allow no more discovery until it decided whether respondents had qualified immunity. See Memorandum in Support of

Federal Defendants' Motion for Protective Order Staying Discovery (Mar. 17, 1992). Without ruling on qualified immunity, however, the District Court denied petitioner's Rule 56(f) motion; it did so at least in part on the ground that the documents requested were "not shown by plaintiff to be necessary to oppose defendants' motion for summary judgment." App. 121. That would be so, however, only if petitioner's failure to notify respondents of an impending danger were fatal to petitioner's claim, but as we have said, it is not.

Because the District Court erred in requiring notification, and because its error may have affected its ruling on petitioner's Rule 56(f) motion, we think it proper to remand for the District Court to reconsider its denial of that motion and, whether it allows additional discovery or not, to apply the Eighth Amendment principles explained above.[10]

B

The government urges us to affirm for reasons not relied on below, but neither of the government's contentions is so clearly correct as to justify affirmance.

With respect to petitioner's damages claim, the government argues that the officials sued in their individual capacities (respondents Brennan, Kurzydlo, DuBois, and Smith, each an official at FCI-Oxford or the Bureau of Prisons North Central Region office), were alleged to be liable only for their transfer of petitioner from FCI-Oxford to USP-Terre Haute, whereas petitioner "nowhere alleges any reason for believing that these officials, who had no direct responsibility for administering the Terre

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[10] The District Court's opinion is open to the reading that it required not only advance notification of a substantial risk of assault, but also advance notification of a substantial risk of assault posed by a particular fellow prisoner. See App. 124 (referring to "a specific threat to [a prisoner's] safety"). The Eighth Amendment, however, imposes no such requirement. See *supra*, at 17.

Haute institution, would have had knowledge of conditions within that institution regarding danger to transsexual inmates." Brief for Respondents 27–28. But petitioner's Rule 56(f) motion alleged just that. Though the government suggests here that petitioner offered no factual basis for that assertion, that is not a ground on which the government chose to oppose petitioner's Rule 56(f) motion below and, in any event, is a matter for the exercise of the District Court's judgment, not ours. Finally, to the extent the government seeks affirmance here on the ground that officials at FCI-Oxford and the Bureau of Prisons regional office had no power to control prisoner placement at Terre Haute, the record gives at least a suggestion to the contrary; respondent Edwards's affidavit states that, after having been at USP-Terre Haute for about a month, petitioner was placed in administrative segregation at Terre Haute "pursuant to directive from the North Central Regional Office" and a "request . . . by staff at FCI-Oxford." App. 94–95. Accordingly, though we do not reject the government's arguments about petitioner's claim for damages, the record does not permit us to accept them as a basis for affirmance when they were not relied upon below. Respondents are free to develop this line of argument on remand.

With respect to petitioner's claim for injunctive relief, the government argued in its merits brief that the claim was "foreclosed by [petitioner's] assignment to administrative detention status because of his high-risk HIV-positive condition, . . . as well as by the absence of any allegation . . . that administrative detention status poses any continuing threat of physical injury to him." Brief for Respondents 28–29. At oral argument, however, the Deputy Solicitor General informed us that petitioner was no longer in administrative detention, having been placed in the general prison population of a medium-security prison. Tr. of Oral Arg. 25–26. He suggested

that affirmance was nevertheless proper because "there is no present threat" that petitioner will be placed in a penitentiary, *id.*, at 26, but this argument turns on facts about the likelihood of a transfer to a penitentiary that the District Court is far better placed to evaluate than we are. We leave it to respondents to present this point on remand.

IV

The judgment of the Court of Appeals is vacated and the case is remanded for further proceedings consistent with this opinion.

So ordered.

Pp. 19-23, 27-29, 31

HAB

To: The Chief Justice
Justice Blackmun
Justice Stevens
Justice O'Connor
Justice Scalia
Justice Kennedy
Justice Thomas
Justice Ginsburg

From: **Justice Souter**

Circulated: _____

Recirculated: 4/15/94

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 92–7247

DEE FARMER, PETITIONER *v.* EDWARD BRENNAN, WARDEN, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[April ___, 1994]

JUSTICE SOUTER delivered the opinion of the Court.

A prison official's "deliberate indifference" to a substantial risk of serious harm to an inmate violates the Eighth Amendment. See *Helling* v. *McKinney* 509 U. S. __ (1993); *Wilson* v. *Seiter*, 501 U. S. 294 (1991); *Estelle* v. *Gamble*, 429 U. S. 97 (1976). This case requires us to define the term "deliberate indifference," as we do by requiring a showing that the official was subjectively aware of the risk.

I

The dispute before us stems from a civil suit brought by petitioner, Dee Farmer, alleging that respondents, federal prison officials, violated the Eighth Amendment by their deliberate indifference to petitioner's safety. Petitioner, who is serving a federal sentence for credit card fraud, has been diagnosed by medical personnel of the Bureau of Prisons as a transsexual, one who has "[a] rare psychiatric disorder in which a person feels persistently uncomfortable about his or her anatomical sex," and who typically seeks medical treatment, including hormonal therapy and surgery, to bring about a permanent sex change. American Medical Association, Encyclopedia of Medicine 1006 (1989); see also American Psychiatric Association, Diagnostic and Statistical

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Manual of Mental Disorders 74–75 (3d rev. ed. 1987). Though biologically male, petitioner lived as a woman for several years before being convicted and sentenced in 1986 at the age of 18, during which time petitioner wore women's clothing (as petitioner did at the 1986 trial), underwent estrogen therapy, received silicone breast implants, and submitted to unsuccessful "black market" testicle-removal surgery. See *Farmer* v. *Haas*, 990 F. 2d 319, 320 (CA7 1993). Petitioner's precise appearance in prison is unclear from the record before us, but petitioner claims to have continued hormonal treatment while incarcerated by having drugs smuggled into prison, and apparently wears clothing in the manner of a woman, as by displaying a shirt "off one shoulder," App. 112. The parties agree that petitioner "projects feminine characteristics." *Id.*, at 51, 74.

The practice of federal prison authorities is to incarcerate preoperative transsexuals with prisoners of like biological sex, see *Farmer* v. *Haas*, *supra*, at 320, and over time authorities housed petitioner in several federal facilities, sometimes in the general male prison population but more often in segregation. While there is no dispute that petitioner was segregated at least several times because of violations of prison rules, neither is it disputed that in at least one penitentiary petitioner was segregated because of safety concerns. See *Farmer* v. *Carlson*, 685 F. Supp. 1335, 1342 (MD Pa. 1988).

On March 9, 1989, petitioner was transferred for disciplinary reasons from the Federal Correctional Institute in Oxford, Wisconsin (FCI-Oxford), to the United States Penitentiary in Terre Haute, Indiana (USP-Terre Haute). Though the record before us is unclear about the security designations of the two prisons in 1989, penitentiaries are typically higher security facilities that house more troublesome prisoners than federal correctional institutes. See generally Federal Bureau of Prisons, Facilities 1990. After an

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initial stay in administrative segregation, petitioner was placed in the USP-Terre Haute general population. Petitioner voiced no objection to any prison official about the transfer to the penitentiary or to placement in its general population. Within two weeks, according to petitioner's allegations, petitioner was beaten and raped by another inmate in petitioner's cell. Several days later, after petitioner claims to have reported the incident, officials returned petitioner to segregation to await, according to the government, a hearing about petitioner's HIV-positive status.

Acting without counsel, petitioner then filed a *Bivens* complaint, alleging a violation of the Eighth Amendment. See *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U. S. 388 (1971); *Carlson* v. *Green*, 446 U. S. 14 (1980). As defendants, petitioner named respondents: the warden of USP-Terre Haute and the Director of the Bureau of Prisons (sued only in their official capacities); the warden of FCI-Oxford and a case manager there; and the director of the Bureau of Prisons North Central Region Office and an official in that office (sued in their official and personal capacities). As later amended, the complaint alleged that respondents either transferred petitioner to USP-Terre Haute or placed petitioner in its general population despite knowledge that the penitentiary had a violent environment and a history of inmate assaults, and despite knowledge that petitioner, as a transsexual who "projects feminine characteristics," would be particularly vulnerable to sexual attack by USP-Terre Haute inmates. This allegedly amounted to a deliberately indifferent failure to protect petitioner's safety, and thus to a violation of petitioner's Eighth Amendment rights. Petitioner sought compensatory and punitive damages, and an injunction

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barring future confinement in any penitentiary, including USP-Terre Haute.[1]

Respondents filed a motion for summary judgment supported by several affidavits, to which petitioner responded with an opposing affidavit and a cross-motion for summary judgment; petitioner also invoked Federal Rule of Civil Procedure 56(f), asking the court to delay its ruling until respondents had complied with petitioner's pending request for production of documents. Respondents then moved for a protective order staying discovery until resolution of the issue of qualified immunity, raised in respondents' summary-judgment motion.

The District Court denied petitioner's Rule 56(f) motion and granted summary judgment to respondents, concluding that there had been no deliberate indifference to petitioner's safety. The failure of prison officials to prevent inmate assaults violates the Eighth Amendment, the court stated, only if prison officials were "reckless in a criminal sense," meaning that they had "actual knowledge" of a potential danger. App. 124. Respondents, however, lacked the requisite knowledge, the court found. "[Petitioner] never expressed any concern for his safety to any of [respondents]. Since [respondents] had no knowledge of any potential danger to [petitioner], they were not deliberately indifferent to his safety." *Ibid.*

The United States Court of Appeals for the Seventh Circuit summarily affirmed without opinion. We granted certiorari, 510 U. S. __ (1993), because Courts of Appeals had adopted inconsistent tests for "deliberate

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[1]Petitioner also sought an order requiring the Bureau of Prisons to place petitioner in a "co-correctional facility" (*i.e.*, one separately housing male and female prisoners but allowing coeducational programming). Petitioner tells us, however, that the Bureau no longer operates such facilities, and petitioner apparently no longer seeks this relief.

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indifference." Compare, for example, *McGill* v. *Duckworth*, 944 F. 2d 344, 348 (CA7 1991) (holding that "deliberate indifference" requires a "subjective standard of recklessness"), cert. denied, 503 U. S. __ (1992), with *Young* v. *Quinlan*, 960 F. 2d 351, 360–361 (CA3 1992) ("[A] prison official is deliberately indifferent when he knows or should have known of a sufficiently serious danger to an inmate").

II

A

The Constitution "does not mandate comfortable prisons," *Rhodes* v. *Chapman*, 452 U. S. 337, 349 (1981), but neither does it permit inhumane ones, and it is now settled that "the treatment a prisoner receives in prison and the conditions under which he is confined are subject to scrutiny under the Eighth Amendment." *Helling*, 509 U. S., at __. In its prohibition of "cruel and unusual punishments," the Eighth Amendment places restraints on prison officials, who may not, for example, use excessive physical force against prisoners. See *Hudson* v. *McMillian*, 503 U. S. 1 (1992). The Amendment also imposes duties on these officials, who must provide humane conditions of confinement; prison officials must ensure that inmates receive adequate food, clothing, shelter and medical care, and must "take reasonable measures to guarantee the safety of the inmates," *Hudson* v. *Palmer*, 468 U. S. 517, 526–527 (1984). See *Helling*, *supra*, at __ (slip op., at 5); *Washington* v. *Harper*, 494 U. S. 210, 225 (1990); *Estelle*, 429 U. S., at 103. Cf. *DeShaney* v. *Winnebago County Dept. of Social Services*, 489 U. S. 189, 198–199 (1989).

In particular, as the lower courts have uniformly held, and as we have assumed, "[p]rison officials have a duty . . . to protect prisoners from violence at the hands of other prisoners." *Cortes-Quinones* v. *Jimenez-Nettleship*, 842 F. 2d 556, 558 (CA1) (internal quotation marks and

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citation omitted), cert. denied, 488 U. S. 823 (1988);[2] see also *Wilson* v. *Seiter*, 501 U. S., at 303 (describing "the protection [an inmate] is afforded against other inmates" as a "conditio[n] of confinement" subject to the strictures of the Eighth Amendment). Having incarcerated people with demonstrated proclivities for criminally antisocial and, in many cases, violent conduct, having stripped them of virtually every means of self-protection and foreclosed their access to outside aid, the government and its officials are not free to let the state of nature take its course. Cf. *DeShaney*, *supra*, at 199–200; *Estelle*, *supra*, at 103–104. Prison conditions may be "restrictive and even harsh," *Rhodes*, *supra*, at 347, but gratuitously allowing the beating or rape of one prisoner by another serves no "legitimate penological objectiv[e]," *Hudson* v. *Palmer*, *supra*, at 548, any more than it squares with "'evolving standards of decency,'" *Estelle*, *supra*, at 102 (quoting *Trop* v. *Dulles*, 356 U. S. 86, 101 (1958) (plurality opinion)). Being violently assaulted in prison is simply not "part of the penalty that criminal offenders pay for their offenses against society." *Rhodes*, *supra*, at 347.

It is not, however, every injury suffered by one prisoner at the hands of another that translates into constitutional liability for prison officials responsible for the victim's safety. Our cases have held that a prison official violates the Eighth Amendment only where two

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[2] Other Court of Appeals decisions to the same effect include *Villante* v. *Department of Corrections*, 786 F. 2d 516, 519 (CA2 1986); *Young* v. *Quinlan*, 960 F. 2d 351, 361–362 (CA3 1992); *Pressly* v. *Hutto*, 816 F. 2d 977, 979 (CA4 1987); *Alberti* v. *Klevenhagen*, 790 F. 2d 1220, 1224 (CA5 1986); *Roland* v. *Johnson*, 856 F. 2d 764, 769 (CA6 1988); *Goka* v. *Bobbitt*, 862 F. 2d 646, 649–650 (CA7 1988); *Martin* v. *White*, 742 F. 2d 469, 474 (CA8 1984); *Berg* v. *Kincheloe*, 794 F. 2d 457, 459 (CA9 1986); *Ramos* v. *Lamm*, 639 F. 2d 559, 572 (CA10 1980), cert. denied, 450 U. S. 1041 (1981); *LaMarca* v. *Turner*, 995 F. 2d 1526, 1535 (CA11 1993); and *Morgan* v. *District of Columbia*, 824 F. 2d 1049, 1057 (CADC 1987).

the victim's safety. Our cases have held that a prison official violates the Eighth Amendment only where two requirements are met. First, the deprivation alleged must be, objectively, "sufficiently serious," *Wilson*, *supra*, at 2324; see also *Hudson* v. *McMillian*, *supra*, at __ (slip op., at 5); a prison official's act or omission must result in the denial of "the minimal civilized measure of life's necessities," *Rhodes*, *supra*, at 347. For a claim (like the one here) based on a failure to prevent harm, the inmate must show that he is incarcerated under conditions posing a substantial risk of serious harm. See *Helling*, *supra*, at __ (slip op., at 8).[3]

The second requirement follows from the principle that "only the unnecessary and wanton infliction of pain implicates the Eighth Amendment." *Wilson*, 501 U. S., at 297 (internal quotation marks, emphasis and citations omitted). To violate the Cruel and Unusual Punishments Clause, a prison official must have a "sufficiently culpable state of mind." *Ibid.*; see also *id.*, at 302–303; *Hudson* v. *McMillian*, *supra*, at __ (slip op., at 5). In prison-conditions cases, we have said, that state of mind is one of "deliberate indifference" to inmate health or safety, *Wilson*, *supra*, at 2326–2327; see also *Helling*, *supra*, at __ (slip op., at 6–7); *Hudson* v. *McMillian*, *supra*, at 999; *Estelle*, *supra*, at 106, a standard the parties agree governs the claim in this case. The parties disagree, however, on the proper test for deliberate indifference, which we must therefore undertake to define.

B

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[3]At what point a risk of inmate assault becomes sufficiently substantial for Eighth Amendment purposes is a question this case does not present, and we do not address it.

Although we have never paused to explain at any length the meaning of the term "deliberate indifference," the case law is instructive. The term first appeared in the United States Reports in *Estelle* v. *Gamble*, 429 U. S., at 104, and its use there shows that deliberate indifference describes a state of mind more blameworthy than negligence. In considering the inmate's claim in *Estelle* that inadequate prison medical care violated the Cruel and Unusual Punishments Clause, we distinguished "deliberate indifference to serious medical needs of prisoners," *ibid.*, from "negligen[ce] in diagnosing or treating a medical condition," *id.*, at 106, holding that only the former violates the Clause. We have since read *Estelle* for the proposition that Eighth Amendment liability requires "more than ordinary lack of due care for the prisoner's interests or safety." *Whitley* v. *Albers*, 475 U. S. 312, 319 (1986).

While deliberate indifference entails something more than mere negligence, the cases are also clear that it is satisfied by something less than acts or omissions for the very purpose of causing harm or with knowledge that harm will result. That point underlies the ruling that "application of the deliberate indifference standard is inappropriate" in one class of prison cases: when "officials stand accused of using excessive physical force." *Hudson* v. *McMillian*, 503 U. S., at __; see also *Whitley*, *supra*, 320. In such situations, where the decisions of prison officials are typically made "'in haste, under pressure, and frequently without the luxury of a second chance,'" *Hudson* v. *McMillian*, *supra*, at __ (quoting *Whitley*, *supra*, at 320), an Eighth Amendment claimant must show more than "indifference," deliberate or otherwise. The claimant must show that officials applied force "'"maliciously and sadistically for the very purpose of causing harm"'" (rather than "in a good faith effort to maintain or restore discipline"), 503 U. S., at __ (quoting *Whitley*, *supra*, at 320–321) (in turn quoting

Johnson v. *Glick*, 481 F. 2d 1028, 1033 (CA2), cert. denied, 414 U. S. 1033 (1973)), or, as the Court also put it, that officials used force with "'a knowing willingness that [harm] occur,'" 503 U. S., at __ (quoting *Whitley*, *supra*, at 321). This standard of purposeful or knowing conduct is not, however, necessary to satisfy the *mens rea* requirement of deliberate indifference for claims challenging conditions of confinement; "the very high state of mind prescribed by *Whitley* does not apply to prison condition cases." *Wilson*, *supra*, at 302–303.

With deliberate indifference lying somewhere between the poles marked by negligence at one end and purpose or knowledge at the other, the Courts of Appeals have routinely equated deliberate indifference with recklessness.[4] See, *e.g.*, *LaMarca* v. *Turner*, 995 F. 2d 1526, 1535 (CA11 1993); *Manarite* v. *Springfield*, 957 F. 2d 953, 957 (CA1), cert. denied, 506 U. S. __ (1992); *Redman* v. *County of San Diego*, 942 F. 2d 1435, 1443 (CA9 1991), cert. denied, 506 U. S. __ (1992); *McGill* v. *Duckworth*, 944 F. 2d, at 347; *Miltier* v. *Beorn*, 896 F. 2d 848, 851–852 (CA4 1990); *Martin* v. *White*, 742 F. 2d 469, 474 (CA8 1984); see also *Springfield* v. *Kibbe*, 480 U. S. 257, 269 (1987) (O'CONNOR, J., dissenting). It is, indeed, fair to say that acting or failing to act with deliberate indifference to a substantial risk of serious harm to a prisoner is the equivalent of recklessly disregarding that risk.

That does not, however, completely answer the pending question about the level of culpability deliberate indifference entails, for the term recklessness is not self-

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[4]Between the poles lies "gross negligence" too, but the term is a "nebulous" one, in practice typically meaning little different from recklessness as typically understood in the civil law (which we discuss later in the text). See W. Keeton, D. Dobbs, R. Keeton, D. Owen, Prosser and Keeton on Torts § 34, p. 212 (5th ed. 1984) (hereinafter Prosser and Keeton).

defining. The civil law generally calls a person reckless who acted or (if the person had a duty to act) failed to act in the face of an unjustifiably high risk of harm that was either known or so obvious that it should have been known. See Prosser and Keeton, § 34, pp. 213–214; Restatement (Second) of Torts § 500 (1965). The criminal law, however, generally permits a finding of recklessness only when a person has disregarded a risk of harm of which he was aware. See R. Perkins & R. Boyce, Criminal Law 850–851 (3d ed. 1982); J. Hall, General Principles of Criminal Law 115–116, 120, 128 (2d ed. 1960) (hereinafter Hall); American Law Institute, Model Penal Code § 2.02(2)(c), and Comment 3 (1985); but see *Commonwealth* v. *Pierce*, 138 Mass. 165, 175–178 (1884) (Holmes, J.) (adopting an objective approach to criminal recklessness). The standards proposed by the parties in this case track the two approaches (though the parties do not describe them that way): petitioner asks us to define deliberate indifference as what we have called civil-law recklessness,[5] and the government urges us to adopt an approach consistent with recklessness in the criminal law.[6]

We reject petitioner's invitation to adopt an objective test for deliberate indifference. We hold instead that a prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official

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[5] See Reply Brief for Petitioner 5 (suggesting that a prison official is deliberately indifferent if he "knew facts which rendered an unreasonable risk obvious; under such circumstances, the defendant should have known of the risk and will be charged with such knowledge as a matter of law"); see also Brief for Petitioner 20–21.

[6] See Brief for Respondents 16 (asserting that deliberate indifference requires that a prison "official must know of the risk of harm to which an inmate is exposed").

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must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference. This approach comports best with the text of the Amendment and our cases interpreting it. The Eighth Amendment does not outlaw cruel and unusual "conditions"; it outlaws cruel and unusual "punishments." An act or omission unaccompanied by knowledge of a significant risk of harm might well be something society wishes to discourage, and if harm does result society might well wish to assure compensation. The common law reflects such concerns when it imposes tort liability on a purely objective basis. See Prosser and Keeton §§ 2, 34 pp. 6, 213–214; see also Federal Tort Claims Act, 28 U. S. C. §§ 2671–2680; *United States* v. *Muniz*, 374 U. S. 150 (1963). But an official's failure to alleviate a significant risk that he should have perceived but did not, while no cause for commendation, cannot be condemned as the infliction of punishment.

In *Wilson* v. *Seiter*, we rejected a reading of the Eighth Amendment that would allow liability to be imposed on prison officials solely because of the presence of objectively inhumane prison conditions. See 501 U. S., at 299–302. As we explained there at length, our "cases mandate inquiry into a prison official's state of mind when it is claimed that the official has inflicted cruel and unusual punishment." *Id.*, at 299. Although "state of mind," like "intent," are ambiguous terms that can encompass objectively defined levels of blameworthiness, see 1 W. LaFave & A. Scott, Substantive Criminal Law §§ 3.4, 3.5, pp. 296–300, 313–314 (1986) (hereinafter LaFave & Scott); *United States* v. *Bailey*, 444 U. S. 394, 404 (1980), it was no accident that we said in *Wilson* and repeated in later cases that Eighth Amendment suits against prison officials must satisfy a "subjective" requirement. See *Wilson*, *supra*, at 298; see also *Helling*, 509 U. S., at __ (slip op., at 9); *Hudson* v.

McMillian, 503 U. S., at __ (slip op., at 4–5). It is true, as petitioner points out, that *Wilson* cited with approval Court of Appeals decisions applying an objective test for deliberate indifference to claims based on prison officials' failure to prevent inmate assaults. See 501 U. S., at 303 (citing *Cortes-Quinones* v. *Jimenez-Nettleship*, 842 F. 2d, at 560; and *Morgan* v. *District of Columbia*, 824 F. 2d, at 1057–1058). But *Wilson* cited those cases for the proposition that the deliberate-indifference standard applies to all prison-conditions claims, not to undo its holding that the Eighth Amendment has a "subjective component." 501 U. S., at 298. Petitioner's purely objective test for deliberate indifference is simply incompatible with that holding.

To be sure, the reasons for focusing on what a defendant's mental attitude actually was (or is), rather than what it should have been (or should be), differ in the Eighth Amendment context from that of the criminal law. Here, a subjective approach isolates those who inflict punishment; there, it isolates those against whom punishment should be inflicted. But the result is the same: to act recklessly in either setting a person must "consciously disregar[d]" a substantial risk of serious harm. Model Penal Code, *supra*, § 2.02(2)(c).

At oral argument, the Deputy Solicitor General advised against frank adoption of a criminal-law *mens rea* requirement, contending that it could encourage triers of fact to find Eighth Amendment liability only if they concluded that prison officials acted like criminals. See Tr. of Oral Arg. 39–40. We think the government's concern is misdirected. *Bivens* actions against federal prison officials (and their § 1983 counterparts against state officials) are civil in character, and a court should no more allude to the criminal law when enforcing the Cruel and Unusual Punishments Clause than when applying the Free Speech and Press Clauses, where we have also adopted a subjective approach to recklessness.

See *Harte-Hanks Communications, Inc.* v. *Connaughton*, 491 U. S. 657, 688 (1989) (holding that the standard for "reckless disregard" for the truth in a defamation action by a public figure "is a subjective one," requiring that "the defendant in fact entertained serious doubts as to the truth of his publication," or that "the defendant actually had a high degree of awareness of . . . probable falsity") (internal quotation marks and citations omitted).[7] That said, however, subjective recklessness as used in the criminal law is a familiar and workable standard that is consistent with the Cruel and Unusual Punishments Clause as interpreted in our cases, and we adopt it as the test for "deliberate indifference" under the Eighth Amendment.

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Our decision that Eighth Amendment liability requires consciousness of a risk is thus based on the Constitution and our cases, not merely on a parsing of the phrase "deliberate indifference." And we do not reject petitioner's arguments for a thoroughly objective approach to deliberate indifference without recognizing that on the crucial point (whether a prison official must know of a risk, or whether it suffices that he should have known) the term does not speak with certainty. Use of "deliberate," for example, arguably requires nothing more than that an act (or omission) of indifference to a serious risk be voluntary, not accidental. Cf. *Estelle*, 429 U. S., at 105 (distinguishing "deliberate indifference" from "accident" or "inadverten[ce]"). And even if "deliberate" is better read as implying knowledge of a risk, the concept of constructive knowledge is familiar enough

[7] Appropriate allusions to the criminal law would, of course, be proper during criminal prosecutions under, for example, 18 U. S. C. § 242, which sets criminal penalties for deprivations of rights under color of law.

that the term "deliberate indifference" would not, of its own force, preclude a scheme that conclusively presumed awareness from a risk's obviousness.

Because "deliberate indifference" is a judicial gloss, appearing neither in the Constitution nor in a statute, we could not accept petitioner's argument that the test for "deliberate indifference" described in *Canton* v. *Harris*, 489 U. S. 378 (1989), must govern here. In *Canton*, interpreting 42 U. S. C. §1983, we held that a municipality can be liable for failure to train its employees when the municipality's failure shows "a deliberate indifference to the rights of its inhabitants." 489 U. S., at 389 (internal quotation marks omitted). In speaking to the meaning of the term, we said that "it may happen that in light of the duties assigned to specific officers or employees the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need." *Id.*, at 390; see also *id.*, at 390, n. 10 (elaborating). JUSTICE O'CONNOR's separate opinion for three Justices agreed with the Court's "obvious[ness]" test and observed that liability is appropriate when policymakers are "on actual or constructive notice" of the need to train, *id.*, at 396 (opinion concurring in part and dissenting in part). It would be hard to describe the *Canton* understanding of deliberate indifference, permitting liability to be premised on obviousness or constructive notice, as anything but objective.

Canton's objective standard, however, is not an appropriate test for determining the liability of prison officials under the Eighth Amendment. Section 1983, which merely provides a cause of action, "contains no state-of-mind requirement independent of that necessary to state a violation of the underlying constitutional right." *Daniels* v. *Williams*, 474 U. S. 327, 330 (1986).

And while deliberate indifference serves under the Eighth Amendment to ensure that only inflictions of punishment carry liability, see *Wilson*, 501 U. S., at 299–300, the "term was used in the *Canton* case for the quite different purpose of identifying the threshold for holding a city responsible for the constitutional torts committed by its inadequately trained agents," *Collins* v. *Harker Heights*, 503 U. S. __, __ (1992), a purpose the *Canton* Court found satisfied by a test permitting liability when a municipality disregards "obvious" needs. Needless to say, moreover, considerable conceptual difficulties would attend any search for the subjective state of mind of a governmental entity, as distinct from that of a prison official. For these reasons, we cannot accept petitioner's argument that *Canton* compels the conclusion here that a prison official who was unaware of a substantial risk of harm to an inmate may nevertheless be held liable under the Eighth Amendment if the risk was obvious and a reasonable prison official would have noticed it.

We are no more persuaded by petitioner's argument that, without an objective test for deliberate indifference, prison officials will be free to ignore obvious dangers to inmates. Under the test we adopt today, an Eighth Amendment claimant need not show that a prison official acted or failed to act believing that harm actually would befall an inmate; it is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm. Cf. 1 C. Torcia, Wharton's Criminal Law §27, p. 141 (14th ed. 1978); Hall 115. We doubt that a subjective approach will present prison officials with any serious motivation "to take refuge in the zone between 'ignorance of obvious risks' and 'actual knowledge of risks.'" Brief for Petitioner 27. Whether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including

inference from circumstantial evidence, see Hall 118 (cautioning against "confusing a mental state with the proof of its existence"), and a factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious. Cf. LaFave & Scott §3.7, p. 335 ("[I]f the risk is obvious, so that a reasonable man would realize it, we might well infer that [the defendant] did in fact realize it; but the inference cannot be conclusive, for we know that people are not always conscious of what reasonable people would be conscious of"). For example, if an Eighth Amendment plaintiff presents evidence showing that a substantial risk of inmate attacks was "longstanding, pervasive, well-documented, or expressly noted by prison officials in the past, and the circumstances suggest that the defendant-official being sued had been exposed to information concerning the risk and thus 'must have known' about it, then such evidence could be sufficient to permit a trier of fact to find that the defendant-official had actual knowledge of the risk." Brief for Respondents 22.[8]

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[8]The government calls our attention to the concept of willful blindness, under which a person is not ignorant of something, but knows it, if he is "aware of [a] 'high probability'" of its existence. *Turner* v. *United States*, 396 U. S. 398, 416 (1970); see also American Law Institute, Model Penal Code § 2.02(7) (1985). The criminal law allows liability to rest on proof that a defendant purposefully avoided obtaining final confirmation of what he strongly suspected to be true, see *ibid.*, and we see no reason the concept of willful blindness should be inapplicable under the Eighth Amendment. (We have assumed its applicability under the First. See *Masson* v. *New Yorker Magazine, Inc.*, 501 U. S. __, __ (1991) (stating that a public figure in a defamation case may establish "reckless disregard" for the truth by showing that the defendant "acted with a 'high degree of awareness of . . . probable falsity'") (citation omitted).) In deliberate indifference cases, willful blindness may be relevant both in establishing knowledge of the underlying facts (a prison official, for example, purposefully avoids confirming his reasons to believe that one prisoner has planned an attack on another), and also in establishing knowledge of the risk (a

Nor may a prison official escape liability for deliberate indifference by showing that, while he was aware of an obvious, substantial risk to inmate safety, he did not know that the complainant was especially likely to be assaulted by the specific prisoner who eventually committed the assault. The question under the Eighth Amendment is whether prison officials, acting with deliberate indifference, exposed a prisoner to a sufficiently substantial "risk of serious damage to his future health," *Helling*, 509 U. S., at __, and it does not matter whether the risk came from a single source or multiple sources, any more than it matters whether a prisoner faced an excessive risk of attack for reasons personal to him or because all prisoners in his situation faced such a risk. See Brief for Respondents 15 (stating that a prisoner can establish exposure to a sufficiently serious risk of harm "by showing that he belongs to an identifiable group of prisoners who are frequently singled out for violent attack by other inmates"). If, for example, prison officials were aware that inmate "rape was so common and uncontrolled that some potential victims dared not sleep [but] instead . . . would leave their beds and spend the night clinging to the bars nearest the guards' station," *Hutto* v. *Finney*, 437 U. S., 678, 681–682 n. 3 (1978), it would obviously be irrelevant to

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prison official, for example, knows that a single needle is being used to administer flu shots to prisoners but refuses to listen to a subordinate attempting to explain the associated risk of transmitting communicable diseases). We stress, however, that at least for Eighth Amendment purposes "[a] deliberate avoidance of knowledge is culpable only when coupled with a subjective awareness of high probability," *United States* v. *Valle-Valdez*, 554 F. 2d 911, 914 (CA9 1977), and courts should be careful to ensure that in its application the willful blindness rule does not dispense with the need for subjective awareness. It is not enough merely to find that a reasonable person would have known of the relevant fact or that the defendant should have known, and juries should be instructed accordingly.

liability that the officials could not have guessed beforehand precisely who would attack whom. Cf. *Helling*, *supra*, at __ (observing that the Eighth Amendment requires a remedy for exposure of inmates to "infectious maladies" such as hepatitis and venereal disease "even though the possible infection might not affect all of those exposed"); *Commonwealth* v. *Welansky*, 316 Mass. 383, 55 N. E. 2d 902 (1944) (affirming conviction for manslaughter under a law requiring reckless or wanton conduct of a nightclub owner who failed to protect patrons from a fire, even though the owner did not know in advance who would light the match that ignited the fire or which patrons would lose their lives).

Because, however, prison officials who lacked knowledge of a risk cannot be said to have inflicted punishment, it remains open to the officials to prove that they were unaware even of an obvious risk to inmate health or safety. That a trier of fact may infer knowledge from the obvious, in other words, does not mean that it must do so. Prison officials charged with deliberate indifference might show, for example, that they did not know of the underlying facts indicating a sufficiently substantial danger, or that they knew the underlying facts but believed (albeit unsoundly) that the risk to which the facts gave rise was insubstantial or nonexistent.

In addition, prison officials who actually knew of a substantial risk to inmate health or safety may be found free from liability if they responded reasonably to the risk, even if the harm ultimately was not averted. A prison official's duty under the Eighth Amendment is to ensure "reasonable safety," *Helling*, *supra*, at __ (slip op., at 7); see also *Washington* v. *Harper*, 494 U. S., at 225; *Hudson* v. *Palmer*, 468 U. S., at 526–527, a standard that incorporates due regard for prison officials' "unenviable task of keeping dangerous men in safe custody under humane conditions." *Spain* v. *Procunier*,

600 F. 2d 189, 193 (CA9 1979) (Kennedy, J.); see also *Bell* v. *Wolfish*, 441 U. S. 520, 547–548, 562 (1979). Whether one puts it in terms of duty or deliberate indifference, prison officials who act reasonably cannot be found liable under the Cruel and Unusual Punishments Clause.

We address, finally, petitioner's argument that a subjective deliberate indifference test is flawed because it will result in leaving objectively inhumane prison conditions uncorrected. "It would," indeed, "be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them." *Helling*, 509 U. S., at __. But nothing in the test we adopt today clashes with that common sense. Under even a subjective approach to deliberate indifference, "a remedy for unsafe conditions need not await a tragic event," and "a prisoner need not wait until he is actually assaulted before obtaining relief." *Ibid.* Petitioner's argument that a subjective test for deliberate indifference would foreclose prospective injunctive relief fails to apprehend that the time relevant for proving a defendant's subjective culpability differs in actions for damages for past harm as compared with actions for injunctive relief to prevent future harm.

To meet the Eighth Amendment's subjective requirement in a suit seeking recompense for a previously experienced injury, an inmate must offer proof directed backwards; he must show that, before the injury occurred, the defendant-officials knew of a substantial risk of serious harm, which the officials disregarded by failing to take reasonable preventive measures. By contrast, in a suit seeking an injunction to prevent harm yet to have occurred, "the subjective factor, deliberate indifference, should be determined in light of the prison authorities' current attitudes and conduct." *Id.*, at __. The inmate seeking equitable relief must show that,

when the lawsuit was filed, the defendant-officials knew of a substantial risk of harm; and if the inmate is properly in court, having adequately pleaded a continuing or sufficiently imminent violation of the Cruel and Unusual Punishments Clause, he may also rely on knowledge the defendants admitted or acquired during the course of the litigation itself. Once knowledge of an intolerable risk of harm is established, the defendant-official's refusal to take reasonable measures to alleviate it reveals a level of subjective blameworthiness that we have called deliberate indifference to inmate health and safety. With the Eighth Amendment's objective and subjective requirements satisfied, the district court may grant injunctive relief if it is appropriate, for example, to stop "an ongoing violation."[9] *Hutto* v. *Finney*, 437 U. S., at 685–688 & n. 9 (upholding order intended to remedy unconstitutional prison conditions including extreme overcrowding, rampant violence, insufficient food, and unsanitary conditions). Of course, a district court should approach issuance of injunctive orders with the usual caution, see *Bell* v. *Wolfish*, 441 U. S., at 562 (warning courts against becoming "enmeshed in the minutiae of prison conditions"), and may appropriately exercise its discretion, for example, by giving prison

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[9]Thus contrary to the dissent's assertion, we do not require (or encourage) district courts to entertain suits for prospective relief that are "utterly unfounded at the outset." *Post*, at 2. A complaint premised on a theory of a continuing or sufficiently imminent constitutional violation must "adequately plea[d] a continuing or sufficiently imminent violation of the Cruel and Unusual Punishments Clause." *Supra*, at 19–20. Nor do we "repudiat[e]" the knowledge requirement for suits seeking prospective relief, or "suspen[d]" the requirement that prison officials act unreasonably. *Post*, at 2, 3. Rather, as the text makes clear, we require inmates seeking prospective relief to "establis[h]" prison officials' "knowledge of an intolerable risk of harm," and to prove their "refusal to take reasonable measures to alleviate" the risk. *Supra*, at 20.

officials time to rectify the situation before issuing an injunction.[10]

The dissent objects to just one aspect of this analysis: its recognition that trial courts need not ignore developments subsequent to the commencement of the suit. But in so stating we merely reiterate the principle, expressed clearly in *Helling* v. *McKinney* (and underlying *Hutto* v. *Finney*), that in suits properly brought to halt an ongoing violation of the Eighth Amendment it is "prison authorities' current attitudes and conduct that matters." *Helling*, *supra*, at __; see also *id.* (explicitly noting that prison authorities attitudes and conduct "may have changed" during the course of the litigation). Nor is *Helling* anomalous; trial courts routinely exercise their discretion to permit litigants to rely on "transactions or occurrences or events which have happened since the date of [a] pleading . . . ." Fed. R. Civ. Proc. 15(d); see also 6A C. Wright, A. Miller & M. Kane, Federal Practice and Procedure §§1504–1510, pp. 177–211.

What is anomalous is the dissent's proposal to freeze time at the moment an inmate files suit, which (notwithstanding the authority of an "immortal Latham and Jaffe tune," the only authority the dissent cites) is directly at odds with *Helling* and hard to square with common sense. It would bar relevant evidence from the litigation of a claim properly brought, while doing nothing to prevent the filing of frivolous complaints as

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[10] This discussion assumes that an inmate seeks injunctive relief on the ground that there is an ongoing Eighth Amendment violation in prison officials' refusal to alleviate an existing, objectively intolerable risk of serious injury. If, instead, an inmate claims entitlement to injunctive relief solely because an Eighth Amendment violation has occurred in the past, then, of course, he must show a "cognizable danger of recurrent violation" in order to obtain an injunction. *United States* v. *W.T. Grant Co.*, 345 U. S. 629, 633 (1953).

vehicles for obtaining evidence on which inmates could rely in subsequent suits, which nothing in the dissent's theory would prohibit them from filing. See *post*, at 4.[11]

Though we adhere to the rule that a district court with jurisdiction over an inmate's claim for injunctive relief may consider post-pleading developments, we should be clear that prisoners would be well advised to "take advantage of internal prison procedures to notify the relevant authorities," as the dissent suggests. *Post*, at 4. When such procedures produce relief, they will typically do so much faster than a court could. When they do not produce constitutionally required relief, the inmate's task in court will obviously be much easier. And failure to invoke prison procedures may be fatal to an inmate's chances for relief, as when an inmate disregards an available and adequate internal mechanism. Because our approach leaves trial courts empowered to dismiss the claims for prospective relief of inmates who, without reason, bypass internal procedures, it plainly does not "invit[e] all prisoners to bring their health and safety concerns [directly] to federal court." *Post*, at 4.

Reference to internal prison procedures is not, however, an adequate response to petitioner's argument that a subjective test will leave objectively inhumane prison conditions uncorrected, the purpose for which the dissent raises the matter. See *id.*, at 4. An internal mechanism will not always be available (there is no suggestion

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[11]Nor does the dissent's contention that we place incarcerated felons in a better position than law-abiding citizens withstand scrutiny. The dissent grounds its argument on the incorrect assertion that a lawsuit "will lie as soon as (but no sooner than) a constitutional violation has occurred." *Post*, at 4. In fact, ordinary litigants quite properly and routinely file suit before a violation has occurred, for "an injunction [is available] to prevent future violations, and, of course, it can be utilized even without a showing of past wrongs." *United States* v. *W.T. Grant Co.*, 345 U. S. 629, 633 (1953) (citation omitted).

in *Hutto* v. *Finney*, for example, that inmates who "spen[t] the night clinging to the bars nearest the guards' station" had an internal avenue to seek relief, 437 U. S. , at 682, n. 3); and pursuing internal procedures that do exist will not always be an adequate means to prevent irreparable harm (as when, for example, prison officials have in the past turned deaf ears to prisoner health complaints, or where they condoned or encouraged inmate violence, see *id.*, at 682–683, nn. 3, 6).

Accordingly, we reject petitioner's arguments and hold that a prison official may be held liable under the Eighth Amendment for denying humane conditions of confinement only if he knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it.

III

A

1

Against this backdrop, we consider whether the District Court's disposition of petitioner's complaint, summarily affirmed without briefing by the Court of Appeals for the Seventh Circuit, comports with Eighth Amendment principles. The government does not defend the District Court's application of the Eighth Amendment to this case, see Brief for Respondents 10, 29, and, without expressing a view on the ultimate merit of petitioner's complaint, we conclude that the appropriate course is to remand.

Though properly stating that respondents could not be liable if they were unaware of a risk to inmate safety, the District Court erred in placing decisive weight on petitioner's failure to notify respondents of a danger. That petitioner "never expressed any concern for his safety to any of the [respondents]," App. 124, was the only evidence the District Court cited for its conclusion

that there was no genuine dispute about respondents' contention that they "had no knowledge of any potential danger to [petitioner]," *ibid.* But with respect to petitioner's claim for prospective injunctive relief, which the District Court did not independently discuss, petitioner's failure to notify respondents prior to the alleged beating and rape is wholly irrelevant; the question is whether prison officials are now knowingly and unreasonably disregarding a substantial risk of serious harm to petitioner. See *supra*, at 19–20.

Even as to petitioner's damages claim, the failure to give advance notice is not dispositive. Although petitioner cannot obtain damages for the alleged rape without showing that respondents knew in advance that petitioner faced a sufficiently serious risk, that burden may be met by reliance on any relevant evidence. See *supra*, at 16. To be sure, prior notification by a prisoner is a strong indication that a prison official had knowledge of a substantial risk of assault, whereas proving knowledge in the absence of notification may be difficult. But prior notification is not a necessary element of an Eighth Amendment failure-to-protect claim. Certainly, if a female inmate were raped after prison officials housed her with male sex offenders, her failure to have notified prison officials of the risk to her safety would not immunize the officials from constitutional liability.

Recognizing that specific notification is not required changes the complexion of the summary judgment record. In their answer to petitioner's complaint, respondents admitted that petitioner is a "non-violent" transsexual "who projects feminine characteristics," and that because of petitioner's "youth and feminine appearance," petitioner "is likely to experience a great deal of sexual pressure." App. 50–51, 73–74. In papers filed in opposition to summary judgment, petitioner pointed to these facts, and also described an earlier case involving petitioner and, among others, respondent Calvin Ed-

wards (then warden of the United States Penitentiary in Lewisburg, Pennsylvania), in which the District Court's opinion stated that "[c]learly, placing plaintiff, a twenty-one year old transsexual, into the general population at [USP-]Lewisburg, a [high-]security institution, could pose a significant threat to internal security in general and to plaintiff in particular." *Farmer* v. *Carlson*, 685 F. Supp., at 1342; see also App. 107–111. That opinion also quoted from a prison document appended to the declaration Edwards filed in the case, which explained that petitioner could not be released from administrative segregation because "'a situation exists which may endanger your [that is, petitioner's] life in the general population.'" 685 F.Supp., at 1342 (quoting Attachment B to Edwards Declaration). As for the other defendants, petitioner's papers stated that respondents Edward Brennan (warden of FCI-Oxford) and J. Michael Quinlan (Director of the Bureau of Prisons) had previously filed court papers relying on *Farmer* v. *Carlson* and were therefore aware of the danger to petitioner's safety. And petitioner asserted that respondents Brennan, Dennis Kurzydlo (case manager at FCI-Oxford), Larry Dubois (Regional Director of the Bureau of Prisons North Central Region) and N. W. Smith (a correctional services administrator in the North Central Region office), each of whom participated in transfers of inmates from FCI-Oxford to USP-Terre Haute, knew that USP-Terre Haute was a "violent type institution" because "inmates who commit violent acts at FCI-Oxford are often transferred to USP-Terre Haute." App. 117, 118. Petitioner also claimed witnessing an environment at USP-Terre Haute that was "much more aggressive and violent" than FCI-Oxford. *Id.*, at 117.

Whether, with respect to any of the defendants, this amounts to an adequate showing by a *pro se* plaintiff to survive a motion for summary judgment (on which the nonmoving party is entitled to have all reasonable

inferences drawn in its favor, see *Anderson* v. *Liberty Lobby, Inc.*, 477 U. S. 242, 255 (1986)) is a question that needs no answer here because it is not clear that this is the only evidence available to petitioner. Petitioner's Rule 56(f) motion, filed in response to respondents' summary judgment motion and requesting the District Court not to rule until respondents complied with a pending discovery request, asserted that responsive documents would show that "each defendant had knowledge that USP-Terre Haute was and is, a violent institution with a history of sexual assault, stabbings, etc., [and that] each defendant showed reckless disregard for my safety by designating me to said institution knowing that I would be sexually assaulted." App. 105–106. In moving for a protective order staying discovery, respondents did not dispute petitioner's assertion about what the sought-after documents would reveal, arguing instead that the court should allow no more discovery until it decided whether respondents had qualified immunity. See Memorandum in Support of Federal Defendants' Motion for Protective Order Staying Discovery (Mar. 17, 1992). Without ruling on qualified immunity, however, the District Court denied petitioner's Rule 56(f) motion; it did so at least in part on the ground that the documents requested were "not shown by plaintiff to be necessary to oppose defendants' motion for summary judgment." App. 121. That would be so, however, only if petitioner's failure to notify respondents of an impending danger were fatal to petitioner's claim, but as we have said, it is not.

Because the District Court erred in requiring notification, and because its error may have affected its ruling on petitioner's Rule 56(f) motion, we think it proper to remand for the District Court to reconsider its denial of that motion and, whether it allows additional discovery

or not, to apply the Eighth Amendment principles explained above.[12]

2

Though agreeing that "prior notice by an inmate is not necessary for liability," *post*, at 4, the dissent castigates us for attributing a contrary view to the District Court, and offers an interpretation of the District Court's opinion that even the government has declined to advance. But even the dissent acknowledges that our reading of the District Court's opinion with respect to denial of petitioner's Rule 56(f) motion is a plausible one. See *id.*, at 6 (calling our reading "neither the only possible, nor even the most plausible, interpretation of [the court's] statement"). We fail to see how a reviewing court can ignore the colorable possibility that a trial court's decision rested on an erroneous view of the law. And where the error may have affected the exercise of a trial court's discretion, as it may have done here, the proper course is plainly to remand.

The dissent, moreover, has not offered a particularly plausible reading of the District Court's explanation for denying the Rule 56(f) motion. The dissent first asserts that the District Court denied the motion solely because of a "timing problem." *Post*, at 6. But this ignores the District Court's statement, in the same sentence in which it referred to a timing problem, that the documents petitioner sought to discover (which petitioner asserted, and which the government did not dispute, would show that the defendants had the requisite knowledge, see *supra*, at 26) were not shown to be

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[12] The District Court's opinion is open to the reading that it required not only advance notification of a substantial risk of assault, but also advance notification of a substantial risk of assault posed by a particular fellow prisoner. See App. 124 (referring to "a specific threat to [a prisoner's] safety"). The Eighth Amendment, however, imposes no such requirement. See *supra*, at 17.

"necessary to oppose defendants' motion for summary judgment." App. 121. The unavoidable implication of the language the District Court chose to employ in denying the Rule 56(f) motion is that if petitioner had shown the documents to be "necessary" the court's ruling may have been different. In apparent acknowledgement of the futility of resting alone on the "timing problem," the dissent offers a second rationale for the District Court's decision: that petitioner was improperly relying on a mere "'"hope" or "hunch" that evidence creating an issue of fact will emerge at trial." *Post*, at 7 (quoting 10A C. Wright, A. Miller & M. Kane, Federal Practice and Procedure §2741, p. 561 (2d ed. 1983)). That may be the dissent's hunch about what the District Court should have said, but it is not what the District Court actually stated. The court did not say that petitioner was seeking documents that (despite petitioner's hope or hunch) were nonexistent, but that petitioner was seeking documents that (existing or not) were not "necessary" to oppose the summary judgment motion. App. 121. That statement is indisputably more consistent with the conclusion that the District Court held the (erroneous) view that the material petitioner sought was "irrelevant to the issues to be adjudicated." 10A C. Wright, A. Miller & M. Kane, *supra*, §2741, p. 558.

The dissent further asserts that the District Court's understanding of Eighth Amendment rules was clearly without error. There is, however, a far greater likelihood of error here than, for example, in *Wilson* v. *Seiter*, 111 S.Ct., at 2328, where the Court vacated a published Court of Appeals decision despite the fact that the Court of Appeals had explicitly stated that the prisoner's claim failed to meet a stricter standard than the one the *Wilson* Court held to be proper. *Ibid.* "Out of an abundance of caution," *ibid.*, and reflecting a proper respect for the respective roles of reviewing and trial courts in our system of justice, as well as the basic

fairness that any litigant deserves, the Court in *Wilson* remanded. The same disposition is proper here.

Though petitioner cited evidence to the District Court to counter the summary judgment motion (summarized *supra*, at 24–25), the court mentioned none of it, instead deeming it sufficient to rest, exclusively, on petitioner's failure to produce a single item of evidence, notification of the defendants. App. 124. The dissent notes that the Seventh Circuit allows inmates to prove actual knowledge either by showing prior notification or by showing "'the existence of so substantial a risk of harm that the defendants' knowledge of the risk can be inferred,'" *post*, at 8 (quoting *James* v. *Milwaukee County*, 956 F. 2d 696, 700 (CA7 1992)), and would rest on the assumption that the District Court relied on the second alternative. But to do so would simply ignore the fact that the District Court chose not to mention that alternative anywhere in its opinion, even though it was the sole option available to the plaintiff before it, while instead mentioning only the notification alternative, which was obviously unavailable. We therefore can hardly agree that "*nothing*" (*post*, at 9 (emphasis in original)) suggests that the District Court placed decisive weight on petitioner's failure to notify prison authorities, and in light of the possibility of error the only just course is to remand. No doubt, any analysis of petitioner's summary judgment evidence would conclude that petitioner's position is by no means identical with respect to each defendant. But the District Court is clearly better situated than we are to review the evidence defendant by defendant (even setting aside the possibility that a different ruling on the Rule 56(f) motion could lead to additional evidence).

B

The government urges us to affirm for reasons not relied on below, but neither of the government's contentions is so clearly correct as to justify affirmance.

With respect to petitioner's damages claim, the government argues that the officials sued in their individual capacities (respondents Brennan, Kurzydlo, DuBois, and Smith, each an official at FCI-Oxford or the Bureau of Prisons North Central Region office), were alleged to be liable only for their transfer of petitioner from FCI-Oxford to USP-Terre Haute, whereas petitioner "nowhere alleges any reason for believing that these officials, who had no direct responsibility for administering the Terre Haute institution, would have had knowledge of conditions within that institution regarding danger to transsexual inmates." Brief for Respondents 27–28. But petitioner's Rule 56(f) motion alleged just that. Though the government suggests here that petitioner offered no factual basis for that assertion, that is not a ground on which the government chose to oppose petitioner's Rule 56(f) motion below and, in any event, is a matter for the exercise of the District Court's judgment, not ours. Finally, to the extent the government seeks affirmance here on the ground that officials at FCI-Oxford and the Bureau of Prisons regional office had no power to control prisoner placement at Terre Haute, the record gives at least a suggestion to the contrary; respondent Edwards's affidavit states that, after having been at USP-Terre Haute for about a month, petitioner was placed in administrative segregation at Terre Haute "pursuant to directive from the North Central Regional Office" and a "request . . . by staff at FCI-Oxford." App. 94–95. Accordingly, though we do not reject the government's arguments about petitioner's claim for damages, the record does not permit us to accept them as a basis for affirmance when they were not relied upon below. Respondents are free to develop this line of argument on remand.

With respect to petitioner's claim for injunctive relief, the government argued in its merits brief that the claim was "foreclosed by [petitioner's] assignment to adminis-

trative detention status because of his high-risk HIV-positive condition, . . . as well as by the absence of any allegation . . . that administrative detention status poses any continuing threat of physical injury to him." Brief for Respondents 28–29. At oral argument, however, the Deputy Solicitor General informed us that petitioner was no longer in administrative detention, having been placed in the general prison population of a medium-security prison. Tr. of Oral Arg. 25–26. He suggested that affirmance was nevertheless proper because "there is no present threat" that petitioner will be placed in a setting where he would face a "continuing threat of physical injury," *id.*, at 26, but this argument turns on facts about the likelihood of a transfer that the District Court is far better placed to evaluate than we are. We leave it to respondents to present this point on remand.

IV

The judgment of the Court of Appeals is vacated and the case is remanded for further proceedings consistent with this opinion.

So ordered.

HAB

Dee
Farmer gobble

To: The Chief Justice
Justice Blackmun
Justice Stevens
Justice O'Connor
Justice Scalia
Justice Kennedy
Justice Thomas
Justice Ginsburg

From: **Justice Souter**

Circulated: MAR 03 1994

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 92–7247

DEE FARMER, PETITIONER *v.* EDWARD BRENNAN, WARDEN, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[March ___, 1994]

JUSTICE SOUTER delivered the opinion of the Court.

A prison official's "deliberate indifference" to a substantial risk of serious harm to an inmate violates the Eighth Amendment. See *Helling* v. *McKinney* 113 S.Ct. 2475 (1993); *Wilson* v. *Seiter*, 111 S.Ct. 2321 (1991); *Estelle* v. *Gamble*, 429 U. S. 97 (1976). This case requires us to define the term "deliberate indifference," as we do by requiring a showing that the official was subjectively aware of the risk.

I

The dispute before us stems from a civil suit brought by petitioner, Dee Farmer, alleging that respondents, federal prison officials, violated the Eighth Amendment by their deliberate indifference to petitioner's safety. Petitioner, who is serving a federal sentence for credit card fraud, has been diagnosed by medical personnel of the Bureau of Prisons as a transsexual, one who has "[a] rare psychiatric disorder in which a person feels persistently uncomfortable about his or her anatomical sex," and who typically seeks medical treatment, including hormonal therapy and surgery, to bring about a permanent sex change. American Medical Association, Encyclopedia of Medicine 1006 (1989); see also American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders 74–75 (3d rev. ed. 1987).

HAB

To: The Chief Justice
Justice Blackmun
Justice Stevens

Though biologically male, petitioner lived as a women for several years before being convicted and sentenced in 1986 at the age of 18, during which time petitioner wore women's clothing (as petitioner did at the 1986 trial), underwent estrogen therapy, received silicone breast implants, and submitted to unsuccessful "black market" testicle-removal surgery. See *Farmer* v. *Haas*, 990 F. 2d 319, 320 (CA7 1993). Petitioner's precise appearance in prison is unclear from the record before us, but petitioner claims to have continued hormonal treatment while incarcerated by having drugs smuggled into prison, and apparently wears clothing in the manner of a woman, as by displaying a shirt "off one shoulder," J.A. 112. The parties agree that petitioner "projects feminine characteristics." J.A. 51; J.A. 74.

The practice of federal prison authorities is to incarcerate pre-operative transsexuals with prisoners of like biological sex, see *Farmer* v. *Haas*, *supra*, at 320, and over time authorities housed petitioner in several federal facilities, sometimes in the general male prison population but more often in segregation. While there is no dispute that petitioner was segregated at least several times because of violations of prison rules, neither is it disputed that in at least one penitentiary petitioner was segregated because of safety concerns. See *Farmer* v. *Carlson*, 685 F. Supp. 1335, 1342 (M.D. Pa. 1988).

On March 9, 1989, petitioner was transferred for disciplinary reasons from the Federal Correctional Institute in Oxford, Wisconsin (FCI-Oxford), to the United States Penitentiary in Terre Haute, Indiana (USP-Terre Haute). Though the record before us is unclear about the security designations of the two prisons in 1989, penitentiaries are typically higher security facilities that house more troublesome prisoners than federal correctional institutes. See generally Federal Bureau of Prisons, Facilities (1990). After an initial stay in administrative segregation, petitioner was

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placed in the USP-Terre Haute general population. Petitioner voiced no objection to any prison official about the transfer to the penitentiary or to placement in its general population. Within two weeks, according to petitioner's allegations, petitioner was beaten and raped by another inmate in petitioner's cell. Several days later, after petitioner claims to have reported the incident, officials returned petitioner to segregation to await, according to the government, a hearing about petitioner's HIV-positive status.

Acting without counsel, petitioner then filed a *Bivens* complaint, alleging a violation of the Eighth Amendment. See *Bivens* v. *Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U. S. 388 (1971); *Carlson* v. *Green*, 446 U. S. 14 (1980). As defendants, petitioner named respondents: the warden of USP-Terre Haute and the Director of the Bureau of Prisons (sued only in their official capacities); the warden of FCI-Oxford and a case manager there; and the director of the Bureau of Prisons North Central Region Office and an official in that office (sued in their official and personal capacities). As later amended, the complaint alleged that respondents either transferred petitioner to USP-Terre Haute or placed petitioner in its general population despite knowledge that the penitentiary had a violent environment and a history of inmate assaults, and despite knowledge that petitioner, as a transsexual who "projects feminine characteristics," would be particularly vulnerable to sexual attack by USP-Terre Haute inmates. This allegedly amounted to a deliberately indifferent failure to protect petitioner's safety, and thus to a violation of petitioner's Eighth Amendment rights. Petitioner sought compensatory and punitive damages,

and an injunction barring future confinement in any penitentiary, including USP-Terre Haute.[1]

Respondents filed a motion for summary judgment supported by several affidavits, to which petitioner responded with an opposing affidavit and a cross-motion for summary judgment; petitioner also invoked Fed. R. Civ. P. 56(f), asking the court to delay its ruling until respondents had complied with petitioner's pending request for production of documents. Respondents then moved for a protective order staying discovery until resolution of the issue of qualified immunity, raised in respondents' summary-judgment motion.

The District Court denied petitioner's Rule 56(f) motion and granted summary judgment to respondents, concluding that there had been no deliberate indifference to petitioner's safety. The failure of prison officials to prevent inmate assaults violates the Eighth Amendment, the court stated, only if prison officials were "reckless in a criminal sense," meaning that they had "actual knowledge" of a potential danger. J.A. 124. Respondents, however, lacked the requisite knowledge, the court found. "[Petitioner] never expressed any concern for his safety to any of [respondents]. Since [respondents] had no knowledge of any potential danger to [petitioner], they were not deliberately indifferent to his safety." *Ibid.*

The United States Court of Appeals for the Seventh Circuit summarily affirmed without opinion. We granted certiorari, __ U. S. __, (1993), because Courts of Appeals had adopted inconsistent tests for "deliberate indifference." Compare, for example, *McGill* v. *Duckworth*, 944

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[1]Petitioner also sought an order requiring the Bureau of Prisons to place petitioner in a "co-correctional facility" (i.e., one separately housing male and female prisoners but allowing coeducational programming). Petitioner tells us, however, that the Bureau no longer operates such facilities, and petitioner apparently no longer seeks this relief.

F. 2d 344, 348 (CA7 1991), cert. denied, 112 S.Ct. 1265 (1992) (holding that "deliberate indifference" requires a "subjective standard of recklessness"), with *Young* v. *Quinlan*, 960 F. 2d 351, 360–361 (CA3 1992) ("a prison official is deliberately indifferent when he knows or should have known of a sufficiently serious danger to an inmate").

II

A

The Constitution "does not mandate comfortable prisons," *Rhodes* v. *Chapman*, 452 U. S. 337, 349 (1981), but neither does it permit uncivilized ones, and it is now settled that "the treatment a prisoner receives in prison and the conditions under which he is confined are subject to scrutiny under the Eighth Amendment." *Helling*, 113 S.Ct., at 2480. In its prohibition of "cruel and unusual punishments," the Eighth Amendment places restraints on prison officials, who may not, for example, use excessive physical force against prisoners. See *Hudson* v. *McMillian*, 112 S.Ct. 995 (1992). The Amendment also imposes duties on these officials, who must provide humane conditions of confinement; prison officials must ensure that inmates receive adequate food, clothing, shelter and medical care, and must "take reasonable measures to guarantee the safety of the inmates," *Hudson* v. *Palmer*, 468 U. S. 517, 526–527 (1984). See *Helling*, *supra*, at 2480; *Washington* v. *Harper*, 494 U. S. 210, 225 (1990); *Estelle*, 429 U. S., at 103. Cf. *DeShaney* v. *Winnebago Cty. Soc. Servs. Dept.*, 489 U. S. 189, 198–199 (1989).

In particular, as the lower courts have uniformly held, and as we have assumed, "[p]rison officials have a duty . . . to protect prisoners from violence at the hands of other prisoners." *Cortes-Quinones* v. *Jimenez-Nettleship*, 842 F. 2d 556, 558 (CA1), cert. denied, 488 U. S. 823

(1988) (internal quotation marks and citation omitted);[2] see also *Wilson* v. *Seiter*, 111 S.Ct. 2321, 2326–27 (1991) (describing "the protection [an inmate] is afforded against other inmates" as a "conditio[n] of confinement" subject to the strictures of the Eighth Amendment). Having incarcerated people with demonstrated proclivities for criminally antisocial and, in many cases, violent conduct, having stripped them of virtually every means of self-protection and foreclosed their access to outside aid, the government and its officials are not free to let the state of nature take its course. Cf. *DeShaney*, *supra*, at 199–200; *Estelle*, *supra*, at 103–104. Prison conditions may be "restrictive and even harsh," *Rhodes*, *supra*, at 347, but gratuitously allowing the beating or rape of one prisoner by another serves no "legitimate penological objectiv[e]," *Hudson* v. *Palmer*, *supra*, at 548, any more than it squares with "evolving standards of decency," *Estelle*, *supra*, at 102 (quoting *Trop* v. *Dulles*, 356 U. S. 86, 101 (1958) (plurality opinion)). Being violently assaulted in prison is simply not "part of the penalty that criminal offenders pay for their offenses against society." *Rhodes*, *supra*, at 347.

It is not, however, every injury suffered by one prisoner at the hands of another that translates into constitutional liability for prison officials responsible for the victim's safety. Our cases have held that a prison official violates the Eighth Amendment only where two

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[2] Other Court of Appeals decisions to the same effect include *Villante* v. *Department of Corrections*, 786 F. 2d 516, 519 (CA2 1986); *Young* v. *Quinlan*, 960 F. 2d 351, 361–362 (CA3 1992); *Pressly* v. *Hutto*, 816 F. 2d 977, 979 (CA4 1987); *Alberti* v. *Klevenhagen*, 790 F. 2d 1220, 1224 (CA5 1986); *Roland* v. *Johnson*, 856 F. 2d 764, 769 (CA6 1988); *Goka* v. *Bobbitt*, 862 F. 2d 646, 649–650 (CA7 1988); *Martin* v. *White*, 742 F. 2d 469, 474 (CA8 1984); *Berg* v. *Kincheloe*, 794 F. 2d 457, 459 (CA9 1986); *Ramos* v. *Lamm*, 639 F. 2d 559, 572 (CA10 1980), cert. denied, 450 U. S. 1041 (1981); *LaMarca* v. *Turner*, 995 F. 2d 1526, 1535 (CA11 1993); and *Morgan* v. *District of Columbia*, 824 F. 2d 1049, 1057 (CADC 1987).

requirements are met. First, the deprivation alleged must be, objectively, "sufficiently serious," *Wilson*, *supra*, at 2324; see also *Hudson* v. *McMillian*, *supra*, at 999; a prison official's act or omission must result in the denial of "the minimal civilized measure of life's necessities," *Rhodes*, *supra*, at 347. For a claim (like the one here) based on a failure to prevent harm, the inmate must show that he is incarcerated under conditions posing a substantial risk of serious harm. See *Helling*, *supra*, at 2481.[3]

The second requirement follows from the principle that "only the unnecessary and wanton infliction of pain implicates the Eighth Amendment." *Wilson*, *supra*, at 2323 (internal quotation marks, emphasis and citations omitted). To violate the Cruel and Unusual Punishments Clause, a prison official must have a "sufficiently culpable state of mind." *Id.* at 2323; see also *id.*, at 2326–2327; *Hudson* v. *McMillian*, *supra*, at 999. In prison-conditions cases, we have said, that state of mind is one of "deliberate indifference" to inmate health or safety, *Wilson*, *supra*, at 2326–2327; see also *Helling*, *supra*, at 2480; *Hudson* v. *McMillian*, *supra*, at 999; *Estelle*, *supra*, at 106, a standard the parties agree governs the claim in this case. The parties disagree, however, on the proper test for deliberate indifference, which we must therefore undertake to define.

B

1

Although we have never paused to explain at any length the meaning of the term "deliberate indifference," the case law is instructive. The term first appeared in the United States Reports in *Estelle* v. *Gamble*, *supra*,

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[3]At what point a risk of inmate assault becomes sufficiently substantial for Eighth Amendment purposes is a question this case does not present, and we do not address it.

at 104, and its use there shows that deliberate indifference describes a state of mind more blameworthy than negligence. In considering the inmate's claim in *Estelle* that inadequate prison medical care violated the Cruel and Unusual Punishments Clause, we distinguished "deliberate indifference to serious medical needs of prisoners," *id.*, at 104, from "negligen[ce] in diagnosing or treating a medical condition," *id.*, at 106, holding that only the former violates the Clause. We have since read *Estelle* for the proposition that Eighth Amendment liability requires "more than ordinary lack of due care for the prisoner's interests or safety." *Whitley* v. *Albers*, 475 U. S. 312, 319 (1986).

While deliberate indifference entails something more than mere negligence, the cases are also clear that it is satisfied by something less than acts or omissions for the very purpose of causing harm or with knowledge that harm will result. That point underlies the rule that "application of the deliberate indifference standard is inappropriate" in one class of prison cases: when "authorities stand accused of using excessive physical force." *Hudson* v. *McMillian*, 112 S.Ct., at 998–999; see also *Whitley*, *supra*, 320. In such situations, where the decisions of prison officials are typically made "'in haste, under pressure, and frequently without the luxury of a second chance,'" *Hudson* v. *McMillian*, *supra*, at 998 (quoting *Whitley*, *supra*, at 320), an Eighth Amendment claimant must show more than "indifference," deliberate or otherwise. The claimant must show that officials applied force "'"maliciously and sadistically for the very purpose of causing harm"'" (rather than "'"in a good faith effort to maintain or restore discipline"'"), *id.*, at 998 (quoting *Whitley*, *supra*, at 320–321) (in turn quoting *Johnson* v. *Glick*, 481 F. 2d 1028, 1033 (CA2), cert. denied, 414 U. S. 1033 (1973)), or, as the Court also put it, that officials used force with "'a knowing willingness that [harm] occur,'" *id.*, at 999 (quoting

Whitley, *supra*, at 321). This standard of purposeful or knowing conduct is not, however, necessary to satisfy the *mens rea* requirement of deliberate indifference for claims challenging conditions of confinement; "the very high state of mind prescribed by *Whitley* does not apply to prison condition cases." *Wilson*, 111 S.Ct., at 2326.

With deliberate indifference lying somewhere between the poles marked by negligence at one end and purpose or knowledge at the other, the Courts of Appeals have routinely equated deliberate indifference with recklessness.[4] See, *e.g.*, *LaMarca* v. *Turner*, 995 F. 2d 1526, 1535 (CA11 1993); *Manarite* v. *Springfield*, 957 F. 2d 953, 957 (CA1), cert. denied, 113 S.Ct. 113 (1992); *Redman* v. *County of San Diego*, 942 F. 2d 1435, 1443 (CA9 1991), cert. denied, 112 S.Ct. 972 (1992); *McGill* v. *Duckworth*, 944 F. 2d, at 347; *Miltier* v. *Beorn*, 896 F. 2d 848, 851–852 (CA4 1990); *Martin* v. *White*, 742 F. 2d 469, 474 (CA8 1984); see also *Springfield* v. *Kibbe*, 480 U. S. 257, 269 (1987) (O'CONNOR, J., dissenting). It is, indeed, fair to say that acting or failing to act with deliberate indifference to a substantial risk of serious harm to a prisoner is the equivalent of recklessly disregarding that risk.

That does not, however, completely answer the pending question about the level of culpability deliberate indifference entails, for the term recklessness is not self-defining. The civil law generally calls a person reckless who acted or (if the person has a duty to act) failed to act in the face of an unjustifiably high risk of harm that was either known or so obvious that it should have been known. See W. Keeton, D. Dobbs, R. Keeton & D.

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[4] "Gross negligence" occupies this territory too, but the term is a "nebulous" one, in practice typically meaning little different from recklessness as typically understood in the civil law (which we discuss later in the text). See W. Keeton, D. Dobbs, R. Keeton, D. Owen, Prosser and Keeton on Torts § 34, p. 212 (5th ed. 1984).

Owen, Prosser and Keeton on Torts, § 34, pp. 213–214 (5th ed. 1984) (hereinafter Prosser and Keeton); Restatement (Second) of Torts § 500. The criminal law, however, generally permits a finding of recklessness only when a person has disregarded a risk of harm of which he was aware. See R. Perkins and R. Boyce, Criminal Law 850–851 (3d ed. 1982) (hereinafter Perkins); J. Hall, General Principles of Criminal Law 115–116, 120, 128 (2d ed. 1960) (hereinafter Hall); Model Penal Code § 2.02(2)(c) and comment 3; but see *Commonwealth* v. *Pierce*, 138 Mass. 165, 175–178 (1884) (Holmes, J.) (adopting an objective approach to criminal recklessness). The standards proposed by the parties in this case track the two approaches (though the parties do not describe them that way): petitioner asks us to define deliberate indifference as what we have called civil-law recklessness,[5] and the government urges us to adopt an approach consistent with recklessness in the criminal law.[6]

We reject petitioner's invitation to adopt an objective test for deliberate indifference. We hold instead that a prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference. This approach comports best with the text of the Amendment

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[5] See Reply Brief for Petitioner 5 (suggesting that a prison official is deliberately indifferent if he "knew facts which rendered an unreasonable risk obvious; under such circumstances, the defendant should have known of the risk and will be charged with such knowledge as a matter of law"); see also Brief for Petitioner 20–21.

[6] See Brief for Respondents 16 (asserting that deliberate indifference requires that a prison "official must know of the risk of harm to which an inmate is exposed").

and our cases interpreting it. The Eighth Amendment does not outlaw cruel and unusual "conditions"; it outlaws cruel and unusual "punishments." An act or omission unaccompanied by knowledge of a significant risk of harm might well be something society wishes to discourage, and if harm does result society might well wish to assure compensation. The common law reflects such concerns when it imposes tort liability on a purely objective basis. See Prosser and Keeton, § 2, pp. 6, 213–214; see also Federal Tort Claims Act, 28 U. S. C. §§ 2671–2680; *United States* v. *Muniz*, 374 U. S. 150 (1963). But an official's failure to alleviate a significant risk that he should have perceived but did not, while no cause for commendation, cannot be condemned as the infliction of punishment.

In *Wilson* v. *Seiter*, we rejected a reading of the Eighth Amendment that would allow liability to be imposed on prison officials solely because of the presence of objectively inhumane prison conditions. See 111 S.Ct., at 2324–2326. As we explained there at length, our "cases mandate inquiry into a prison official's state of mind when it is claimed that the official has inflicted cruel and unusual punishment." 111 S.Ct., at 2324. Although "state of mind," like "intent," are ambiguous terms that can encompass objectively defined levels of blameworthiness, see W. LaFave & A. Scott, 1 Substantive Criminal Law § 3.4, pp. 296–300, 313–314 (1986) (hereinafter LaFave & Scott); *United States* v. *Bailey*, 444 U. S. 394, 404 (1980), it was no accident that we said in *Wilson* and repeated in later cases that Eighth Amendment suits against prison officials must satisfy a "subjective" requirement. See *Wilson*, *supra*, at 2324; see also *Helling*, 113 S.Ct., at 2481; *Hudson* v. *McMillian*, 112 S.Ct., at 999. It is true, as petitioner points out, that *Wilson* cited with approval Court of Appeals decisions applying an objective test for deliberate indifference to claims based on prison officials' failure to

prevent inmate assaults. See 111 S.Ct., at 2327 (citing *Cortes-Quinones* v. *Jimenez-Nettleship*, 842 F. 2d 556, 560 (CA1), cert. denied, 488 U. S. 823 (1988); and *Morgan* v. *District of Columbia*, 824 F. 2d 1049, 1057–58 (CADC 1987)). But *Wilson* cited those cases for the proposition that the deliberate-indifference standard applies to all prison-conditions claims, not to undo its holding that the Eighth Amendment has a "subjective component." *Id.*, at 2324. Petitioner's purely objective test for deliberate indifference is simply incompatible with that holding.

To be sure, the reasons for focussing on what a defendant's mental attitude actually was (or is), rather than what it should have been (or should be), differ in the Eighth Amendment context from that of the criminal law. Here, a subjective approach isolates those who inflict punishment; there, it isolates those against whom punishment should be inflicted. But the result is the same: to act recklessly in either setting a person must "consciously disregar[d]" a substantial risk of serious harm. Model Penal Code § 2.02(2)(c).

At oral argument, the Deputy Solicitor General advised against frank adoption of a criminal-law *mens rea* requirement, contending that it could encourage triers of fact to find Eighth Amendment liability only if they concluded that prison officials acted like criminals. See Transcript of Oral Argument 39–40. We think the government's concern is misdirected. *Bivens* actions against federal prison officials (and their § 1983 counterparts against state officials) are civil in character, and a court should no more allude to the criminal law when enforcing the Cruel and Unusual Punishments Clause than when applying the Free Speech and Press Clauses, where we have also adopted a subjective approach to recklessness. See *Harte-Hanks Communications, Inc.* v. *Connaughton*, 491 U. S. 657, 688 (1989) (holding that the standard for "reckless disregard" for the truth in a

defamation action by a public figure "is a subjective one," requiring that "the defendant in fact entertained serious doubts as to the truth of his publication," or that "the defendant actually had a high degree of awareness of . . . probable falsity") (internal quotation marks and citations omitted).[7] That said, however, subjective recklessness as used in the criminal law is a familiar and workable standard that is consistent with the Cruel and Unusual Punishments Clause as interpreted in our cases, and we adopt it as the test for "deliberate indifference" under the Eighth Amendment.

2

Our decision that Eighth Amendment liability requires consciousness of a risk is thus based on the Constitution and our cases, not merely on a parsing of the phrase "deliberate indifference." And we do not reject petitioner's arguments for a thoroughly objective approach to deliberate indifference without recognizing that on the crucial point (whether a prison official must know of a risk, or whether it suffices that he should have known) the term does not speak with certainty. Use of "deliberate," for example, arguably requires nothing more than that an act (or omission) of indifference to a serious risk be voluntary, not accidental. Cf. *Estelle*, 429 U. S., at 105 (distinguishing "deliberate indifference" from "accident" or "inadverten[ce]"). And even if "deliberate" is better read as implying knowledge of a risk, the concept of constructive knowledge is familiar enough that the term "deliberate indifference" would not, of its own force, preclude a scheme that conclusively presumed awareness from a risk's obviousness.

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[7] Appropriate allusions to the criminal law would, of course, be proper during criminal prosecutions under, for example, 18 U. S. C. § 242, which sets criminal penalties for deprivations of rights under color of law.

Because "deliberate indifference" is a judicial gloss, appearing neither in the Constitution nor in a statute, we could not accept petitioner's argument that the test for "deliberate indifference" described in *City of Canton* v. *Harris*, 489 U. S. 378 (1989), must govern here. In *Canton*, interpreting 42 U. S. C. §1983, we held that a municipality can be liable for failure to train its employees when the municipality's failure shows "a deliberate indifference to the rights of its inhabitants." 489 U. S., at 389 (internal quotation marks omitted). In speaking to the meaning of the term, we said that "it may happen that in light of the duties assigned to specific officers or employees the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need." *Id.*, at 390; see also *id.*, at 390 n. 10 (elaborating). Justice O'CONNOR's separate opinion for three Justices agreed with the Court's "obvious[ness]" test and observed that liability is appropriate when policymakers are "on actual or constructive notice" of the need to train, *id.*, at 396 (opinion concurring in part and dissenting in part). It would be hard to describe the *Canton* understanding of deliberate indifference, permitting liability to be premised on obviousness or constructive notice, as anything but objective.

But it does not follow from the adoption of an objective approach to deliberate indifference for municipal liability under §1983 that deliberate indifference must carry the same meaning for prison-official liability under the Eighth Amendment. Differences in the governing texts and their purposes justify different standards of deliberate indifference. Unlike the language of the Cruel and Unusual Punishments Clause, for example, the language of §1983 does not imply a *mens rea* requirement. See *Daniels* v. *Williams*, 474 U. S. 327,

330 (1986). And while deliberate indifference serves under the Eighth Amendment to ensure that only inflictions of punishment carry liability, see *Wilson*, 111 S.Ct., at 2324–2328, the "term was used in the *Canton* case for the quite different purpose of identifying the threshold for holding a city responsible for the constitutional torts committed by its inadequately trained agents," *Collins* v. *City of Harker Heights*, 112 S.Ct. 1061, 1068 (1992), a purpose the *Canton* Court found satisfied by a test permitting liability when a municipality disregards "obvious" needs. Needless to say, moreover, considerable conceptual difficulties would attend any search for the subjective state of mind of a governmental entity, as distinct from that of a prison official. For these reasons, we cannot accept petitioner's argument that *Canton* compels the conclusion here that a prison official who was unaware of a substantial risk of harm to an inmate may nevertheless be held liable under the Eighth Amendment if the risk was obvious and a reasonable prison official would have noticed it.

We are no more persuaded by petitioner's argument that, without an objective test for deliberate indifference, prison officials will be free to ignore obvious dangers to inmates. Under the test we adopt today, an Eighth Amendment claimant need not show that a prison official acted or failed to act believing that harm actually would befall an inmate; it is enough that the official acted or failed to act despite a substantial risk of serious harm. Cf. 1 C. Torcia, Wharton's Criminal Law §27, p. 141 (14th ed. 1978); Hall 115. We doubt that a subjective approach will present prison officials with any serious motivation "to take refuge in the zone between 'ignorance of obvious risks' and 'actual knowledge of risks.'" Brief for Petitioner 27. Whether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including inference from circumstantial

evidence, see Hall 118 (cautioning against "confusing a mental state with the proof of its existence"), and a factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious. Cf. LaFave & Scott 335 ("[I]f the risk is obvious, so that a reasonable man would realize it, we might well infer that [the defendant] did in fact realize it; but the inference cannot be conclusive, for we know that people are not always conscious of what reasonable people would be conscious of"). For example, if an Eighth Amendment plaintiff presents evidence showing that a substantial risk of inmate attacks was "longstanding, pervasive, well-documented, or expressly noted by prison officials in the past, and the circumstances suggest that the defendant-official being sued had been exposed to information concerning the risk and thus 'must have known' about it, then such evidence could be sufficient to permit a trier of fact to find that the defendant-official had actual knowledge of the risk." Brief for Respondents 22.[8]

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[8]The government calls our attention to the concept of willful blindness, under which a person is not ignorant of something, but knows it, if he is "aware of [a] 'high probability' " of its existence. *Turner* v. *United States*, 396 U. S. 398, 416 (1970); see also Model Penal Code § 2.02(7). The criminal law allows liability to rest on proof that a defendant purposefully avoided obtaining final confirmation of what he strongly suspected to be true, see *id.*, and we see no reason the concept of willful blindness should be inapplicable under the Eighth Amendment. (We have assumed its applicability under the First. See *Masson* v. *New Yorker Magazine, Inc.*, 111 S.Ct. 2419, 2429 (1991) (stating that a public figure in a defamation case may establish "reckless disregard" for the truth by showing that the defendant "acted with a 'high degree of awareness of . . . probable falsity' ") (citation omitted).) In deliberate-indifference cases, willful blindness may be relevant both in establishing knowledge of the underlying facts (a prison official, for example, purposefully avoids confirming his reasons to believe that one prisoner has planned an attack on another), and also in establishing knowledge of the risk (a prison official, for example, knows that a single needle is being used to

Nor may a prison official escape liability for deliberate indifference by showing that, while he was aware of an obvious, substantial risk to inmate safety, he did not know that the complainant was especially likely to be assaulted by the specific prisoner who eventually committed the assault. The question under the Eighth amendment is whether prison officials, acting with deliberate indifference, exposed a prisoner to a sufficiently substantial "risk of serious damage to his future health," *Helling*, 113 S.Ct., at 2481, and it does not matter whether the risk came from a single source or multiple sources, any more than it matters whether a prisoner faced an excessive risk of attack for reasons personal to him or because all prisoners in his situation faced such a risk. See Brief for Respondents 15 (stating that a prisoner can establish exposure to a sufficiently serious risk of harm "by showing that he belongs to an identifiable group of prisoners who are frequently singled out for violent attack by other inmates"). If, for example, prison officials were aware that inmate "rape was so common and uncontrolled that some potential victims dared not sleep [but] instead . . . would leave their beds and spend the night clinging to the bars nearest the guards' station," *Hutto* v. *Finney*, 437 U. S., at 681–682, n.3, it would be irrelevant to liability that the officials could not have guessed beforehand precisely who would

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administer flu shots to prisoners but refuses to listen to a subordinate attempting to explain the associated risk of transmitting communicable diseases). We stress, however, that at least for Eighth Amendment purposes "[a] deliberate avoidance of knowledge is culpable only when coupled with a subjective awareness of high probability," *United States* v. *Valle-Valdez*, 554 F. 2d 911, 914 (CA9 1977), and courts should be careful to ensure that in its application the willful blindness rule does not dispense with the need for subjective awareness. It is not enough merely to find that a reasonable person would have known of the relevant fact or that the defendant should have known, and juries should be instructed accordingly.

attack whom. Cf. *Helling*, *supra*, at 2480 (observing that the Eighth Amendment requires a remedy for exposure of inmates to "infectious maladies" such as hepatitis and venereal disease "even though the possible infection might not affect all of those exposed"); *Commonwealth* v. *Welansky*, 316 Mass. 383, 55 N.E.2d 902 (Mass. 1944) (affirming conviction for manslaughter under a law requiring reckless or wanton conduct of a nightclub owner who failed to protect patrons from a fire, even though the owner did not know in advance who would light the match that ignited the fire or which patrons would lose their lives).

Because, however, prison officials who lacked knowledge of a risk cannot be said to have inflicted punishment, it remains open to the officials to prove that they were unaware even of an obvious risk to inmate health or safety. That a trier of fact may infer knowledge from the obvious, in other words, does not mean that it must do so. Prison officials charged with deliberate indifference might show, for example, that they did not know of the underlying facts indicating a sufficiently substantial danger, or that they knew the underlying facts but believed (albeit unsoundly) that the risk to which the facts gave rise was insubstantial or nonexistent.

In addition, even prison officials who actually knew of a substantial risk to inmate health or safety may be found free from liability if they responded reasonably to the risk, even if the harm ultimately was not averted. A prison official's duty under the Eighth Amendment is to ensure "reasonable safety," *Helling*, 113 S.Ct., at 2481; see also *Washington* v. *Harper*, 494 U. S. 210, 225 (1990); *Hudson* v. *Palmer*, 468 U. S. 517, 526–527 (1984), a standard that incorporates due regard for prison officials' "unenviable task of keeping dangerous men in safe custody under humane conditions." *Spain* v. *Procunier*, 600 F. 2d 189, 193 (CA9 1979) (Kennedy, J.); see also *Bell* v. *Wolfish*, 441 U. S. 520, 547–548, 562

(1979). Whether one puts it in terms of duty or deliberate indifference, prison officials who act reasonably cannot be found liable under the Cruel and Unusual Punishments Clause.

We address, finally, petitioner's argument that a subjective deliberate indifference test is flawed because it will result in leaving objectively inhumane prison conditions uncorrected. "It would," indeed, "be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them." *Helling*, 113 S.Ct., at 2481. But nothing in the test we adopt today clashes with that common sense. Under even a subjective approach to deliberate indifference, "a remedy for unsafe conditions need not await a tragic event," and "a prisoner need not wait until he is actually assaulted before obtaining relief." *Ibid.* Petitioner's argument that a subjective test for deliberate indifference would foreclose prospective injunctive relief fails to apprehend that deliberate indifference is proven differently in actions for damages for past harm as compared with actions for injunctive relief to stop ongoing harm or to prevent future harm.

To meet the Eighth Amendment's subjective requirement in a suit seeking recompense for a previously experienced injury, an inmate must offer proof directed backwards; he must show that, before the injury occurred, the defendant-official knew of a substantial risk of serious harm and disregarded it by failing to take reasonable preventive measures. By contrast, in a suit seeking relief from ongoing harm or from a risk of harm yet to occur, the Eighth Amendment's subjective requirement can be established during the litigation itself. The prisoner's complaint will put the defendants on notice, as the Deputy Solicitor General observed at oral argument. See Transcript of Oral Argument 27. And certainly if the evidence before the court establishes the

existence of a substantial risk of serious future injury, it is no longer open to the defendant-officials to claim lack of awareness; at that point, the officials' refusal to take reasonable measures to alleviate the risk amounts to deliberate indifference to inmate health and safety, and a district court may grant appropriate injunctive relief. Cf. *Hutto* v. *Finney*, 437 U. S., at 685–689 & n. 9 (approving remedial order designed "to bring an ongoing violation [of the Eighth Amendment] to an immediate halt"); *Bell* v. *Wolfish*, 441 U. S., at 462 (cautioning federal courts against becoming "enmeshed in the minutiae of prison operations").

Accordingly, we hold that a prison official may be held liable under the Eighth Amendment for denying humane conditions of confinement only if he knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it.

III

A

Against this backdrop, we consider whether the District Court's disposition of petitioner's complaint, summarily affirmed by the Court of Appeals for the Seventh Circuit, comports with Eighth Amendment principles. The government does not defend the District Court's application of the Eighth Amendment to this case, see Brief for Respondents 10, 29, and we conclude that the appropriate course is to remand.

Though properly stating that respondents could not be liable if they were unaware of a risk to inmate safety, the District Court erred in placing decisive weight on petitioner's failure to notify respondents of a danger. That petitioner "never expressed any concern for his safety to any of the [respondents]," J.A. 124, was the only evidence the District Court cited for its conclusion that there was no genuine dispute about respondents'

contention that they "had no knowledge of any potential danger to [petitioner]," *ibid.* But with respect to petitioner's claim for injunctive relief (i.e., that petitioner not be transferred again to USP-Terre Haute or any other penitentiary), petitioner's failure to notify respondents prior to the alleged beating and rape is wholly irrelevant; the question is whether petitioner now faces a substantial risk of serious harm if housed in a penitentiary, see *ante*, at 19–20, a question the District Court did not address.

Even as to petitioner's damages claim, the failure to give advance notice is not dispositive. Although petitioner cannot obtain damages without showing that respondents knew in advance of a sufficiently serious risk of assault, that burden may be met by reliance on any relevant evidence. See *ante*, at 16. To be sure, prior notification by a prisoner is strong evidence that a prison official had knowledge of a substantial risk of assault, and proving knowledge in the absence of notification may be difficult. But prior notification is not a necessary element of an Eighth Amendment failure-to-protect claim. Certainly, if a female inmate were raped after prison officials housed her with male sex offenders, her failure to have notified prison officials of the risk to her safety would not immunize the officials from constitutional liability. Cf. *Dothard* v. *Rawlinson*, 433 U. S. 321, 335–336 (1977) (discussing safety risks to female prison guards).

Recognizing that specific notification is not required changes the complexion of the summary judgment record. In their answer to petitioner's complaint, respondents admitted that petitioner is a "non-violent" transsexual "who projects feminine characteristics," and that because of petitioner's "youth and feminine appearance," petitioner "is likely to experience a great deal of sexual pressure." J.A. 50–51, 73–74. In papers filed in opposition to summary judgment, petitioner pointed to

these facts, and also described an earlier case involving petitioner and, among others, respondent Calvin Edwards (then warden of the United States Penitentiary in Lewisburg, Pennsylvania), in which the District Court's opinion stated that "[c]learly, placing plaintiff, a twenty-one year old transsexual, into the general population at [USP-] Lewisburg, a [high-] security institution, could pose a significant threat to internal security and to plaintiff in particular." *Farmer* v. *Carlson*, 685 F. Supp. 1335, 1342 (M.D. Pa. 1988); see also J.A. 107–111. That opinion also quoted from a prison document appended to the declaration Edwards filed in the case, which explained that petitioner could not be released from administrative segregation because "'a situation exists which may endanger your [that is, petitioner's] life in the general population.'" *Ibid.* (quoting Attachment B to Edwards Declaration). As for the other defendants, petitioner's papers stated that respondents Edward Brennan (warden of FCI-Oxford) and J. Michael Quinlan (Director of the Bureau of Prisons) had previously filed court papers relying on *Farmer* v. *Carlson* and were therefore aware of the danger to petitioner's safety. And petitioner asserted that respondents Brennan, Dennis Kurzydlo (case manager at FCI-Oxford), Larry Dubois (Regional Director of the Bureau of Prisons North Central Region) and N.W. Smith (a correctional services administrator in the North Central Region office), each of whom participated in transfers of inmates from FCI-Oxford to USP-Terre Haute, knew that USP-Terre Haute was a "violent type institution" because "inmates who commit violent acts at FCI-Oxford are often transferred to USP-Terre Haute." J.A. 117, 118. Petitioner also claimed witnessing an environment at USP-Terre Haute that was "much more aggressive and violent" than FCI-Oxford. J.A. 117.

Whether this amounts to an adequate showing by a *pro se* plaintiff to survive a summary-judgment motion

(on which the non-moving party is entitled to have all reasonable inferences drawn in its favor, see *Anderson* v. *Liberty Lobby, Inc.*, 477 U. S. 242, 255 (1986)), is a question that needs no answer here because it is not clear that this is the only evidence available to petitioner. Petitioner's Rule 56(f) motion, filed in response to respondents' summary judgment motion and requesting the District Court not to rule until respondents complied with a pending discovery request, asserted that responsive documents would show that "each defendant had knowledge that USP-Terre Haute was and is, a violent institution with a history of sexual assault, stabbings, etc., [and that] each defendant showed reckless disregard for my safety by designating me to said institution knowing that I would be sexually assaulted." J.A. 105–106. In moving for a protective order staying discovery, respondents did not dispute petitioner's assertion about what the sought-after documents would reveal, arguing instead that the court should allow no more discovery until it decided whether respondents had qualified immunity. See Memorandum in Support of Federal Defendants' Motion for Protective Order Staying Discovery (Mar. 17, 1992). Without ruling on qualified immunity, however, the District Court denied petitioner's Rule 56(f) motion; it did so at least in part on the ground that the documents requested were "not shown by plaintiff to be necessary to oppose defendants' motion for summary judgment." J.A. 121. That would be so, however, only if petitioner's failure to notify respondents of an impending danger were fatal to petitioner's claim, but as we have said, it is not.

Because the District Court erred in requiring notification, and because its error may have affected its ruling on petitioner's Rule 56(f) motion, we think it proper to remand for the District Court to reconsider its denial of that motion and, whether it allows additional discovery

or not, to apply the Eighth Amendment principles explained above.[9]

B

The government urges us to affirm for reasons not relied on below. But neither of the government's contentions is so clearly correct as to justify affirmance on grounds presented here for the first time.

With respect to petitioner's damages claim, the government argues that the officials sued in their individual capacities (respondents Brennan, Kurzydlo, DuBois, and Smith, each an official at FCI-Oxford or the Bureau of Prisons North Central Region office), were alleged to be liable only for their transfer of petitioner from FCI-Oxford to USP-Terre Haute, whereas petitioner "nowhere alleges any reason for believing that these officials, who had no direct responsibility for administering the Terre Haute institution, would have had knowledge of conditions within that institution regarding danger to transsexual inmates." Brief for Respondents 27–28. But petitioner's Rule 56(f) motion alleged just that. Though the government suggests here that petitioner offered no factual basis for that assertion, that is not a ground on which the government chose to oppose petitioner's Rule 56(f) motion below and, in any event, is a matter for the exercise of the District Court's judgment, not ours. Finally, to the extent the government seeks affirmance here on the ground that officials at FCI-Oxford and the Bureau of Prisons regional office had no power to control prisoner placement at Terre Haute, the record gives at least a suggestion to the contrary; respondent Edwards's

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[9] The District Court's opinion is open to the reading that it required not only advance notification of a substantial risk of assault, but also advance notification of a substantial risk of assault posed by a particular fellow prisoner. See J.A. 124 (referring to "a specific threat to [a prisoner's] safety"). The Eighth Amendment, however, imposes no such requirement. See *ante*, at 17.

affidavit states that, after having been at USP-Terre Haute for about a month, petitioner was placed in administrative segregation at Terre Haute "pursuant to directive from the North Central Regional Office" and a "request . . . by staff at FCI-Oxford." J.A. 94–95. Accordingly, though we do not reject the government's arguments about petitioner's claim for damages, the record does not permit us to accept them as a basis for affirmance when they were not presented below. Respondents are free to develop this line of argument on remand.

With respect to petitioner's claim for injunctive relief, the government argued in its merits brief that the claim was "foreclosed by [petitioner's] assignment to administrative detention status because of his high-risk HIV-positive condition, . . . as well as by the absence of any allegation . . . that administrative detention poses any continuing threat of physical injury to him." Brief for Respondents 28–29. At oral argument, however, the Deputy Solicitor General informed us that petitioner was no longer in administrative detention, having been placed in the general prison population of a medium-security prison. Transcript of Oral Argument 25–26. He suggested that affirmance was nevertheless proper because "there is no present threat" that petitioner will be placed in a penitentiary, *id.*, at 26, but this argument turns on facts about the likelihood of a transfer to a penitentiary that the District Court is far better placed to evaluate than we are. We leave it to respondents to present this point on remand.

IV

The judgment of the Court of Appeals is vacated and the case is remanded for further proceedings consistent with this opinion. *So ordered.*