No. 89-7376

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In the Supreme Court of the United States

OCTOBER TERM, 1990

PEARLY L. WILSON, PETITIONER

v.

RICHARD SEITER, ET AL.

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

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

KENNETH W. STARR
Solicitor General

JOHN R. DUNNE
Assistant Attorney General

DAVID L. SHAPIRO
Deputy Solicitor General

ROGER CLEGG
Deputy Assistant Attorney General

MICHAEL R. DREEBEN
Assistant to the Solicitor General

DAVID K. FLYNN
THOMAS E. CHANDLER
Attorneys

Department of Justice
Washington, D.C. 20530
(202) 514-2217

QUESTION PRESENTED

The United States will address the following question:

Whether the "malicious and sadistic" intent requirement of *Whitley* v. *Albers*, 475 U.S. 312 (1986), applies to Eighth Amendment challenges to conditions of confinement that are not a response to needs of prison safety and security.

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INTEREST OF THE UNITED STATES

This case presents the issue whether the "malicious and sadistic" intent requirement of *Whitley* v. *Albers*, 475 U.S. 312 (1986), applies to prisoners' Eighth Amendment challenges to their general conditions of confinement. The United States has responsibility for enforcing the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. 1997 *et seq.*, which authorizes the Attorney General to institute a civil injunctive action against state officials whenever he has reason to believe they are "subjecting persons residing in or confined to [a prison or correctional facility] * * * to egregious or flagrant conditions which deprive such persons" of rights protected by the Constitution. 42 U.S.C. 1997a(a). CRIPA also authorizes the Attorney General to intervene in certain actions seek-

ing relief from unconstitutional conditions in prisons or correctional institutions. 42 U.S.C. 1997c(a).

In addition, the Bureau of Prisons, operating under the direction of the Attorney General, has the responsiblity to manage federal correctional institutions and to provide for the "safekeeping, care, and subsistence" of persons maintained in such facilities. 18 U.S.C. 4001, 4042. Finally, the Department of Justice defends actions brought by federal inmates alleging unconstitutional prison conditions.

STATEMENT

1. In 1986, petitioner, a prisoner at the Hocking Correctional Facility (HCF) in Nelsonville, Ohio, filed suit against state prison officials under 42 U.S.C. 1983, alleging that the conditions of confinement at HCF violated his rights under the Eighth and Fourteenth Amendments.[1] Specifically, petitioner alleged that overcrowding, excessive noise, inadequate heating in winter and cooling in summer, improper ventilation, unsanitary restrooms, unsanitary eating conditions, and housing with mentally and physically ill inmates amounted to cruel and unusual punishment. Petitioner requested declaratory and injunctive relief, as well as compensatory and punitive damages.[2] J.A. 2-9, 53-54, 62-63.

The parties filed cross-motions for summary judgment. Petitioner supported his motion with affidavits from inmates describing the alleged unconstitutional conditions of confinement. Several of these inmates also stated that

[1] The Eighth Amendment, held applicable to the States by the Fourteenth Amendment in *Robinson* v. *California,* 370 U.S. 660 (1962), provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

[2] Everett Hunt, Jr., a second plaintiff, is no longer confined at HCF.

they had contacted prison officials concerning the conditions, but the officials took no action. J.A. 10-39. The respondents' supporting affidavits explained efforts taken by prison officials to improve conditions within the prison, and contradicted certain of petitioner's claims concerning existing conditions at HCF. J.A. 40-52.

The district court granted respondents' motion for summary judgment and dismissed the action. J.A. 53-61. The court recognized that conditions of confinement may, under certain circumstances, constitute cruel and unusual punishment, and noted that "[i]t is obduracy and wantonness, not inadvertence or error in good faith, that characterizes the conduct prohibited by the [Eighth Amendment]." J.A. 53-61, quoting *Whitley* v. *Albers,* 475 U.S. 312, 319 (1986). Relying on respondents' affidavits, the district court concluded that "plaintiffs have been provided with at least the minimal civilized measure of life's necessities and have not been deprived of their Eighth Amendment right to be free from cruel and unusual punishment." J.A. 59. The court also concluded that "HCF officials do not demonstrate obdurate or wanton behavior regarding the conditions of HCF." *Ibid.*

2. The court of appeals affirmed. J.A. 62-74. The court first held that the district court had erred to the extent it had accepted the accuracy of contested statements in respondents' affidavits—thus weighing the evidence—in concluding that the confinement conditions did not amount to cruel and unusual punishment under the Eighth Amendment. J.A. 66. Nevertheless, the court explained, if the circumstances set forth in petitioner's affidavits would not support an Eighth Amendment violation in any case, they did not raise material issues for trial. J.A. 66-70. Examining petitioner's affidavits, the court concluded that petitoner's claims relating to inadequate cooling, housing with mentally ill inmates, and overcrowding, even if true,

did not demonstrate the type of "seriously inadequate and indecent surroundings" required to establish an Eighth Amendment violation. *Id.* at 68, quoting *Birrell* v. *Brown,* 867 F.2d 956, 958 (6th Cir. 1989).

With regard to petitioner's remaining claims, however, the court found that the conditions described in petitioner's affidavits were suggestive of conditions that could violate the Cruel and Unusual Punishments Clause. J.A. 68. Accordingly, the court proceeded to consider whether petitioner had set forth sufficient facts to raise an inference that respondents acted with the requisite "state of mind" to support an Eighth Amendment claim. J.A. 70-74. The court noted that *Whitley* v. *Albers,* 475 U.S. at 319, had stated that "[i]t is obduracy and wantonness, not inadvertence or error in good faith, that characterizes the conduct prohibited by the Cruel and Unusual Punishments Clause." J.A. 71. The court added that in the Sixth Circuit "the *Whitley* standard is not confined to the facts of that case; that is, to suits alleging use of excessive force in an effort to restore prison order." *Ibid.*

Applying those principles, the Sixth Circuit concluded that petitioner's affidavits failed to support a reasonable inference that the respondents acted with "obduracy and wantonness." J.A. 71-74. The court stressed that petitioner "do[es] not contend that the [respondents] have made no efforts to provide [him] with minimally decent confinement conditions." J.A. 73. Rather, the court observed, petitioner's complaints "are aimed at the results of those efforts." *Ibid.* After reviewing the "undisputed record" indicating that prison officials had taken affirmative steps to improve conditions, the court concluded that "confinement conditions may constitute cruel and unusual punishment only if such conditions 'compose the punishment at issue.' " *Ibid.*, quoting *Rhodes* v. *Chapman,* 452 U.S. 337, 347 (1981). "Nothing in [petitioner's] affidavits

implies that [respondents] used confinement conditions to punish [petitioner]." J.A. 73. Finally, the court observed (*ibid.*):

> [T]he *Whitley* standard of obduracy and wantonness requires behavior marked by persistent malicious cruelty. The record before us simply fails to assert facts suggesting such behavior. At best, [petitioner's] claim evidences negligence on [respondents'] parts in implementing standards for maintaining conditions. Negligence, clearly, is inadequate to support an [E]ighth [A]mendment claim.

SUMMARY OF ARGUMENT

The court of appeals erred in requiring "behavior marked by persistent malicious cruelty" in a case challenging the general and pervasive conditions of confinement under the Eighth Amendment. The court purported to apply the standard set forth in *Whitley* v. *Albers,* 475 U.S. 312, 320 (1986), but that case required a showing of a "malicious[ ] and sadistic[ ]" state of mind in the context of actions to quell a prison disturbance. The considerations that prompted the Court to formulate that standard—the intense concern that prison officials must have for safety and security in a potentially explosive situation, and the need for quick decisions—do not apply in a challenge to general prison conditions.

We believe the correct Eighth Amendment analysis, as applied to a case of this character in which an inmate challenges systemic prison conditions forming an integral part of his confinement, should focus on the objective conditions in the prison, rather than on the state of mind of particular officials. See *Rhodes* v. *Chapman,* 452 U.S. 337 (1981). In our view, neither the language, history, nor intent of the Eighth Amendment supports a separate inquiry

into the officials' state of mind. Rather, the issue is simply whether the punishment itself is objectively "cruel and unusual." The absence of an inquiry into the officials' intent makes it especially important that an Eighth Amendment claimant demonstrate under a rigorous standard that the conditions at issue are truly "cruel and unusual."

If a state of mind requirement does apply here, however, the "deliberate indifference" standard fits the conduct at issue. That standard, which falls between simple negligence and malicious and sadistic intent, focuses attention on whether responsible officials had knowledge (actual or constructive) of conditions likely to offend the Constitution, and failed to take action to remedy those conditions. The standard should be applied with strong deference to the difficult circumstances confronting prison officials in managing a prison facility.

ARGUMENT

THE COURT OF APPEALS ERRED IN APPLYING THE "MALICIOUS AND SADISTIC" INTENT STANDARD TO AN EIGHTH AMENDMENT CLAIM CHALLENGING GENERAL CONDITIONS OF CONFINEMENT

A. The "Malicious And Sadistic" Intent Standard Does Not Apply To A Claim Challenging General Conditions Of Confinement

In *Whitley* v. *Albers*, 475 U.S. 312 (1986), this Court held that the question whether the use of excessive force to restore order in a prison disturbance violates the Eighth Amendment "ultimately turns on 'whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm.' " *Id.* at 320-321, quoting *Johnson* v. *Glick*, 481 F.2d 1028, 1033 (2d Cir.), cert. denied, 414 U.S. 1033 (1973). In this case, the court of appeals apparently believed that the *Whitley* standard applies to the very different type of Eighth Amendment violation alleged here—a challenge to general and pervasive prison conditions. We believe that the court of appeals' application of the *Whitley* test in this context constitutes error.[3]

1. To put *Whitley* in context, it is necessary to examine two of this Court's precedents addressing the application of the Eighth Amendment to claims by prisoners challenging their experiences in confinement.

In *Estelle* v. *Gamble*, 429 U.S. 97 (1976), the Court considered an inmate's claim under the Eighth Amendment based on the failure of prison officials to render adequate medical care for an injury he received in prison. The Court began by stating that the Eighth Amendment proscribes more than physically barbarous punishments; it also

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[3] In this action, petitioner sought injunctive relief against respondents in their official capacity, and damages against respondents in their individual capacity. The issue before this Court, at this preliminary stage, presents a question common to both aspects of the case: the appropriate standard for determining whether petitioner's allegations in his pleadings and affidavits, if proved, are sufficient to establish a violation of the Eighth Amendment. Not raised at this stage are issues relevant to the imposition of personal liability for damages if such a violation has occurred. Those issues would include questions of causation and of personal responsibility for the conditions complained of (*i.e.*, to what extent may a particular individual be held personally accountable for those conditions), and of the appropriate scope of qualified immunity in a conditions of confinement case. For example, we believe there is a significant difference, for purposes of personal liability, between a prison official who has unreasonably failed to resort to available alternatives in order to alleviate or eliminate inhumane prison conditions, and one who has been unable to correct those conditions as a result of fiscal constraints beyond his control. See Brief for the United States as Amicus Curiae in *Brutsche* v. *Cleveland-Perdue*, No. 89-1167, cert. denied (Oct. 29, 1990), at pp. 17-18. (We have furnished the parties here with copies of our brief in *Brutsche*.)

reaches punishments that "are incompatible with 'the evolving standards of decency that mark the progress of a maturing society,' " *id.* at 102, quoting *Trop* v. *Dulles,* 356 U.S. 86, 100, 101 (1958) (plurality opinion), or that "involve the unnecessary and wanton infliction of pain". 429 U.S. at 102-103, quoting *Gregg* v. *Georgia,* 428 U.S. 153, 173 (1976) (opinion of Stewart, Powell, and Stevens, JJ.). Those principles led the Court to conclude that "deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton' infliction of pain * * * proscribed by the Eighth Amendment." *Id.* at 104.

The Court emphasized in *Estelle* that not every claim of inadequate medical treatment violates the Eighth Amendment. 429 U.S. at 105. The "inadvertent failure" to provide medical care, the Court explained, does not constitute an unnecessary and wanton infliction of pain; thus, claims of negligent diagnosis or treatment of a medical condition do not state a violation of the Eighth Amendment. *Id.* at 105-106. The Court concluded by characterizing the level of fault required to state a claim of "deliberate indifference" (*id.* at 106):

> Medical malpractice does not become a constitutional violation merely because the victim is a prisoner. In order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs. It is only such indifference that can offend "evolving standards of decency" in violation of the Eighth Amendment.

Five years later, in *Rhodes* v. *Chapman,* 452 U.S. 337 (1981), the Court considered an Eighth Amendment challenge to a quite different prison practice: a condition of confinement involving a practice of assigning a single cell for every two inmates at a particular correctional

facility. In reviewing that challenge, the Court articulated the basic principles applicable to Eighth Amendment cases involving conditions of confinement. The Court reaffirmed the underlying rule that punishments are cruel and unusual when they involve "unnecessary and wanton infliction of pain," or inflict pain "totally without penological justification." *Id.* at 346. But the Court also explained that "the Constitution does not mandate comfortable prisons," *id.* at 349, and that "restrictive and even harsh" conditions "are part of the penalty that criminal offenders pay for their offenses against society." *Id.* at 347.

While recognizing that no "static 'test' " can govern the judicial inquiry into whether conditions of confinement violate standards drawn from the Eighth Amendment, the Court admonished that such judgments "should neither be nor appear to be merely the subjective views of judges," but "should be informed by objective factors to the maximum possible extent." 452 U.S. at 346. Thus, when "the conditions of confinement compose the punishment at issue," the Eighth Amendment is violated when those conditions "result[ ] in unquestioned and serious deprivations of basic human needs," or deprive inmates of the "minimal civilized measure of life's necessities." *Id.* at 347. Applying those standards to the practice of "double-celling" involved in that case, the Court found no constitutional violation. *Id.* at 347-350.[4]

2. In *Whitley* v. *Albers, supra,* the Court considered "what standard governs a prison inmate's claim that prison officials subjected him to cruel and unusual punishment by shooting him during the course of their attempt to quell

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[4] The Court took into account that the double celling at issue "did not lead to deprivations of essential food, medical care, or sanitation," "increase violence among inmates," or "create other conditions intolerable for prison confinement." 452 U.S. at 348.

a prison riot." 475 U.S. at 314. The Court initially observed that not all actions touching a prisoner's interests are susceptible to Eighth Amendment analysis; only the "unnecessary and wanton infliction of pain" rises to the level of a violation. 475 U.S. at 319. As illustrated by *Estelle* v. *Gamble,* "[t]o be cruel and unusual punishment, conduct that does not purport to be punishment at all must involve more than ordinary lack of due care for the prisoner's interests or safety." *Ibid.* From these principles, the Court derived the generalization that:

> [i]t is obduracy and wantonness, not inadvertence or error in good faith, that characterizes the conduct prohibited by the Cruel and Unusual Punishments Clause, whether that conduct occurs in connection with establishing conditions of confinement, supplying medical needs, or restoring official control over a tumultuous cellblock.

Ibid. The Court added, however, that the requirement of proving "unnecessary and wanton infliction of pain" is a general criterion that should be applied "with due regard for differences in the kind of conduct against which an Eighth Amendment objection is lodged." *Id.* at 320.

Keeping in mind the need to tailor Eighth Amendment requirements to the type of conduct under scrutiny, the Court concluded that the "deliberate indifference" standard, applied to the denial of medical treatment in *Estelle,* should not govern challenges to the use of force in prison security measures taken to prevent or resolve disturbances. In the latter class of cases, "the question whether the measure taken inflicted unnecessary and wanton pain and suffering ultimately turns on whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm." 475 U.S. at 320-321. The Court contrasted the

standard employed in *Estelle* by noting that in evaluating whether a failure to provide medical care violates the Constitution, a court would normally have no need to balance "competing institutional concerns for the safety of prison staff or other inmates." *Id.* at 320. But where force is applied to calm a prison disruption, "prison officials undoubtedly must take into account the very real threats the unrest presents to inmates and prison officials alike, in addition to the possible harms to inmates against whom force might be used." *Ibid.* In that setting, "a deliberate indifference standard does not adequately capture the importance of such competing obligations, or convey the appropriate hesitancy to critique in hindsight decisions necessarily made in haste, under pressure, and frequently without the luxury of a second chance." *Ibid.*

3. In the present case, petitioner challenged the general and endemic conditions of his confinement, not the application of force in a particular prison disturbance. Nevertheless, the court of appeals essentially transposed *Whitley*'s heightened "malicious and sadistic" test to the present context, stating that *Whitley* is "not confined to the facts of that case; that is to suits alleging use of excessive force in an effort to restore prison order." J.A. 71.[5]

We disagree with the court of appeals' transposition of the *Whitley* test to the circumstances of this case. Al-

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[5] The court of appeals never actually quoted the "malicious and sadistic" language used by the Court in *Whitley*; rather, the court stated that the "*Whitley* standard of obduracy and wantonness requires behavior marked by persistent malicious cruelty." J.A. 73. If anything, however, the court of appeals' paraphrase imposes an even more stringent test. A requirement of "persistent malicious cruelty" appears to require ongoing wrongful conduct, while the facts and analysis in *Whitley* itself imply that an isolated application of force can violate the Eighth Amendment if the requisite state of mind is established.

though the court correctly noted that the "obdurate and wanton" formulation serves as a general criterion applicable to Eighth Amendment claims, J.A. 71, the court failed to heed *Whitley*'s admonition that different types of conduct challenged under the Eighth Amendment implicate distinct concerns—an admonition that militates against a single standard for determining in every case whether a particular act or practice constitutes "the unnecessary and wanton infliction of pain." 475 U.S. at 320.[6] A case challenging the systemic conditions of confinement implicates none of the policy considerations that led this Court to embrace a more rigorous intent standard for prison disturbance cases and other instances implicating legitimate security or other penological concerns.[7]

As the Court in *Whitley* noted, when officials must act to restore order within a prison, "decisions [are] necessarily made in haste, under pressure, and frequently without

[6] *Whitley* can hardly be read to require a single test in all cases arising under the Eighth Amendment; the Court in *Whitley,* while fashioning a new standard for considering challenges to the use of force in a prison disturbance, expressly reaffirmed the holding in *Estelle* that the deliberate indifference standard applies to claims of inadequate medical attention. 475 U.S. at 320.

[7] Of course, *Whitley* is not strictly limited to its facts. See *Corselli* v. *Coughlin,* 842 F.2d 23, 26 (2d Cir. 1988) (applying *Whitley*'s malicious and sadistic intent standard to a claim by an inmate injured by a prison official during a scuffle in the mess hall even though *Whitley* was distinguishable, "since that case involved a full scale prison riot"). In *Stubbs* v. *Dudley,* 849 F.2d 83, 86 (1988), the Second Circuit refused to apply *Whitley* to a claim that officials failed to protect an inmate from an assault at the hands of mob of prisoners, because a full-blown prison riot was not in progress at the time officials acted. Three Justices dissented from the denial of certiorari, arguing that *Whitley* was not limited to prison riots but applied in the setting of *Stubbs* because the same type of "competing institutional concerns" and need for "split-second decision[s]" found in *Whitley* were present there as well. *Dudley* v. *Stubbs,* 489 U.S. 1034, 1038 (1989).

the luxury of a second chance." 475 U.S. at 320. Further, prison disturbances involve a significant risk to the safety of inmates and staff. Prison officials must necessarily act to protect those persons, for "central to all other corrections goals is the institutional consideration of internal security within the corrections facilities themselves." *Pell* v. *Procunier,* 417 U.S. 817, 823 (1974); *Procunier* v. *Martinez,* 416 U.S. 396, 412 (1974); *Thornburgh* v. *Abbott,* 109 S. Ct. 1874, 1881 (1989). Consequently, Eighth Amendment standards must reflect the need to afford officials "wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." 475 U.S. at 321-322, quoting *Bell* v. *Wolfish,* 441 U.S. 520, 547 (1979).

Very different considerations arise with respect to the general conditions prevailing at a prison facility. These conditions are likely to evolve as the consequence of policy decisions made over time, and shaped by such long-term factors as funding levels and available resources. Management of such continuing and integral features of prison confinement as the provision of food, the housing of inmates, and the cleaning of living quarters is not a process of reacting to emergencies; rather, it is part of the regular administration of the prison as a penal institution. And, while prison officials must consider their obligation to ensure security and safety within the prison in any decision affecting prison life, that factor does not have the same immediacy in establishing and maintaining general conditions of confinement as it does in dealing with a prison disturbance. Accordingly, the heightened standard of "malicious and sadistic" intent applied in *Whitley* is not appropriate here.[8]

[8] Other than the present decision, the courts of appeals have uniformly rejected the extension of *Whitley*'s malicious and sadistic in-

B. The Claim That General Prison Conditions Violate The Eighth Amendment Should Be Resolved By Examining The Objective Conditions At The Particular Institution, Not The Subjective State Of Mind Of The Responsible Officials

The remaining issue is what state-of-mind requirement, if any, should apply to the claim here that the general, systemic conditions of a prison violate the prohibition of the Eighth Amendment. In our view, that inquiry should focus on the objective conditions at the prison, not on the intent of the responsible officials.[9]

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tent standard to conditions of confinement cases. See, *e.g.*, *Berry* v. *City of Muskogee*, 900 F.2d 1489, 1495 (10th Cir. 1990) (*Whitley* "carefully preserved" the distinction between "the malicious and sadistic standard applicable in prison riot situations and the deliberate indifference standard applicable to more ordinary prison policy decisions"); *Evans* v. *Dugger*, 908 F.2d 801, 803-804 (11th Cir. 1990) (*Whitley* standard does not apply to claim of inadequate medical attention); *Gillespie* v. *Crawford*, 833 F.2d 47, 50 (1987) (per curiam) ("[p]rison conditions may violate the Eighth Amendment even if they are not imposed maliciously or with the conscious desire to inflict gratuitous pain"), vacated in other aspects, 858 F.2d 1101, 1103 (5th Cir. 1988) (en banc); *Foulds* v. *Corley*, 833 F.2d 52, 54-55 (5th Cir. 1987) (rejecting *Whitley* standard in challenge to conditions of confinement); *Morgan* v. *District of Columbia*, 824 F.2d 1049, 1057-1058 (D.C. Cir. 1987) (rejecting *Whitley* standard where an inmate was injured in a fight with another inmate allegedly as the result of prison overcrowding); *LaFaut* v. *Smith*, 834 F.2d 389, 391 (4th Cir. 1987) (rejecting *Whitley* standard in action by a paraplegic inmate challenging his conditions of confinement); *Berg* v. *Kincheloe*, 794 F.2d 457, 459-461 (9th Cir. 1986) (rejecting application of malicious and sadistic intent standard to claim by an inmate assaulted by another inmate). See also *Unwin* v. *Campbell*, 863 F.2d 124, 135 (1st Cir. 1988) (in qualified immunity context, the *Whitley* standard does not apply when institutional security is not at stake).

[9] The court of appeals disposed of three of petitioner's claims in precisely that way, concluding that even if petitioner's allegations were true, those conditions did not rise to the level of Eighth Amendment violations. J.A. 66-70. With respect to the remaining claims, however,

1. The text of the Eighth Amendment does not contain any irreducible "intent" requirement.[10] The language of the Amendment refers to "punishments," and thus to methods or kinds of punishment that are cruel and unusual. In context, the adjective "cruel" (like the word "unusual") is naturally read as describing the type of prohibited punishment alone, without respect to the subjective intent of the officials responsible for the punishment.[11]

In addition, the history of the Amendment and its underlying values support its application to particular methods of punishment, irrespective of the mental state of the punisher. As this Court has recounted, the language of the Eighth Amendment was derived from the English Bill of Rights of 1689. In seventeenth century England, it is

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the court addressed only whether petitioner alleged a state of mind sufficient to support an Eighth Amendment claim. *Id.* at 70-74. Since the proper application of Eighth Amendment standards other than the intent requirement is not at issue here, we express no view about whether any of those remaining claims involve conditions sufficiently harsh to constitute cruel and unusual punishment. We note, however, that if, as we believe, state of mind is not an element of a constitutional violation in a systemic conditions-of-confinement case, courts must exercise special caution in determining whether objective conditions are sufficiently egregious to violate inmates' constitutional rights. Cf. *Hoptowit* v. *Ray*, 682 F.2d 1237, 1247 (9th Cir. 1982); *Inmates of Occoquan* v. *Barry*, 844 F.2d 828, 836-837 (D.C. Cir. 1988). See also pp. 25-26, *infra*, addressing the need for judicial deference to judgments of prison officials.

[10] Although this Court has remarked that "the terms 'cruel' and 'punishment' clearly suggest some inquiry into subjective state of mind," *Graham* v. *Connor*, 109 S. Ct. 1865, 1873 (1989) (dictum), those terms, as used in the Eighth Amendment, do not invariably require an intent-based analysis.

[11] See *Estelle* v. *Gamble*, 429 U.S. at 116-117 (Stevens, J., dissenting) ("whether the constitutional standard has been violated should turn on the character of the punishment rather than the motivation of the individual who inflicted it").

generally believed, the phrase "cruel and unusual punishments" was directed against punishments not authorized by statute and beyond the jurisdiction of the sentencing court, or disproportionate to the offense involved. *Gregg* v. *Georgia,* 428 U.S. at 169 (opinion of Stewart, Powell, and Stevens, JJ.). See also Granucci, *"Nor Cruel and Unusual Punishments Inflicted": The Original Meaning,* 57 Calif. L. Rev. 839, 860 (1969). Neither of these concerns necessarily requires the intentional or indifferent infliction of pain or discomfort. Moreover, in framing the Eighth Amendment, the American drafters were primarily concerned with prohibited certain *methods* of punishment (*i.e.*, "torture[ ]" and other "barbarous" techniques), *id.* at 842; *Gregg,* 428 U.S. at 169-170. Again, these methods do not focus on the intent of the punisher. And, this Court has interpreted the Cruel and Unusual Punishments Clause so as to further its underlying purpose of embodying "broad and idealistic concepts of dignity, civilized standards, humanity, and decency." *Estelle* v. *Gamble,* 429 U.S. at 102. Those values also do not require proof of subjective intent.[12]

This Court's Eighth Amendment cases outside the prison conditions context, though they do not speak with one voice, have not always considered the intent of the officials applying the punishment. For example, in *Louisiana ex rel. Francis* v. *Resweber,* 329 U.S. 459 (1947), the Court held that a second attempt to electrocute an inmate, after a first effort had failed, was not unconstitutional, because the initial failure was "an unforseeable accident," and "[t]here was no purpose to inflict unnecessary pain

[12] It is noteworthy that, in *Gregg,* where the Court first referred to the "unnecessary and wanton infliction of pain," 428 U.S. at 173, it was using the phrase to describe an excessive punishment, not to describe the state of mind of the person inflicting that punishment.

nor any unnecessary pain involved in the proposed execution." *Id.* at 464 (plurality opinion) (emphasis added). While the first part of the formulation focuses on the intent of government officials, the italicized phrase suggests that if the pain was truly "unnecessary," it would be unconstitutional even if accidental. In *Robinson* v. *California,* 370 U.S. 660, 666-667 (1962), the Court concluded that under the Eighth Amendment, a State cannot make it a criminal offense to be a narcotics addict; no showing of improper intention on the part of government actors is required. And much of the Court's capital punishment jurisprudence has measured the standards set by state law against the requirements of the Constitution without considering the state of mind of individual government actors.[13] See also pp. 19-21, *infra* (discussing prison conditions cases).

2. Reasons of principle also support the use of an objective standard to resolve claims of systemically inadequate prison conditions. The constraints and hardships that characterize prison life are an integral part of the punishment imposed by confinement, not conditions incompatible with it. *Rhodes* v. *Chapman,* 452 U.S. at 347, 349. But the "wanton and unnecessary infliction of pain" on inmates cannot be justified by any legitimate penological interest. When general conditions of confinement are so severe that they result in "unquestioned and serious deprivations of basic human needs," or "deprive inmates of the minimal civilized measure of life's necessities," *id.* at

[13] See, *e.g.*, *Ford* v. *Wainwright,* 477 U.S. 399 (1986); *Thompson* v. *Oklahoma,* 487 U.S. 815 (1988). Although the death penalty receives unique Eighth Amendment treatment, *id.* at 856 (O'Connor, J. concurring), the Court's consideration of the Amendment in that context without regard to intent is nevertheless relevant here.

347, the inmates are subjected to the kind of suffering that triggers Eighth Amendment concerns.[14]

The standards described in *Rhodes* are rigorous ones, but when widespread, systemic deprivations of that nature are alleged and properly supported, the state of mind of the responsible officials is not relevant to the ultimate question whether those conditions inflict wanton and unnecessary pain.[15] Rather, judicial consideration of such cases (which typically seek injunctive relief) should focus on objective conditions as experienced by the inmates. The reason for structuring the inquiry in that fashion is straightforward. Prison conditions may conceivably have deteriorated through neglect or as a result of official indifference to prisoners' needs; more likely, the conditions result from the sheer lack of resources and overwhelming demands placed on prison officials, despite the officials' efforts to ensure adequate food, safety, and sanitation for those in their custody. See *Rhodes* v. *Chapman,* 452 U.S.

[14] Although the Court in *Rhodes* did not explain the meaning of the quoted phrases, it gave some insight into the nature of the conditions that fall below applicable thresholds by its citation, 452 U.S. at 347, of *Hutto* v. *Finney,* 437 U.S. 678 (1978), in which the district court had characterized the prison conditions under scrutiny as "a dark and evil world completely alien to the free world," *id.* at 681—a statement made readily understandable by the *Hutto* Court's detailed description of those conditions. *Id.* at 681-682. See also *Rhodes* v. *Chapman,* 452 U.S. at 355 (Brennan, J., concurring), quoting *Pugh* v. *Locke,* 559 F.2d 283 (5th Cir. 1977), rev'd in part on other grounds, 438 U.S. 781 (1978) (per curiam).

[15] The present case does not involve a complaint growing out of an isolated incident or a transitory condition. Such a case may present considerations more analogous to those involved in *Estelle* v. *Gamble,* or *Whitley* v. *Albers.* Moreover, such cases often involve only actions for damages against officials in their individual capacity, thus raising questions of personal accountability and qualified immunity. See p. 7 n.3, *supra;* p. 19 n.16, *infra.*

at 359-360 (Brennan, J., concurring). The conduct and motives of officials may well affect the form of relief that is appropriate upon the finding of a violation. But seriously inhumane, pervasive conditions should not be insulated from constitutional challenge because the officials managing the institution have exhibited a conscientious concern for ameliorating its problems, and have made efforts (albeit unsuccessful) to that end. Nor is the concern to avoid judicial second-guessing of particular, discretionary decisions by prison officials as pressing in the context of pervasive, continuing conditions. From the vantage point of those who are punished by such conditions, the failure of the government to meet inmates' basic human needs constitutes cruel and unusual punishment whether or not fault can be clearly ascribed to the particular officials responsible for running the facility.[16]

3. An objective test is consistent with the approach marked out in *Rhodes* v. *Chapman*—the only decision of this Court to address the constitutionality of generalized

[16] Of course, an objective analysis would take into account the purposes asserted by prison officials to justify the establishment of particular conditions. For example, particular housing arrangements may respond to prison security concerns in which prison officials are entitled to a wide range of deference. *Rhodes* v. *Chapman,* 452 U.S. at 349 n.14. The duration of the conditions, which may relate to their cause, is also a factor. Cf. *Hutto* v. *Finney,* 437 U.S. 678, 686-687 (1978) ("A filthy, overcrowded cell and a diet of 'grue' might be tolerable for a few days and intolerably cruel for a week or a month."). An unheated prison during a cold winter may be viewed as inflicting unnecessary pain, but if the problem is a temporary one caused by a broken boiler that officials have endeavored to fix, the situation does not involve the kind of pervasive conditions that can be viewed as an integral part of the penal confinement itself. Courts faced with constitutional challenges to particular conditions of confinement can readily take such considerations carefully into account in resolving such claims.

conditions of prison confinement. Justice Powell's opinion for the Court focused solely on the prison conditions themselves, rather than on the officials' state of mind, in considering whether there was a violation.[17] In emphasizing that the Court was considering "for the first time" the Eighth Amendment limitations "upon the conditions in which a State may confine those convicted of crimes," 452 U.S. at 344-345, *Rhodes* necessarily implied that *Estelle* v. *Gamble,* and the state of mind requirement applied in that case, did not establish the governing legal standards when general conditions of confinement are challenged.[18]

Although some of the more general language in *Whitley* v. *Albers,* 475 U.S. at 319, appears to contemplate an inquiry into state of mind in the typical Eighth Amendment prison case, that decision did not actually confront allegations of systemically deficient prison conditions of the sort alleged here. Indeed, the Court stressed in *Whitley* that the formulation of Eighth Amendment standards requires careful attention to the "differences in the kind of conduct against which an Eighth Amendment objection is lodged." 475 U.S. at 320. The Court in *Whitley* suggested that the conduct at issue in that case (action taken to restore prison order), as well as the conduct at issue in *Estelle* (diagnosing and treating a medical condition), did "not purport to be punishment at all." *Id.* at 319.[19] In contrast, the general and pervasive conditions of confinement may properly be considered part of the punishment. See *Rhodes,* 452 U.S. at 347. When the challenged conduct does not purport to be punishment, there are sound reasons to inquire into prison officials' state of mind before finding a violation.[20] But those reasons do not apply when general prison conditions, which are an integral aspect of the penalty of confinement, are so inhumane so as to result in "unquestioned and serious deprivations of basic human needs." *Rhodes,* 452 U.S. at 347.[21]

[17] At the same time, the Court emphasized that, to constitute an Eighth Amendment violation, it is not enough that the conditions of confinement are "restrictive and even harsh"; constitutional limits are exceeded only when the conditions result in deprivation of the "minimal civilized measure of life's necessities." 452 U.S. at 347.

[18] See *Inmates of Occoquan* v. *Barry,* 844 F.2d 828, 837 (D.C. Cir. 1988) ("The demand for objective facts going to essential human needs is, we believe, the clear message of *Rhodes.*").

[19] Because they were not general conditions cases—but rather challenges to an isolated incident—*Whitley* and *Estelle* appear to have implicated only Section 1983 claims for personal liability and damages, where factors other than the objective conditions of confinement would be relevant. See p. 7 n.3, *supra.*

[20] The situation in *Estelle*—the denial of adequate medical care—illustrates the point. Government is required to provide medical care to prison inmates, since the incarcerated prisoner has no other options, *DeShaney* v. *Winnebago County Social Services Dep't,* 489 U.S. 189, 200 (1989); *West* v. *Atkins,* 487 U.S. 42, 54-55 (1987); *Estelle,* 429 U.S. at 103. But the inherent nature of medical care is such that good faith, or even negligent, mistakes are an inevitable by-product of providing the service in the first place. The risk of medical malpractice is not appreciably different for prison inmates than for other persons. Accordingly, once government has furnished access to medical care, it has satisfied the basic requirements imposed by the Constitution. To require government to furnish error-free medical care as a matter of constitutional law would not only impose an unrealistic standard of care, but would also seek to assure a level of protection that is essentially unrelated to the goal of avoiding cruel and unusual "punishment." Cf. *Davidson* v. *Cannon,* 474 U.S. 344 (1986) (Due Process Clause is not violated by the negligent failure of prison officials to protect an inmate against an assault by another prisoner).

[21] See *Gillespie* v. *Crawford,* 833 F.2d 47, 50 (5th Cir. 1987) (per curiam) ("Unlike conduct that does not purport to be punishment at all, the Court has not made intent an element of a cause of action alleging unconstitutional conditions of confinement.").

C. If A State Of Mind Inquiry Is Relevant In A Prison Conditions Of Confinement Case, The Appropriate Requirement Is That Of "Deliberate Indifference"

If the Court determines that state of mind is relevant to the question whether an Eighth Amendment violation has occurred, we believe that the deliberate indifference test, properly qualified, strikes the correct balance in this context. The deliberate indifference standard is consistent with the accepted meaning of the adjective "cruel" when used to refer to a person.[22] And deprivations affecting basic human needs for shelter, food, and sanitary conditions have in common with the denial of medical care at issue in *Estelle* that in these areas the inmate depends on the prison to provide for his needs, and inadequate performance "may result in pain and suffering which no one suggests would serve any penological purpose." *Estelle,* 429 U.S. at 103.

The deliberate indifference standard, however, "is not self-defining." *Berry* v. *City of Muskogee,* 900 F.2d 1489, 1495 (10th Cir. 1990). As this Court has made clear, the standard requires more than negligence, *Estelle,* 429 U.S. at 105-106, but less than malicious and sadistic intent, *Whitley,* 475 U.S. at 320.[23] We believe the proper focus of the deliberate indifference standard, in the first instance, should be on whether prison officials had knowledge of

[22] See J. Murray, *A New English Dictionary on Historical Principles* 1216 (1893) (defining "cruel" to mean "indifferent to or taking pleasure in another's pain or distress" as applied to a person) (dictionary reissued in 1933 as *The Oxford English Dictionary*).

[23] See also *Berry* v. *City of Muskogee,* 900 F.2d at 1495-1596 (deliberate indifference requires a higher degree of fault than negligence but "remains lower than the intentional and malicious infliction of injury reflected in the *Whitley* standard"); *LaFaut* v. *Smith,* 834 F.2d at 392 n.5 (an inmate need not prove that prison officials intended to deprive him of medical care).

the conditions that are very likely to offend the Constitution. Actual knowledge of the conditions, coupled with the failure to act (the "deliberate indifference"), would ordinarily satisfy the standard.[24]

Actual knowledge, however, is not always required. For example, knowledge of prison conditions may properly be inferred if prison officials deliberately shield themselves from such knowledge. Cf. *City of Canton* v. *Harris,* 109 S. Ct. 1197, 1205 n.10 (1989) (municipality may be liable under 42 U.S.C. 1983 for failure to train only if failure amounts to deliberate indifference to constitutional rights;

[24] This position is generally consistent with decision of the lower federal courts. See, *e.g., Berry* v. *City of Muskogee, supra* (an official acts with deliberate indifference if his conduct "disregards a known or obvious risk that is very likely to result in the violation of the prisoners' constitutional rights"); *LaFaut* v. *Smith,* 834 F.2d at 394 (prison officials acted with deliberate indifference in neglecting the needs of a paraplegic inmate where the evidence established that a prison official "was fully advised both of the inhumane conditions of [the inmate's] confinement and the failure to provide him with the needed therapy" and did nothing for almost eight months); *Cortes-Quinones* v. *Jimenez-Nettleship, supra* (evidence was sufficient to find that prison officials were deliberately indifferent to the needs of a psychiatrically disturbed prisoner in an overcrowded jail since prison officials knew or should have known of the risks of housing a mentally ill prisoner with the general prison population and failed to act); *Morgan* v. *District of Columbia,* 824 F.2d at 1058 (deliberate indifference requires showing that officials knew or should have known of obvious unreasonable risk of harm and were "outrageously insensitive or flagrantly indifferent to the situation and took no significant action to correct or avoid the risk of harm"); *Gillespie* v. *Crawford,* 833 F.2d at 50 (inmates' allegations that they repeatedly complained, without results, about the conditions of their confinement are sufficient to state a claim); *Ruefly* v. *Landon,* 825 F.2d 792, 794 (4th Cir. 1987) (in an action by an inmate assaulted by a fellow inmate, complaint failed to state a claim because it did not allege that prison officials knew or had reason to know that the other inmate posed a specific risk of harm).

where need to train is "plainly obvious" to officials, failure may be characterized as deliberate indifference). Moreover, if the potential harm from general conditions is so great that prison officials should have known of those conditions and foreseen the harm, the factfinder may infer the requisite knowledge in appropriate cases.[25]

Nor would the fact that individual prison officials have taken some action in response to a deficient condition preclude a finding of an Eighth Amendment violation. Actions that fall short of remedying demonstrated inhumane conditions may fail to dispel the inference of indifference arising in this context from pervasively inadequate conditions. In such a case, the government officials and institutions responsible for the commitment of resources may have, collectively, exhibited the requisite "deliberate indifference" to the problem at hand by failing to appropriate funds to defray the expense of maintaining adequate conditions; although the individual prison officials may not have made those judgments, they are appropriately called upon to answer for them when sued in their official capacity.[26]

[25] Some courts have equated deliberate indifference with recklessness. See, *e.g., Duckworth* v. *Franzen,* 780 F.2d 645, 652-653 (7th Cir. 1985) (equating deliberate indifference with criminal recklessness, which implies "an act so dangerous that the defendant's knowledge of the risk can be inferred"), cert. denied, 479 U.S. 816 (1986). But see *Berry* v. *City of Muskogee,* 900 F.2d at 1495-1496 & n.9 (stating that deliberate indifference standard is not as high as criminal recklessness, and noting that the Supreme Court has never ruled on the precise relationship among gross negligence, deliberate indifference, and recklessness in the Eighth Amendment context). This Court has suggested in a different context that deliberate indifference requires proof of more culpable conduct than gross negligence. *City of Canton* v. *Harris,* 109 S. Ct. 1197, 1204 n.7 (1989) (Section 1983 action alleging a city's failure to train).

[26] With respect to the officials' liability in damages when sued in their personal capacity, see p. 7 n.3, *supra.*

The approach suggested in text comports with the recognition that

A deliberate indifference standard permits the necessary deference to prison officials' judgments about security and other important penological concerns. This Court has noted that "the problems that arise in the day-to-day operation of a corrections facility are not susceptible to easy solutions. Prison administrators therefore should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." *Bell* v. *Wolfish,* 441 U.S. 520, 547 (1979). Moreover, the Court has recognized that judicial deference is warranted "because the operation of our correctional facilities is peculiarly the province of the Legislative and Executive Branches of our Government, not the Judicial." *Id.* at 548. See also *O'Lone* v. *Estate of Shabazz,* 482 U.S. 342, 353 (1987) (courts should not "substitute [their] judgment * * * on difficult and sensitive matters of institutional administration * * * for the determinations of those charged with the formidable task of running a prison"); *Procunier* v. *Martinez,* 416 U.S. 396, 404-405 (1974) ("[T]he problems of prisons * * * are not readily susceptible of resolution by decree. * * * [W]here state penal institutions are involved, federal courts have a further reason for deference to the appropriate prison authorities."); *Rhodes* v. *Chapman,* 452 U.S. at 351 & n.16

prison management is "peculiarly within the province of the legislative and executive branches of government" because the resolution of prison problems "requires expertise, comprehensive planning, and the *commitment of resources.*" *Procunier* v. *Martinez,* 416 U.S. 396, 404-404 (1974) (emphasis added). See also *Revere* v. *Massachusetts General Hospital,* 463 U.S. 239, 245 (1983) ("If, of course, the governmental entity can obtain the medical care needed for a detainee only by paying for it, then it must pay."; construing Due Process Clause).

(addressing magnitude of the problems of prison administration).[27]

* * * * *

The court of appeals incorrectly applied the heightened malicious and sadistic intent standard to the claim here that the systemic and pervasive conditions of confinement violate the Eighth Amendment. Accordingly, the judgment should be vacated and the case remanded for further consideration under the proper standard. See *Graham* v. *Connor*, 109 S. Ct. 1865, 1873 (1989); *Illinois* v. *Rodriguez*, 110 S. Ct. 2793, 2801-2802 (1990).

[27] If the deliberate indifference standard is applied as we suggest, it is unlikely that the more serious prison conditions cases (such as those cited in p. 18 n.14, *supra*), would come out differently under such a standard than under our preferred approach, which dispenses with an inquiry into state of mind. Nevertheless, we believe it analytically sounder in systemic challenges for the courts to look to the nature of the conditions themselves, rather than to conduct a distracting and often inconclusive inquiry into intent.

CONCLUSION

The judgment of the court of appeals should be vacated and the case remanded.

Respectfully submitted.

KENNETH W. STARR
Solicitor General
JOHN R. DUNNE
Assistant Attorney General
DAVID L. SHAPIRO
Deputy Solicitor General
ROGER CLEGG
Deputy Assistant Attorney General
MICHAEL R. DREEBEN
Assistant to the Solicitor General
DAVID K. FLYNN
THOMAS E. CHANDLER
Attorneys

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