SUPREME COURT OF THE UNITED STATES

No. 01–309

LARRY HOPE, PETITIONER *v.* MARK PELZER ET AL.

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

[June 27, 2002]

JUSTICE STEVENS delivered the opinion of the Court.

The Court of Appeals for the Eleventh Circuit concluded that petitioner Larry Hope, a former prison inmate at the Limestone Prison in Alabama, was subjected to cruel and unusual punishment when prison guards twice handcuffed him to a hitching post to sanction him for disruptive conduct. Because that conclusion was not supported by earlier cases with "materially similar" facts, the court held that the respondents were entitled to qualified immunity, and therefore affirmed summary judgment in their favor. We granted certiorari to determine whether the Court of Appeals' qualified immunity holding comports with our decision in *United States* v. *Lanier,* 520 U. S. 259 (1997).

I

In 1995, Alabama was the only State that followed the practice of chaining inmates to one another in work squads. It was also the only State that handcuffed prisoners to "hitching posts" if they either refused to work or otherwise disrupted work squads.[1] Hope was handcuffed

[1] In its review of the summary judgment, the Court of Appeals viewed

to a hitching post on two occasions. On May 11, 1995, while Hope was working in a chain gang near an interstate highway, he got into an argument with another inmate. Both men were taken back to the Limestone prison and handcuffed to a hitching post. Hope was released two hours later, after the guard captain determined that the altercation had been caused by the other inmate. During his two hours on the post, Hope was offered drinking water and a bathroom break every 15 minutes, and his responses to these offers were recorded on an activity log. Because he was only slightly taller than the hitching post, his arms were above shoulder height and grew tired from being handcuffed so high. Whenever he tried moving his arms to improve his circulation, the handcuffs cut into his wrists, causing pain and discomfort.

On June 7, 1995, Hope was punished more severely. He

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the facts in the light most favorable to Hope, the nonmoving party. 240 F. 3d 975, 977 (CA11 2001) (case below). We do the same. *Saucier* v. *Katz*, 533 U. S. 194, 201 (2001). The Court of Appeals also referenced facts established in *Austin* v. *Hopper*, 15 F. Supp. 2d 1210 (MD Ala. 1998). 240 F. 3d, at 978, n. 6. This was appropriate because *Austin* is a class-action suit brought by Alabama prisoners, including Hope, and the District Court opinion in that case discusses Hope's allegations at some length. 15 F. Supp. 2d, at 1247–1248. In their summary judgment papers, both Hope and the respondents referenced the findings in *Austin*, and thus those findings are part of the record in this case. See, *e.g.*, Plaintiff's Preliminary Response to Defendants' Special Report, Record 30; Defendants' Response to Court Order, App. 61. Accordingly, for purposes of our review of the denial of summary judgment, the *Austin* findings may also be assumed true, and we reference them when appropriate.

As *Austin* explained, the hitching post is a horizontal bar "made of sturdy, nonflexible material," placed between 45 and 57 inches from the ground. Inmates are handcuffed to the hitching post in a standing position and remain standing the entire time they are placed on the post. Most inmates are shackled to the hitching post with their two hands relatively close together and at face level. 15 F. Supp. 2d, at 1241–1242.

took a nap during the morning bus ride to the chain gang's worksite, and when it arrived he was less than prompt in responding to an order to get off the bus. An exchange of vulgar remarks led to a wrestling match with a guard. Four other guards intervened, subdued Hope, handcuffed him, placed him in leg irons and transported him back to the prison where he was put on the hitching post. The guards made him take off his shirt, and he remained shirtless all day while the sun burned his skin.[2] He remained attached to the post for approximately seven hours. During this 7-hour period, he was given water only once or twice and was given no bathroom breaks.[3] At one point, a guard taunted Hope about his thirst. According to Hope's affidavit: "[The guard] first gave water to some dogs, then brought the water cooler closer to me, removed its lid, and kicked the cooler over, spilling the water onto the ground." App. 11.

Hope filed suit under Rev. Stat. §1979, 42 U. S. C. §1983, in the United States District Court for the Northern District of Alabama against three guards involved in the May incident, one of whom also handcuffed him to the hitching post in June. The case was referred to a Magistrate Judge who treated the responsive affidavits filed by the defendants as a motion for summary judgment. With-

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[2] "The most repeated complaint of the hitching post, however, was the strain it produced on inmates' muscles by forcing them to remain in a standing position with their arms raised in a stationary position for a long period of time. In addition to their exposure to sunburn, dehydration, and muscle aches, the inmates are also placed in substantial pain when the sun heats the handcuffs that shackle them to the hitching post, or heats the hitching post itself. Several of the inmates described the way in which the handcuffs burned and chafed their skin during their placement on the post." *Id.,* at 1248.

[3] The Court of Appeals noted that respondents had not produced any activity log for this incident, despite the policy that required that such a log be maintained. 240 F. 3d, at 977, n. 1.

out deciding whether "the very act of placing him on a restraining bar for a period of hours as a form of punishment" had violated the Eighth Amendment, the Magistrate concluded that the guards were entitled to qualified immunity.[4] Supplemental App. to Pet. for Cert. 21. The District Court agreed, and entered judgment for respondents.

The United States Court of Appeals for the Eleventh Circuit affirmed. 240 F. 3d 975 (2001) Before reaching the qualified immunity issue, however, it answered the constitutional question that the District Court had bypassed. The court found that the use of the hitching post for punitive purposes violated the Eighth Amendment. Nevertheless, applying Circuit precedent concerning qualified immunity, the court stated that "'the federal law by which the government official's conduct should be evaluated must be preexisting, obvious and mandatory,'" and established, not by "'abstractions,'" but by cases that are "'materially similar'" to the facts in the case in front of us." *Id.,* at 981. The court then concluded that the facts in the two precedents on which Hope primarily relied—*Ort* v. *White*, 813 F. 2d 318 (CA11 1987), and *Gates* v. *Collier*, 501 F. 2d 1291 (CA5 1974)—"[t]hough analogous," were not "'materially similar' to Hope's situation.'" 240 F. 3d, at 981. We granted certiorari to review the Eleventh Circuit's qualified immunity holding. 534 U. S. 1073 (2002).

II

The threshold inquiry a court must undertake in a qualified immunity analysis is whether plaintiff's allegations, if true, establish a constitutional violation. *Saucier* v. *Katz*, 533 U. S. 194, 201 (2001). The Court of Appeals held that "the policy and practice of cuffing an inmate to a

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[4] Supplemental App. to Pet. for Cert. 21–27.

hitching post or similar stationary object for a period of time that surpasses that necessary to quell a threat or restore order is a violation of the Eighth Amendment." 240 F. 3d, at 980–981. The court rejected respondents' submission that Hope could have ended his shackling by offering to return to work, finding instead that the purpose of the practice was punitive,[5] and that the circumstances of his confinement created a substantial risk of harm of which the officers were aware. Moreover, the court relied on Circuit precedent condemning similar practices[6] and the results of a United States Department of Justice (DOJ) report that found Alabama's systematic use of the hitching post to be improper corporal pun-

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[5] In reaching this conclusion, the Court of Appeals stated: "While the DOC claims that Hope would have been released from the hitching post had he asked to return to work, the evidence suggests that is not the case. First, Hope never refused to work. During the May incident, he was the victim in an altercation on the work site, but he never refused to do his job. During the June incident, Hope was involved in an altercation with prison guards. There is nothing in the record, however, claiming that he refused to work or encouraged other inmates to refuse to work. Therefore, it is not clear that the solution to his hitching post problem was to ask to return to work. Second, Hope was placed in a car and driven back to Limestone to be cuffed to the hitching post on both occasions. Given the facts, it is improbable that had Hope said, 'I want to go back to work,' a prison guard would have left his post at Limestone to drive Hope back to the work site. It is more likely that the guards left Hope on the post until his work detail returned to teach the other inmates a lesson." 240 F. 3d, at 980.

[6] "Since abolishing the pillory over a century ago, our system of justice has consistently moved away from forms of punishment similar to hitching posts in prisons. In *Gates* v. *Collier*, 501 F. 2d 1291 (5th Cir. 1974), in regard to 'handcuffing inmates to the fence and to cells for long periods of time' and other such punishments, we stated that '[w]e have no difficulty in reaching the conclusion that these forms of corporal punishment run afoul of the Eighth Amendment, offend contemporary concepts of decency, human dignity, and precepts of civilization which we profess to possess.' *Gates*, 501 F. 2d at 1306." *Id.,* at 979.

ishment.[7] We agree with the Court of Appeals that the attachment of Hope to the hitching post under the circumstances alleged in this case violated the Eighth Amendment.

"'[T]he unnecessary and wanton infliction of pain . . . constitutes cruel and unusual punishment forbidden by the Eighth Amendment.'" *Whitley* v. *Albers*, 475 U. S. 312, 319 (1986) (some internal quotation marks omitted). We have said that "[a]mong 'unnecessary and wanton' inflictions of pain are those that are 'totally without penological justification.'" *Rhodes* v. *Chapman*, 452 U. S. 337, 346 (1981). In making this determination in the context of prison conditions, we must ascertain whether the officials involved acted with "deliberate indifference" to the inmates' health or safety. *Hudson* v. *McMillian*, 503 U. S. 1, 8 (1992). We may infer the existence of this subjective state of mind from the fact that the risk of harm is obvious. *Farmer* v. *Brennan*, 511 U. S. 825, 842 (1994).

As the facts are alleged by Hope, the Eighth Amendment violation is obvious. Any safety concerns had long since abated by the time petitioner was handcuffed to the hitching post because Hope had already been subdued, handcuffed, placed in leg irons, and transported back to the prison. He was separated from his work squad and not given the opportunity to return to work. Despite the clear lack of an emergency situation, the respondents knowingly subjected him to a substantial risk of physical harm, to unnecessary pain caused by the handcuffs and the restricted position of confinement for a 7-hour period, to unnecessary exposure to the heat of the sun, to prolonged thirst and taunting, and to a deprivation of bath-

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[7] The DOJ report apparently was not before the District Court in this case, but the Court of Appeals took judicial notice of the report and referenced it throughout the decision below. *Id.,* at 979, n. 8.

room breaks that created a risk of particular discomfort and humiliation.[8] The use of the hitching post under these circumstances violated the "basic concept underlying the Eighth Amendment[, which] is nothing less than the dignity of man." *Trop* v. *Dulles*, 356 U. S. 86, 100 (1958). This punitive treatment amounts to gratuitous infliction of "wanton and unnecessary" pain that our precedent clearly prohibits.

III

Despite their participation in this constitutionally impermissible conduct, the respondents may nevertheless be shielded from liability for civil damages if their actions did not violate "clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow* v. *Fitzgerald*, 457 U. S. 800, 818 (1982). In assessing whether the Eighth Amendment violation here met the *Harlow* test, the Court of Appeals required that the facts of previous cases be "'materially similar' to Hope's situation." 240 F. 3d, at 981. This rigid gloss on the qualified immunity standard, though supported by Circuit precedent,[9] is not consistent with our cases.

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[8]The awareness of the risk of harm attributable to any individual respondent may be evaluated in part by considering the pattern of treatment that inmates generally received when attached to the hitching post. In *Austin* v. *Hopper*, the District Court cited examples of humiliating incidents resulting from the denial of bathroom breaks. One inmate "was not permitted to use the restroom or to change his clothing for four and one-half hours after he had defecated on himself." 15 F. Supp. 2d, at 1246. "Moreover, certain corrections officers not only ignored or denied inmates' requests for water or access to toilet facilities, but taunted them while they were clearly suffering from dehydration. . . . " *Id.,* at 1247.

[9]See, *e.g.*, *Suissa* v. *Fulton County,* 74 F. 3d 266–270 (CA11 1996); *Lassiter* v. *Alabama A&M Univ. Bd. of Trustees*, 28 F. 3d 1146, 1150 (CA11 1994); *Hill* v. *Dekalb Regional Youth Detention Center*, 40 F. 3d 1176, 1185 (CA11 1994).

As we have explained, qualified immunity operates "to ensure that before they are subjected to suit, officers are on notice their conduct is unlawful." *Saucier* v. *Katz*, 533 U. S., at 206. For a constitutional right to be clearly established, its contours "must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. This is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful, see *Mitchell* [v. *Forsyth*, 472 U. S. 511,] 535, n. 12; but it is to say that in the light of pre-existing law the unlawfulness must be apparent." *Anderson* v. *Creighton*, 483 U. S. 635, 640 (1987).

Officers sued in a civil action for damages under 42 U. S. C. §1983 have the same right to fair notice as do defendants charged with the criminal offense defined in 18 U. S. C. §242. Section 242 makes it a crime for a state official to act "willfully" and under color of law to deprive a person of rights protected by the Constitution. In *United States* v. *Lanier,* 520 U. S. 259 (1997), we held that the defendant was entitled to "fair warning" that his conduct deprived his victim of a constitutional right, and that the standard for determining the adequacy of that warning was the same as the standard for determining whether a constitutional right was "clearly established" in civil litigation under §1983.[10]

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[10] "[T]he object of the 'clearly established' immunity standard is not different from that of 'fair warning' as it relates to law 'made specific' for the purpose of validly applying §242. The fact that one has a civil and the other a criminal law role is of no significance; both serve the same objective, and in effect the qualified immunity test is simply the adaptation of the fair warning standard to give officials (and, ultimately, governments) the same protection from civil liability and its consequences that individuals have traditionally possessed in the face of vague criminal statutes. To require something clearer than 'clearly established' would, then, call for something beyond 'fair warning.'" 520

In *Lanier*, the Court of Appeals had held that the indictment did not charge an offense under §242 because the constitutional right allegedly violated had not been identified in any earlier case involving a factual situation "'fundamentally similar'" to the one in issue. *Id.,* at 263 (citing *United States* v. *Lanier,* 73 F. 3d 1380, 1393 (CA6 1996)). The Court of Appeals had assumed that the defendant in a criminal case was entitled to a degree of notice "'substantially higher than the "clearly established" standard used to judge qualified immunity'" in civil cases under §1983. 520 U. S., at 263. We reversed, explaining that the "fair warning" requirement is identical under §242 and the qualified immunity standard. We pointed out that we had "upheld convictions under §241 or §242 despite notable factual distinctions between the precedents relied on and the cases then before the Court, so long as the prior decisions gave reasonable warning that the conduct then at issue violated constitutional rights." *Id.,* at 269. We explained:

> "This is not to say, of course, that the single warning standard points to a single level of specificity sufficient in every instance. In some circumstances, as when an earlier case expressly leaves open whether a general rule applies to the particular type of conduct at issue, a very high degree of prior factual particularity may be necessary. But general statements of the law are not inherently incapable of giving fair and clear warning, and in other instances a general constitutional rule already identified in the decisional law may apply with obvious clarity to the specific conduct in question, even though 'the very action in question has [not] previously been held unlawful,' *Anderson, supra*, at 640." *Id.,* at 270–271 (citation omitted).

U. S., at 270–271.

Our opinion in *Lanier* thus makes clear that officials can still be on notice that their conduct violates established law even in novel factual circumstances. Indeed, in *Lanier*, we expressly rejected a requirement that previous cases be "fundamentally similar." Although earlier cases involving "fundamentally similar" facts can provide especially strong support for a conclusion that the law is clearly established, they are not necessary to such a finding. The same is true of cases with "materially similar" facts. Accordingly, pursuant to *Lanier*, the salient question that the Court of Appeals ought to have asked is whether the state of the law in 1995 gave respondents fair warning that their alleged treatment of Hope was unconstitutional. It is to this question that we now turn.

IV

The use of the hitching post as alleged by Hope "unnecessar[ily] and wanton[ly] inflicted pain," *Whitley*, 475 U. S., at 319 (internal quotation marks omitted), and thus was a clear violation of the Eighth Amendment. See Part II, *supra.* Arguably, the violation was so obvious that our own Eighth Amendment cases gave the respondents fair warning that their conduct violated the Constitution. Regardless, in light of binding Eleventh Circuit precedent, an Alabama Department of Corrections (ADOC) regulation, and a DOJ report informing the ADOC of the constitutional infirmity in its use of the hitching post, we readily conclude that the respondents' conduct violated "clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow*, 457 U. S., at 818.

Cases decided by the Court of Appeals for the Fifth Circuit before 1981 are binding precedent in the Eleventh Circuit today. See *Bonner* v. *Pritchard,* 661 F. 2d 1206 (CA11 1981). In one of those cases, decided in 1974, the Court of Appeals reviewed a District Court decision find-

ing a number of constitutional violations in the administration of Mississippi's prisons. *Gates* v. *Collier,* 501 F. 2d 1291. That opinion squarely held that several of those "forms of corporal punishment run afoul of the Eighth Amendment [and] offend contemporary concepts of decency, human dignity, and precepts of civilization which we profess to possess." *Id.,* at 1306. Among those forms of punishment were "handcuffing inmates to the fence and to cells for long periods of time, . . . and forcing inmates to stand, sit or lie on crates, stumps, or otherwise maintain awkward positions for prolonged periods." *Ibid.* The fact that *Gates* found several forms of punishment impermissible does not, as respondents suggest, lessen the force of its holding with respect to handcuffing inmates to cells or fences for long periods of time. Nor, for the purpose of providing fair notice to reasonable officers administering punishment for past misconduct, is there any reason to draw a constitutional distinction between a practice of handcuffing an inmate to a fence for prolonged periods and handcuffing him to a hitching post for seven hours. The Court of Appeals' conclusion to the contrary exposes the danger of a rigid, overreliance on factual similarity. As the Government submits in its brief *amicus curiae:* "No reasonable officer could have concluded that the constitutional holding of *Gates* turned on the fact that inmates were handcuffed to fences or the bars of cells, rather than a specially designed metal bar designated for shackling. If anything, the use of a designated hitching post highlights the constitutional problem." Brief for United States as *Amicus Curiae* 22. In light of *Gates*, the unlawfulness of the alleged conduct should have been apparent to the respondents.

The reasoning, though not the holding, in a case decided by the Eleventh Circuit in 1987 sent the same message to reasonable officers in that Circuit. In *Ort* v. *White,* 813 F. 2d 318, the Court of Appeals held that an officer's tem-

porary denials of drinking water to an inmate who repeatedly refused to do his share of the work assigned to a farm squad "should not be viewed as punishment in the strict sense, but instead as necessary coercive measures undertaken to obtain compliance with a reasonable prison rule, *i.e.*, the requirement that all inmates perform their assigned farm squad duties." *Id.,* at 325. "The officer's clear motive was to encourage Ort to comply with the rules and to do the work required of him, after which he would receive the water like everyone else." *Ibid.* The court cautioned, however, that a constitutional violation might have been present "if later, once back at the prison, officials had decided to deny [Ort] water as punishment for his refusal to work." *Id.,* at 326. So too would a violation have occurred if the method of coercion reached a point of severity such that the recalcitrant prisoner's health was at risk. *Ibid.* Although the facts of the case are not identical, *Ort*'s premise is that "physical abuse directed at [a] prisoner after he terminate[s] his resistance to authority would constitute an actionable eighth amendment violation." *Id.,* at 324. This premise has clear applicability in this case. Hope was not restrained at the worksite until he was willing to return to work. Rather, he was removed back to the prison and placed under conditions that threatened his health. *Ort* therefore gave fair warning to the respondents that their conduct crossed the line of what is constitutionally permissible.

Relevant to the question whether *Ort* provided fair warning to respondents that their conduct violated the Constitution is a regulation promulgated by ADOC in 1993.[11] The regulation authorizes the use of the hitching

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[11] The regulation was not provided to the District Court, but it was added to the record at the request of the Court of Appeals. See App. 100–106.

post when an inmate refuses to work or is otherwise disruptive to a work squad. It provides that an activity log should be completed for each such inmate, detailing his responses to offers of water and bathroom breaks every 15 minutes. Such a log was completed and maintained for petitioner's shackling in May, but the record contains no such log for the 7-hour shackling in June and the record indicates that the periodic offers contemplated by the regulation were not made. App. 43–48. The regulation also states that an inmate "will be allowed to join his assigned squad" whenever he tells an officer "that he is ready to go to work." *Id.,* at 103. The findings in *Austin* v. *Hopper,* 15 F. Supp. 2d 1210, 1244–1246 (MD Ala. 1998), as well as the record in this case, indicate that this important provision of the regulation was frequently ignored by corrections officers. If regularly observed, a requirement that would effectively give the inmate the keys to the handcuffs that attached him to the hitching post would have made this case more analogous to the practice upheld in *Ort*, rather than the kind of punishment *Ort* described as impermissible. A course of conduct that tends to prove that the requirement was merely a sham, or that respondents could ignore it with impunity, provides equally strong support for the conclusion that they were fully aware of the wrongful character of their conduct.

The respondents violated clearly established law. Our conclusion that "a reasonable person would have known," *Harlow*, 457 U. S., at 818, of the violation is buttressed by the fact that the DOJ specifically advised the ADOC of the unconstitutionality of its practices before the incidents in this case took place. The DOJ had conducted a study in 1994 of Alabama's use of the hitching post. 240 F. 3d, at 979. Among other findings, the DOJ report noted that ADOC's officers consistently failed to comply with the policy of immediately releasing any inmate from the hitching post who agrees to return to work. The DOJ

concluded that the systematic use of the restraining bar in Alabama constituted improper corporal punishment. *Ibid.* Accordingly, the DOJ advised the ADOC to cease use of the hitching post in order to meet constitutional standards. The ADOC replied that it thought the post could permissibly be used "'to preserve prison security and discipline.'" *Ibid.* In response, the DOJ informed the ADOC that, "'[a]lthough an emergency situation may warrant drastic action by corrections staff, our experts found that the "rail" is being used systematically as an improper punishment for relatively trivial offenses. Therefore, we have concluded that the use of the "rail" is without penological justification.'" *Ibid.* Although there is nothing in the record indicating that the DOJ's views were communicated to respondents, this exchange lends support to the view that reasonable officials in the ADOC should have realized that the use of the hitching post under the circumstances alleged by Hope violated the Eighth Amendment prohibition against cruel and unusual punishment.

The obvious cruelty inherent in this practice should have provided respondents with some notice that their alleged conduct violated Hope's constitutional protection against cruel and unusual punishment. Hope was treated in a way antithetical to human dignity—he was hitched to a post for an extended period of time in a position that was painful, and under circumstances that were both degrading and dangerous. This wanton treatment was not done of necessity, but as punishment for prior conduct. Even if there might once have been a question regarding the constitutionality of this practice, the Eleventh Circuit precedent of *Gates* and *Ort*, as well as the DOJ report condemning the practice, put a reasonable officer on notice that the use of the hitching post under the circumstances alleged by Hope was unlawful. The "fair and clear warning," *Lanier*, 520 U. S., at 271, that these cases provided

was sufficient to preclude the defense of qualified immunity at the summary judgment stage.

V

In response to JUSTICE THOMAS' thoughtful dissent, we make the following three observations. The first is that in granting certiorari to review the summary judgment entered in favor of the officers, we did not take any question about the sufficiency of pleadings and affidavits to raise a genuine possibility that the three named officers were responsible for the punitive acts of shackling alleged. All questions raised by petitioner (the plaintiff against whom summary judgment was entered) go to the application of the standard that no immunity is available for official acts when "it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *Saucier* v. *Katz*, 533 U. S., at 202. The officers' brief in opposition to certiorari likewise addressed only the legal standard of what is clearly established. The resulting focus in the case was the Eleventh Circuit's position that a violation is not clearly established unless it is the subject of a prior case of liability on facts "'materially similar'" to those charged. 240 F. 3d, at 981. We did not take, and do not pass upon, the questions whether or to what extent the three named officers may be held responsible for the acts charged, if proved. Nothing in our decision forecloses any defense other than qualified immunity on the ground relied upon by the Court of Appeals.

Second, we may address the immunity question on the assumption that the act of field discipline charged on each occasion was handcuffing Hope to a hitching post for an extended period apparently to inflict gratuitous pain or discomfort, with no justification in threatened harm or a continuing refusal to work. *Id.*, at 980 (on neither occasion did Hope "refus[e] to work or encourag[e] other in-

mates to refuse to work"). The Court of Appeals clearly held the act of cuffing petitioner to the hitching post itself to suffice as an unconstitutional act: "We find that cuffing an inmate to a hitching post for a period of time extending past that required to address an immediate danger or threat is a violation of the Eighth Amendment." *Ibid.* Although the court continued that "[t]his violation is exacerbated by the lack of proper clothing, water, or bathroom breaks," *ibid.*, this embellishment was not the basis of its decision, and our own decision adequately rests on the same assumption that sufficed for the Court of Appeals.

Third, in applying the objective immunity test of what a reasonable officer would understand, the significance of federal judicial precedent is a function in part of the Judiciary's structure. The unreported District Court opinions cited by the officers are distinguishable on their own terms.[12] But regardless, they would be no match for the Circuit precedents[13] in *Gates* v. *Collier*, 501 F. 2d, at 1306, which held that "handcuffing inmates to the fence and to cells for long periods of time," was unconstitutional, and *Ort* v. *White*, 813 F. 2d, at 326, which suggested that it

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[12] In three of the decisions, the inmates were given the choice between working or being restrained. See *Whitson* v. *Gillikin*, No. CV–93–H–1517–NE (ND Ala., Jan. 24, 1994), p. 4, App. 84; *Dale* v. *Murphy*, No. CV–94–A–268–N (MD Ala., Dec. 9, 1994), p. 2; *Ashby* v. *Dees*, No. CV–94–U–0605–NE (ND Ala., Dec. 27, 1994), p. 6. In others, the inmates were offered regular water and bathroom breaks. See *Lane* v. *Findley*, No. CV 93–C–1741–S (ND Ala., Aug. 4, 1994), p. 9*, Williamson* v. *Anderson*, No. CV–92–H–675–N (MD Ala., Aug. 18, 1993), p. 2; *Hollis* v. *Folsom*, No. CV–94–T–0052–N (MD Ala., Nov. 4, 1994), p. 9. Finally, in *Vinson* v. *Thompson*, No. CV–94–A–268–N (MD Ala., Dec. 9, 1994), the inmate was restrained for approximately 45 minutes. *Id.*, at 2.

[13] There are apparently no decisions on similar facts from other Circuits, presumably because Alabama is the only State to authorize the use of the hitching post in its prison system.

would be unconstitutional to inflict gratuitous pain on an inmate (by refusing him water), when punishment was unnecessary to enforce on-the-spot discipline. The vitality of *Gates* and *Ort* could not seriously be questioned in light of our own decisions holding that gratuitous infliction of punishment is unconstitutional, even in the prison context, see *supra*, at 6 (citing *Whitley* v. *Albers,* 475 U. S., at 319; *Rhodes* v. *Chapman,* 452 U. S., at 346).

The judgment of the Court of Appeals is reversed.

It is so ordered.