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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

HOPE *v.* PELZER ET AL.

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

No. 01–309. Argued April 17, 2002—Decided June 27, 2002

In 1995, petitioner Hope, then an Alabama prison inmate, was twice handcuffed to a hitching post for disruptive conduct. During a 2-hour period in May, he was offered drinking water and a bathroom break every 15 minutes, and his responses were recorded on an activity log. He was handcuffed above shoulder height, and when he tried moving his arms to improve circulation, the handcuffs cut into his wrists, causing pain and discomfort. After an altercation with a guard at his chain gang's worksite in June, Hope was subdued, handcuffed, placed in leg irons, and transported back to the prison, where he was ordered to take off his shirt, thus exposing himself to the sun, and spent seven hours on the hitching post. While there, he was given one or two water breaks but no bathroom breaks, and a guard taunted him about his thirst. Hope filed a 42 U. S. C. §1983 suit against three guards. Without deciding whether placing Hope on the hitching post as punishment violated the Eighth Amendment, the Magistrate Judge found that the guards were entitled to qualified immunity. The District Court entered summary judgment for respondents, and the Eleventh Circuit affirmed. The latter court answered the constitutional question, finding that the hitching post's use for punitive purposes violated the Eighth Amendment. In finding the guards nevertheless entitled to qualified immunity, it concluded that Hope could not show, as required by Circuit precedent, that the federal law by which the guards' conduct should be evaluated was established by cases that were "materially similar" to the facts in his own case.

Held: The defense of qualified immunity was precluded at the summary judgment phase. Pp. 4–17.

(a) Hope's allegations, if true, establish an Eighth Amendment

violation. Among the " 'unnecessary and wanton' inflictions of pain [constituting cruel and unusual punishment forbidden by the Amendment] are those that are 'totally without penological justification.' " *Rhodes* v. *Chapman,* 452 U. S. 337, 346. This determination is made in the context of prison conditions by ascertaining whether an official acted with "deliberate indifference" to the inmates' health or safety, *Hudson* v. *McMillian,* 503 U. S. 1, 8, a state of mind that can be inferred from the fact that the risk of harm is obvious, *Farmer* v. *Brennan,* 511 U. S. 825. The Eighth Amendment violation here is obvious on the facts alleged. Any safety concerns had long since abated by the time Hope was handcuffed to the hitching post, because he had already been subdued, handcuffed, placed in leg irons, and transported back to prison. He was separated from his work squad and not given the opportunity to return. Despite the clear lack of emergency, respondents knowingly subjected him to a substantial risk of physical harm, unnecessary pain, unnecessary exposure to the sun, prolonged thirst and taunting, and a deprivation of bathroom breaks that created a risk of particular discomfort and humiliation. Pp. 4–7.

(b) Respondents may nevertheless be shielded from liability for their constitutionally impermissible conduct 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. In its assessment, the Eleventh Circuit erred in requiring that the facts of previous cases and Hope's case be "materially similar." Qualified immunity operates to ensure that before they are subjected to suit, officers are on notice that their conduct is unlawful. Officers sued in a §1983 civil action have the same fair notice right as do defendants charged under 18 U. S. C. §242, which makes it a crime for a state official to act willfully and under color of state to deprive a person of constitutional rights. This Court's opinion in *United States* v. *Lanier,* 520 U. S. 259, a §242 case, makes clear that officials can be on notice that their conduct violates established law even in novel factual situations. Indeed, the Court expressly rejected a requirement that previous cases be "fundamentally similar." Accordingly, the salient question that the Eleventh Circuit should have asked is whether the state of the law in 1995 gave respondents fair warning that Hope's alleged treatment was unconstitutional. Pp. 7–10.

(c) A reasonable officer would have known that using a hitching post as Hope alleged was unlawful. The obvious cruelty inherent in the practice should have provided respondents with some notice that their conduct was unconstitutional. In addition, binding Circuit precedent should have given them notice. *Gates* v. *Collier*, 501 F. 2d 1291, found several forms of corporal punishment impermissible, in-

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cluding handcuffing inmates to fences or cells for long periods, and *Ort* v. *White,* 813 F. 2d 318, 324, warned that "physical abuse directed at [a] prisoner after he terminate[s] his resistance to authority would constitute an actionable eighth amendment violation." Relevant to the question whether *Ort* provided fair notice is a subsequent Alabama Department of Corrections (ADOC) regulation specifying procedures for using a hitching post, which included allowing an inmate to rejoin his squad when he tells an officer that he is ready to work. If regularly observed, that provision would have made Hope's case less like the kind of punishment *Ort* described as impermissible. But conduct showing that the provision was a sham, or that respondents could ignore it with impunity, provides equally strong support for the conclusion that they were fully aware of their wrongful conduct. The conclusion here is also buttressed by the fact that the Justice Department specifically advised the ADOC of the constitutional infirmity of its practices before the incidents in this case took place. Pp. 10–15.

240 F. 3d 975, reversed.

STEVENS, J., delivered the opinion of the Court, in which O'CONNOR, KENNEDY, SOUTER, GINSBURG, and BREYER, JJ., joined. THOMAS, J., filed a dissenting opinion, in which REHNQUIST, C. J., and SCALIA, J., joined.