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Recent Developments: Farmer v. Brennan: Prison Officials May Be Held Liable under the Eighth Amendment For "Deliberate Indifference" to an Inmate's Health and Safety in Prison Condition Claims

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Farmer v. Brennan:

**PRISON OFFICIALS
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In *Farmer v. Brennan*, 114 S. Ct. 1970 (1994), the United States Supreme Court held that a prison official may be held accountable under the Eighth Amendment for knowing and disregarding a substantial risk of harm faced by an inmate. In so ruling, the Court established the subjective elements of the “deliberate indifference” test used to determine whether prison officials violate the Eighth Amendment for failure to prevent harm in prison condition claims.

Petitioner Dee Farmer (“Farmer”) was a transsexual serving a prison sentence in an all-male federal prison for credit-card fraud. Farmer, a biological male, had undergone treatment for silicone breast implants and unsuccessful black market surgery to have his testicles removed. Despite his overtly feminine characteristics, and his previous segregation at a different federal prison because of safety concerns, prison officials at the United States Penitentiary in Terre Haute, Indiana, (“USP-Terre Haute”) after an initial stay in administrative segregation, housed him in the general population of that maximum-security prison. Farmer voiced no objection to either the transfer from the Federal Correctional Institute in Oxford, Wisconsin (“FCI-Oxford”) or to his placement in the general population at USP-Terre Haute. Less than two weeks after his placement in the general population, Farmer was beaten and raped by another inmate. He

reported the incident and several days later officials returned him to segregation.

Farmer filed a *Bivens* complaint, alleging a violation of the Cruel and Unusual Punishment Clause of the Eighth Amendment. He contended that Respondents, in their official capacity as warden and Director of the Bureau of prisons, either transferred him to USP-Terre Haute or placed him in its general population despite knowledge that he was a transsexual projecting feminine characteristics, and was particularly vulnerable to sexual attack by some inmates. Farmer asserted that this amounted to a deliberately indifferent failure to protect his safety, and thus, a violation of his rights under the Eighth Amendment. He sought compensatory and punitive damages and an injunction barring future confinement in any penitentiary.

Respondents filed a motion for summary judgment in the United States District Court for the Western District of Wisconsin. The district court held that there could be deliberate indifference to Farmer’s safety only if prison officials were reckless in a criminal sense, meaning that they had actual knowledge of a potential danger. The United States Court of Appeals for the Seventh Circuit affirmed without opinion. The Supreme Court granted certiorari to resolve the inconsistency among lower appellate court decisions.

The Court began its

analysis by taking a logical and analytical progression through case precedent that culminated in the Court's determination that prison rape was not constitutionally tolerable. In short, prison officials could be held liable for failure to prevent harm under the Cruel and Unusual Punishment Clause of the Eighth Amendment. *Farmer*, 114 S. Ct. at 1976 (citations omitted).

The Court made it clear that "[a] prison official's deliberate indifference to a substantial risk of serious harm to an inmate violates the Eighth Amendment." *Id.* at 1974 (citations omitted). In acknowledging that prison conditions may be "restrictive and even

harsh," the Court emphasized that prison officials have the duty to protect inmates from harm at the hands of other prisoners. *Id.* at 1976-77 (quoting *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981)).

The Court was careful to point out however, that not every injury suffered by an inmate reaches constitutional dimension and imposes liability on prison officials.

Stating two necessary requirements for a constitutional violation of the Eighth Amendment, the Court determined that first the deprivation alleged must be objectively "sufficiently serious," subjecting the inmate to substantial risk of serious harm.

Id. at 1977 (quoting *Wilson v. Seiter*, 501 U.S. 294, 298 (1991)). Further, the Court noted that an exploration into the mindset of prison officials is necessary as well, thereby adding a subjective component to cruel and unusual punishment inquiries. *Id.* (citing *Wilson*, 501 U.S. at 302-03).

In defining the term deliberate indifference, the Court observed that the phrase encompasses conduct more blameworthy than negligence. *Farmer*, 114 S. Ct. at 1978. Rejecting a high malicious standard, as well as a civil law definition of recklessness, the Court adopted a subjective recklessness requirement as applied in



the criminal law because it was a familiar and workable standard consistent with the Court's interpretation of the Cruel and Unusual Punishment Clause. *Id.* at 1980.

In rejecting Farmer's claim that prison officials would be free to ignore obvious dangers to inmates, the Court instructed that under the subjective test adopted, a claimant need not show that a prison official acted or failed to act believing that harm would befall an inmate; it was enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm. *Id.* at 1981. Furthermore, the Court observed that a prison official could not escape liability by showing that while he was aware of an obvious substantial risk to an inmate's safety, he did not know that the inmate would be assaulted by a specific person. *Id.* at 1982. On the other hand, even if the official actually knew of a substantial risk and responded reasonably, he could not be held liable even if the risk was not averted. *Id.* at 1982-83.

The Court found unpersuasive Farmer's argument that the use of the subjective test would bar prospective relief and require inmates to unjustly suffer a physical injury before obtaining court ordered correction of objectively inhumane prison conditions. *Id.* at 1983. The Court referred to long settled case law which established that "one does not have to await consummation of

threatened injury to obtain preventative relief." *Id.* at 1983 (quoting *Pennsylvania v. West Virginia*, 262 U.S. 553, 593 (1923)).

The Court then focused on Farmer's request for injunctive relief and enumerated the requirements that must be satisfied by an inmate seeking prospective relief. First, both the objective and subjective requirements must be satisfied. *Farmer*, 114 S. Ct. at 1983. The Court instructed that the subjective factor should be determined based on the current attitudes and conduct of prison officials at the time suit is brought and thereafter. *Id.* at 1983-84. Second, the inmate must adequately plead the issue. In order to survive summary judgment, evidence must be produced from which it can be inferred that at the time suit was filed and at the time of summary judgment, the official knowingly and unreasonably disregarded an objectively intolerable risk of harm and would continue to do so. *Id.*

Finally, the Court considered whether the district court's disposition of Farmer's complaint comported with Eighth Amendment principles. *Id.* at 1984-85. The Court found that in granting summary judgment to Respondents, the district court may have placed decisive weight on Farmer's failure to notify Respondents of a risk of harm. *Id.* at 1985. The Court emphasized that failure to give notice was not dispositive of Farmer's claims for damages

and injunctive relief. *Id.* Thus, the Supreme Court reversed the court of appeals' decision and ordered the district court on remand to reconsider its denial of Farmer's discovery motion and apply the principles explained in its decision.

Faithful to its precedent, the United States Supreme Court in *Farmer v. Brennan* developed the subjective elements of deliberate indifference, without creating new obstacles for prisoners to overcome. The Court's decision is a practical, clear, and consistent standard for lower courts to follow. While the opinion is restrictive, to some extent, it makes clear that prison rape is constitutionally intolerable under the Eighth Amendment. Prison officials may be held responsible for this inhumane prison condition if the official was aware of the risk and failed to take reasonable measures to abate it. Prisoners are now empowered with the means to successfully challenge the response of prison officials to the dehumanizing and volatile conditions of prison rape, long tolerated and long known to exist.

- Ruth G. Allen