SUPREME COURT OF THE UNITED STATES

No. 04–1739

JEFFREY A. BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, PETITIONER *v.* RONALD BANKS, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

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

[June 28, 2006]

JUSTICE BREYER announced the judgment of the Court and delivered an opinion, in which THE CHIEF JUSTICE, JUSTICE KENNEDY, and JUSTICE SOUTER join.

We here consider whether a Pennsylvania prison policy that "denies newspapers, magazines, and photographs" to a group of specially dangerous and recalcitrant inmates "violate[s] the First Amendment." Brief for Petitioner i; see *Turner* v. *Safley,* 482 U. S. 78, 89 (1987) (prison rules restricting a prisoner's constitutional rights must be "reasonably related to legitimate penological interests"). The case arises on a motion for summary judgment. While we do not deny the constitutional importance of the interests in question, we find, on the basis of the record now before us, that prison officials have set forth adequate legal support for the policy. And the plaintiff, a prisoner who attacks the policy, has failed to set forth "specific facts" that, in light of the deference that courts must show to the prison officials, could warrant a determination in his favor. Fed. Rule Civ. Proc. 56(e); *Overton* v. *Bazzetta,* 539

U. S. 126, 132 (2003) (need for "substantial deference to the professional judgment of prison administrators").

I

A

The prison regulation at issue applies to certain prisoners housed in Pennsylvania's Long Term Segregation Unit. The LTSU is the most restrictive of the three special units that Pennsylvania maintains for difficult prisoners. The first such unit, the "Restricted Housing Unit," is designed for prisoners who are under disciplinary sanction or who are assigned to administrative segregation. App. 80. The second such unit, the "Special Management Unit," is intended for prisoners who "exhibit behavior that is continually disruptive, violent, dangerous or a threat to the orderly operation of their assigned facility." *Ibid.* The third such unit, the LTSU, is reserved for the Commonwealth's "most incorrigible, recalcitrant inmates." *Id.*, at 25.

LTSU inmates number about 40. *Id.*, at 127. Most, but not all, have "flunked out" of the SMU program. *Id.*, at 137. To qualify, they must have met one or more of the following conditions: failure to "complete" the SMU program; "assaultive behavior with the intent to cause death or serious bodily injury"; causing injury to other inmates or staff; "engaging in facility disturbance(s)"; belonging to an unauthorized organization or "Security Threat Group"; engaging in criminal activity that "threatens the community"; possessing while in prison "weapons" or "implements of escape"; or having a history of "serious" escape attempts, "exerting negative influence in facility activities," or being a "sexual predator." *Id.*, at 85–86. The LTSU is divided into two levels. All inmates are initially assigned to the most restrictive level, level 2. After 90 days, depending upon an inmate's behavior, an individual may graduate to the less restrictive level 1, although in

practice most do not. *Id.*, at 131–132, 138.

The RHU, SMU, and LTSU all seriously restrict inmates' ordinary prison privileges. At all three units, residents are typically confined to cells for 23 hours a day, have limited access to the commissary or outside visitors, and (with the exception of some phases of the SMU) may not watch television or listen to the radio. *Id.*, at 102; Brief for Petitioner 2–4.

Prisoners at level 2 of the LTSU face the most severe form of the restrictions listed above. They have no access to the commissary, they may have only one visitor per month (an immediate family member), and they are not allowed phone calls except in emergencies. App. 102. In addition they (unlike all other prisoners in the Commonwealth) are restricted in the manner at issue here: They have no access to newspapers, magazines, or personal photographs. *Id.*, at 26. They are nonetheless permitted legal and personal correspondence, religious and legal materials, two library books, and writing paper. *Id.*, at 35, 102, 169. If an inmate progresses to level 1, he enjoys somewhat less severe restrictions, including the right to receive one newspaper and five magazines. *Id.*, at 26, 102. The ban on photographs is not lifted unless a prisoner progresses out of the LTSU altogether. *Ibid.*

B

In 2001, plaintiff Ronald Banks, respondent here, then a prisoner confined to LTSU level 2, filed this federal-court action against Jeffrey Beard, the Secretary of the Pennsylvania Department of Corrections. See Rev. Stat. §1979, 42 U. S. C. §1983. Banks claimed that the level 2 Policy forbidding inmates all access to newspapers, magazines, and photographs bears no reasonable relation to any legitimate penological objective and consequently violates the First Amendment. App. 15; see also *Turner, supra; Overton, supra.* The Secretary, the defendant, petitioner

here, filed an answer. The District Court certified a class composed of similar level 2 inmates, and the court assigned the case to a Magistrate who conducted discovery.

Banks' counsel deposed a deputy superintendent at the prison, Joel Dickson. The parties introduced various prison policy manuals and related documents into the record. And at that point the Secretary filed a motion for summary judgment. He also filed a "Statement of Material Facts Not in Dispute," with a copy of the deputy superintendent's deposition attached as an appendix. See App. 25; Rule 56.1(C)(1) (WD Pa. 2006).

Banks (who was represented by counsel throughout) filed no opposition to the Secretary's motion, but instead filed a cross-motion for summary judgment. Neither that cross-motion nor any other of Banks' filings sought to place any significant fact in dispute, and Banks has never sought a trial to determine the validity of the Policy. Rather, Banks claimed in his cross-motion that the undisputed facts, including those in Dickson's deposition, entitled him to summary judgment. In this way, and by failing specifically to challenge the facts identified in the defendant's statement of undisputed facts, Banks is deemed to have admitted the validity of the facts contained in the Secretary's statement. See Rule 56.1(E).

On the basis of the record as described (the complaint, the answer, the statement of undisputed facts, other agreed-upon descriptions of the system, the Dickson deposition, and the motions for summary judgment), the Magistrate recommended that the District Court grant the Secretary's motion for summary judgment and deny that of Banks. App. to Brief in Opposition 130. The District Court accepted the Magistrate's recommendation. *Id.*, at 131–132.

On appeal, a divided Third Circuit panel reversed the District Court's award of summary judgment to the Secretary. 399 F. 3d 134 (2005). The majority of the panel held

that the prison regulation "cannot be supported as a matter of law by the record in this case." *Id.*, at 148; see also *infra*, at 14–15. The Secretary sought our review of the Appeals Court's judgment, and we granted his petition. 546 U. S. ___ (2005).

II

Turner v. *Safley,* 482 U. S. 78 (1987), and *Overton* v. *Bazzetta,* 539 U. S 126 (2003), contain the basic substantive legal standards governing this case. This Court recognized in *Turner* that imprisonment does not automatically deprive a prisoner of certain important constitutional protections, including those of the First Amendment. *Id.*, at 93; see also *O'Lone* v. *Estate of Shabazz,* 482 U. S. 342, 348 (1987). But at the same time the Constitution sometimes permits greater restriction of such rights in a prison than it would allow elsewhere. See, *e.g.*, *Turner*, *supra*, at 84–85. As *Overton* (summarizing pre-*Turner* case law) pointed out, courts owe "substantial deference to the professional judgment of prison administrators." 539 U. S., at 132. And *Turner* reconciled these principles by holding that restrictive prison regulations are permissible if they are "'reasonably related' to legitimate penological interests," 482 U. S., at 87, and are not an "exaggerated response" to such objectives, *ibid.*

Turner also sets forth four factors "relevant in determining the reasonableness of the regulation at issue." *Id.,* at 89. First, is there a "'valid, rational connection' between the prison regulation and the legitimate governmental interest put forward to justify it"? *Ibid.* Second, are there "alternative means of exercising the right that remain open to prison inmates"? *Id.*, at 90. Third, what "impact" will "accommodation of the asserted constitutional right . . . have on guards and other inmates, and on the allocation of prison resources generally"? *Ibid.* And, fourth, are "ready alternatives" for furthering the governmental

interest available? *Ibid*.

This case has arrived in this Court in the context of the Secretary's motion for summary judgment. Thus we must examine the record to see whether the Secretary, in depositions, answers to interrogatories, admissions, affidavits and the like, has demonstrated "the absence of a genuine issue of material fact" and his entitlement to judgment as a matter of law. See, *e.g.*, Fed. Rule Civ. Proc. 56; *Celotex Corp.* v. *Catrett,* 477 U. S. 317 (1986).

If the Secretary has done so, then we must determine whether Banks, the plaintiff, who bears the burden of persuasion, *Overton*, *supra*, at 132, has "by affidavits or as otherwise provided" in Rule 56 (*e.g.* through depositions, etc.) "*set forth specific facts showing that there is a genuine issue for trial*." Rule 56(e) (emphasis added). If not, the law requires entry of judgment in the Secretary's favor. See *Celotex Corp.*, *supra*, at 322 (Rule 56 "mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial").

We recognize that at this stage we must draw "all justifiable inferences" in Banks' "favor." *Anderson* v. *Liberty Lobby, Inc.,* 477 U. S. 242, 255 (1986). In doing so, however, we must distinguish between evidence of disputed facts and disputed matters of professional judgment. In respect to the latter, our inferences must accord deference to the views of prison authorities. *Overton, supra.* Unless a prisoner can point to sufficient evidence regarding such issues of judgment to allow him to prevail on the merits, he cannot prevail at the summary judgment stage.

III

The Secretary in his motion set forth several justifica-

tions for the prison's policy, including the need to motivate better behavior on the part of particularly difficult prisoners, the need to minimize the amount of property they control in their cells, and the need to assure prison safety, by, for example, diminishing the amount of material a prisoner might use to start a cell fire. We need go no further than the first justification, that of providing increased incentives for better prison behavior. Applying the well-established substantive and procedural standards set forth in Part II, we find, on the basis of the record before us, that the Secretary's justification is adequate. And that finding here warrants summary judgment in the Secretary's favor.

A

The Secretary rested his motion for summary judgment primarily upon the statement of undisputed facts along with Deputy Prison Superintendent Dickson's affidavit. The statement of undisputed facts says that the LTSU's 40 inmates, about 0.01 percent of the total prison population, constitute the "'worst of the worst,'" those who "have proven by the history of their behavior in prison, the necessity of holding them in the rigorous regime of confinement" of the LTSU. App. 26. It then sets forth three "penological rationales" for the Policy, summarized from the Dickson deposition:

> (1) to "motivat[e]" better "behavior" on the part of these "particularly difficult prisoners," by providing them with an incentive to move to level 1, or out of the LTSU altogether, and to "discourage backsliding" on the part of level 1 inmates;
>
> (2) to minimize the amount of property controlled by the prisoners, on the theory that the "less property these high maintenance, high supervision, obdurate troublemakers have, the easier it is for . . . correctional officer[s] to detect concealed contraband [and]

> to provide security"; and
> (3) to diminish the amount of material (in particular newspapers and magazines) that prisoners might use as weapons of attack in the form of "'spears'" or "'blow guns,'" or that they could employ "as tools to catapult feces at the guards without the necessity of soiling one's own hands," or use "as tinder for cell fires." *Id.*, at 27.

As we have said we believe that the first rationale itself satisfies *Turner*'s requirements. First, the statement and deposition set forth a "'valid, rational connection'" between the Policy and "'legitimate penological objectives.'" 482 U. S., at 89, 95. The deputy superintendent stated in his deposition that prison authorities are "very limited . . . in what we can and cannot deny or give to [a level 2] inmate [who typically has already been deprived of almost all privileges, see *supra*, at 2–3], and these are some of the items that we feel are legitimate as incentives for inmate growth." App. 190. The statement of undisputed facts (relying on the deposition) added that the Policy "serves to encourage . . . progress and discourage backsliding by the level 1 inmates." *Id.*, at 27.

These statements point to evidence—namely, the views of the deputy superintendent—that the regulations do, in fact, serve the function identified. The articulated connections between newspapers and magazines, the deprivation of virtually the last privilege left to an inmate, and a significant incentive to improve behavior, are logical ones. Thus, the first factor supports the Policy's "reasonableness."

As to the second factor, the statement and deposition make clear that, as long as the inmate remains at level 2, *no* "alternative means of exercising the right" remain open to him. *Turner, supra*, at 90. After 90 days the prisoner may be able to graduate to level 1 and thus regain his

access to most of the lost rights. In the approximately 2 ½ years after the LTSU opened, about 25 percent of those confined to level 2 did graduate to level 1 or out of the LTSU altogether. App. 138; Reply Brief for Petitioner 8. But these circumstances simply limit, they do not eliminate, the fact that there is no alternative. The absence of any alternative thus provides "some evidence that the regulations [a]re unreasonable," but is not "conclusive" of the reasonableness of the Policy. *Overton*, 539 U. S., at 135.

As to the third factor, the statement and deposition indicate that, were prison authorities to seek to "accommodat[e] . . . the asserted constitutional right," the resulting "impact" would be negative. That circumstance is also inherent in the nature of the Policy: If the Policy (in the authorities' view) helps to produce better behavior, then its absence (in the authorities' view) will help to produce worse behavior, *e.g.*, "backsliding" (and thus the expenditure of more "resources" at level 2). *Turner,* 482 U. S., at 90. Similarly, as to the fourth factor, neither the statement nor the deposition describes, points to, or calls to mind any "alternative method of accommodating the claimant's constitutional complaint . . . that fully accommodates the prisoner's rights at *de minimis* cost to valid penological interests." *Id.*, at 90–91.

In fact, the second, third, and fourth factors, being in a sense logically related to the Policy itself, here add little, one way or another, to the first factor's basic logical rationale. See *post*, at 6 (opinion of STEVENS, J.) (noting that "deprivation theory does not map easily onto several of the *Turner* factors"), cf. *post*, at 5-6 (opinion of THOMAS, J.) (similar). The fact that two of these latter three factors seem to support the Policy does not, therefore, count in the Secretary's favor. The real task in this case is not balancing these factors, but rather determining whether the Secretary shows more than simply a logical relation, that

is, whether he shows a *reasonable* relation. We believe the material presented here by the prison officials is sufficient to demonstrate that the Policy is a reasonable one.

Overton provides significant support for this conclusion. In *Overton* we upheld a prison's "severe" restriction on the family visitation privileges of prisoners with repeat substance abuse violations. 539 U. S., at 134. Despite the importance of the rights there at issue, we held that withholding such privileges "is a proper and even necessary management technique to induce compliance with the rules of inmate behavior, especially for high-security prisoners who have few other privileges to lose." *Ibid*.

The Policy and circumstances here are not identical, but we have not found differences that are significant. In both cases, the deprivations at issue (all visits with close family members; all access to newspapers, magazines, and photos) have an important constitutional dimension. In both cases, prison officials have imposed the deprivation at issue only upon those with serious prison-behavior problems (here the 40 most intractable inmates in the Commonwealth). In both cases, prison officials, relying on their professional judgment, reached an experience-based conclusion that the policies help to further legitimate prison objectives.

The upshot is that, if we consider the Secretary's supporting materials, *i.e.*, the statement and deposition), by themselves, they provide sufficient justification for the Policy. That is to say, unless there is more, they bring the Policy within *Turner*'s legitimating scope.

B

Although summary judgment rules provided Banks with an opportunity to respond to the Secretary's materials, he did not offer any fact-based or expert-based refutation in the manner the rules provide. Fed. Rule Civ. Proc. 56(e)

(requiring plaintiff through, *e.g.*, affidavits, etc., to "s*et forth specific facts showing that there is a genuine issue for trial*" (emphasis added)). Instead, Banks filed his own cross-motion for summary judgment in which he claimed that the Policy fell of its own weight, *i.e.*, that the Policy was "unreasonable as a matter of law." Plaintiffs' Brief in Support of Motion for Summary Judgment in C. A. 01–1956 (WD Pa.), p. 13 (hereinafter Plaintiffs' Brief). In particular, Banks argued (and continues to argue) that the Policy lacks any significant incentive effect given the history of incorrigibility of the inmates concerned and the overall deprivations associated with the LTSU, Brief for Respondent 22; Plaintiffs' Brief 13. He points in support to certain court opinions that he believes reflect expert views that favor his position. *Abdul Wali* v. *Coughlin*, 754 F. 2d 1015, 1034 (CA2 1985); *Bieregu* v. *Reno*, 59 F. 3d 1445, 1449 (CA3 1995); *Knecht* v. *Collins*, 903 F. Supp. 1193, 1200 (SD Ohio 1995), aff'd in part, rev'd in part, vacated in part, 187 F. 3d 636 (CA6 1999). And he adds that only about one-quarter of level 2 inmates graduate out of that environment.

The cases to which Banks refers, however, simply point out that, in the view of some courts, increased contact with the world generally favors rehabilitation. See *Abdul Wali*, *supra*, at 1034; *Bieregu*, *supra*, at 1449; *Knecht*, *supra*, at 1200. That circumstance, as written about in court opinions, cannot provide sufficient support, particularly as these courts were not considering contexts such as this one, where prison officials are dealing with especially difficult prisoners. Neither can Banks find the necessary assistance in the fact that only one-quarter or so of the level 2 population graduates to level 1 or out of the LTSU. Given the incorrigibility of level 2 inmates—which petitioner himself admits—there is nothing to indicate that a 25 percent graduation rate is low, rather than, as the Secretary suggests, acceptably high.

We recognize that the Court of Appeals reached a contrary conclusion. But in doing so, it placed too high an evidentiary burden upon the Secretary. In respect to behavior-modification incentives, for example, the court wrote that the "District Court did not examine . . . whether the ban was implemented in a way that could modify behavior, or inquire into whether the [Department of Corrections'] deprivation theory of behavior modification had any basis in real human psychology, or had proven effective with LTSU inmates." 399 F. 3d, at 142. And, the court phrased the relevant conclusions in terms that placed a high summary judgment evidentiary burden upon the Secretary, *i.e.*, the moving party. See, *e.g.*, *id.*, at 141 ("[W]e cannot say that the [defendant] has shown how the regulations in this case serve [an incentive-related] purpose"). The court's statements and conclusions here also offer too little deference to the judgment of prison officials about such matters. The court, for example, offered no apparent deference to the deputy prison superintendent's professional judgment that the Policy deprived "particularly difficult" inmates of a last remaining privilege and that doing so created a significant behavioral incentive.

Contrary to JUSTICE GINSBURG's suggestion, *post*, at 2–4, we do not suggest that the deference owed prison authorities makes it impossible for prisoners or others attacking a prison policy like the present one ever to succeed or to survive summary judgment. After all, the constitutional interest here is an important one. *Turner* requires prison authorities to show more than a formalistic logical connection between a regulation and a penological objective. A prisoner may be able to marshal substantial evidence that, given the importance of the interest, the Policy is not a reasonable one. Cf. 482 U. S., at 97–99 (striking down prison policy prohibiting prisoner marriages). And with or without the assistance that public interest law

firms or clinics may provide, it is not inconceivable that a plaintiff's counsel, through rigorous questioning of officials by means of depositions, could demonstrate genuine issues of fact for trial. Finally, as in *Overton*, we agree that "the restriction here is severe," and "if faced with evidence that [it were] a *de facto* permanent ban . . . we might well reach a different conclusion in a challenge to a particular application of the regulation." 539 U. S., at 134. That is not, however, the case before us.

Here prison authorities responded adequately through their statement and deposition to the allegations in the complaint. And the plaintiff failed to point to "'specific facts'" in the record that could "lead a rational trier of fact to find" in his favor. *Matsushita Elec. Industrial Co.* v. *Zenith Radio Corp.,* 475 U. S. 574, 587 (1986) (quoting Fed. Rule Civ. Proc. 56(e)).

The judgment of the Court of Appeals for the Third Circuit is reversed, and the case is remanded for further proceedings.

It is so ordered.

JUSTICE ALITO took no part in the consideration or decision of this case.