September 2012

Lowering the Bar Behind Bars: Chao v. Ballista and Prison Official Liability in All-Female Prisons

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LOWERING THE BAR BEHIND BARS:  
CHAO v. BALLISTA AND PRISON OFFICIAL LIABILITY IN ALL-FEMALE PRISONS

ELIZA MURRAY*

Abstract: On March 25, 2011, in Chao v. Ballista, the U.S. District Court for the District of Massachusetts denied defendant prison officials’ motion for summary judgment on an inmate’s Eighth Amendment claims of sexual misconduct, and a jury held a prison superintendent liable for failure to protect the inmate from a prison guard’s sexual abuse. Although the district court drew thoughtful attention to the unique vulnerabilities of female inmates, the court implicitly expanded the Supreme Court’s Farmer v. Brennan standard for deliberate indifference in failure to protect claims, potentially lowering the bar for establishing Eighth Amendment violations by prison officials in all-female facilities.

Introduction

Former inmate Christina Chao brought a 42 U.S.C. § 1983 action against prison guard Moises Ballista and four prison officials at South Middlesex Correctional Center (SMCC) for damages arising from alleged sexual misconduct.1 Chao claimed that Ballista sexually abused her while she was an inmate, thereby violating her Eighth Amendment right to be free from cruel and unusual punishment.2 Chao also claimed that the prison officials, including SMCC Superintendent Kelly Ryan, violated the Eighth Amendment and § 1983 by failing to protect her from Ballista’s abuse.3 Chao alleged that prison officials failed to

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1 Chao v. Ballista (Chao I), 772 F. Supp. 2d 337, 341 (D. Mass. 2011). The other defendants were prison supervisory officials Kathleen Dennehy, Commissioner of the Massachusetts Department of Correction; Kelly Ryan, Superintendent of SMCC; Randy Azzato, Director of Security of SMCC; and Chris Tortora, Training Officer of SMCC. Id. at 341–42.


3 Chao I, 772 F. Supp. 2d at 341. Chao also claimed that the supervisory officials violated the MCRA by interfering with her civil rights to bodily integrity and to be free from sexual abuse. Id. at 341, 359; see § 11H–I. To establish a claim under the MCRA, Chao needed to show that the defendants interfered or attempted to interfere with her exercise or enjoyment of rights secured by the U.S. Constitution or the laws of Massachusetts by
adequately train their officers, investigate rumors of abuse, and ensure safe prison conditions.\(^4\)

The United States District Court for the District of Massachusetts denied Ballista’s and Superintendent Ryan’s motions for summary judgment because there remained genuine issues of material fact.\(^5\) At trial, a jury found that Ballista’s conduct was “intentional, willful, wanton or malicious,” and violative of the Eighth Amendment.\(^6\) Although Superintendent Ryan’s “conduct was not intentional, willful, wanton or malicious,” a jury found that she violated Chao’s Eighth Amendment right to be free from cruel and unusual punishment by failing to protect her from Ballista.\(^7\) Both Ballista and Superintendent Ryan moved for either a judgment notwithstanding the verdict or a new trial, arguing that the evidence against them was insufficient.\(^8\) The district court denied those motions.\(^9\)

In denying both the defendants’ summary judgment and post-trial motions, the court applied the standard for deliberate indifference in failure to protect claims set forth by the Supreme Court in Farmer v. Brennan.\(^10\) In its application, however, the district court implicitly expanded the limits of the Farmer standard to suggest a presumption of constitutional-level harm in all-female prisons.\(^11\) Although the court drew thoughtful attention to the unique vulnerabilities of the female inmates, such a presumption may lower the bar for establishing Eighth Amendment violations by prison officials in all-female facilities.\(^12\)

\(^4\) See Chao I, 772 F. Supp. 2d at 359. The court granted summary judgment on the MCRA claims in favor of the supervisory officials, but denied summary judgment for Ballista. Chao I, 772 F. Supp. 2d at 360.

\(^5\) Id. at 343, 350–51 (reasoning that “[t]here is enough about the prison environment—and this case in particular—that requires a trial”). The claims against prison official defendants Azzato and Tortora were dismissed at summary judgment and trial, respectively, and a jury found that defendant Dennehy did not violate Chao’s Eighth Amendment rights. Chao v. Ballista (Chao II), 806 F. Supp. 2d 358, 363, 379 (D. Mass. 2011); Chao I, 772 F. Supp. 2d at 362.

\(^6\) Chao II, 806 F. Supp. 2d at 363.

\(^7\) Id. The other supervisory officials were not found liable for failure to protect Chao.

\(^8\) Id.

\(^9\) Id. at 383.


\(^11\) See Chao I, 772 F. Supp. 2d at 351, 353 (introducing evidence into the Farmer standard for failure to protect beyond conditions specific to SMCC or Chao).

\(^12\) See Chao II, 806 F. Supp. 2d at 371; Chao I, 772 F. Supp. 2d at 343, 351, 353.
I. Chao’s Failure to Protect Claim and the Introduction of the Farmer Standard

At the time of Chao’s incarceration, SMCC had recently transitioned from an all-male to an all-female facility, and accommodating that change was not entirely successful.\(^{13}\) As a minimum security prison, SMCC was more “akin to a college dormitory” than a traditional prison.\(^{14}\) There had been few staffing changes when SMCC transitioned to an all-female population, resulting in male officers being posted directly outside the unlocked rooms of female inmates.\(^{15}\) There were also many areas of the prison facility where sex could go undetected, as there were few surveillance cameras on the premises.\(^{16}\)

Chao and Ballista had “fifty to one hundred sexual encounters” in the minimum security facility.\(^{17}\) Chao developed romantic feelings for Ballista, and at one point she asked to be placed in a special program to be nearer to him.\(^{18}\) Ballista flirted with Chao and provided her with benefits, such as giving her advance warning when her room would be searched for contraband and allowing her to use his cell phone to call her children.\(^{19}\) Over time, Chao and Ballista’s sexual encounters became more one-sided.\(^{20}\) Ballista would come into Chao’s room two or three times a night and force her to perform fellatio against her will.\(^{21}\) Chao had experienced sexual abuse in the past and, though she began to feel used, she was afraid that if she ended the relationship she would be put into solitary confinement or transferred to a higher security facility.\(^{22}\) Chao therefore did not report the abuse, and when officials heard rumors from other inmates and asked her about it, she denied her relationship with Ballista.\(^{23}\)

SMCC officials ordered two investigations of sexual activity at SMCC, but the investigator found that allegations against Ballista were “unsubstantiated.”\(^{24}\) Superintendent Ryan ordered a third and final investigation into allegations against Ballista after receiving an anony-

\(^{14}\) Id. at 344.
\(^{16}\) Chao I, 772 F. Supp. 2d at 354.
\(^{17}\) Id. at 356.
\(^{18}\) Id. at 343.
\(^{19}\) Id. at 343–44.
\(^{20}\) Id. at 344.
\(^{21}\) See Chao I, 772 F. Supp. 2d at 344.
\(^{22}\) Chao II, 806 F. Supp. 2d at 368–69; Chao I, 772 F. Supp. 2d at 346.
\(^{23}\) Chao I, 772 F. Supp. 2d at 346.
\(^{24}\) Id. (internal quotations omitted).
mous letter describing Chao and Ballista’s sexual relationship. During this investigation, Chao finally admitted to the relationship. Upon her release from prison, Chao brought a § 1983 claim under the Eighth Amendment in the district court. “It is well established that sexual abuse by a prison guard may give rise to an Eighth Amendment claim” because sexual abuse is in no way considered a legitimate penological goal. In part, Chao alleged that Superintendent Ryan violated her right to be free from cruel and unusual punishment by failing to protect her from Ballista’s sexual abuse.

In analyzing Chao’s Eighth Amendment claim and ultimately denying summary judgment, the district court relied on the Supreme Court’s standard in Farmer v. Brennan. In Farmer, the Court explained that in order to prevail on a claim against a prison official under the Eighth Amendment, a plaintiff must first demonstrate that the official’s alleged conduct is “objectively, ‘sufficiently serious’” so as to constitute “‘the unnecessary and wanton infliction of pain . . . .’” Second, the plaintiff must show that the prison official had a “sufficiently culpable state of mind” by showing “‘deliberate indifference’ to inmate health or safety . . . .” The district court therefore analyzed Chao’s claims using the two required prongs of the Farmer standard: (1) objectively, sufficiently serious harm; and (2) deliberate indifference—a “more complex” subjective prong that looks into the mind of the official.

The defendants argued that Chao was not abused in a way that gave rise to an Eighth Amendment claim because she voluntarily engaged in the sexual relationship with Ballista. Courts continue to debate what level of harm resulting from sex in prisons may rise to the level of “sufficiently serious,” especially in instances of consensual sex-

25 Id.
26 Id.
27 Id. at 341.
28 Chao II, 806 F. Supp. 2d at 374; see Farmer v. Brennan, 511 U.S. 825, 833–34 (1994) (quoting Rhodes v. Chapman, 452 U.S. 337, 347 (1981)) (reasoning that the treatment a prisoner receives when incarcerated is subject to scrutiny under the Eighth Amendment and that “[b]eing violently assaulted in prison is simply not ‘part of the penalty that criminal offenders pay for their offenses against society’”).
29 See Chao I, 772 F. Supp. 2d at 341.
32 Id. (quoting Wilson, 501 U.S. at 297, 302–03).
33 Id.; Chao I, 772 F. Supp. 2d at 347, 353.
34 Chao I, 772 F. Supp. 2d at 347–48.
ual relations.35 The district court nonetheless denied summary judgment and concluded that the seriousness of the harm to Chao was a genuine question of material fact for a jury.36

It was the second, subjective prong of the Farmer standard—the deliberate indifference inquiry—that posed a more difficult question.37 This prong requires insight into the minds of the defendant officials in the particular circumstances of the case to determine whether they had a sufficiently culpable state of mind.38 While “[i]t is not necessary that the official be aware of the actual harm,” the plaintiff must prove that the official was “aware of a substantial risk of harm.”39 The Farmer Court explained that “a prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety...”40 The prison official “must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.”41

A prison official’s requisite knowledge of a substantial risk is a question of fact.42 While liability cannot be premised on obviousness or constructive notice alone, the requisite knowledge can be demonstrated “in the usual ways, including inference from circumstantial evidence...”43 In applying the Farmer standard, the court considered the prison’s physical conditions, the guards’ training, and the prison offi-

35 See Farmer, 511 U.S. at 834; Schwenk v. Hartford, 204 F.3d 1187, 1196–97 (9th Cir. 2000) (quoting Felix v. McCarthy, 939 F.2d 699, 702 (9th Cir. 1991)) (reasoning that “no lasting physical injury is necessary” for an Eighth Amendment claim; “the only requirement is that the officer’s actions be offensive to human dignity,” and “sexual assault on an inmate by a guard...is deeply offensive to human dignity”) (internal quotations omitted). But see Boddie v. Schnieder, 105 F.3d 857, 861 (2nd Cir. 1997) (reasoning that, although sexual abuse may meet the objective element of a constitutional test under the Eighth Amendment, the individual incidents in which the plaintiff was allegedly “verbally harassed, touched, and pressed against” were neither “objectively, sufficiently serious” nor “cumulatively egregious”) (internal quotations omitted); Freitas v. Ault, 109 F.3d 1335, 1339 (8th Cir. 1997) (holding that “welcome and voluntary sexual interactions, no matter how inappropriate, cannot as a matter of law constitute ‘pain’ as contemplated by the Eighth Amendment”); Phillips v. Bird, No. Civ.A. 03-247-KAJ, 2003 WL 22953175, at *6 (D. Del. Dec. 1, 2003) (“Consensual sex between two adults does not constitute cruel and unusual punishment simply because it occurs within the walls of a prison.”).

36 Chao I, 772 F. Supp. 2d at 350–52.

37 See id. at 353–54.

38 See Farmer, 511 U.S. at 834; Wilson, 501 U.S. at 297–99.

39 Chao I, 772 F. Supp. 2d. at 353; see Farmer, 511 U.S. at 842.

40 511 U.S. at 837.

41 Id.

42 Id. at 842.

43 See id. at 841–42.
cials’ response to rumors and allegations. The court denied the defendants’ motions for summary judgment and their subsequent posttrial motions. The court explained that a factfinder could come to one of two plausible conclusions. A jury could determine that the prison officials “acted reasonably” and made comprehensive efforts to protect inmates. A jury could also find, however, “that the defendants failed to adequately train their staff and allowed . . . sexual predators to run rampant, to coerce sexual favors, [and] to revictimize women who were already vulnerable.” A jury could therefore find that the defendants “exhibit[ed] precisely the kind of ‘deliberate indifference’ envisioned by the Eighth Amendment.”

II. ELEMENTS OF HARM IN FAILURE TO PROTECT CLAIMS AND THE APPLICATION OF THE FARMER STANDARD

The subjective prong of the Farmer standard, deliberate indifference, posed a complex question for the jury in determining that the prison officials had a “sufficiently culpable” mindset. In cases in which the defendant allegedly failed to protect, as in Chao, there may be a dearth of testimony about what inferences the defendant actually drew. In such cases, however, “a genuine issue of material fact as to deliberate indifference can be based on a strong showing on the objective component [of the Farmer standard].” The Farmer Court implicitly reasoned that the objective and subjective prongs are intertwined. The objective prong, though a separate component, may nonetheless inform the subjective, deliberate indifference prong. Therefore, the objective prison conditions may inform whether a defendant could infer risks of serious harm and was deliberately indifferent.

44 Chao I, 772 F. Supp. 2d at 356.
45 See Chao II, 806 F. Supp. 2d at 376, 379; Chao I, 772 F. Supp. 2d at 356, 359.
47 Id. at 359.
48 Id.
49 Id.
51 See Estate of Carter v. City of Detroit, 408 F.3d 305, 307, 313 (6th Cir. 2005) (discussing a lack of explicit evidence that defendant actually drew inference of harm in deliberate indifference claim for failure to provide medical care to detainee).
52 See Farmer, 511 U.S. at 840–42; Carter, 408 F.3d at 312–13.
53 See Farmer, 511 U.S. at 840–42; Carter, 408 F.3d at 312–13.
54 See Farmer, 511 U.S. at 840–42; Carter, 408 F.3d at 312–13.
55 See Chao I, 772 F. Supp. 2d at 353–54; Carter, 408 F.3d at 313.
Chao alleged that the objective prison conditions of SMCC, such as the design of the facility and the heavily-male, minimally-trained staff, “created a substantial risk of harm that was known to the defendants . . . .”\textsuperscript{56} Although the court found that Superintendent Ryan and the other officials were attuned to the safety of inmates because they were involved in running the prison, discerning actual knowledge in the mind of prison officials is a considerable task for the factfinder.\textsuperscript{57} The court nonetheless decided that a jury could conclude that the officials knew about a risk of harm within the prison because it was objectively obvious.\textsuperscript{58} Both inmates and prison guards knew SMCC to have a “highly-charged sexual environment.”\textsuperscript{59} At least two of the guards, including Ballista, were having sexual contact with multiple female inmates.\textsuperscript{60} Inmates “kept the peek” for other inmates engaging in sex with guards, and inmates held “story time” to discuss sexual details about guards.\textsuperscript{61} According to Chao, “sex was so common that the horticultural room, which had beds in it and was directly across from the staff locker room, was called the ‘Hotel.’”\textsuperscript{62}

The obviousness of the sexually-charged environment of SMCC may have allowed Superintendent Ryan to infer a risk of harm to inmates, but \textit{Farmer} requires something more than the possibility of an inference.\textsuperscript{63} The subjective prong of the \textit{Farmer} standard requires that the officials actually drew the inference that the particular conditions at SMCC, whether obvious or not, posed a significant risk of harm to female inmates.\textsuperscript{64} The court recognized that “[i]t is not enough to show that they should have known of these conditions but rather, that they actually did know. That bar is high.”\textsuperscript{65} Deliberate indifference encapsulates a “narrow band of conduct,” in that a prison official can only be

\textsuperscript{56} Chao I, 772 F. Supp. 2d at 354.
\textsuperscript{57} See id. at 353, 355.
\textsuperscript{58} Id. at 353–56; see Farmer, 511 U.S. at 842–43; Calderón-Ortiz v. LaBoy-Alvarado, 300 F.3d 60, 65 (1st Cir. 2002) (finding that prisoner sufficiently pled deliberate indifference by alleging prison officers were aware that pre-trial detainees were being housed without regard to security needs, and that this was an obviously dangerous practice); Giroux v. Somerset County, 178 F.3d 28, 33 (1st Cir. 1999) (finding that inmate was on “cell feed status” may have been obvious indicator that inmate was at risk of attack from other inmates to implicate police sergeant’s deliberate indifference to inmate’s potential harm).
\textsuperscript{60} Chao II, 806 F. Supp. 2d at 367.
\textsuperscript{61} Id. at 368 (internal quotations omitted); Chao I, 772 F. Supp. 2d. at 345.
\textsuperscript{62} Chao I, 772 F. Supp. 2d. at 345.
\textsuperscript{63} See Farmer, 511 U.S. at 837; Chao I, 772 F. Supp. 2d at 354–55.
\textsuperscript{64} See Farmer, 511 U.S. at 837; Chao I, 772 F. Supp. 2d. at 355.
\textsuperscript{65} Chao I, 772 F. Supp. 2d at 355; see Farmer, 511 U.S. at 837.
found to be deliberately indifferent if he actually knew about the risk of harm.66

In applying the Farmer standard, however, the court amplified the objective obviousness of these potential harms by discussing the prison experience of all-female facilities generally, rather than only relying on the specific circumstances at SMCC.67 The court explained that female inmates are “particularly vulnerable” because of the prevalence of sexual, mental, and physical abuse they experience before their imprisonment.68 “Women bring their histories to prison,” and “this abuse has lasting consequences for them.”69 For female inmates who have a history of abuse, sexual abuse by guards may retraumatize them.70

The court also emphasized that female inmates commonly have male dependency problems.71 This is exacerbated by the “inherently imbalanced” relationship between female inmates and male guards because the guard has “absolute power,” and the female inmate must rely on him for even basic necessities.72 Moreover, the court recognized that as a result of improper relationships with guards, vulnerable female inmates may experience a number of physical symptoms including depression, frequent headaches, irritability, nausea, and insomnia.73 This discussion brought thoughtful attention to the unique vulnerabilities of female inmates.74 The court nonetheless went beyond the particular experience of Chao and the circumstances at SMCC in its discussion about the objective obviousness of a risk of harm at SMCC.75

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67 Compare Chao I, 772 F. Supp. 2d at 350–52 (discussing female inmates generally), with Farmer, 511 U.S. at 829, 834, 848–49 (considering specific qualities of transsexual inmate, including inmate’s “youth and feminine appearance,”” in combination with objective safety characteristics of that particular facility), and Taylor v. Michigan Dep’t of Corr., 69 F.3d 76, 81–83 (6th Cir. 1995) (discussing “a particular class of persons,” such as passive, “small, youthful prisoners [who] are especially vulnerable to sexual pressure” within the context of that particular facility), and id. at 87 (Wellford, J., dissenting) (reasoning that in comparison to “the characteristics of the pre-operative transsexual in Farmer,” even factors such as youthful and small are too subjective to hold warden liable).

68 Chao I, 772 F. Supp. 2d at 351.

69 Id.

70 See id.

71 See id.

72 See id. at 350–51.

73 See Chao I, 772 F. Supp. 2d at 351.

74 See id. at 351, 353–54.

75 See id. (citing Calderón-Ortiz, 300 F.3d at 65–66) (finding that prison officials can be liable for a failure to protect an inmate when it was obvious that the structure or practices of the prison created a substantial risk of harm).
Although Farmer implied that objective conditions could inform the subjective inquiry of whether a defendant was deliberately indifferent, Farmer reflected a cautious approach to imposing liability.\(^\text{76}\) The Farmer Court explained that “[t]he Eighth Amendment does not outlaw cruel and unusual conditions; it outlaws cruel and unusual punishments.”\(^\text{77}\) “[A]n official’s failure to alleviate a significant risk that he should have perceived but did not . . . cannot . . . be condemned as the infliction of punishment.”\(^\text{78}\) Therefore, courts may require that prison officials knew of a “substantial risk of serious harm to a particular class of persons . . . .”\(^\text{79}\) Any circumstantial evidence presented to the jury should remain within the bounds of the class of persons similarly situated to the plaintiff at that particular prison.\(^\text{80}\) Prison officials cannot be held liable for failure to protect inmates when the officials were unaware of the risks, lest the court establish a standard approaching strict liability.\(^\text{81}\) The district court in Chao introduced new characteristics of the female prison experience from which prison officials could now be expected to infer sufficiently serious harm.\(^\text{82}\)

### III. DELIBERATE INDIFFERENCE AND THE RISK OF CREATING A PRESUMPTION OF HARM IN FEMALE PRISONS

The district court applied a reasoned application of the Farmer standard in allowing Chao to go to the jury, but the court’s discussion of the vulnerabilities of female inmates was problematic.\(^\text{83}\) While referring

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\(^{76}\) See Farmer, 511 U.S. at 834, 837–38, 840–41; Carter, 408 F.3d at 312–13.

\(^{77}\) See 511 U.S. at 837 (internal quotations omitted).

\(^{78}\) Id. at 838.

\(^{79}\) See Taylor, 69 F.3d at 81.

\(^{80}\) See Farmer, 511 U.S. at 829, 834, 848–49 (considering specific qualities of transsexual inmate in combination with objective safety characteristics of that particular facility in determining prison official liability); Taylor, 69 F.3d at 81–83 (determining that liability should be imposed only when prison official should have known that inmate was part of an identifiable class of persons who risk being singled out for attack, and applying the Farmer framework within the context of that particular facility).

\(^{81}\) See Farmer, 511 U.S. at 834, 837–38; Chao I, 772 F. Supp. 2d at 353.

\(^{82}\) See Chao I, 772 F. Supp. 2d. at 350–52.

\(^{83}\) See Chao v. Ballista (Chao I), 772 F. Supp. 2d 337, 350–52, 355, 359 (D. Mass. 2011) (finding denial of summary judgment appropriate where plaintiff sets forth specific facts to show a genuine issue of fact for trial); see also Farmer v. Brennan, 511 U.S. 825, 829, 834, 848–49 (considering specific qualities of transsexual inmate and objective safety characteristics of that particular facility); Taylor v. Michigan Dep’t of Corr., 69 F.3d 76, 81–83 (6th Cir. 1995) (discussing the need for knowledge of risk to “a particular class of persons” and considering the context of that particular facility); id. at 87 (Wellford, J., dissenting) (reasoning that in comparison to “the characteristics of the pre-operative transsexual in Farmer,” even factors such as youthful and small are too subjective to hold warden liable).
to its in-depth discussion of the unique vulnerabilities of female inmates as a factual “backdrop,” the court implied a presumption of sufficiently serious harm within the walls of SMCC. The court’s inclusion of outside evidence of female inmates’ susceptibility to harm imputed objective harm to all inmates at SMCC. This presumption that all female inmates enter prison primed for constitutional harm effectively lowers the bar of objectively sufficiently serious harm, and juries may use this to inform the subjective prong of Farmer—what officials actually inferred from the objective prison conditions.

Providing the jury in Chao with general information about female inmates’ unique vulnerabilities may encourage the conclusion that Superintendent Ryan actually drew the inference of substantial harm to Chao. While this presumption of objectively sufficiently serious harm in all-female prisons does not relieve a plaintiff of her duty to present specific facts showing a genuine issue for trial, it could lessen the amount of evidence a plaintiff must produce. The court found that “the jury necessarily found the harm in this case, in these circumstances to be sufficiently serious.” Yet a presumption of constitutional harm may have coaxed the jury to construe evidence in light of the objectively sufficiently serious harm that jurors were told female inmates necessarily face as a condition of incarceration.

The finding that Superintendent Ryan failed to protect Chao from constitutional harm suggests that the court allowed the jury to step away from the limitations of Farmer toward a presumption of pre-existing harm and the establishment of a strict liability approach. Farmer, however, implicitly rejected a strict liability approach in in-

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84 See Chao I, 772 F. Supp. 2d at 351–52.
86 See Farmer, 511 U.S. at 834, 837; Chao II, 806 F. Supp. 2d at 371–72, 375–76; Chao I, 772 F. Supp. 2d at 353–54.
87 See Chao II, 806 F. Supp. 2d at 371–72, 375–76; Chao I, 772 F. Supp. 2d at 350–52. While the external factors the court discussed could show objectively sufficiently serious harm, as required by the first prong of the Farmer standard, Chao’s allegations were rooted in the particular objective conditions at SMCC from which officials could specifically infer a substantial risk of serious harm. See Chao I, 772 F. Supp. 2d at 354–55 (“Chao alleges that the prison conditions created a substantial risk of harm that was known to the defendants—both in terms of the design of the prison and the training and supervision of the officers [at SMCC].”).
89 Chao II, 806 F. Supp. 2d at 375.
90 See id. at 371–72, 375–76; Chao I, 772 F. Supp. 2d at 350–52.
91 See Farmer, 511 U.S. at 843; Chao II, 806 F. Supp. 2d at 371–72, 375–76; Chao I, 772 F. Supp. 2d at 350–52.
stances of prisoner harm. The Farmer Court stated that not every injury “translates into constitutional liability for prison officials responsible for the victim’s safety.” The district court’s discussion situated broader female inmate vulnerability within the narrative of Chao’s specific experience at SMCC. While courts should perhaps distinguish between the experiences of inmates at all-male and all-female prisons when determining risks of objective harm, reflexively emphasizing inmate female vulnerabilities may lower the threshold for constitutional liability.

Ambiguities now exist as to a court’s potential to further broaden the Farmer standard. In determining potential objective harm, a court now seems at liberty to consider a wider range of external evidence. The district court’s consideration of evidence not necessarily specific to Chao or other similarly situated female inmates at SMCC expanded the Farmer framework and allowed the court to look beyond objective indicators of harm from which officials could reasonably be expected to infer substantial risk. The district court’s application of the Farmer standard may allow prison official liability to be predicated not on the presence of objectively sufficiently serious harm and deliberate indifference, but on a weaker foundation of evidence about the vulnerability of female inmates in general.

 Conclusion

Repetitive and willful sexual abuse at the hands of a prison guard serves no legitimate penological objective. Being repeatedly forced to perform sexual acts “is simply not ‘part of the penalty that criminal of-

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92 See 511 U.S. at 834.
93 See id.
94 See Chao I, 772 F. Supp. 2d at 350–52.
95 See Farmer, 511 U.S. at 837–38; Chao I, 772 F. Supp. 2d. at 350–52.
98 See Chao I, 772 F. Supp. 2d at 347–52; see also Farmer, 511 U.S. at 829, 834, 848–49 (considering specific qualities of transsexual inmate, including inmate’s “‘youth and feminine appearance,’” in combination with objective safety characteristics of that particular facility); Taylor, 69 F.3d at 81–85 (discussing “a particular class of persons,” such as passive, “small, youthful prisoners [who] are especially vulnerable to sexual pressure” within the context of that particular facility); id. at 87 (Wellford, J., dissents) (reasoning that in comparison to “the characteristics of the pre-operative transsexual in Farmer,” even factors such as youthful and small are too subjective to hold warden liable).
99 See Farmer, 511 U.S. at 829, 834, 848–49; Taylor, 69 F.3d at 81–83; id. at 87 (Wellford, J., dissents); Chao I, 772 F. Supp. 2d at 350–55.
fenders pay for their offenses against society.”100 The district court exercised sound judgment in allowing the case to go to a jury and skillfully fleshed out the Farmer v. Brennan framework as it has been applied in courts since its inception. Drawing attention to the unique safety challenges of the all-female prison experience, the court recognized the importance of protecting a potentially vulnerable class of persons. Nevertheless, the court may have gone too far in its application of Farmer by conflating potentially harmful prison conditions specific to Chao at SMCC with harms associated with female inmates generally. In so doing, the court implied a presumption of constitutional harm in all-female prisons, effectively placing prison officials working in those facilities closer to meeting the subjective deliberate indifference threshold under the Farmer standard. If followed by other courts, the district court’s reasoning could lower the bar for plaintiffs in establishing Eighth Amendment violations by prison officials in all-female facilities.