

No. 20-6812

No.

# ORIGINAL

**IN THE**

**SUPREME COURT OF THE UNITED STATES**

WASHINGTON D.C. 20843

Supreme Court, U.S.  
FILED

NOV 04 2020

**OFFICE OF THE CLERK**

Keith McCay — PETITIONER  
(Your Name)

(Your Name)

vs.

MICHAEL ATTORTON — RESPONDENT(S)

**ON PETITION FOR A WRIT OF CERTIORARI TO**

Seventh Cir. Appeal Court  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

**PETITION FOR WRIT OF CERTIORARI**

Karen McCay  
(your Name)

(Your Name)

4001 East 38st

(Address)

Indianapolis, IN 46218  
(City, State, Zip Code)

(City, State, Zip Code)

317-798-9443

**(Phone Number)**

## QUESTION PRESENTED

1. Did the Appeals Court err though McCoy might have had a liberty interest in avoiding transfer to a mental hospital for involuntary psychiatric treatment, see Vitex, 445 US. at 487-88, that interest does not extend to his inter-prison transfer to a wig for the physical and mentally ill, a move which did not contravene state law and did not carry the same significant and stigmatizing consequences as transfer to a mental hospital for involuntary psychiatric treatment
2. Did the Appeal Court err because McCoy wished to proceed pro se, we are unable to consider issues argued in the Amicus brief that have not been preserved or advanced by McCoy and in his pro se appellate brief, that mean the court will not address any possible equal protection claim or issues related to discovery ruling, issues that were advanced solely by Amicus curiae.
3. DID the Appeal Court err McCoy Offered no evidence contradicting the jail logS account of the Incident

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## List of Parties Air related cases

John Buncich terminated:4/23/2015  
Mr, Mark Kalusinki terminated 4/23/2015  
Me Gentry terminated 4/23/2015  
Mrs Brown terminated 4/23/2015  
Mrs calvery terminated 4/23/2015  
Ms Gonzales terminated 4/23/2015  
Ms Kristen terminated 4/23/2015  
Mr Michael terminated 4/23/2015  
Mr Attenten  
Mr Roberts terminated 4/23/2015  
Nieces Gore  
Karen Kennedy terminated 4/23/2015  
Douce Thomas terminated 4/23/2015  
Mr Eric terminated 4/23/2015  
Ms Leto terminated 4/23/2015  
Y Hogan  
Ms Pierson  
Joe Manchaca  
Eric Boss terminated 4/23/2015  
Mr Revess terminated 4/23/2015  
Unknown male officer Transported him to medical separation 9/21/2012  
Lake county jail terminated 4/23/2015

### RELATED CASES

#### Table of authorities

#### Cases

Binning El v Long 482 f 3D 923 924-25(7th cir 2007

Antonelliv Shehan, 81 f 3D 1422 1432(7th cir 1995

Sandin v Conner,515US.472,484(1995)

### **Vitex v Jones 445. US. at 480(1980)**

### Youngberg v Romeo 457 US 307(1982)

**Yock wo v Hopkins, 118 US 356 (1986)**

Duncan v Duckworth, 664 f 2d 655(8th cir 1981)

Snider intern. Corp v Town of Forest Height.MD. 739 f 3D 140,145(4th cir 2014

Farnham, 394 f 3D 469,477(7th cir 2005)

Bell, 441 US 520, 535 n 16(1979)

## Shelby City jail inmates v Westlake 798 2d, 1085,1087(7th cir 1986)

Jackson v Duckworth 955 f 2 d 21 22 (7th cir 1992)

## Statutes

|   |   |
|---|---|
| 28 U.S.C. § 1257 .....                        | 1   |
| <b>Constitutional Provisions</b>              |   |
| United States Constitution, Amendment V ..... | 1, 6 United States Constitution,                  |
| Amendment VI.....                             | 5 United States Constitution, Amendment XIV ..... |

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at NO 18-1086 Keith IV Toy v Atherton; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

reported at Case 2:14-cv-00385-PBS; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

## JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was July 2, 2020.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: August 5 2020, and a copy of the order denying rehearing appears at Appendix C.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_. A copy of that decision appears at Appendix \_\_\_\_\_.

[ ] A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

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**From:** Rhylonda Rhodes <rhylondar@icloud.com>  
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**Subject:** [EXTERNAL]

## Constitutional and statutory provisions involved

1.1 Article 14 of the Constitution of India reads as under: All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection

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**From:** Rhylonda Rhodes <rhylondar@icloud.com>  
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**Subject:** [EXTERNAL] STATEMENT OF CASE

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#### STATEMENT OF CASE

In Sandin The protections of the Due Process Clause, both substantive and procedural, may be triggered when the State, by the affirmative acts of its agents, subjects an involuntarily confined individual to deprivations of liberty which are not among those generally authorized by his confinement. See, e.g., *Whitley v. Albers*, *supra*, 475 U.S., at 326-327, 106 S.Ct., at 1087-1088 (shooting inmate); *Youngberg v. Romeo*, *supra*, 457 U.S., at 316, 102 S.Ct., at 2458 (shackling involuntarily committed mental patient); *Hughes v. Rowe*, 449 U.S. 5, 11, 101 S.Ct. 173, 177, 66 L.Ed.2d 163 (1980) (removing inmate from general prison population and confining him to administrative segregation); *Vitek v. Jones*, 445 U.S. 480, 491-494, 100 S.Ct. 1254, 1262-1264, 63 L.Ed.2d 552 (1980) (transferring inmate to mental health facility)

In *vitex*- This court held Appellee, a convicted felon, was transferred from state prison to a mental hospital pursuant to a Nebraska statute (§ 83-180(1)) which provides that, if a designated physician or psychologist finds that a prisoner "suffers from a mental disease or defect" that "cannot be given proper treatment" in prison, the Director of Correctional Services may transfer the prisoner to a mental hospital. In an action challenging the constitutionality of § 83-180(1) on procedural due process grounds, the District Court declared the statute unconstitutional as applied to appellee, holding that transferring him to the mental hospital without adequate notice and opportunity for a hearing deprived him of liberty without due process of law contrary to the Fourteenth Amendment, and that such transfers must be accompanied by adequate notice, an adversary hearing before an independent decisionmaker, a written statement by the factfinder of the evidence relied on and the reasons for the decision, and the availability of appointed counsel for indigent prisoners. The court permanently enjoined the State from transferring appellee (who meanwhile had been transferred back to prison) to the mental hospital without following the prescribed procedures. Subsequently, appellee was paroled on condition that he accept mental treatment, but he violated that parole and was returned to prison. Relying on appellee's history of mental illness and the State's representation that he was a serious threat to his own and others' safety, the District Court held that the parole and revocation thereof did not render the case moot, because appellee was still subject to being transferred to the mental hospital.

Held: The judgment is affirmed as modified. Pp. 445 U. S. 486-497; 445 U. S. 497-500.

#### THE TRANSFER OF MCCOY TO THE MENTAL HEALTH FLOOR:

The Last few times McCoy have been housed at the lake county jail tha classification sgt have forced him to be housed on the mental health floor were he was infear for his health and safety I'd de 56  
On September 20, 2012.McCoy was incarcerated and booked into the lake county jail.SA201. At the time, McCoy wore Nail polish on his fingernails .Id. During the booking process he was screened for medical issues and cleared. SA201-02;SA157.A mental health official reported That McCoy" feels safe in (general population)"It is suitable to go into general population without threat to his sexuality. SA171:seeSA201 .Therefore.McCoy was assigned to general population housing.SA201-02:SA157,

When McCoy was in the general populated cell with those who were also done with the booking intake process and waiting to be confined to a lake county assigned housing section , McCoy then seen Niecey Gore who use to Force him to be house on the mental health floor Even though he had been cleared by medical and mental health, McCoy felt that The Wardon was there to have the classification department sgt pull him out the group of inmates a place him back on the mental health floor . The classification sgt then came , when the classification department sgt called McCoy name he then had to walk pass Niecey Gore ,

While being transferred to general population housing unit. McCoy was singled out by Sergeant Jose Menchaca.SA76. Menchaca noticed McCoys fingernail polish and act like he did not want to touch McCoy. SA 77.Menchaca Sent other detainees to their housing sections with another officer. I'd. Menchaca then separately placed McCoy in general population I'd,

After an hour or two, And without notice or cause, McCoy was removed to a medical segregation cell. SA157;SA77-78. McCoy's cell was effectively solitary confinement cell and for inmates with a contagion Disease and are mental defect, When McCoy was Placed on the mental floor Guards placed him In an unclean cell in the cell their was hair on the bed Podium, a yellow stained Piece of toilet paper stuck to the floor on the side of the bed then seen to be the last inmate bodily fluids ,hair and soap cum in the sink from the last inmate shaving and Urion on toilet set ,

Guards and medical staff denied him a pen to write the classification department to be moved,

After being placed in medical segregation .McCoy was giving an Anniversary hearing for every one placed on the mental health floor see SA162.SA271.McCoy told the medical staff that he has been cleared to be with the general population ,and believe that he had been placed in medical segregation due to discrimination based on his sexual orientation SA16:see also A5.Medical staff clear McCoy a second time is suitable for general population.Yet did not remove him despite he was misclassified either,

Guards denied McCoy a grievance McCoy called the Guard a bitchThe guard then retaliated against McCoy by placing him with the more mentally ill inmates on the mental health floor then he usually went to range with, refused to take McCoy to appointment with mental health staff Shut off his phone call,

Next lie To a state inspector during a state inspection on the mental health floor to keep him on the medical floor,by telling him McCoy was placed on the mental health floor by mental health staff for mental health reasons after the inspector noticed their Was not a sticker on McCoy cell door to address was he placed on the floor by medical or mental health staff ,

Next Shut off his water in cell that McCoy was using Flushing his toilet Repeatedly to block out a inmate on the mental health floor telling inmates LCJ and medical staff Forced McCoy to be housed on medical floor because he had Aids and miss with little kids, Guards feed him suecide meals and placed him on 30 min ranges when he surprise to get a full hour  
SA205;SA162;

Next McCoy went to court ,when he came back Guards placed him in a suicide cell,were there was fetus still Visabe on the wall and Straight across from a inmate McCoy had been Arguing with, and had been telling the inmates LCJ, and medical staff was froceing him to be housed on the medical floor because McCoy had aids a miss with little kids

A Guard then placed McCoy cleared by mental health on range with inmates placed on the floor by mental health staff and with the inmate McCoy had been arguing with and it was surprise to been reported to keep Separate , with a broom mop , mop bucket still left in the day room by staff , McCoy was in a fight with the inmate (placed on the floor by mental health and stabbed in the leg severl times With a piece of aa broken broom handle , guards and medical staff responded to the incident, McCoy was not taken for medical care until a day later, when a nurse came around and McCoy told the nurse that he was still Bleeding,

Guard open him mail marked legal not infront of him,

Guards failed to take him to court despite he had court

## 1. Procedural History

McCoy who had been placed on mental health floor despite his clearance by mental health brought civil rights action against classification officer, warden, doctor during his anniversary hearing and the Sheriff because the classification sgt placed him on the mental health floor despite his and mental health Evaluator had determined this was unnecessary, warden for retaliation for giving the classification department sgt the ok, the doctor performances anniversary hearing because he did not remove him out of medical segregation Despite he was missed class either and the Sheriff For failure to Train and supervise

McCoy sued guards, medical staff because he was placed in a in unclean cell on the mental floor and they did not give him cleaning serplys

Sued A Guard because she denied him a pen to write the classification department to be moved of the mental health floor

Sued A Guard because they denied him a grievance to file to be move out the mental floor

Sued A Guard because she retaliated against him by shutting off his cell water, feeding him suicide meal and placing him on 30 min range when he supposed to get a four hour and

Sued guards ,medical staff who had received complaints that he was placed on the mental health floor despite his clearance by mental health staff , and he was being retaliated against by a guard by shutting off his water in cell, feeding him suicide meals, and by placing him on 30min ranges and they did not protect him from the mistreatment by the Guard

Sued mental health staff and Warden because they received complaints that he was placed on the mental health floor despite his clearance , A Guards were retaliating against him, by denying him a grievance, shut off water in cell , feed him suicide meals and thet the guard were now retaliating against him by placing him in a suicide cell and they did not protect him from the mistreatment and or move him out the suicide cell

Sued guards because they placed him on range with the inmates placed on the the floor by mental health staff with a mop mop bucket and broom still left in the day room

as well as Guards and medical staff who failed to take him for medical care in which he was in a fight with another inmate and stabbed serverl times in the leg with a peace of a broken broom handle ,

Sued guards because they open his mail marked legal not in front of him and

Sued guards because they failed to take him for court

The district court then held that McCoy was unhappy about nearly Aspect of treatment he received at Lake county jail but the only to causes of action does he identify McCoy will

Seceeed in stateing o causes of actions is one is that Niecey Gore placed him on the Mental health floor despite his mental health evaluator had Determine this was unnecessary and

second against Guards who failed to take him for medical care in which he was in a fight with another Inmates and stabs Several times In the leg with a peace of a broken broom Handle officers responded to the incident and McCoy was not taken to medical care until a day or two when a Nurse came around and he told her his leg was still bleeding

McCoy then filed a motion to reconsider the named lake county medical provider and staff because they did not move him off the mental health floor dispute he was misclassified either I'd at De24

The district court then held McCoy motion to reconsider denied because In De Jesus Odom 578 578 Fed.Appx.698,600(7th cir.3014), the Seventh Circuit upheld a grant of summary judgment for defendants where the defendants did not make any decisions or were not Personally involved in the placement decision leading to a Prisoner administration Segregation

Second Plaintiff contentions to any public employee who knows or should know about a Ro must do something to fix it is just an effort evade,By indirection, Monell's rule that pubic employees are Responsible for On but not for everyone else s, section 1983 establishes a species of tort law liability, and one distinctive feature of this nationS' tort law is that there is no general duty to rescue.

McCoy then filed a motion to reconsider the medical staff because he also said medical state also failed to take him fo medical care in which he was on a fight with another inmates and stabbed serverl times in the leg with a peace of a broken broom handle

The district court then held that it read the complaint and determined that their was only two claims does it identify states a cause of action one is that Nlecey Gore placed him on the mental health floor dispite his clearance and second against guards" who failed to take him for medical care in which he was in a fight with another inmates and stabbed in the leg serverl times with a peace of a broom handle

The District Court granted summary judgment for the Remaining Defendants

## 2. Direct appeal

McCoy asked this court if the rest of the defendants and claim the judge dismissed state a cause of action

And renewed his claims defendants violated his due process And equal protectionaccording to vitex v Jones

The Court of Appeals for the Seventh Circuit affirmed, 812 F.2d 298 (1987), holding that petitioners had not made out an actionable § 1983 claim for two alternative reasons. First, the court held to Establish a due process violation,McCoy needed to present evidence that the defendant deprive him of a liberty interest by imposing an atypical and significant hardship on (him)in relation to the ordinary incidents of prison life "Sandin v Conner,515US472,484(1995),taking together the conditions and duration of his term in segregation, see Marion v Columbia core. I still, 559 f 3D 693 697 (7th cir 2009).Accepting McCloys Characterization that He lived in a dirty cell near physical and mentally ill inmates, his conditions were not so atypical and significantly harsh as to implicate a liberty interest: see eg , Hardaway v Meyerhoff, 734 F. 740 744 (7th cir 2013)(

Moreover, He was not segregated for only three months, which, given The circumstances of his confinement,It's generally not long enough to trigger due process protections, see Marion, 559 f 3D at 6 9 7 - 97 n2(Characterizing up to 90 days And segregation as a relatively short period,Depending on the condition and imposed). Though McCoy may have a liberty interest in avoiding transfer to a mental hospital for involuntary psychiatric treatment, see vitex, 445 US . at 487 -88,That interest does not extend to his intro prison transfer to a wing for the physical and mentally ill,a move which did not contravene state law and did not carrothe same significant and stigmatizing consequences as transfer to a mental hospital for involuntary psychiatric treatment

Mr McCoy filed a petition for re- hearing with the Seventh circuit appeals court, renewing his argument that defendants acts violated his due process according to vitex v. Jones and or equal protection, and that he turned in evidence to support his medical claims at

The Savanth Circuit denied the petition for rehearing , Justice: ILANA DIMOND ROVNER,MICHAEL B BRENNAN, AMY J ST EVE circuit judges dissented from the order pointed out All members of the original panel vote to deny a petition for rehearing August 5, 2020

**From:** Rhylonda Rhodes <rhylondar@icloud.com>  
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## Reasons for granting the petition

### REASONS FOR GRANTING THE WRIT

A. To avoid erroneous deprivations of a liberty protected by the Due process this Court should clarify the "initiation" standard under Sandin that applies when the affirmative acts of its agents, subjects an involuntarily confined individual to deprivations of liberty which are not among those generally authorized by his confinement

A liberty interest

The purpose of the due process is generally not to Keep the government from doing certain things all together, But rather to keep it from acting an Obituary and unfair Manor. When you have a liberty Interst protected by the due process clause, Jail and prison officials must provide you with fair treatment. In 1995 This court , in Sandin v Conner, limited the due process protections of Prisoners, holding that in -prison Restrictions deprive them of liberty within the meeting of the due process clause Only If The restrictions impose atypical and significant hardship on inmate in relation to the ordinary incidents of prison life

What is article in significant hardship ? 1 court has held that it is something significant worse than the most restrictive conditions that prison officials, Exercising their administrative authority to ensure institutional safety and good order, Routinely imposed on inmates serving similar sentences. For example officials at your prison routinely Place Inmates in administrative segregation units for various reasons. To have a liberty interest you must be subject to conditions significantly worse than conditions in the Prison

#### Transfers:

Due process clause were only required procedural protection in connection with a transfer of a convicted prisoner If transfer Of a convicted prisoner Deprive the prisoner of a right That is independently protected by the Constitution, Or if it imposes atypical and significant hardship ralative To ordinary incidence of prison Conditions Sandin v Conner 515 at 472 484 115s 2293(1995) And example of the first category the only example we know at this point) Is transfer to a mental hospital, Which requires to process protection in the form of commitment hearing vitex v Jones 445 is 480 494-96 100s ct 1264(1980) And example of the second (again, The only one we know of) land the second is transfers to a high security Supermax unit for potentially definiteOf time under extreme harsh and Restrictive Conditions Wilkins v Austen 545 at 208 223-24 125 s ct 354(2005)

Here, the court of Appeals accepted the district court finding that defendant Jose Menchaca placed McCoy on the mental health floor Despite his mental health evaluator had determined this was a necessary, The court also did not disturb the

district courts finding that Mr McCoy had been in General population at the time he was transferred to Administrative segregation on the mental health floor. The court also conceded that officers transferring McCoy to the mental health floor despite his mental health evaluation had determined this was unnecessary could qualify as a due process violation. Nonetheless, the Seventh Circuit Appeal court reasoned that the record, however, fails to demonstrate that defendants violated McCoy's due process rights to establish a due process violation. McCoy needed to present evidence that the defendant deprived him of a liberty interest by imposing an atypical and significant hardship on (him) in relation to the ordinary incidents of prison life ("Sandin v. Conner", 515 U.S. 472, 484 (1995)), taking together the conditions and duration of his term in segregation, see "Marion v. Columbia Care, Inc.", 559 F.3d 693, 697 (7th Cir. 2009). Accepting McCoy's characterization that he lived in a dirty cell near physical and mentally ill inmates, his conditions were not so atypical and significantly harsh as to implicate a liberty interest: see e.g., "Hardaway v. Meyerhoff", 734 F.3d 740, 744 (7th Cir. 2013).

Moreover, he was not segregated for only three months, which, given the circumstances of his confinement, it's generally not long enough to trigger due process protections, see "Marion", 559 F.3d at 697 n.2 (Characterizing up to 90 days in segregation as a relatively short period, depending on the condition imposed). Though McCoy may have a liberty interest in avoiding transfer to a mental hospital for involuntary psychiatric treatment, see "Vitex", 445 U.S. at 487-88, that interest does not extend to his intro prison transfer to a wing for the physically and mentally ill, a move which did not contravene state law and did not carothe same significant and stigmatizing consequences as transfer to a mental hospital for involuntary psychiatric treatment.

The decision by the Court of Appeals is plainly incorrect, as it both contradicts the bright-line holding of Sandin and the express purpose of the rule. The analytical starting point of Sandin is that given a valid conviction, the criminal defendant has been Constitutionally deprived of his liberty to the extent that the state may confine him and subject him to the rules of its prison system so long as the conditions of confinement do not otherwise violate the Constitution.... Confinement in any of the state institution is within the normal limits or range of custody which the conviction has authorized the state to impose.

This case presents this Court with an opportunity to clarify the Sandin "initiation" standard when the affirmative acts of its agents, subjects an involuntarily confined individual to deprivations of liberty which are not among those generally authorized by his confinement.

The Seventh Circuit Court of Appeals' published decision will work to undermine the carefully-crafted procedural safeguards that this Court has spent the past 50 years developing.

## REASONS FOR GRANTING THE WRIT

A.

Several of the Courts of Appeals have read this language as implying that once the State learns that a third party poses a special danger to an identified victim, and indicates its willingness to protect the victim against that danger, a "special relationship" arises between State and victim, giving rise to an affirmative duty, enforceable through the Due Process Clause, to render adequate protection. See "Estate of Bailey by Oare v. County of York", 768 F.2d 503, 510-511 (CA3 1985); "Jensen v. Conrad", 747 F.2d 185, 190-194, and n. 11 (CA4 1984) (dicta), cert. denied, 470 U.S. 1052 (1985); "Balistreri v. Pacifica Police Dept.", 855 F.2d 1421, 1425-1426 (CA9 1988). But see, in addition to the opinion of the Seventh Circuit below, "Estate of Gilmore v. Buckley", 787 F.2d 714, 720-723 (CA1), cert. denied, 479 U.S. 882 (1986); "Harpole v. Arkansas",

Dept. of Human Services, 820 F.2d 923, 926-927 (CA8 1987); Wideman v. Shallowford Community Hospital Inc., 826 F.2d 1030, 1034-1037 (CA11 1987).

Here the district court Except McCoy statement McCoy was placed on the floor by gaurd, he complained about this to guards and medical personal non who went against the plain and moved m

\*fn5 To make out an Eighth Amendment claim based on the failure to provide adequate medical care, a prisoner must show that the state defendants exhibited "deliberate indifference" to his "serious" medical needs; the mere negligent or inadvertent failure to provide adequate care is not enough. *Estelle v. Gamble*, 429 U.S., at 105-106. In *Whitley v. Albers*, 475 U.S. 312 (1986), we suggested that a similar state of mind is required to make out a substantive due process claim in the prison setting. *Id.*, at 326-327.

fn6 The Eighth Amendment applies "only after the State has complied with the constitutional guarantees traditionally associated with criminal prosecutions. . . . he State does not acquire the power to punish with which the Eighth Amendment is concerned until after it has secured a formal adjudication of guilt in accordance with due process of law." *Ingraham v. Wright*, 430 U.S. 651, 671-672, n. 40 (1977); see also *Revere v. Massachusetts General Hospital*, 463 U.S. 239, 244 (1983); *Bell v. Wolfish*, 441 U.S. 520, 535, n. 16 (1979).

Even in this situation, we have recognized that the State "has considerable discretion in determining the nature and scope of its responsibilities." *Youngberg v. Romeo*, 457 U.S., at 317.

\*fn8 Of course, the protections of the Due Process Clause, both substantive and procedural, may be triggered when the State, by the affirmative acts of its agents, subjects an involuntarily confined individual to deprivations of liberty which are not among those generally authorized by his confinement. See, e. g., *Whitley v. Albers*, *supra*, at 326-327 (shooting inmate); *Youngberg v. Romeo*, *supra*, at 316 (shackling involuntarily committed mental patient); *Hughes v. Rowe*, 449 U.S. 5, 11 (1980) (removing inmate from general prison population and confining him to administrative segregation); *Vitek v. Jones*, 445 U.S. 480, 491-494 (1980) (transferring inmate to mental health facility).

Here the court

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## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Keith McCay

Date: November 4, 2026