No. 21- 6517

IN THE SUPREME COURT OF THE UNITED STATES

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MARK STINSON, REG #29908-076 – Petitioner,

VS.

K. CAULEY, ET AL., - Respondent(s).

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

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# PETITION FOR REHEARING

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MARK STINSON, REG #29908-076

1629 WINCHESTER ROAD

MEMPHIS, TN 38116

(901) 542- 1943

June 28, 2022

DUE PROCESS CASE

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## PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44.1, Mark Stinson respectfully petitions for rehearing of the Court's per curiam decision issued on June 21, 2022, Stinson v. K. Cauley, et al., (June 21, 2022). Mr. Stinson moves this Court to grant this petition for rehearing and consider his case with merits briefing and oral argument. Pursuant to Supreme Court Rule 44.1, this petition for rehearing is filed within 25 days of this Court's decision in this case.

## REASON FOR GRANTING THE PETITION

This Court did not acknowledge The Eighth Circuit inconsistent with the Seventh Amendment Rights Claim. This Court should not issue a per curiam opinion, without briefing or argument, granting a lower appellate court's denial of a constitutional claim that did not received a federal appellate court review. But that is precisely what happened here. This Court did not address the constitutional issues that was presented in this case. The "Due Process of law" involved in prison disciplinary proceedings is the procedural aspect of the due process requirement of the Fifth and Fourteenth Amendments. Meachum v. Fano, 427 U.S. 215, 223-227 (1976); Boag v. MacDougall, 454 U.S. 364; 102 S.Ct. 700; 70 L.Ed.2d 551 (1982).

### I. Should This Court have dismissed this Constitutional Claim Per Curiam?

Rehearing is appropriate for this Court to review because of the per curiam decision made by this Court, without addressing the constitutional issues that were presented in this case. Stinson should be excluded from any constitutional scrutiny, both because it results in the inconsistent application of the law, cf. Ornelas v. United States, 517 U.S. 690 (1996) (in Fourth Amendment context, "[i]ndependent

review is therefore necessary if appellate courts are to maintain control of, and to clarify, the legal principles"), and because it increases arbitrariness and the likelihood of error. See Jones v. Barnes, 463 U.S. 745, 756 n.1 (1983) (Brennan, J., joined by Marshall, J., dissenting) ("There are few, if any situations in our system of justice in which a single judge is given unreviewable discretion over matters concerning a person's liberty or property...").

What limits the Due Process Clause of the Fifth Amendment places on the authority of prison administrators to remove inmates from the general prison population and confine them to a less desirable regimen for administrative reasons. Hewitt v. Helms, 459 U.S. 460; 103 S.Ct. 864; 74 L.Ed.2d 675 (1983). This Court said that Helms could not be deprived of this interest without a hearing, governed by the procedures mandated in Wolff v. McDonnell, 418 U.S. 539 (1974).

In the context of the Eighth Amendment, this Court has repeatedly recognized that a federal appellate review is necessary to protect against arbitrariness, capriciousness, and error. Pulley v. Harris, 465 U.S. 37, 59 (1984) (Stevens, J., Concurring in part) ("[O]ur decision certainly recognized what was plain from Gregg, Proffitt, and Jurek: that some form of meaningful appellate review is an essential safeguard against the arbitrary and capricious imposition of this decision by individual juries and judges."); Parker v. Dugger, 498 U.S. 308, 321 (1991) ("We have emphasized repeatedly the crucial role of meaningful appellate review in ensuring that the penalty's is not imposed arbitrarily or irrationally.").

Despite this Court's recognition of the need for appellate review in the context of the per curiam opinion in this case, it will permit Mark Stinson's denial of his constitutional rights, which is a violation. While Petitioner believes this is untenable under the Eighth Amendment, at a minimum it should be

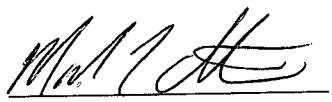
resolved by this Court after he has had an adequate opportunity to brief this issue. Anders v. California, 366 U.S. 738 S.Ct. 1396 Ed.2d 493 (1967); Watson v. Ault, 525 F.2d 886 (5th Cir. 1976).

The Court notes the well-recognized principle that complaints drawn by pro se litigants are held to a less stringent standard than those drawn by legal counsel. Haines v. Kerner, 404 U.S. 519 92 S.Ct. 594, 30 L.Ed.2d 652 (1972); United States v. Rains, 615 F.3d 589 (5th Cir. 2010).

## CONCLUSION

Therefore, Mr. Stinson respectfully requests that this Court grant the petition for rehearing and order full briefing and argument on the merits of this case.

**Respectfully submitted,**



Mark Stinson
Reg #29908-076
1629 Winchester Road
Memphis, TN 38116
June 28, 2022