No. 25-31

IN THE

Supreme Court of the United States

BENJAMIN ADAMS,

Petitioner,

v.

LLOYD ARNOLD*, et al.,*

Respondents,

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

REPLY TO BRIEF IN OPPOSITION

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INTRODUCTION

Respondents[1] all but acknowledge that the Courts of Appeals apply different due process standards to individuals facing disciplinary segregation that amounts to a deprivation of liberty. Five circuits apply the more rigorous standard articulated in *Wolff v. McDonnell*, 418 U.S. 539 (1974). Two apply the informal standard articulated in *Wilkinson v. Austin*, 545 U.S. 209 (2005). Despite Respondents' best efforts to minimize that "disagreement among the circuits" as "out-of-date or undeveloped," BIO 1, the split is alive and well and deeper than most.

Respondents have little to say on importance, either. No surprise, given the frequency with which this issue arises and the stakes for individuals facing lengthy terms in solitary confinement. Instead, Respondents devote the majority of their brief to defending the decision below on its merits. Those arguments are wrong. Regardless, they are no reason to deny certiorari, given that the majority of jurisdictions take the opposite view. Finally, the supposed vehicle problems on which Respondents fixate pose no barrier to review. This Court should grant certiorari, answer the Question Presented, and remand for the lower courts to address any remaining issues.

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[1] Respondent Lloyd Arnold replaced Christina Reagle, an appellee in the Court of Appeals, as Commissioner of the Indiana Department of Correction.

ARGUMENT

I. THE COURTS OF APPEALS ARE DIVIDED.

Despite labeling the split "putative," BIO 17, Respondents do not seriously dispute that it exists. They argue only that the split is not "as fresh or developed as [Mr. Adams] asserts." *Id.* As the petition demonstrated, however, the split includes new cases in addition to older ones. *See* Pet. 16-22 (citing four cases decided in the last two years, spanning both sides of the split); *infra* 4-5 (citing additional cases). And it is both developed and entrenched: At least seven circuits have weighed in, and courts on both sides have continued to adhere to their positions since the split crystallized. *See* Pet. 22. Respondents' attempts to minimize the split fail.

A. Start with the short side. Respondents do not dispute that the Seventh Circuit has squarely held that individuals "facing transfer to disciplinary segregation [are] entitled only to informal, nonadversarial due process." Pet.App.28a (internal quotation marks omitted); *see also Ealy v. Watson*, 109 F.4th 958, 965 (7th Cir. 2024) (same). But despite endorsing the Seventh Circuit's rule, Respondents attempt to distinguish the Eighth Circuit's decision to adopt it in *Spann v. Lombardi*, 65 F.4th 987 (8th Cir. 2023). *Spann*, they argue, involved administrative, not disciplinary, segregation. BIO 20.

That is inaccurate. The plaintiff in *Spann* was accused of sexually assaulting a cellmate and transferred to segregation after being found "guilty" of this "major conduct violation." 65 F.4th at 990-91. Although the court occasionally described the plaintiff's confinement as "administrative

segregation," the plaintiff was confined *for disciplinary reasons*. *See id.* (noting that the plaintiff was "transferred ... as a result" of the major conduct violation). The purpose of the segregation—not its label—is what matters. *See Bills v. Henderson*, 631 F.2d 1287, 1295 (6th Cir. 1980) (explaining that, regardless of labels, when segregation "is based on a specific rule infraction, rather than general behavior … there appears to be no reason why the procedural safeguards set forth in *Wolff* ... should not apply"); Pet. 28-29; *infra* 9-10.

B. As for the long side of the split, Respondents contend that each case on which the petition relied has been "overtaken by subsequent decisions," addresses this issue in "nonbinding dicta," or is limited to "pretrial detainees." BIO 17. Respondents' attempts to explain away these cases fail.

1. Respondents do not dispute that the Second Circuit applied *Wolff* to disciplinary segregation in *Kalwasinski v. Morse*, 201 F.3d 103 (2d Cir. 1999) (per curiam). They further acknowledge that the Second Circuit adopted the same position in an earlier case, *McCann v. Coughlin*, 698 F.2d 112, 121 (2d Cir. 1983). But they suggest that *McCann* is no longer good law in light of *Sandin v. Conner*, 515 U.S. 472 (1995), and dismiss the key portion of *Kalwasinski* as dicta. BIO 17-18.

The rule articulated in both *McCann* and *Kalwasinski*—that *Wolff* governs due process claims based on disciplinary segregation—remains controlling in the Second Circuit. As Respondents' own authority recognizes, the portion of *McCann* superseded by *Sandin* is about when segregation in

solitary confinement amounts to a deprivation of liberty. *See Scott v. Albury*, 156 F.3d 283, 287 (2d Cir. 1998) (per curiam). *Sandin* in no way undermined *McCann*'s holding about the applicable standard where a deprivation of liberty occurs. And as *Kalwasinski*, demonstrates, the Second Circuit has continued to apply *Wolff* to disciplinary segregation cases in *Sandin*'s wake. Respondents are of course correct that *Kalwasinski* ultimately found that the plaintiff "was provided with all the procedures required by *Wolff*." BIO 17. That is hardly surprising: *Wolff*'s standard, by design, is readily achievable. *See* 418 U.S. at 566 (characterizing rule as "flexible" and subject to "institutional safety or correctional goals"); *Ponte v. Real*, 471 U.S. 491, 498-99 (1985) (reiterating that, under *Wolff*, "the right to call witnesses [is] a limited one" and acknowledging the possibility that "a constitutional challenge to a disciplinary hearing … will rarely, if ever, be successful"). But *Kalwasinski*'s articulation of the applicable standard remains controlling in the Second Circuit. *See, e.g.*, *Holland v. Goord*, 758 F.3d 215, 225 (2d Cir. 2014) (applying *Wolff*); *Smith v. Fischer*, 803 F.3d 124, 127 (2d Cir. 2015) (per curiam) (same); *Elder v. McCarthy*, 967 F.3d 113, 124 (2d Cir. 2020) (same); *Brown v. Venettozzi*, No. 18-cv-2628, 2022 WL 3867958, at *7 (S.D.N.Y. Aug. 30, 2022) (same).

2. Respondents try a similar tack on the Ninth Circuit, suggesting that *Walker v. Sumner*, 14 F.3d 1415 (9th Cir. 1994), is no longer good law because (1) *Walker* relied on footnote 19 in *Wolff*, and (2) *Sandin* treated footnote 19 as dicta. BIO 18. Again, however, *Sandin* was about the circumstances in which solitary confinement amounts to a deprivation of liberty—not

the standard that applies once a deprivation is established. *See* 515 U.S. at 487. And the only aspect of footnote 19 it characterized as dicta is the "impl[ication] that solitary confinement *automatically* triggers due process protection." *Id.* at 485 (emphasis added). *Sandin* in no way undermined the Ninth Circuit's holding that *Wolff* governs where disciplinary segregation "present[s] the type of atypical, significant deprivation" that does amount to a deprivation of liberty. *Id.* at 486; *see Walker*, 14 F.3d at 1419 (*Wolff* applies when "substantial liberty interests are being deprived"). Ninth Circuit courts have applied *Wolff* in that context ever since. *See, e.g.*, *Brown v. Yordy*, 738 F. App'x 482, 483 (9th Cir. 2018); *Carr v. Page*, No. 20-Cv-00146, 2020 WL 3420683, at *5 (D. Idaho June 18, 2020).

3. As for the Sixth Circuit, Respondents acknowledge that court's holding in *Bills* that *Wolff* governs transfers to segregation made "in response to a determination of guilt of a specific infraction." 631 F.2d at 1296. They argue, however, that the Sixth Circuit "later clarified" that holding in *Finley v. Huss*, 102 F.4th 789, 816 (6th Cir. 2024)—such that the key portion of *Bills* is no longer good law. BIO 19. In reality, *Finley* restates the precise rule *Bills* adopted (and the decision below rejected): "that *Wolff v. McDonnell* prescribes relatively rigorous procedural safeguards before officials can punish an inmate for serious alleged misconduct," while "non-punitive classification to administrative segregation … call[s] for more relaxed procedures." 102 F.4th at 816. The court simply held that the plaintiff had "received the process due" because the proceeding in which he was "adjudicated … guilty of a serious contraband

violation … m[et] *Wolff*'s requirements." *Id.* It then went on to hold that a "distinct" proceeding in which he was administratively reclassified met *Hewitt*'s and *Wilkinson*'s. *Id.* at 817.

4. Respondents' attempts to limit the Third and Eleventh Circuit's rulings to pretrial detainees (BIO 18-19) fare no better. Although both cases happened to involve pretrial detainees, neither turned on the detainees' status. To the contrary, *Stevenson v. Carroll*, 495 F.3d 62 (3d Cir. 2007), spoke broadly to the process that must be "accorded to *prisoners* who are confined for disciplinary infractions." *Id.* at 70 (emphasis added); *see also Contant v. Sabol*, No. 11-1806, 2011 WL 2410986, at *2 (3d Cir. June 16, 2011) (per curiam) ("A pretrial detainee who is transferred to more restrictive housing for disciplinary infractions is entitled to the due process protections applicable to sentenced inmates."). And *Jacoby v. Baldwin County*, 835 F.3d 1338 (11th Cir. 2016), stated clearly that the "due process safeguards that must be afforded to *both pretrial detainees and convicted inmates* in prison disciplinary proceedings are governed by *Wolff*[.]" *Id.* at 1346 (emphasis added).

II. THE QUESTION PRESENTED IS IMPORTANT.

Respondents' half-hearted attempts to characterize this issue as unimportant (BIO 23) miss their mark.

A. Respondents suggest that Mr. Adams "overstates the case's importance" because he "does not say how many prisoners segregated for disciplinary reasons would have a protected interest." *Id.* But they do not seriously argue that long stints in harsh conditions are an unusual penalty for prison misconduct. Nor could they: According to a 2021 survey, "[n]early a quarter"

of individuals held in restrictive housing had been "isolated … for a year or more." *Time-In-Cell: A 2021 Snapshot of Restrictive Housing*, Correctional Leaders Association & Arthur Liman Center for Public Interest Law at Yale Law School, at 9 (2022) https://law.yale.edu/sites/default/files/area/center/liman/document/time_in_cell_2021.pdf. And the frequency with which this issue arises confirms that disciplinary segregation serious enough to trigger due process protections is anything but rare. *See* Pet. 16-22; *supra* 3-5.

B. Respondents also contend that the Question Presented is unworthy of review because "concerns about 'prison conditions' are more the stuff of an 'Eighth Amendment claim' than a 'Due Process claim.'" BIO 23 (quoting *Prieto v. Clarke*, 780 F.3d 245, 251 (4th Cir. 2015)). But Mr. Adams' claim before this Court is not that the conditions to which he was subjected were so inhumane that they violated the Eighth Amendment. His claim is that he was entitled to *procedural protections* before those conditions could be imposed. That is a due process claim, through and through. *See, e.g.*, *Wolff*, 418 U.S. at 542-44, 552-73 (assessing claim under the Due Process Clause); *Hewitt v. Helms*, 459 U.S. 460, 462, 466-77 (1983) (same); *Sandin*, 515 U.S. at 474, 477-87 (same); *Wilkinson*, 545 U.S. at 213, 220-30 (same).

C. Finally, Respondents suggest that "any decision in this case is unlikely to 'resolve' the precise degree of process due all inmates facing segregation for disciplinary reasons." BIO 23-24. But with respect to disciplinary segregation that amounts to a deprivation of liberty, that is *exactly* the question this petition positions the Court to resolve. And the answer—*Wolff*

or *Wilkinson*—will govern in every case. To be sure, clarifying the applicable standard will not resolve *every possible question* that may arise in these cases. Courts must still decide whether disciplinary segregation implicates a protected liberty interest in the first place. And they must still determine whether the applicable standard was satisfied. But courts must grapple with those questions regardless which standard applies. If anything, the fact that they may sometimes prove difficult to answer is all the more reason the applicable standard should at least be clear.

III. THE DECISION BELOW IS WRONG.

Respondents devote the bulk of their brief to defending the decision below on the merits. *See* BIO 10-17.

A. As an initial matter, it bears emphasis that Respondents' position is the minority view. *See* Pet. 16-22. Indeed, having written off the Eighth Circuit's ruling as distinguishable, BIO 20, Respondents apparently believe that the Seventh Circuit is the only appellate court in the country that has definitively answered the Question Presented correctly. So to the extent their merits arguments have purchase, that only underscores the need for this Court's review.

B. Their arguments, however, are wrong.

1. Respondents begin by insisting that "incarcerated persons retain only a narrow range of protected liberty interests," *id.* at 10 (quoting *Hewitt*, 459 U.S. at 467), and that the "procedural protections to which they are entitled are more limited than in cases where the right at stake is the right to be free from confinement," *id.* (quoting *Wilkinson*, 545 U.S. at 225). These points are

uncontroversial: Not every disciplinary sanction constitutes a deprivation of liberty, *see Sandin*, 515 U.S. at 483-87, and the process due under *Wolff* is far less than that required to imprison individuals in the first place. They are certainly not reasons why *Wolff* should not apply where disciplinary segregation amounts to a deprivation of liberty.

2. Respondents next attempt to limit *Wolff* to parole revocations and good time credits. *See* BIO 10-11, 13. But *Wolff* itself made clear that its holding extends to the "imposition of 'solitary' confinement" as punishment for "serious misbehavior." 418 U.S. at 571-72 n.19. "[I]t would be difficult for the purposes of procedural due process," the Court emphasized, "to distinguish between the procedures that are required where good time is forfeited and those that must be extended when solitary confinement is at issue." *Id.*

If there were any doubt about *Wolff*'s application to disciplinary segregation, *Hewitt* eliminates it. *Hewitt* involved administrative segregation, not disciplinary segregation. *Hewitt*, 459 U.S. at 463, 474. But in holding that a lesser standard applies in that context, *Hewitt* distinguished disciplinary segregation: "Unlike disciplinary confinement," the Court reasoned, "the stigma of wrongdoing or misconduct does not attach to administrative segregation." 459 U.S. at 473. And it reiterated that "*Wolff* require[s] that inmates facing disciplinary charges for misconduct be accorded" additional procedural rights—including "a right to call witnesses and present documentary evidence." *Id.* at 466 n.3.

3. Respondents' attempts to elide the distinction between disciplinary segregation and administrative

segregation (BIO 13-14) fall similarly flat. The purposes of the two forms of confinement are different: Disciplinary segregation is imposed as a result of "specific, serious misbehavior," *Wilkinson*, 454 U.S. at 229, whereas administrative segregation can be imposed for any number of other reasons, *see Hewitt*, 459 U.S. at 468. Their consequences are different, too. *See id.* at 473 ("Unlike disciplinary confinement the stigma of wrongdoing or misconduct does not attach to administrative segregation.").

Respondents' primary citations to the contrary say only that both forms of confinement can sometimes entail the same conditions. *See* BIO 14 (citing *Sandin*, 515 U.S. at 486, and *Wagner v. Hanks*, 128 F.d 1173, 1175 (7th Cir. 1997)). True enough. But conditions of confinement are relevant to just one factor in the *Mathews v. Eldridge* calculus. 424 U.S. 319, 335 (1976) ("private interest"). Even as to that factor, the consequences of confinement weigh heavily. *See* Pet. 28-29; *Hewitt*, 459 U.S. at 473 (assessing consequences of confinement as part of "private interest"). And the purpose of confinement bears on the other two factors. *See* Pet. 29. Respondents are therefore wrong to argue that "any differences between administrative and disciplinary segregation do not affect the [*Mathews*] analysis." BIO 15; *see* Pet. 28-29.

As for Respondents' suggestion that distinguishing between disciplinary segregation and administrative segregation will prove too difficult—and ensnarl "federal courts in the day-to-day management of prisons," BIO 15 (internal quotation marks omitted)—there is no indication that the five Circuits that do exactly that have had any trouble. In any event, the distinction is straightforward: If segregation is

imposed as a result of "specific, serious misbehavior," *Wilkinson*, 545 U.S. at 228, *Wolff* applies. If it is imposed for other reasons, *Wilkinson* does.

IV. THIS CASE IS A GOOD VEHICLE.

The purported vehicle issues Respondent identifies are, at most, potential issues for remand that pose no obstacle to this Court's review.

A. Respondents first contend that Mr. Adams was not actually subjected to disciplinary segregation because he was administratively reclassified into restrictive housing as a result of multiple considerations. *See* BIO 2, 20, 22. Relatedly, they insist than any due process violation was harmless because Mr. Adams would have been segregated even absent the assault charge. *See id.* at 21.

But Respondents acknowledge that "the sanctions imposed for the assault charge … included one year in disciplinary segregation." *Id.* at 20. And contrary to Respondents' suggestion, *id.*, Mr. Adams' claim has always been that he was denied procedural due process in the proceedings on that charge—and faced disciplinary segregation as a result. *See, e.g.*, Pet.App.31a (noting that Mr. Adams' "theory" was that "he was not given adequate [process] at his disciplinary hearings on the assault charge"). "Adams' involvement in [the] assault … was cited as reason for [his] reclassification." *Id.* at 7a. And the decision below recognized at least "a question of fact as to whether Adams' disciplinary conviction in the assault case contributed to the reclassification decision that placed him in department-wide restrictive housing." *Id.* at 11a. To the extent there is any doubt about whether Mr. Adams would have been reclassified

without the assault charge, the lower courts can address that issue on remand.

B. Next, Respondents argue that "review would make no difference" because the law on this issue is not "clearly established" and, as a result, Respondents will have qualified immunity. BIO 22. But Respondents did not raise qualified immunity in the district court or on appeal. *See generally* D.Ct. Dkt. 200 (summary judgment motion); Ct.App. Dkt. 36 (appellate brief). They therefore "abandoned the defense." *Walsh v. Mellas*, 837 F.2d 789, 800 (7th Cir. 1988). It would be meritless anyway. *See, e.g.*, Ct.App. Dkt. 36, at 31 (recognizing that *Wolff* applies where good time credits are at stake); BIO 5-6 (acknowledging that good time credits were at stake); *Adams v. Superintendent*, No. 2:17-cv-00546, 2018 WL 4077022 at *3 (S.D. Ind. Aug. 27, 2018) (granting habeas petition on that ground).

C. Finally, the factual record is more than sufficient. *Contra* BIO 24. The Question Presented is purely legal. To answer it, this Court need only decide what standard applies. Any questions about its application to these facts can be left for remand.

CONCLUSION

The petition for a writ of certiorari should be granted.

September 23, 2025

Respectfully submitted,

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