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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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WILKINSON, DIRECTOR, OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION, ET AL. *v.*
AUSTIN ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT

No. 04–495. Argued March 30, 2005—Decided June 13, 2005

“Supermax” prisons are maximum security facilities with highly restrictive conditions, designed to segregate the most dangerous prisoners from the general prison population. Their use has increased in recent years, in part as a response to the rise in prison gangs and prison violence. Ohio opened its only Supermax facility, the Ohio State Penitentiary (OSP), after a riot in one of its maximum security prisons. In the OSP almost every aspect of an inmate’s life is controlled and monitored. Incarceration there is synonymous with extreme isolation. Opportunities for visitation are rare and are always conducted through glass walls. Inmates are deprived of almost any environmental or sensory stimuli and of almost all human contact. Placement at OSP is for an indefinite period, limited only by an inmate’s sentence. Inmates otherwise eligible for parole lose their eligibility while incarcerated at OSP.

When OSP first became operational, no official policy governing placement there was in effect, and the procedures used to assign inmates to the facility were inconsistent and undefined, resulting in haphazard and erroneous placements. In an effort to establish guidelines for the selection and classification of OSP inmates, Ohio issued its Policy 111–07. Relevant here are two versions of the policy: the “Old Policy” and the “New Policy.” Because assignment problems persisted after the Old Policy took effect, Ohio promulgated the New Policy to provide more guidance regarding the factors to be considered in placement decisions and to afford inmates more procedural protection against erroneous placement. Under the New Policy, a prison official conducts a classification review either (1) upon entry

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into the prison system if the inmate was convicted of certain offenses, *e.g.*, organized crime, or (2) during the incarceration if the inmate engages in specified conduct, *e.g.*, leads a prison gang. The New Policy also provides for a three-tier review process after a recommendation that an inmate be placed in OSP. Among other things, the inmate must receive notice of the factual basis leading to consideration for OSP placement and a fair opportunity for rebuttal at a hearing, although he may not call witnesses. In addition, the inmate is invited to submit objections prior to the final level of review. Although a subsequent reviewer may overturn an affirmative recommendation for OSP placement at any level, the reverse is not true; if one reviewer declines to recommend OSP placement, the process terminates. Ohio also provides for a placement review within 30 days of an inmate's initial assignment to OSP, and annual review thereafter.

A class of current and former OSP inmates filed this suit for equitable relief under 42 U. S. C. §1983, alleging, *inter alia*, that the Old Policy, which was then in effect, violated the Fourteenth Amendment's Due Process Clause. On the eve of trial, Ohio promulgated its New Policy and represented that it contained the procedures to be followed in the future. After extensive evidence was presented, the District Court made findings and conclusions and issued a detailed remedial order. First, relying on *Sandin v. Conner*, 515 U. S. 472, the court found that inmates have a liberty interest in avoiding assignment to OSP. Second, it found Ohio had denied the inmates due process by failing to afford many of them notice and an adequate opportunity to be heard before transfer; failing to give them sufficient notice of the grounds for their retention at OSP; and failing to give them sufficient opportunity to understand the reasoning and evidence used to retain them at OSP. Third, it held that, although the New Policy provided more procedural safeguards than the Old Policy, it was nonetheless inadequate to meet procedural due process requirements. The court therefore ordered modifications to the New Policy, including substantive modifications narrowing the grounds that Ohio could consider in recommending assignment to OSP, and various specific procedural modifications. The Sixth Circuit affirmed the District Court's conclusion that the inmates had a liberty interest in avoiding OSP placement and upheld the lower court's procedural modifications in their entirety, but set aside the far-reaching substantive modifications on the ground they exceeded the District Court's authority.

Held: The procedures by which Ohio's New Policy classifies prisoners for placement at its Supermax facility provide prisoners with sufficient protection to comply with the Due Process Clause. Pp. 9–19.

(a) Inmates have a constitutionally protected liberty interest in avoiding assignment at OSP. Such an interest may arise from state

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policies or regulations, subject to the important limitations set forth in *Sandin*, which requires a determination whether OSP assignment “imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.” 515 U. S., at 483. The Court is satisfied that assignment to OSP imposes such a hardship compared to any plausible baseline from which to measure the Ohio prison system. For an inmate placed in OSP, almost all human contact is prohibited, even to the point that conversation is not permitted from cell to cell; his cell’s light may be dimmed, but is on for 24 hours; and he may exercise only one hour per day in a small indoor room. Save perhaps for the especially severe limitations on all human contact, these conditions likely would apply to most solitary confinement facilities, but here there are two added components. First is the duration. Unlike the 30-day placement in segregated confinement at issue in *Sandin*, placement at OSP is indefinite and, after an initial 30-day review, is reviewed just annually. Second is that placement disqualifies an otherwise eligible inmate for parole consideration. Taken together these conditions impose an atypical and significant hardship within the correctional context. Pp. 9–13.

(b) The New Policy’s procedures are sufficient to satisfy due process. Evaluating the sufficiency of particular prison procedures requires consideration of three distinct factors: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government’s interest, including the function involved and the fiscal and administrative burdens that additional or substitute procedural requirement would entail. *Mathews v. El-drige*, 424 U. S. 319, 335. Applying those factors demonstrates that Ohio’s New Policy provides a sufficient level of process. First, the inmate’s interest in avoiding erroneous placement at OSP, while more than minimal, must nonetheless be evaluated within the context of the prison system and its attendant curtailment of liberties. The liberty of prisoners in lawful confinement is curtailed by definition, so their procedural protections are more limited than in cases where the right at stake is the right to be free from all confinement. Second, the risk of an erroneous placement is minimized by the New Policy’s requirements. Ohio provides multiple levels of review for any decision recommending OSP placement, with power to overturn the recommendation at each level. In addition, Ohio reduces the risk of erroneous placement by providing for a placement review within 30 days of an inmate’s initial assignment to OSP. Notice of the factual basis for a decision and a fair opportunity for rebuttal are among the most important procedural mechanisms for purposes of avoiding er-

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roneous deprivations. See, e.g., *Greenholtz v. Inmates of Neb. Penal and Correctional Complex*, 442 U. S. 1, 15. Third, in the context of prison management and the specific circumstances of this case, Ohio's interest is a dominant consideration. Ohio's first obligation must be to ensure the safety of guards and prison personnel, the public, and the prisoners themselves. See *Hewitt v. Helms*, 459 U. S. 460, 473. Prison security, imperiled by the brutal reality of prison gangs, provides the backdrop of the State's interest. Another component of Ohio's interest is the problem of scarce resources. The high cost of maintaining an inmate at OSP would make it difficult to fund more effective education and vocational assistance programs to improve prisoners' lives. Courts must give substantial deference to prison management decisions before mandating additional expenditures for elaborate procedural safeguards when correctional officials conclude that a prisoner has engaged in disruptive behavior. Were Ohio required to provide other attributes of an adversary hearing before ordering transfer to OSP, both the State's immediate objective of controlling the prisoner and its greater objective of controlling the prison could be defeated. Where, as here, the inquiry draws more on the experience of prison administrators, and where the State's interest implicates the safety of other inmates and prison personnel, the informal, nonadversary procedures set forth in *Greenholtz* and *Hewitt* provide the appropriate model. If an inmate were to demonstrate that the New Policy did not in practice operate in the fashion described, any cognizable injury could be the subject of an appropriate future challenge. In light of the foregoing, the procedural modifications ordered by the District Court and affirmed by the Sixth Circuit were in error. Pp. 13–19.

372 F. 3d 346, affirmed in part, reversed in part, and remanded.

KENNEDY, J., delivered the opinion for a unanimous Court.