

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

AUSTIN LEE MONTEIRO,)
Plaintiff,)
v.)
JASON CARTER MD,)
STEPHANIE RILEY,)
CENTURION HEALTH OF INDIANA,)
Defendants.)
No. 1:23-cv-01752-MPB-KMB

**ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT AND DENYING PRELIMINARY INJUNCTION**

Plaintiff Austin Lee Monteiro brings claims of Eighth Amendment violations against Defendants Dr. Jason Carter and Dr. Stephanie Riley for deliberate indifference to his serious medical needs in the form of denial of medication for his polycystic kidney disease and chronic pain. *See* dkt. 42 at 2 (Screening Order). He also brings an Eighth Amendment deliberate indifference claim against Defendant Centurion Health of Indiana ("Centurion") for having a policy of refusing specialists' instructions. *See id.* Defendants have moved for summary judgment. Dkt. [72]. Mr. Montiero has moved for a preliminary injunction. Dkt. [86] For the reasons below, the motion for summary judgment is **GRANTED in part and DENIED in part**, and the motion for preliminary injunction is **DENIED**.

I. MOTION FOR SUMMARY JUDGMENT

A. Standard of Review

A motion for summary judgment asks the Court to find that a trial is unnecessary because there is no genuine dispute as to any material fact and, instead, the movant is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(a). When reviewing a motion for summary judgment,

the Court views the record and draws all reasonable inferences from it in the light most favorable to the nonmoving party. *Khungar v. Access Cnty. Health Network*, 985 F.3d 565, 572–73 (7th Cir. 2021). It cannot weigh evidence or make credibility determinations on summary judgment because those tasks are left to the fact-finder. *Miller v. Gonzalez*, 761 F.3d 822, 827 (7th Cir. 2014). A court only has to consider the materials cited by the parties, *see Fed. R. Civ. P. 56(c)(3)*; it need not "scour the record" for evidence that might be relevant. *Grant v. Trs. of Ind. Univ.*, 870 F.3d 562, 573–74 (7th Cir. 2017) (cleaned up).

A party seeking summary judgment must inform the district court of the basis for its motion and identify the record evidence it contends demonstrates the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

Whether a party asserts that a fact is undisputed or genuinely disputed, the party must support the asserted fact by citing to particular parts of the record, including depositions, documents, or affidavits. *Fed. R. Civ. P. 56(c)(1)(A)*. Failure to properly support a fact in opposition to a movant's factual assertion can result in the movant's fact being considered undisputed, and potentially in the grant of summary judgment. *Fed. R. Civ. P. 56(e)*.

B. Factual Background

Because Defendants have moved for summary judgment under Rule 56(a), the Court views and recites the evidence in the light most favorable to the non-moving party and draws all reasonable inferences in that party's favor. *Khungar*, 985 F.3d at 572–73.

Mr. Monteiro was diagnosed with autosomal dominate polycystic kidney disease in February 2008. Dkt. 37 at 3 (Verified 2d Am. Compl.); dkt. 85 (2d Monteiro Decl.). He has been incarcerated at New Castle Correctional Facility ("New Castle") since December 19, 2022. Dkt. 82 ¶ 1 (1st Monteiro Decl.). Centurion provides health care services at New Castle. Dkt. 74-1 ¶ 3.

New Castle has an infirmary and is able to draw labs and send lab draws to Henry County Memorial Hospital for processing. Dkt. 82 ¶ 4. The Indiana Department of Correction Health Care Services Continuity of Care Health Care Services Directive states, "Care must be taken to ensure that all patient care is adapted as needed especially that which is recommended by off-site specialists." Dkt. 81 at 39.

For all times relevant to Mr. Monteiro's claims, Dr. Stephanie Riley was the Statewide Medical Director of Centurion. Dkt. 74-1 ¶ 2. Dr. Carter was Mr. Monteiro's primary physician at New Castle until his resignation in mid-November 2023. Dkt. 74-1 ¶¶ 10, 33.

1. Tolvaptan

On June 21, 2023, Mr. Monteiro was seen by Lori Wanko, DO, a nephrologist. Dkt. 75-6 at 26 (Medical Records). Dr. Wanko decided that Mr. Monteiro "requires tolvaptan to decrease cyst growth." *Id.* at 28. She prescribed the medication and noted that "he will need to receive it through the prison system." *Id.* Because she does not prescribe pain medication, she recommended a referral to urology. *Id.* Only the Centurion Statewide Medical Director or Associate Statewide Medical Director can approve offsite referral requests. Dkt. 74-1 ¶ 12.

Tolvaptan is used to treat polycystic kidney disease by slowing kidney function decline. Dkt. 74-1 ¶ 15. It has dangerous side effects and requires extremely close monitoring and rigorous blood testing. Dkt. 74-1 ¶¶ 15-18.

Only the Centurion Statewide Medical Director or Associate Statewide Medical Director can approve formulary exception requests. Dkt. 74-1 ¶ 22. A formulary exception request for tolvaptan was submitted, and Dr. Riley approved the request for a 180-day supply on July 14, 2023. Dkt. 13-1 at 17-18. Because Dr. Carter was not an authorized prescriber of tolvaptan, he asked Dr. Wanko to prescribe it. Dkt. 13-1 at 24. On August 16, Mr. Monteiro was called to sign

an enrollment form for the tolvaptan, and necessary labs were drawn for starting the medication. Dkt. 37 at 4. On August 28, 2023, Dr. Carter told Mr. Monteiro that the tolvaptan was denied. Dkt. 13-1 at 25. Mr. Monteiro states in his verified second amended complaint:

Dr. Jason Carter told me at this visit [their] reason for denying me the drug is that Centurion Health Services of Indiana LLC's Research Department stated in an email that I wouldn't [benefit] from the drug, despite this being the only treatment for the disease polycystic kidney disease. He also told me that the real reason was because of the \$20,000.00+ monthly price tag.

Dkt. 37 at 5.

Defendants, on the other hand, contend that Dr. Riley's ultimate denial of the tolvaptan was not due to fiscal considerations but because she concluded that the substantial risks posed by tolvaptan outweighed any potential benefit to Mr. Monteiro, based on Dr. Carter's observation of Mr. Monteiro's medical condition. Dkt. 74-1 ¶¶ 27-28

2. *Tramadol*

Tramadol is a narcotic mediation used to treat moderate to severe pain. Dkt. 74-1 ¶ 35. For patients suffering from chronic pain, the expected course of treatment within the applicable standard of care is to provide Tylenol to treat such chronic pain. Dkt. 74-1 ¶ 36. For patients, like Mr. Monteiro, who have a history of narcotic substance abuse, the provision of narcotic medications should be limited to extremely rare instances to avoid the risk of further substance abuse. Dkt. 74-1 ¶ 38. Dr. Riley's opinion is that it was medically appropriate for Mr. Monteiro's medical providers to not provide tramadol to him and instead provide other pain management treatment. Dkt 74-1 ¶ 39.

Extra strength Tylenol did not relieve Mr. Monteiro's chronic pain. Dkt. 37 at 5. Mr. Monteiro received tramadol for severe chronic pain management from November 17, 2023, until October 25, 2024, with no instances of abuse. Dkt. 82 ¶ 7. On September 17, 2024, a formulary exception request for a 90-day order of tramadol was met with an alternative recommendation for

either diclofenac or a "short course <30 days" of tramadol.¹ Dkt. 81 at 32. Polycystic kidney disease patients are not supposed to take diclofenac to treat pain from the disease. Dkt. 82 ¶ 8.

Multiple people acquainted with Mr. Monteiro have signed affidavits attesting to observing his chronic severe pain and weight loss. Dkt. 83 (Witness Affidavits).

Mr. Montiero submitted several Request for Health Care forms (the writing on which is very faint), and at least some of these forms were related to his polycystic kidney disease. *See* dkt. 81 at 23-31.

C. Discussion

The Eighth Amendment's prohibition against cruel and unusual punishment imposes a duty on the states, through the Fourteenth Amendment, "to provide adequate medical care to incarcerated individuals." *Boyce v. Moore*, 314 F.3d 884, 889 (7th Cir. 2002) (citing *Estelle v. Gamble*, 429 U.S. 97, 103 (1976)). "Prison officials can be liable for violating the Eighth Amendment when they display deliberate indifference towards an objectively serious medical need." *Thomas v. Blackard*, 2 F.4th 716, 721–22 (7th Cir. 2021). "Thus, to prevail on a deliberate indifference claim, a plaintiff must show '(1) an objectively serious medical condition to which (2) a state official was deliberately, that is subjectively, indifferent.'" *Johnson v. Dominguez*, 5 F.4th 818, 824 (7th Cir. 2021) (quoting *Whiting v. Wexford Health Sources, Inc.*, 839 F.3d 658, 662 (7th Cir. 2016)).

The Court assumes for purposes of the summary judgment motion that Mr. Monteiro's polycystic kidney disease and chronic pain were objectively serious. To avoid summary judgment, then, the record must allow a reasonable jury to conclude that Defendants acted with deliberate

¹ Though the alternative recommendation is not signed, in the reply brief, Dr. Riley does not dispute that the alternative treatment plan was her own. *See* dkt. 84 at 6 n.2.

indifference—that is, that they "consciously disregarded a serious risk to [Mr. Monteiro]'s health."

Dean v. Wexford Health Sources, Inc., 18 F.4th 214, 241 (7th Cir. 2021) (cleaned up).

Deliberate indifference requires more than negligence or even objective recklessness. *Id.*

Rather, Mr. Monteiro "must provide evidence that an official actually knew of and disregarded a substantial risk of harm." *Petties v. Carter*, 836 F.3d 722, 728 (7th Cir. 2016).

"Of course, medical professionals rarely admit that they deliberately opted against the best course of treatment. So in many cases, deliberate indifference must be inferred from the propriety of their actions." *Dean*, 18 F.4th at 241 (internal citations omitted).

The Seventh Circuit has held that deliberate indifference occurs when the defendant:

- renders a treatment decision that departs so substantially "'from accepted professional judgment, practice, or standards as to demonstrate that'" it is not based on judgment at all. *Petties*, 836 F.3d at 729 (quoting *Cole v. Fromm*, 94 F.3d 254, 260 (7th Cir. 1996)).
- refuses "to take instructions from a specialist." *Id.*
- persists "in a course of treatment known to be ineffective." *Id.* at 729–30.
- chooses "an 'easier and less efficacious treatment' without exercising professional judgment." *Id.* at 730 (quoting *Estelle*, 429 U.S. at 104 n.10).
- effects "an inexplicable delay in treatment which serves no penological interest." *Id.*

"Persisting in treatment known to be ineffective can constitute deliberate medical indifference, provided that the doctor was subjectively aware that the treatment plan was ineffective." *Thomas v. Martija*, 991 F.3d 763, 772 (7th Cir. 2021).

Mr. Monteiro argues that Defendants were deliberately indifferent to his polycystic kidney disease when they refused to approve tolvaptan as prescribed by the nephrologist and for not providing him with tramadol for pain management.

1. *Dr. Stephanie Riley*

a. Tolvaptan

When viewing the evidence in the light most favorable to Mr. Monteiro, a rational jury could decide that Dr. Riley was deliberately indifferent in violation of Mr. Monteiro's Eighth Amendment rights because her denial of the tolvaptan recommended by specialist Dr. Wanko was based on the cost of the medicine and not based on medical judgment. Mr. Monteiro has stated under penalties of perjury that Dr. Carter told him that this was the reason behind Dr. Riley's denial. Thus, there is a question of material fact as to the true reason that Mr. Monteiro's tolvaptan prescription ultimately was not approved.

2. Tramadol

Mr. Montiero presents evidence that Tylenol was not alleviating his chronic pain. However, he has not presented evidence that Dr. Riley's failure to approve the formulary exception request for tramadol was a deliberately indifferent action. Mr. Montiero has not disputed the evidence that the use of tramadol should be limited in those with a history of narcotic substance abuse and that it was medically appropriate to not provide tramadol as Mr. Montiero's primary pain treatment plan. Additionally, incarcerated individuals have "no right to [their] preferred course of treatment." *Grund v. Murphy*, 736 F. App'x 601, 604 (7th Cir. 2018) (citing *Holloway v. Delaware Cty. Sheriff*, 700 F.3d 1063, 1073 (7th Cir. 2012)). Deliberate indifference requires more than negligence or even objective recklessness. *Id.* Rather, Mr. Montiero "must provide evidence that an official actually knew of and disregarded a substantial risk of harm." *Petties v. Carter*, 836 F.3d 722, 728 (7th Cir. 2016). Mr. Montiero's evidence does not meet this standard. Dr. Riley is entitled to summary judgment regarding the tramadol.

2. *Dr. Jason Carter*

a. Tolvaptan

Though Mr. Monteiro alleges that Dr. Carter demonstrated deliberate indifference by denying Dr. Wanko's recommendation for tolvaptan, the undisputed evidence is that Dr. Carter was not an authorized prescriber of tolvaptan and that he does not have the authority to approve or deny a formulary exception request. "To recover damages under § 1983, a plaintiff must establish that a defendant was personally responsible for the deprivation of a constitutional right." *Whitfield v. Spiller*, 76 F.4th 698, 706 (7th Cir. 2023) (quoting *Gentry v. Duckworth*, 65 F.3d 555, 561 (7th Cir. 1995)). For this purpose, each defendant is considered independently. *Id.* No reasonable jury could determine that Dr. Carter was personally responsible for denying the tolvaptan prescription. Accordingly, Dr. Carter is entitled to summary judgment regarding the tolvaptan.

2. Tramadol

Dr. Carter resigned from his position at New Castle in mid-November 2023. The asserted denial of tramadol to Mr. Monteiro occurred in September 2024, so there is no reasonable inference that Dr. Carter was personally responsible for this denial.

Though Mr. Monteiro states in his verified complaint that he was denied adequate pain relief "during" the same time as the tolvaptan denial, dkt. 37 at 5, he has not submitted evidence to show that Dr. Carter is personally responsible for this vaguely described denial of pain relief. Dr. Carter is entitled to summary judgment regarding the alleged denial of adequate pain relief to Mr. Monteiro.

3. *Centurion*

Mr. Monteiro argues that Centurion has "a policy, practice, or custom in refusing to take instruction from specialists." Dkt. 81 at 6. A private corporation acting under color of state law as

a municipality is liable for a deprivation of federal rights that is caused by "a widespread practice that is so permanent and well-settled that it constitutes a custom or practice." *Dean v. Wexford Health Sources, Inc.*, 18 F.4th 214, 235 (7th Cir. 2021) (quoting *First Midwest Bank ex rel. LaPorta v. City of Chi.*, 988 F.3d 978, 986 (7th Cir. 2021)); *see also Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978)).

A "pivotal requirement" for any practice or custom claim is a showing of widespread constitutional violations. *See Hildreth v. Butler*, 960 F.3d 420, 426 (7th Cir. 2020). Although it is not "impossible" for a plaintiff to demonstrate a widespread practice or custom with evidence limited to personal experience, "it is necessarily more difficult . . . because 'what is needed is evidence that there is a true municipal policy at issue, not a random event.'" *Id.* at 426–27 (quoting *Calhoun v. Ramsey*, 408 F.3d 375, 380 (7th Cir. 2005)). "When a plaintiff chooses to challenge a municipality's unconstitutional policy by establishing a widespread practice, proof of isolated acts of misconduct will not suffice; a series of violations must be presented to lay the premise of deliberate indifference." *Palmer v. Marion Cnty.*, 327 F.3d 588, 596 (7th Cir. 2003).

Here, Mr. Monteiro has designated no evidence of refusal to follow specialists' instructions other than Dr. Wanko's instructions for his care. *See Hildreth*, 960 F.3d at 426. As the Seventh Circuit has noted, "there is no clear consensus as to how frequently such conduct must occur to impose *Monell* liability, except that it must be more than one instance, or even three." *Thomas v. Cook Cnty. Sheriff's Dep't*, 604 F.3d 293, 303 (7th Cir. 2010) (internal quotes and citations omitted). Mr. Monteiro's evidence is insufficient for a rational jury to conclude that Centurion has a de facto policy of refusing specialists' instructions. Centurion is entitled to summary judgment.

II. MOTION FOR PRELIMINARY INJUNCTION

Mr. Montiero asks the Court to order Defendants to give him a urology referral for pain management and to approve the request for tolvaptan.

A. Legal Standard

"A preliminary injunction is an extraordinary equitable remedy that is available only when the movant shows clear need." *Turnell v. Centimark Corp.*, 796 F.3d 656, 661 (7th Cir. 2015). To obtain a preliminary injunction a plaintiff first must show that: "(1) without this relief, [he] will suffer irreparable harm; (2) traditional legal remedies would be inadequate; and (3) [he] has some likelihood of prevailing on the merits of [his] claims." *Speech First, Inc. v. Killen*, 968 F.3d 628, 637 (7th Cir. 2020) (internal quotations omitted). If the plaintiff meets these threshold requirements, "the Court then must weigh the harm the denial of the preliminary injunction would cause the plaintiff against the harm to the defendant if the Court were to grant it." *Id.*

"A movant's showing of likelihood of success on the merits must be strong." *Tully v. Okeson*, 977 F.3d 608, 613 (7th Cir. 2020) (quotation marks omitted). A "mere possibility" or even a "better than negligible" likelihood of success is not enough. *Ill. Republican Party v. Pritzker*, 973 F.3d 760, 762–63 (7th Cir. 2020). Under the Prison Litigation Reform Act (PLRA), "[p]reliminary injunctive relief must be narrowly drawn, extend no further than necessary to correct the harm the court finds requires preliminary relief, and be the least intrusive means necessary to correct that harm." 18 U.S.C. § 3626(a)(2).

"[T]he purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held." *Benisek v. Lamone*, 138 S. Ct. 1942, 1945 (2018) (cleaned up). "A preliminary injunction is always appropriate to grant intermediate relief of the

same character as that which may be granted finally." *DeBeers Consol. Mines v. United States*, 325 U.S. 212, 220 (1945).

B. Discussion

1. Urology Referral

Though Mr. Monteiro has submitted a sworn affidavit in which he states that Dr. Riley has denied at least two requests for urology referrals, dkt. 82 ¶ 10, he does not mention a urology referral in his operative complaint, *see* dkt. 37. Defendants maintain that injunctive relief for this request should be denied on this basis. If a motion for preliminary injunction, "deals with a matter lying wholly outside the issues in the suit," it should be denied. *De Beers Consol. Mines v. United States*, 325 U.S. 212, 220 (1945). Here, though, the urology referral is sought for the purpose of pain management, and Mr. Monteiro's complaint is, in part, about his alleged lack of proper pain management while incarcerated. The Court will not say that the urology referral is "a matter lying wholly outside the issues in the suit."

The injunctive relief must be denied for other reasons, though. As analyzed above, Mr. Monteiro does not succeed on his claims regarding pain management, that is, his claim that the denial of tramadol to him was a constitutional violation. Because he does not prevail on the merits of this claim, the request for preliminary injunctive relief is denied.

2. Tolvaptan

Mr. Monteiro's claim that Dr. Riley violated his constitutional rights when she denied the formulary exception request for tolvaptan has survived summary judgment. The Court now considers whether a preliminary injunction should issue.

a. Likelihood of Success

The fact that summary judgment was denied does not mandate that the preliminary injunction be granted. *Joseph J. Legat Architects, P.C. v. U.S. Dev. Corp.*, 625 F. Supp. 293, 301 (N.D. Ill. 1985). "A movant's showing of likelihood of success on the merits must be strong." *Tully v. Okeson*, 977 F.3d 608, 613 (7th Cir. 2020) (quotation marks omitted). A "better than negligible" likelihood of success is not enough. *Ill. Republican Party v. Pritzker*, 973 F.3d 760, 762–63 (7th Cir. 2020). "A 'strong' showing . . . does not mean proof by a preponderance But it normally includes a demonstration of how the applicant proposes to prove the key elements of its case." *Id.*

Though the burden of proof is different for a motion for preliminary injunction than it is for a motion for summary judgment, the Court finds that, for the same reasons that the tolvaptan claim against Dr. Riley survives summary judgment, Mr. Monteiro has made a sufficient showing of likelihood of success.

b. Irreparable Harm and Traditional Legal Remedies

Irreparable harm is "harm that 'cannot be repaired' and for which money compensation is inadequate." *Orr*, 953 F.3d at 502 (quoting *Graham v. Med. Mut. of Ohio*, 130 F.3d 293, 296 (7th Cir. 1997)). The plaintiff must show "that he will *likely* suffer irreparable harm absent obtaining preliminary injunctive relief." *Id.* (cleaned up). "The moving party must also demonstrate that he has no adequate remedy at law should the preliminary injunction not issue." *Whitaker by Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1046 (7th Cir. 2017). "This does not require that he demonstrate that the remedy be wholly ineffectual." *Id.* (citing *Foodcomm Int'l v. Barry*, 328 F.3d 300, 304 (7th Cir. 2003)). "Rather, he must demonstrate that any award would be seriously deficient as compared to the harm suffered." *Id.* (quoting *Foodcomm*, 328 F.3d at 304).

On June 21, 2023, Dr. Wanko stated that Mr. Monteiro had polycystic kidney disease "with severe cyst burden" and "requires tolvaptan to decrease cyst growth." Dkt. 75-6 at 26, 28. The Court finds that the chronic pain and weight loss that Mr. Monteiro experiences as a result of his polycystic kidney disease satisfy these elements.

c. Balancing of the Harms

The Court finds that, on balance, a preliminary injunction should not issue. There is evidence in the record showing that Mr. Monteiro is not an ideal candidate for tolvaptan: his blood sodium and blood pressure levels were controlled, and his polycystic disease was not rapidly progressing. Dkt. 74-1 ¶ 27. The drug has dangerous side effects and poses a significant risk for liver damage. *Id.* ¶ 16. Providers prescribing and pharmacies dispensing tolvaptan have additional requirements placed on them. *Id.* ¶ 18. Patients taking tolvaptan require "extremely close monitoring" and "rigorous blood testing," *Id.* Though the evidence that the tolvaptan was denied purely for its monetary cost is concerning, there is also evidence that Dr. Riley denied the tolvaptan because "the substantial risks posed by tolvaptan . . . outweighed any potential benefit to be received." *Id.* ¶ 28. She instead chose to pursue an "alternative appropriate treatment plan for his [polycystic kidney disease], including regular monitoring for renal cysts, kidney size and renal functionality," which would "help assess whether Monteiro was ever at increased risk for rapid progression" of the disease in the future. *Id.*

The Court weighs the harm of denial of tolvaptan to Mr. Monteiro (which is tempered by the significant risks and possible side effects and the fact that he is being treated under an alternative treatment plan) and the harm to Defendants by granting the preliminary injunction (which, in addition to a purported cost of over \$20,000 per month includes the burdens of extremely close monitoring, rigorous blood testing, and finding a prescriber and pharmacy

permitted to prescribe and dispense the drug and able to work with IDOC to coordinate the monitoring and testing). The Court finds that the harm to Defendants outweighs the harm to Mr. Monteiro and therefore denies the motion for preliminary injunction.

CONCLUSION

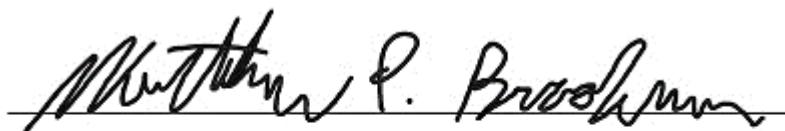
Defendants' motion for summary judgment is **GRANTED in part and DENIED in part**. Dkt. [72]. Summary judgment is granted in favor of Dr. Carter and Centurion on all claims and in favor of Dr. Riley as to the claim of denial of tramadol. Summary judgment is denied as to the claim regarding denial of tolvaptan by Dr. Riley.

Mr. Monteiro's motion for a preliminary injunction is **DENIED**. Dkt. [86].

The Court *sua sponte* **RECONSIDERS** its order denying Mr. Montiero's request for assistance recruiting counsel. The Court now **GRANTS** that motion, dkt. [40]. Once counsel has been recruited, the magistrate judge is asked to schedule a telephonic status conference to discuss further proceedings.

IT IS SO ORDERED.

Dated: February 2, 2026



Matthew P. Brookman, Judge
United States District Court
Southern District of Indiana

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