extensively in the section on criminal due process. However, they are worth noting here. In *Meachum v. Fano*,[802] the Court held that a state prisoner was not entitled to a fact-finding hearing when he was transferred to a different prison in which the conditions were substantially less favorable to him, because (1) the Due Process Clause liberty interest by itself was satisfied by the initial valid conviction, which had deprived him of liberty, and (2) no state law guaranteed him the right to remain in the prison to which he was initially assigned, subject to transfer for cause of some sort. As a prisoner could be transferred for any reason or for no reason under state law, the decision of prison officials was not dependent upon any state of facts, and no hearing was required.

In *Vitek v. Jones*,[803] by contrast, a state statute permitted transfer of a prisoner to a state mental hospital for treatment, but the transfer could be effectuated only upon a finding, by a designated physician or psychologist, that the prisoner "suffers from a mental disease or defect" and "cannot be given treatment in that facility." Because the transfer was conditioned upon a "cause," the establishment of the facts necessary to show the cause had to be done through fair procedures. Interestingly, however, the *Vitek* Court also held that the prisoner had a "residuum of liberty" in being free from the different confinement and from the stigma of involuntary commitment for mental disease that the Due Process Clause protected. Thus, the Court has recognized, in this case and in the cases involving revocation of parole or probation,[804] a liberty interest that is separate from a statutory entitlement and that can be taken away only through proper procedures.

But, with respect to the possibility of parole or commutation or otherwise more rapid release, no matter how much the expectancy matters to a prisoner, in the absence of some form of positive entitlement, the prisoner may be turned down without observance of procedures.[805] Summarizing its prior holdings, the Court recently concluded that two requirements must be present before a liberty interest is created in the prison context: the statute or regulation must contain "substantive predicates" limiting the exercise of discretion, and there must be explicit "mandatory language" requiring

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[802] 427 U.S. 215 (1976). *See also* Montanye v. Haymes, 427 U.S. 236 (1976).

[803] 445 U.S. 480 (1980).

[804] Morrissey v. Brewer, 408 U.S. 471 (1972); Gagnon v. Scarpelli, 411 U.S. 778 (1973).

[805] Greenholtz v. Nebraska Penal Inmates, 442 U.S. 1 (1979); Connecticut Bd. of Pardons v. Dumschat, 452 U.S. 458 (1981); Ohio Adult Parole Auth. v. Woodard, 523 U.S. 272 (1998); Jago v. Van Curen, 454 U.S. 14 (1981). *See also* Wolff v. McDonnell, 418 U.S. 539 (1974) (due process applies to forfeiture of good-time credits and other positivist granted privileges of prisoners).