No. 22-693

In the Supreme Court of the United States

MICHAEL JOHNSON,

Petitioner,

v.

SUSAN PRENTICE, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether a series of prison yard restrictions that furthered valid penological interests by responding to multiple, serious violations of prison rules violated the Eighth Amendment when the prisoner was regularly evaluated and treated while he was subject to those restrictions.

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BRIEF IN OPPOSITION

The Seventh Circuit applied longstanding circuit precedent when it affirmed summary judgment on petitioner's Eighth Amendment yard-access claim under *Pearson v. Ramos*, 237 F.3d 881 (7th Cir. 2001), which has been approvingly cited by appellate and district courts in several circuits, as well as by a member of this Court. See *Apodaca v. Raemisch*, 139 S. Ct. 5, 7 n.4 (2018) (statement of Sotomayor, J., respecting denial of certiorari). *Pearson* held that a yard restriction of 90 days or less is presumptively valid unless it was imposed for a trivial infraction and that, when reviewing the constitutionality of individual restrictions that run consecutively, each one must be considered separately and cannot be "stacked" into a single sanction. 237 F.3d at 884-886. Following that approach, the Seventh Circuit correctly concluded that summary judgment was proper here because the restrictions on petitioner's yard access were justified by his "continuous, serious, and sometimes highly dangerous" misconduct. Pet. App. 14a.

Petitioner now asks this Court to review a question that is not presented by this case and that rests on a mischaracterization of the Seventh Circuit's holding. Although petitioner maintains that the court held that prison officials may impose indefinite yard restrictions that lack any security justification, *e.g.* Pet. i, 10, 16-17, this description of the court's decision cannot be reconciled with the decision itself. The appellate court unambiguously grounded its decision in *Pearson*, which recognized that yard restrictions must be supported by a penological justification to comply with the Eighth Amendment, see 237 F.3d at 885, and determined that the severity of petitioner's misconduct

meant that *Pearson*'s standard was met here. By insisting that the court instead held that yard restrictions need not be justified by any security concerns at all, petitioner misreads the decision and seeks to manufacture a split in authority.

When the petition is considered in view of the appellate court's actual holding, rather than petitioner's inaccurate description of that holding, it is clear that the circuit split petitioner purports to identify does not exist. The Seventh Circuit has consistently held, in this case and others, that yard restrictions must serve valid penological interests. The cases petitioner cites apply the same rule. Petitioner's arguments for this Court's review thus reduce to his disagreement with the Seventh Circuit's conclusion that his loss of yard access was justified on this record. But the court correctly resolved petitioner's yard-access claim based on the evidence before it and, even if it hadn't, a request for error correction is not a basis for certiorari review.

This case, in any event, is a uniquely poor vehicle for deciding when prison yard restrictions violate the Eighth Amendment. As Judge Scudder explained when concurring in the denial of rehearing *en banc*, the record is too meager to permit a thorough consideration of any potential issues. Pet. App. 62a. In fact, the record deficiencies that precluded review in *Apodaca*, 139 S. Ct. 5, are even more prevalent here. For similar reasons, any decision would have little impact beyond this case, confirming that it is an inappropriate vehicle. Using this case, with its undeveloped record and unusual facts, to identify the point at which a yard restriction becomes unlawful will not produce a generally applicable rule for lower courts to follow.

Finally, petitioner's attempt to embellish the petition's importance by questioning the constitutionality of solitary confinement, which was not at issue, further establishes that this case is inappropriate for this Court's review. Both because the case presents no question suitable for the Court's review and because the decision below is correct, the petition, including the request for summary reversal, should be denied.

STATEMENT

1. Petitioner Michael Johnson, a prisoner in the custody of the Illinois Department of Corrections ("Department"), was housed at Pontiac Correctional Center ("Pontiac") beginning in March 2013. Dist. Ct. Doc. 92 at 2. He had received multiple disciplinary tickets for misconduct at his previous facility, and he was transferred to Pontiac for the purpose of placing him in disciplinary segregation, where he remained until he was transferred to a mental health unit at a different facility in August 2016. Dist. Ct. Doc. 93-1 at 9.

Petitioner's misconduct continued while he was at Pontiac. See Dist. Ct. Doc. 93-14. From March 2013 through August 2016, he was found guilty of 46 major prison rule violations arising from 30 incidents. *Id.* at 4-7. The corresponding disciplinary actions varied depending on the severity of the underlying infractions and included the revocation of sentencing credit, additional disciplinary segregation terms, status reductions, and restrictions on certain privileges. See *ibid.* Yard restrictions were imposed in connection with 16 of the incidents, where petitioner was found guilty of assaulting and attempting to assault staff and inmates; intimidation or threats; impairing surveillance; diso-

beying direct orders; health, smoking, or safety violations; insolence; giving false information to staff; damaging or misusing property; abusing privileges; possessing contraband or unauthorized property; and possessing another inmate's social security number. *Ibid.* Seven of the yard restrictions were for three months, seven were for two months, and two were for one month. *Ibid.*

As a result of this persistent misconduct, petitioner remained in disciplinary segregation for the duration of his time at Pontiac, and he was on yard restrictions from January 2014 through August 2016. See Dist. Ct. Docs. 1 at 7, 93-1 at 11. Prisoners who were placed on a yard restriction received one hour of outdoor yard access per month, but petitioner claimed that he was denied that opportunity on multiple occasions and was not allowed to go to the yard from June 2015 to June 2016. Dist. Ct. Doc. 1 at 7; see 7th Cir. Doc. 71 at 9. When asked if he could exercise in his cell, petitioner answered that he "couldn't even move around like [he] wanted to at times" because his property was on the floor. Dist. Ct. Doc. 93-1 at 24.

Petitioner, who was designated as seriously mentally ill, regularly met with doctors and mental health professionals employed by Wexford Health Sources, Inc. ("Wexford"), the prison healthcare provider, who monitored his condition and treated him throughout his time at Pontiac. Dist. Ct. Docs. 76 at 4-27, 92 at 2; see Dist. Ct. Docs. 76-1–76-11, 78–78-11, 93-1 at 11, 93-15, 93-16. Mental health professionals frequently interviewed and evaluated petitioner, prescribed him medications for his conditions, and determined that a transfer to a mental health unit was unnecessary until that recommendation was made in August 2016, at

which time he was promptly relocated to that unit. Dist. Ct. Doc. 76 at 4-19, 23-27; see Dist. Ct. Docs. 76-3–76-7, 76-11, 78–78-11. Petitioner often informed his doctors that he had no physical complaints or injuries, see Dist. Ct. Docs. 78-2 at 1, 78-6 at 1, 78-8 at 7, 78-9 at 2, 78-9 at 6, 78-10 at 5, and when he complained of physical ailments, such as muscle pain, weakness, and atrophy, doctors examined and treated him with medications or vitamins as necessary, see Dist. Ct. Docs. 76 at 19-23, 76-1, 76-2, 78, 78-1–78-3, 78-5, 93-15, 93-16. None of the doctors and mental health professionals concluded that any of petitioner's physical or mental health issues were caused by the conditions of his confinement until a June 2016 finding that his muscle issues were related to a lack of exercise and the August 2016 recommendation that he be relocated to a mental health unit, which led to his transfer out of Pontiac. See Dist. Ct. Docs. 76-1–76-7.

2. Meanwhile, petitioner filed this lawsuit under 42 U.S.C. § 1983, asserting two sets of Eighth Amendment claims. Dist. Ct. Doc. 1. First, he raised conditions-of-confinement claims against respondents, who are corrections officials at Pontiac, *id.* at 2-6, alleging that they unlawfully deprived him of out-of-cell exercise by restricting his yard access, and denying it at times, and that they placed him in cells with poor ventilation, excessive noise, extreme heat, and unsanitary conditions, *id.* at 21-25. Second, he raised medical claims against both his Wexford providers and respondents, alleging that he received inadequate medical and mental health treatment. *Id.* at 23; see Dist. Ct. Doc. 8.

Respondents moved for summary judgment as to all claims. Dist. Ct. Doc. 92. On the yard-access claim,

which is at issue here, they argued that the individual yard restrictions satisfied the Eighth Amendment under *Pearson* because they were a justified response to petitioner's numerous violations of prison rules, and because the longest restrictions did not exceed 90 days. *Id.* at 14-15. And, respondents continued, the fact that the restrictions ran consecutively did not alter the analysis because, as *Pearson* held, those separate restrictions could not be "stacked" into a single sanction for purposes of an Eighth Amendment claim. *Id.* at 15.

Respondents also argued that they were entitled to summary judgment on the yard-access claim for other, independent reasons. See *id.* at 15, 17-18. Although petitioner claimed that three of the respondents violated his rights because they each denied his request to go to the yard on a single occasion, see Dist. Ct. Doc. 93-1 at 13-14, there was no evidence that they knew about his yard restrictions, any prior denials of yard time, or the status of his physical or mental health, which would have been necessary to prove that they acted with deliberate indifference to a risk of serious harm, Dist. Ct. Doc. 92 at 17. The other respondents could not be held liable either because there was no evidence that they were responsible for imposing the yard restrictions or had authority to modify them. *Id.* at 17-18. Respondents further argued that petitioner could not prevail on his yard-access claim because there was no evidence that a shortage of yard time was a proximate cause of any injuries he suffered. *Id.* at 15, 17.

As to petitioner's claims relating to the conditions of his cell, respondents argued that there was no evidence that the alleged conditions presented an objectively serious risk of harm or that any individual respondent subjectively disregarded any such risk. *Id.* at 15-16, 18-

19. About the medical claims, respondents argued that they could not have acted with deliberate indifference because they reasonably deferred to the treatment decisions made by petitioner's doctors. *Id.* at 19. The Wexford defendants also sought summary judgment on the medical claims, emphasizing that they provided petitioner with consistent physical and mental health treatment that comported with medical judgment. Dist. Ct. Doc. 76.

Petitioner filed a response, arguing that all defendants knew about the challenged conditions and had authority to provide him with relief. Dist. Ct. Doc. 108. Petitioner, however, did not submit any evidence in support of his arguments, and he stated that his response was unfinished. See *id.* at 17.

The district court granted summary judgment for all defendants on all claims. Pet. App. 37a-60a. On the yard-access claim, the court began by reasoning that, under *Pearson*, the yard restrictions had to be considered individually, rather than as a single sanction. *Id.* at 51a. It then pointed out that petitioner did not challenge the justifications for any of the individual yard restrictions and concluded that, given the underlying infractions, no reasonable juror could find that they were excessive or "imposed without penological justification." *Id.* at 51a, 53a-54a. The court also stated that the extent of petitioner's ability to exercise in his cell, or in the yard, was unclear from the record, and there was no evidence that he suffered any adverse health consequences as a result of any yard restriction. *Id.* at 53a-54a. And, in granting summary judgment on the medical claims, the court concluded that the Wexford defendants provided petitioner with continuous treatment while he was at Pontiac and that respondents

were entitled to defer to the judgment of the medical professionals. *Id.* at 57a-59a.

3. The Seventh Circuit affirmed summary judgment as to all claims. Pet. App. 1a-36a. At the outset, the court noted that petitioner, who was represented by counsel on appeal, had tried in his briefing to transform this case into a challenge to the constitutionality of solitary confinement, but it held that he had waived any such claim by not raising it in the district court. *Id.* at 2a-3a, 9a-12a. The court then began its analysis of the claims that were before it by recognizing that the "familiar" deliberate indifference standard, which provides that prison officials violate the Eighth Amendment only when they know of and disregard a serious risk of harm to a prisoner's safety, governed those claims. *Id.* at 12a-13a (quoting *Farmer v. Brennan*, 511 U.S. 825, 837 (1994)).

On the yard-access claim, the Seventh Circuit held that summary judgment was proper under *Pearson*. *Id.* at 14a. It acknowledged that the cumulative length of the yard restrictions here was greater than in *Pearson*, but pointed out that petitioner did not argue, either in the district court or on appeal, that his misconduct was trivial. *Ibid.* In any event, the court explained, the yard restrictions were permissible because, even though petitioner's misconduct was not as violent as in *Pearson*, it was "continuous, serious, and sometimes highly dangerous." *Ibid.*

On petitioner's claims challenging his cell conditions, the court held that there was no evidence that respondents subjectively disregarded any risk of serious harm. *Id.* at 13a. And on the medical claims, it held that the extensive treatment petitioner received

from the Wexford defendants defeated any claim against them, and that respondents could reasonably defer to the medical professionals' judgment. *Id.* at 15a-16a.

Judge Rovner dissented in part, stating that she would have reversed summary judgment on the yard-access claim but otherwise agreed with the majority's analysis. *Id.* at 18a-36a. On the yard-access claim, Judge Rovner pointed out that circuit precedent, including *Pearson*, established that the denial of an opportunity to exercise could violate the Eighth Amendment. *Id.* at 21a-23a. She then contended that the majority misapplied *Pearson* because she believed that many of petitioner's yard restrictions were not supported by a sufficient security justification. *Id.* at 23a-36a.

Petitioner filed a petition for rehearing *en banc* on the yard-access claim, which was denied on a tie vote. *Id.* at 61a-74a. Judge Scudder concurred in the denial, emphasizing the record deficiencies that rendered this case a poor vehicle for revisiting *Pearson* or for identifying the point at which a yard restriction violates the Eighth Amendment. *Id.* at 62a-64a. He stated that whether a given yard restriction amounted to deliberate indifference presented a fact-dependent question, and listed numerous pertinent factual matters about which there was no evidence in this record. *Ibid.*

The dissent from denial of rehearing *en banc* believed that the panel majority "delet[ed] 'exercise'" as a basic prison necessity subject to Eighth Amendment protections, *id.* at 65a, but conceded that a multi-week yard restriction could be permissible while opining that, at some point, a lengthier restriction would cross

a constitutional line, *id.* at 69a-70a. The dissent also maintained that the panel majority misapplied *Pearson* when concluding that the yard restrictions here were permissible. *Id.* at 71a-74a.

REASONS FOR DENYING THE PETITION

Petitioner seeks review of a question not presented by this case. The question, and the circuit split that petitioner proposes, are based on the view that the Seventh Circuit held that a yard restriction need not further any security interests to satisfy the Eighth Amendment. But the court held no such thing. Rather, it followed the framework set out in *Pearson*, which, like other circuit precedent, held that yard restrictions that lack a penological justification violate the Eighth Amendment, and it concluded that the restrictions on petitioner's yard access did not lack such a justification. Petitioner's disagreement with that conclusion does not negate the fact that it was made, or that it was the reason the Seventh Circuit affirmed summary judgment. His proposed circuit split thus does not exist.

Even if there were a split in authority, this case is the wrong vehicle for resolving it. As Judge Scudder pointed out, deliberate indifference claims like petitioner's yard-access claim are especially fact-dependent and, because petitioner did not present any evidence, the record here is too undeveloped to permit careful consideration of any issues raised by this claim. However, as Judge Scudder made clear, the Seventh Circuit is poised to address these issues when a better vehicle arrives.

The petition therefore fails to present a sufficiently important question to warrant this Court's consideration both because it merely seeks correction of a purported error in applying settled precedent and because any decision on that fact-dependent question will necessarily be narrow. Petitioner effectively concedes as much by devoting multiple pages of argument to a challenge to solitary confinement that all three judges on the Seventh Circuit panel agreed was not before it. Whatever merit there might be to any such challenge, this is not the case for considering it.

I. There Is No Circuit Split Because The Seventh Circuit, Like Other Circuits, Requires That Yard Restrictions Further Penological Interests.

The Seventh Circuit reached its decision by following *Pearson*, where the court held, more than 20 years ago, that a yard restriction violates the Eighth Amendment when it is not supported by a valid penological interest and that, when assessing the constitutionality of multiple yard restrictions, each one must be considered individually. Applying that standard, the appellate court correctly concluded that petitioner's yard restrictions were permissible because they were justified by his multiple, serious violations of prison rules.

Petitioner tries to excise that conclusion from the court's decision by echoing Judge Rovner's criticisms of it and using them to argue that the panel majority held that a yard restriction need not be supported by any security concerns at all. But his attempt to manufacture a circuit split by rewriting the appellate court's decision cannot succeed because the court plainly ap-

plied circuit precedent, which is consistent with decisions from other circuits, and did not alter the Seventh Circuit's decades-long approach.

A. The Seventh Circuit has held, in this case and others, that yard restrictions must be supported by a valid penological justification.

The Seventh Circuit applied settled circuit precedent when it held that the challenged yard restrictions did not violate the Eighth Amendment. While petitioner maintains that the court created a circuit split by holding that prison officials may impose yard restrictions that are unconnected to any security concerns, this mischaracterizes the court's decision and ignores its fit within the circuit's jurisprudence. The court did not break any new legal ground in this case, but merely applied *Pearson*, which held that a yard restriction must have a valid penological justification and set out a framework for conducting the governing Eighth Amendment analysis in the context of a yard-access claim.

In *Pearson*, the plaintiff received four consecutive 90-day yard restrictions for four separate infractions and claimed that the cumulative, year-long restriction violated the Eighth Amendment. 237 F.3d at 883. The Seventh Circuit rejected that claim based on two conclusions that are relevant here. See *id.* at 884-886. First, it held that yard restrictions that lack any penological justification violate the Eighth Amendment, stating that a 90-day restriction for a trivial infraction of prison rules would be unconstitutional. *Id.* at 884-885. Second, it held that separate yard restrictions

cannot be "stacked" into a single sanction when deciding their constitutionality. *Id.* at 885-886. Through those conclusions, the court established a presumption that a yard restriction of 90 days or less is validly justified by penological interests unless it was imposed for a trivial infraction. See *id.* at 884-886. In *Pearson*, the plaintiff could not overcome that presumption because the yard restrictions there were imposed for serious misconduct, including assaulting an officer and throwing bodily fluids at other staff. *Id.* at 885.

This approach aligns with other decisions from the Seventh Circuit, which, citing *Pearson*, recognize that "short-term denials of exercise may be inevitable in the prison context" but hold that yard restrictions that lack a penological basis are unconstitutional. *Delaney v. DeTella*, 256 F.3d 679, 683-684 (7th Cir. 2001); see *Winger v. Pierce*, 325 F. App'x 435, 436 (7th Cir. 2009) (constitutionality of nine-month restriction depended on existence of "good penological reasons"). And those decisions confirm that *Pearson*'s 90-day threshold is merely a presumption, explaining that shorter yard restrictions violate the Eighth Amendment when they lack a valid justification. See *Turley v. Rednour*, 729 F.3d 645, 652 (7th Cir. 2013) (rejecting argument that *Pearson* created "ironclad rule," while holding that plaintiff stated claim by alleging that shorter restriction lacked valid basis); *Rasho v. Walker*, 393 F. App'x 401, 403 (7th Cir. 2010) (stating that *Pearson* "left open the possibility that a denial of *less* than 90 days could be actionable") (emphasis in original).

Here, the Seventh Circuit hewed to *Pearson* by deciding that the yard restrictions were justified by the seriousness of petitioner's misconduct. See Pet. App.

14a. It noted that the cumulative length of the restrictions was greater than in *Pearson* but, consistent with *Pearson*'s "anti-stacking" rule, it reviewed the justification for each restriction. *Ibid.* To that end, the court pointed out that petitioner did not argue that any of his infractions were trivial, "either individually or in the aggregate," *ibid.*, which mirrored the district court's observation that he did not challenge the justifications for any of the restrictions, see *id.* at 51a. In any event, the appellate court continued, petitioner could not have successfully challenged the restrictions as unjustified because, even though his misconduct was not as violent as in *Pearson*, his infractions "were continuous, serious, and sometimes highly dangerous." *Id.* at 14a.

While petitioner insists that the Seventh Circuit held that yard restrictions need not be justified by any security concerns, *e.g.*, Pet. 16-17, that characterization finds no support in the court's decision. As explained, the court stuck close to *Pearson*, see Pet. App. 14a, which held that all yard restrictions must serve valid penological interests and set a framework for deciding if that requirement was met that looks to the basis for each restriction, see 237 F.3d at 884-885. Thus, by applying *Pearson* and determining that the yard restrictions were justified by petitioner's serious misconduct, the appellate court necessarily concluded that the restrictions served valid penological interests.

To the extent that petitioner suggests that there is a difference between "security" interests, on the one hand, and "penological" interests, on the other, any such suggestion would fail, as the cases he cites in support of his proposed circuit split use the terms interchangeably. See Pet. 12-14; *Melendez v. Sec'y, Fla.*

Dep't of Corr., No. 22-10306, 2022 WL 1124753, *13 (11th Cir. Apr. 15, 2022) (asking if yard restriction was "penologically justified"); *Silverstein v. Fed. Bureau of Prisons*, 559 F. App'x 739, 755 (10th Cir. 2014) (prison actions that are "reasonably related to a legitimate penological interest" are permissible); *Bass v. Perrin*, 170 F.3d 1312, 1316 (11th Cir. 1999) (yard restriction violates the Eighth Amendment when it is "'totally without penological justification'") (quoting *Gregg v. Georgia*, 428 U.S. 153, 183 (1976)); *Mitchell v. Rice*, 954 F.2d 187, 192 (4th Cir. 1992) ("penological considerations" may justify yard restrictions); *Walker v. Mintzes*, 771 F.2d 920, 928 (6th Cir. 1985) (court must consider "security requirements" and "'penological justification[s]'") (quoting *Rhodes v. Chapman*, 452 U.S. 337, 346 (1981)). Indeed, in *Pearson*, the penological interest that justified the yard restrictions was "protecting the staff and the other prisoners from" the plaintiff. 237 F.3d at 885; see *Apodaca*, 139 S. Ct. at 7 n.4 (statement of Sotomayor, J., respecting denial of certiorari) (citing *Pearson* for proposition that yard restrictions must be supported by "security justification").

Petitioner bases his argument that the Seventh Circuit required no security justification on a part of the panel dissent where Judge Rovner related that she believed the majority had misapplied circuit precedent because, in her view, petitioner's yard restrictions were not supported by security concerns. See Pet. 16-17; Pet. App. 36a. But this statement by the dissent is not the majority's holding. As explained, the majority clearly held that the yard restrictions were justified by petitioner's "continuous, serious, and sometimes highly dangerous" misconduct, Pet. App. 14a, and the

dissent's disagreement with that conclusion does not change the fact that it was made.

Tellingly, petitioner does not mention or discuss *Pearson* in his petition or contend with other Seventh Circuit decisions holding that yard restrictions of any length must be supported by a valid penological justification. The panel majority did not purport to overrule any of those decisions. Rather, it closely followed *Pearson*, which, again, holds that yard restrictions not supported by a penological justification violate the Eighth Amendment. See 237 F.3d at 884-885. In short, petitioner's assertion that the Seventh Circuit does not require yard restrictions to be supported by a valid justification is directly contradicted by circuit precedent, as well as the majority opinion itself.

B. Given that the Seventh Circuit, like other circuits, requires that a yard restriction be supported a penological justification, there is no circuit split.

Without petitioner's misleading characterization of the majority's holding and Seventh Circuit precedent, his proposed circuit split has no basis. Indeed, the cases petitioner cites uniformly hold that a prison yard restriction must have a valid justification, whether phrased as a safety concern or other penological interest. See Pet. 10-16; see also *Melendez*, 2022 WL 1124753, *13 (asking if restriction was "penologically justified"); *McClure v. Haste*, 820 F. App'x 125, 131-32 (3d Cir. 2020) (mattress restriction that served "no legitimate penological reason" was unconstitutional); *Silverstein*, 559 F. App'x at 755 (restriction is valid if "reasonably related to a legitimate penological interest"); *Giacalone v. Dubois*, 121 F.3d 695 (Table) (1st

Cir. 1997) (restrictions imposed for disciplinary infractions, including assisting in assault, were permissible) (citing *McGuinness v. Dubois*, 893 F. Supp. 2 (D. Mass. 1995)); *Williams v. Greifinger*, 97 F.3d 699, 704 (2d Cir. 1996) (recognizing "safety exception" to exercise guarantee); *Allen v. Sakai*, 40 F.3d 1001, 1004 (9th Cir. 1994) (denial of yard access based on logistical reasons, rather than security concerns, was invalid); *Patterson v. Mintzes*, 717 F.2d 284, 289 (6th Cir. 1983) (exercise denial, "without penological justification," is unconstitutional); *Campbell v. Cauthron*, 623 F.2d 503, 507 n.4 (8th Cir. 1980) (prisons may deny out-of-cell exercise for security reasons).[1]

Those decisions align with Seventh Circuit decisions, including *Pearson*, which also hold that a yard restriction violates the Eighth Amendment unless it is justified by a valid penological interest. See *supra* pp. 12-13. In fact, multiple appellate and district courts outside the Seventh Circuit have followed *Pearson*'s reasoning when reviewing Eighth Amendment yard-access claims. See, *e.g.*, *Barndt v. Wenerowicz*, 698 F.

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[1] The remaining cases petitioner cites, see Pet. 14-15, did not decide any issues relevant to the question presented because: (1) *Hernandez v. Velazquez*, 522 F.3d 556, 559 (5th Cir. 2008), was decided based on the absence of a risk of serious harm from the exercise denial; (2) *Maze v. Hagett*, 200 F.3d 814 (5th Cir. 1999), is an unpublished decision that cannot be cited as precedent, see 5th Cir. R. 47.5.4 (unpublished opinions issued after January 1, 1996, may be cited under Fed. R. App. 32.1(a), which allows citing unpublished opinions issued after January 1, 2007); and (3) *Campbell v. McGruder*, 580 F.2d 521, 544-546 (D.C. Cir. 1978), involved pretrial detainees and did not discuss the permissible justifications for a yard restriction. Thus, these cases do not conflict with Seventh Circuit decisions holding that a yard restriction must be supported by a valid penological justification.

App'x 673, 677 (3d Cir. 2017); *Phillips v. Norris*, 320 F.3d 844, 848 (8th Cir. 2003); *Grant v. Bowers*, No. 1:22-cv-330 (RDA/IDD), 2023 WL 2392729, *5-6 (E.D. Va. Mar. 6, 2023); *Erskine v. Mears*, Civ. No. 22-381-GBW, 2022 WL 16921844, *3 (D. Del. Nov. 14, 2022); *Ruggiero v. Fischer*, No. 15-cv-00962-RJA-JJM, 2018 WL 7892966, *6 (W.D.N.Y. Sept. 27, 2018); *O'Mara v. Hillsborough Cnty. Dep't of Corr.*, No. 08-cv-51-SM, 2008 WL 5077001, *4 (D.N.H. Nov. 24, 2008). And *Pearson* relied on some of the same decisions that petitioner cites in support of his proposed circuit split. 237 F.3d at 884-885 (citing *Bass*, 170 F.3d at 1316-1317; *Allen*, 40 F.3d at 1004; and *LeMaire v. Maass*, 12 F.3d 1444, 1457-1458 (9th Cir. 1993)). In addition, a member of this Court has, correctly, cited *Pearson* as support for the point that yard restrictions must be supported by a valid penological justification. See *Apodaca*, 139 S. Ct. at 7 n.4 (statement of Sotomayor, J., respecting denial of certiorari).

Petitioner's suggested circuit split therefore is illusory because it rests on the false premise that the Seventh Circuit has approved yard restrictions that lack any penological justification. When the Seventh Circuit's precedent is accurately stated, it is clear that the court's approach is fully consistent with the uniform decisions of other circuits. Because this case does not implicate any split in authority, it is not suitable for this Court's review.

II. This Case Is A Poor Vehicle For Deciding The Question Presented.

Even if petitioner could identify a circuit split, this case does not provide an appropriate vehicle for resolv-

ing the question presented. Whether a given yard restriction violates the Eighth Amendment is fact-dependent, and here, where petitioner did not present any evidence, any inquiry into whether the yard restrictions were improper will be hamstrung by the absence of pertinent facts. Relatedly, answering the question presented in petitioner's favor would not change the outcome of this case because, as respondents argued below, the evidence does not support a finding that any individual respondent was liable or that petitioner suffered any injury as a result of respondents' conduct. There is also little reason to consider the question presented on this deficient record when the Seventh Circuit has expressed a willingness to revisit the question if a better vehicle arrives.

1. At the outset, petitioner's assertion that the petition presents a "pure question of law," Pet. 23, is wrong. A prison official violates the Eighth Amendment as to conditions of confinement when the official acts with deliberate indifference to a substantial risk of serious harm. *Farmer*, 511 U.S. at 836-837. Whether a prison official acted with deliberate indifference "is a question of fact." *Id.* at 842. Indeed, the deliberate indifference standard contains both an objective and a subjective component, *Thomas v. Blackard*, 2 F.4th 716, 719 (7th Cir. 2021), and "requires a fact-specific analysis of the record" at each step, *Edmo v. Corizon, Inc.*, 935 F.3d 757, 794 (9th Cir. 2019); see *Rachel v. Troutt*, 820 F.3d 390, 394 (10th Cir. 2016) ("'Each step of this inquiry is fact-intensive.'") (quoting *Hartsfield v. Colburn*, 491 F.3d 394, 397 (8th Cir. 2007)). That "fact-intensive inquiry" into a conditions claim "requires the development of a factual record." *Budd v. Motley*, 711 F.3d 840, 843 (7th Cir. 2013) (*per curiam*).

Whether a particular restriction on a prisoner's yard access amounts to deliberate indifference thus depends on the circumstances of the case, as Judge Scudder pointed out when identifying the factual issues at play here. See Pet. App. 63a-64a. A yard restriction that is constitutional under one set of facts may be unconstitutional under another. *E.g.*, *Silverstein*, 559 F. App'x at 763-764; *Mitchell*, 954 F.2d at 191. Petitioner overlooks the fact-bound nature of *Farmer*'s deliberate indifference standard when he mistakenly contends that his petition asking to identify at what point a yard restriction violates the Eighth Amendment under that standard presents a "pure question of law." Pet. 23. And while petitioner maintains that the question whether a yard restriction must be supported by any security justifications at all is a question of law, *ibid.*, the Seventh Circuit, as explained, *supra* pp. 12-16, requires just such a justification, leaving no legal question to resolve. Accordingly, the petition does not present the type of purely legal question that can be decided on an undeveloped factual record.

2. Thus, petitioner's yard-access claim could not be resolved without developing the evidence about the circumstances surrounding his yard restrictions. That necessary record development did not occur. Petitioner did not present any evidence or challenge the justifications for the yard restrictions in response to the motion for summary judgment. See Dist. Ct. Doc. 108; Pet. App. 51a.[2] As a result, there was little evidence about several issues that would be relevant to

[2] Although petitioner argued in his reply brief on appeal that the district court should have considered evidence that was not included with his response, 7th Cir. Doc. 71 at 15-16, he has not renewed that argument here and, regardless, those documents are

this Court's review. Judge Scudder, in fact, provided a non-exhaustive list of those issues in his concurrence. Pet. App. 63a-64a. For example, as the district court noted, the extent of petitioner's out-of-cell access was uncertain, *id.* at 53a, and the evidence about his ability to exercise in his cell was unclear, *id.* at 54a. This is because the litigation before the lower courts, like in *Apodaca*, did not focus on the validity of the penological justifications on which the yard restrictions were based, and, therefore, produced a factual record that "is not well suited" for this Court's review. 139 S. Ct. at 7 (statement of Sotomayor, J., respecting denial of certiorari).

Petitioner makes three arguments about the sufficiency of the record, but none is convincing. First, he contends that the Court should not wait for a case with an adequate record, suggesting that it may never arrive because most prisoner litigation is conducted *pro se*. Pet. 24. But petitioner was able to obtain counsel on appeal, demonstrating that there are attorneys and advocacy organizations willing to litigate cases like this. Plus, *pro se* prisoners who are not competent to litigate their claims may have counsel recruited to represent them. See 28 U.S.C. § 1915(e)(1); *Pruitt v. Mote*, 503 F.3d 647 (7th Cir. 2007) (*en banc*). Here, the district court determined that petitioner was competent to litigate his claims, and he did not challenge that ruling on appeal. See Pet. App. 16a-17a.

Second, petitioner maintains that the record is adequate because, at summary judgment, the evidence must be viewed in the light most favorable to him. Pet.

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not relevant to the justifications for the yard restrictions, see 7th Cir. Doc. 62 at 35-36.

24. But a plaintiff must present evidence in support of each element of his claims to defeat summary judgment, *Cleveland v. Policy Mgmt. Sys. Corp.*, 526 U.S. 795, 805-806 (1999), and a court need not accept his characterization of the facts, see *Burnette v. Fahey*, 687 F.3d 171, 180 (4th Cir. 2012), or draw inferences in his favor that the evidence does not support, *Pioneer Ctrs. Holding Co. Emp. Stock Ownership Plan & Tr. v. Alerus Fin. N.A.*, 858 F.3d 1324, 1334 (10th Cir. 2017). Consequently, this Court should not accept petitioner's assertions that the yard restrictions did not further security interests or that they caused him significant harm, see Pet. 24, given the undeveloped record on these points.[3]

Third, petitioner argues that the undeveloped record can be ignored because he was deprived of exercise for three years, which, he maintains, is unconstitutional regardless of what the evidence, had it been developed, might show. Pet. 25. This overlooks that petitioner did not receive a three-year yard restriction, but instead received multiple restrictions of between one and three months each. See Dist. Ct. Doc. 93-14 at 4-7. Consistent with *Pearson*, the Seventh Circuit held that those discrete restrictions should be considered separately, and not "stacked," when evaluating them for Eighth Amendment compliance. Pet. App. 14a; see also *Pearson*, 237 F.3d at 886.

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[3] Petitioner's contention that a court must accept that he could not exercise in his cell, see Pet. 24, is also incorrect. He did not state that he could not exercise in his cell, but merely remarked that it was different from being in the yard because he "couldn't even move around like [he] wanted to at times," as the cell was small and his property was stored either on the bed or on the floor. Dist. Ct. Doc. 93-1 at 24.

Petitioner does not argue that *Pearson*'s anti-stacking rule implicates a circuit split or otherwise warrants this Court's review. And it does not, as *Pearson*'s rule is consistent with decisions from other circuits, see *Hawkins v. Hargett*, 200 F.3d 1279, 1285 n.5 (10th Cir. 1999) (Eighth Amendment "focuses on the sentence imposed for each specific crime, not on the cumulative sentence for multiple crimes"); *United States v. Aiello*, 864 F.2d 257, 265 (2d Cir. 1988) (same), and has been relied upon by other courts, see *Hand v. Turner*, No. 3:19-cv-049, 2019 WL 699357, *5 (S.D. Ohio Feb. 20, 2019); *Zanetti v. McDowell*, No. EDCV 17-1232-DMG (LAL), 2018 WL 8053777, *8 n.36 (C.D. Cal. July 16, 2018).

In any event, even if petitioner's separate yard restrictions could be "stacked" into a single sanction, the record would still be too meager for this Court's review. As Judge Scudder noted, there is no evidence about petitioner's ability to exercise while on yard restrictions or the impact the restrictions had on his physical and mental health. Pet. App. 63a-64a. Absent that evidence, it is impossible to determine whether respondents were deliberately indifferent to a risk of serious harm, especially when petitioner was regularly examined and treated by doctors and mental health providers who did not connect any medical issues to a lack of exercise until shortly before he was transferred out of Pontiac. See Dist. Ct. Docs. 76-1–76-7.

3. On that point, this case is the wrong vehicle for the additional reason that answering the question presented in petitioner's favor would not change the outcome. To prevail on his yard-access claim, petitioner needs to prove not only that the yard restrictions were unjustified, but also that respondents were personally

responsible for denying him yard time and, in doing so, consciously disregarded a substantial risk of serious harm. See *Green v. City of St. Louis*, 52 F.4th 734, 740 (8th Cir. 2022) (section 1983 liability "is personal, so each defendant's conduct must be independently assessed") (internal quotations omitted); *Mitchell v. Kallas*, 895 F.3d 492, 498 (7th Cir. 2018) (official is liable under section 1983 only when "personally responsible for the alleged deprivation"); *Vasquez v. Davis*, 882 F.3d 1270, 1275 (10th Cir. 2018) (plaintiff must show defendant "personally participated" in violation). And petitioner would have to prove that respondents' conduct "(not somebody else's) *caused* [him] injury." *Pineda v. Hamilton Cnty.*, 977 F.3d 483, 490 (6th Cir. 2020) (emphasis in original); accord *Gray v. Hardy*, 826 F.3d 1000, 1006 (7th Cir. 2016) (citing *Carey v. Piphus*, 435 U.S. 247, 264 (1978)).

Respondents argued in their summary judgment motion that petitioner could not prove these necessary elements—subjective indifference, personal involvement, or injury—on this record, Dist. Ct. Doc. 92 at 15-18, and the district court did not disagree, Pet. App. 53a-54a (noting that evidence was "unclear" with respect to extent petitioner could access outdoor yard, and holding that evidence did not establish that petitioner "suffered adverse health consequences" from loss of yard access). Respondents, moreover, could not have been subjectively indifferent to a risk of harm when the doctors and mental health professionals who regularly evaluated and treated petitioner did not identify any medical issues caused by a lack of exercise until shortly before he was transferred out of Pontiac. See Dist. Ct. Docs. 76-1–76-7; see also Pet. App. 16a, 58a

(holding respondents could rely on medical professionals' judgment). The petition addresses none of these issues and does not dispute that the absence of evidence about the details of the yard restrictions or their effect on petitioner's health would alone justify summary judgment for respondents.

4. Finally, there is no need to grant certiorari in this case, which provides a deeply flawed vehicle for considering the question presented, when the Seventh Circuit has indicated that it is willing to revisit the issues the case presents when a better vehicle arrives. When concurring in the denial of rehearing *en banc*, Judge Scudder stated that the full court should consider these issues in "another appeal with a more developed record." Pet. App. 64a. As Judge Scudder's vote was necessary to deny rehearing, it is likely that the Seventh Circuit will revisit these issues in a case that provides this Court with a far better vehicle for examining any questions worthy of consideration.

III. The Seventh Circuit's Decision Is Correct.

Certiorari is further unwarranted because the appellate court's decision is correct.

1. Under the deliberate indifference test, prison officials violate the Eighth Amendment when they knowingly disregard a substantial risk of an objectively serious harm. *Farmer*, 511 U.S. at 834-836. In *Pearson*, the Seventh Circuit articulated a framework for applying these principles to prison yard restrictions that requires them to further a valid penological interest. 237 F.3d at 884. This framework gives effect to both parts of the deliberate indifference test. First, a yard restriction without a penological justification presents an objectively serious harm by unnecessarily depriving a

prisoner of "the minimal civilized measure of life's necessities." *Rhodes*, 452 U.S. at 346-347. Second, a prison official who knowingly imposes an unjustified yard restriction subjectively disregards a risk of that serious harm. See *Farmer*, 511 U.S. at 837.

Here, the Seventh Circuit correctly applied the deliberate indifference standard. It began by noting that petitioner had not argued that any of his individual yard restrictions lacked a penological justification, and explained that even if he had, the record demonstrated that the restrictions were justified because petitioner's misconduct was "continuous, serious, and sometimes highly dangerous." Pet. App. 14a; see also Dist. Ct. Doc. 93-14 at 4-15 (describing petitioner's history of infractions, which included assaulting and attempting to assault inmates and staff, impairing surveillance, and threatening to kill another inmate). Given the lack of evidence and argument by petitioner that his infractions were either minor or less serious than they appeared, such that he did not pose a security threat, the appellate court correctly held that the yard restrictions were justified, which satisfied the objective element of the deliberate indifference test. See Pet. App. 14a. And because the restrictions were supported by a valid penological interest, respondents could not have been subjectively indifferent to a serious risk of harm when imposing or enforcing them.

2. Petitioner offers four arguments for why the appellate court erred, but all lack merit. First, he maintains that the court disregarded the principle from *Wilson v. Seiter*, 501 U.S. 294, 304 (1991), that multiple conditions of confinement may in combination violate the Eighth Amendment because "they have a mutually

enforcing effect that produces the deprivation of a single, identifiable human need such as food, warmth, or exercise." Pet. 17-18, 30-31. But the Seventh Circuit properly applied *Wilson*, correctly reasoning that conditions may be aggregated only when together they uniformly affect a single need, such as exercise. Pet. App. 13a; see *Wilson*, 501 U.S. at 305 ("Nothing so amorphous as 'overall conditions' can rise to the level of cruel and unusual punishment when no specific deprivation of a single human need exists."). Although petitioner argues that the court failed to consider his placement in segregation when evaluating his yard-access claim, Pet. 18, 30-31, the court addressed that fact in its decision, see Pet. App. 5a, 14a. Petitioner does not identify any effect that his segregation status had on his ability to exercise that was not accounted for by the Seventh Circuit, beyond asserting that he could not exercise in his cell, which, as explained, *supra* p. 22 n.3, is not supported by the evidence.

Second, petitioner contends that the Seventh Circuit failed to apply the governing deliberate indifference standard. Pet. 18-20, 31-32. Again, *Pearson* provides a framework—which requires that yard restrictions further a valid penological interest—for effectuating that standard in the yard-access context. See *supra* pp. 25-26. The appellate court's conclusion that the yard restrictions were justified by valid penological interests, see Pet. App. 14a, thus resolved any question of deliberate indifference, see *supra* p. 26.

Indeed, petitioner's arguments with respect to the two parts of the deliberate indifference test confirm the record deficiencies that Judge Scudder identified. The district court noted, with respect to the objective element, that the record did not establish that petitioner

suffered any adverse health consequences due to the loss of yard access. Pet. App. 54a; see also *id.* at 9a (panel majority noting same). And petitioner argues that "it is reasonable to assume" that he suffered "serious harm," Pet. 18-19, effectively conceding that the evidence does not show that he suffered such harm. Again, it was petitioner's obligation to present evidence supporting each element of his claims, *supra* p. 22; petitioner's speculation that he suffered harm sufficient to establish the objective element of a deliberate indifference claim cannot defeat summary judgment, see *Intel Corp. Inv. Pol'y Comm. v. Sulyma*, 140 S. Ct. 768, 779 (2020) (courts will not accept nonmovant's version of facts when unsupported by evidence); *Nitkin v. Main Line Health*, 67 F.4th 565, 571 (3d Cir. 2023) ("bare assertions, conclusory allegations, or suspicions [will not] suffice") (cleaned up); *Beaulieu v. Stockwell*, 46 F.4th 871, 876 (8th Cir. 2022) (claims based on "speculation or suspicion" do not survive summary judgment).

On the subjective part of the deliberate indifference test, petitioner does not dispute that the evidence showed that he was treated by Wexford's doctors and mental health professionals throughout his time at Pontiac, and that these medical professionals did not conclude that his medical issues were connected to any lack of exercise until just before his transfer. See Dist. Ct. Docs. 76-1–76-7.[4] As the Seventh Circuit held, re-

[4] Although petitioner argues that mental health staff at one point advised that he lacked an outlet for his mental illness without yard access, Pet. 19, he appears to rely on a document, Dist. Ct. Doc. 58, that was not part of the summary judgment record, see Dist. Ct. Text Order (entered 4/26/2018) (informing petitioner that doc-

spondents, who are not medical professionals, were entitled to defer to the medical judgments of the Wexford defendants, precluding a finding that they were deliberately indifferent to a risk of serious harm. See *Giles v. Godinez*, 914 F.3d 1040, 1052 (7th Cir. 2019) (prison officials did not violate Eighth Amendment by relying on medical professionals' judgment that cell conditions did not exacerbate prisoner's mental health issues); see also *Est. of Beauford v. Mesa Cnty.*, 35 F.4th 1248, 1265 (10th Cir. 2022) ("Prison officials generally may rely on the advice and course of treatment prescribed by medical personnel."); *McRaven v. Sanders*, 577 F.3d 974, 981 (8th Cir. 2009) (same).

Third, petitioner argues that the Seventh Circuit improperly "delet[ed] 'exercise'" from the list of basic human needs that *Wilson* identified. Pet. 20-21, 32. But, again, this argument rests on a mischaracterization of the appellate court's decision. See *supra* pp. 12-16. The court did not hold that yard restrictions need not be supported by a security justification, but instead held, consistent with decades of Seventh Circuit precedent, that yard restrictions do not comply with the Eighth Amendment unless they further valid penological interests. See *id.*

Fourth, petitioner asserts that his lack of yard access was "contrary to 'evolving standards of decency.'" Pet. 21-23, 32-33 (quoting *Rhodes*, 452 U.S. at 346). But the cases petitioner cites for that proposition are among the ones he cites for his proposed circuit split,

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uments not attached to a motion or response will not be considered and directing him to include all relevant documents with his response to the summary judgment motion).

compare id. at 22-23, *with id.* at 10-16, and, as explained, these cases hold merely that yard restrictions that serve a valid penological purpose do not violate the Eighth Amendment. As also explained, both the decision below and other Seventh Circuit cases are consistent with that approach. See *supra* pp. 12-18.

IV. The Question Presented Is Not Sufficiently Important To Justify This Court's Review.

Finally, the petition should be denied for the additional reason that petitioner merely seeks to correct a purported error in applying precedent on a fact-dependent issue in a case with unusual facts. Any decision by this Court would therefore have little impact beyond this case.

1. As explained, petitioner's arguments for this Court's review mischaracterize the decision below as having held that yard restrictions that are unsupported by security concerns may still comply with the Eighth Amendment. See *supra* pp. 12-16. Shorn of this mischaracterization, the petition amounts to an argument that (as the panel dissent would have held, see Pet. App. 32a (opining that "[m]any, if not most" of petitioner's infractions "do not signify any acute security risk")), the yard restrictions here were not in fact justified by security concerns. *E.g.*, Pet. 21 (summary judgment record shows "no security justification" "existed"); *id.* at 32 (record does "not support" "assertion" that restrictions were "necessitated by security"). But the panel majority held otherwise, reasoning that the yard restrictions were permissible because petitioner's misconduct was "continuous, serious, and sometimes highly dangerous." Pet. App. 14a. Because the petition

challenges this determination, it improperly asks this Court to engage in error correction.

2. Moreover, any decision on that request is unlikely to yield a generally applicable rule that could provide guidance to lower courts in other cases. For example, as even the judges who would have granted rehearing *en banc* recognized, the Eighth Amendment contemplates short-term restrictions on yard access. Pet. App. 69a-70a. Thus, the dissenters described the relevant question as asking at what point yard restrictions cross a constitutional line. *Id.* at 69a-70a. While that question calls into question *Pearson*'s anti-stacking rule, petitioner does not challenge that rule. See *supra* p. 23. And even if petitioner had put the propriety of *Pearson*'s rule before the Court, in his view this case is *sui generis*. See Pet. 25. To identify a generally applicable rule, the Court would benefit from a case with usual facts. This is yet another reason to "await another appeal" before granting certiorari on any issues raised by this case. Pet. App. 64a (Scudder, J., concurring in the denial of the petition for rehearing *en banc*); see also *supra* p. 25.

In the end, although petitioner claims that the question presented is exceptionally important, see Pet. 26-30, his arguments suggest the opposite. Rather than explaining why a decision on his yard-access claim would be important to a wide swath of prisoners and corrections officers or essential to the development of the law, petitioner devotes nearly his entire argument on this point to challenging the constitutionality of solitary confinement. See *id.* But all three judges on the Seventh Circuit panel that heard this appeal agreed that he waived this claim by not raising it in the district court. Pet. App. 9a-12a, 18a. By basing his arguments

regarding importance on a claim that was not raised below, petitioner effectively concedes that the question presented in this petition is insufficiently important to justify this Court's review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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