

No. 25-417

IN THE
Supreme Court of the United States

FRANCIS NIELSEN,

Petitioner,

v.

KEKAI WATANABE,

Respondent.

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

SUPPLEMENTAL BRIEF FOR PETITIONER

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Petitioner Francis Nielsen respectfully submits this supplemental brief to notify the Court of the Solicitor General’s petition for a writ of certiorari in *Mohan v. Watkins*, No. 25-952, filed February 10, 2026 (“Gov’t Pet.”). The Solicitor General notes that the government’s petition in *Mohan* “raises essentially the same question” presented in this case. Gov’t Pet.7. And he urges that “[t]his Court should grant the petition for a writ of certiorari in *Nielsen v. Watanabe*, No. 25-417”—this case—and hold *Mohan* “pending the resolution of *Nielsen*.” Gov’t Pet.7; *id.* at 4, 24-25.

1. As the Solicitor General explains, the question presented both here and in *Mohan* implicates a “multi-sided circuit conflict” over “Carlson’s scope and continuing vitality.” Gov’t Pet.18, 21. The circuits are divided over whether “alternative remedial structure[s]” that “previous *Bivens* cases did not consider”—such as the Bureau of

Prisons’ “Administrative Remedy Program” and the “Prison Litigation Reform Act”—give rise to “a new *Bivens* context.” *Id.* at 11-12, 18-21 (quotation marks omitted); accord Pet.15-19; Reply.3-5.

The circuits are likewise divided over whether a new *Bivens* context arises where a “case involves a different type of injury than *Carlson*,” *e.g.*, a “‘chronic, non-emergent medical condition’” (like here and in *Mohan*), as opposed to the “‘acute medical emergency’” in *Carlson* that “‘should have received immediate treatment to avoid serious injury or death’”—and that in fact resulted in the inmate’s on-scene death in *Carlson*. Gov’t Pet.12-13, 20-21; Pet.20-22; Reply.5-6. As the Solicitor General explains, the Seventh Circuit (in *Mohan*) and the Ninth Circuit (in this case) have taken the wrong side of both conflicts. Gov’t Pet.10-13; accord Pet.24-31.

2. The Solicitor General explains that “the question presented is important” and recurring. Gov’t Pet.23. “Questions about *Carlson*’s scope arise frequently.” *Ibid.* Thousands of prisoner civil-rights suits are filed every year, and in the past two calendar years alone, “six courts of appeals *** issued conflicting decisions about the viability of [*Carlson*] claims.” *Ibid.* The question presented also bears directly on the “‘complex and difficult’” “‘realities of running a penal institution.’” *Ibid.* The decisions below—here and in *Mohan*—“ad[d] to those challenges by countermanaging the political branches’ policy judgments about the proper remedies for inadequate care in prisons, by exposing prison staff to harassing litigation, and by confronting staff with the risk of ‘personal financial liability.’” *Ibid.*; see *id.* at 13; accord Pet.22-23, 29-30. They also “undermin[e] the separation of powers by usurping a function, the creation of new

causes of action, that the Constitution reserves to Congress.” Gov’t Pet.23; accord Pet.22-23.

3. The Solicitor General explains that this case (*Nielsen*) is “an even better vehicle” than *Mohan* for the Court “to clarify *Carlson*’s scope and continuing vitality.” Gov’t Pet.24; *id.* at 4. Among other things, granting *Nielsen*’s petition avoids unnecessary delay. The “certiorari-stage briefing in *Nielsen*” is “already complete” and ready for Conference, while the *Mohan* petition was just filed on February 10. Gov’t Pet.24. “Granting review in *Nielsen* could enable a prompter resolution of the question presented than granting review in [*Mohan*].” *Ibid.*

CONCLUSION

For the reasons articulated by the Solicitor General, as well as those in *Nielsen*’s petition and reply, “[t]his Court should * * * grant the petition for a writ of certiorari in *Nielsen* and hold the [government’s] petition in [*Mohan*].” Gov’t Pet.24-25.

Respectfully submitted.

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