

No. 25-417

In the Supreme Court of the United States

FRANCIS NIELSEN, PETITIONER

v.

KEKAI WATANABE

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT*

SUPPLEMENTAL BRIEF FOR RESPONDENT

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Respondent Kekai Watanabe respectfully submits this supplemental brief in response to petitioner’s submission regarding the Solicitor General’s petition for a writ of certiorari in *Mohan v. Watkins*, No. 25-952 (filed Feb. 10, 2026). As previously noted, the Department of Justice represents petitioner Francis Nielsen in the district court in this case. Br. in Opp. 7 n.*.

1. The Solicitor General’s filing underscores the limited and nascent nature of any circuit disagreement. The Solicitor General agrees with Watanabe that only two circuits have suggested or held that the ARP *per se* creates a new context. Gov’t Pet. 19-20; contra Pet. 5, 15-16 (arguing five circuits take petitioner’s position). And the Solicitor General agrees with Watanabe that petitioner has overstated the purported split regarding the severity of a plaintiff’s injury. Compare Pet. 5, 20-21,

with Gov't Pet. 20. For the reasons set forth in Watanabe's brief in opposition, even these more limited splits do not justify certiorari. See Br. in Opp. 7-14. And the disagreement between the Solicitor General and petitioner on the contours of the purported circuit splits highlights that further percolation is needed. *Id.* at 11.

2. This issue does not warrant the Court's review. Neither the ARP nor the PLRA represents a changed circumstance that would justify granting certiorari to overrule *Carlson*. As the Solicitor General admits, the ARP "already existed in some form" at the time this Court decided *Carlson*, Gov't Pet. 12, and the ARP merely routes damages claims through the FTCA (already addressed in *Carlson*), see Br. in Opp. 14-17. And the PLRA (which petitioner did not raise below as a new context) did not eliminate preexisting *Carlson* claims. See *id.* at 17, 22. The final factor the Solicitor General emphasizes—the difference between acute injuries (as in *Carlson*) and chronic conditions (as in *Mohan*), Gov't Pet. 12-13—is not implicated here, because Watanabe suffered an acute injury during a physical assault.

The "[t]housands of prisoner civil-rights suits" filed annually is immaterial. Supp. Br. 2; Gov't Pet. 23. The relevant metric is the number of *Carlson* suits that courts are permitting to go forward, and that number is vanishingly small. Br. in Opp. 26. And it is petitioner, not Watanabe, that seeks to "countermand[]" the judgment of "the political branches[]," Gov't Pet. 23, because Congress has legislated in reliance on *Carlson*. Br. in Opp. 20-22. Most notably, Congress in the Westfall Act preempted state-law causes of action against federal officers but expressly preserved constitutional claims. *Ibid.* If accepted, petitioner's and the Solicitor General's

position would grant federal officials impunity to deliberately deprive federal prisoners of basic medical care and in turn to violate their Eighth Amendment right to be free from cruel and unusual punishment. There is no reason to take that dramatic step, particularly without analysis of the *stare decisis* factors.

3. Petitioner’s assertion that this case presents a “better vehicle” than *Mohan* is misplaced. Supp. Br. 3 (quoting Gov’t Pet. 24). The Solicitor General’s discussion primarily highlights why *Mohan* is a poor vehicle, see Gov’t Pet. 24 (noting pretrial detention issues), not why this case is a good one. In fact, the Solicitor General acknowledges this case concerns an Eighth Amendment claim and is therefore “more typical” of “*Carlson* claims”—review here would not clarify the outer bounds of *Carlson*. *Ibid.* Nor is there any urgency for Supreme Court review—*Bivens* and *Carlson* are decades-old precedent, and the circuit decisions petitioner draws on were issued relatively recently. Br. in Opp. 11.

For the reasons articulated in Watanabe's brief in opposition, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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