

No. 25-417

IN THE
Supreme Court of the United States

FRANCIS NIELSEN,

Petitioner,

v.

KEKAI WATANABE,

Respondent.

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

**BRIEF OF THE RODERICK & SOLANGE
MACARTHUR JUSTICE CENTER AND
PRISON POLICY INITIATIVE AS *AMICI
CURIAE* IN SUPPORT OF RESPONDENT**

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TABLE OF CONTENTS

Table of Authorities.....	iii
Interest of <i>Amici Curiae</i>	1
Introduction.....	3
Argument.....	5
I. The Bureau Of Prisons Instituted The Administrative Remedy Program In 1974, Before The Events At Issue In <i>Carlson</i>	5
II. The ARP Has Become A System For Rejecting Claims, Providing Relief For Less Than 1% Of Medical Grievances.	12
III. Too Often, Claims Fail In The ARP Due To Its Byzantine Rules, Inaction By Prison Officials, And Blatant Misconduct.	17
Conclusion	28
Appendix to Amicus Brief	
Docket Sheet, <i>Ramer v. Kleindienst</i> , No. 294-73 (D.D.C.).....	App. 1
Complaint, <i>Ramer v. Kleindienst</i> , No. 294-73 (D.D.C.), Feb. 15, 1973	App. 11
Letter from Hon. Adrian A. Spears, District Judge, W.D. Texas, to Norman Carlson, Dir. Fed. Bureau of Prisons, Mar. 14, 1974	App. 18

Operations Memorandum 2001.11, Fed. Bureau of Prisons, Apr. 29, 1974	App. 19
Operations Memorandum 2001.14, Fed. Bureau of Prisons, Sept. 27, 1974	App. 21
Operations Memorandum 2001.15, Fed. Bureau of Prisons, Oct. 10, 1974.....	App. 23
Norman A. Carlson, Director's Letter, Dec. 19, 1974	App. 25
Norman A. Carlson, Director's Letter, Apr. 8, 1976	App. 30
Robert L. Brutsche, Summary of Terre Haute Medical Problems Over the Past 1 ½ Years, Sept. 23, 1976....	App. 46
Memorandum from the National Prison Project of the ACLU to Mike Quinlan, U.S. Bureau of Prisons, Regarding P.S. 2001.6A, June 23, 1977	App. 51
Norman A. Carlson, Director's Letter, Oct. 4, 1977.....	App. 62
Operations Memorandum 2200.1, Fed. Bureau of Prisons, Dec. 29, 1977	App. 67
George A. Ralston, Jr., Advisory Report on U.S. Penitentiary Terre Haute, Jan. 6, 1982.....	App. 70

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Carlson v. Green</i> , 446 U.S. 14 (1980)	3, 5, 11, 27
<i>Gooch v. Young</i> , 24 F.4th 624 (7th Cir. 2022)	26
<i>Green v. Carlson</i> , 581 F.2d 669 (7th Cir. 1978)	5, 10
<i>McGuire-Mollica v. Fed. Bureau of Prisons</i> , 146 F.4th 1308 (11th Cir. 2025)	21, 22, 23, 24
<i>McGuire-Mollica v. Griffin</i> , No. 7:20-cv-01768, 2026 WL 1735036 (N.D. Ala. June 16, 2026)	24
<i>Sparks v. Fuller</i> , 506 F.2d 1238 (1st Cir. 1974)	9
 Other Authorities	
28 C.F.R. § 542.18	22
120 Cong. Rec. 8300 (Mar. 26, 1974)	3, 5, 6, 8
42 Fed. Reg. 64082 (Dec. 21, 1977)	9, 10
44 Fed. Reg. 62248 (Oct. 29, 1979)	10
Aala Abdullahi & Christie Thompson, <i>Grievances in Federal Prison Rarely Succeed. Here’s How Prisoners Would Change That</i> , THE MARSHALL PROJECT (June 14, 2026)	17

<i>Administrative Ombudsman: Hearing on S. 1195 Before the Subcomm. on Admin. Prac. and Proc. of the Comm. on the Judiciary United States Senate</i> , 90th Cong. 35 (Jan. 16, 1968)	7, 8
Aleks Kajstura et al., <i>Advocates to Census Bureau: End Prison Gerrymandering in 2030</i> , PRISON POLICY INITIATIVE (Nov. 21, 2022)	20
Allen J. Beck et al., <i>Sexual Victimization Reported by Former State Prisoners, 2008</i> , BUREAU OF JUSTICE STATISTICS (May 2012)	20
Appellant’s App’x Vol. II, <i>Rager v. Augustine</i> , 760 F. App’x 947 (11th Cir. 2019) (No. 18-10834)	25, 26
<i>Audit of the Federal Bureau of Prisons’ Efforts to Place Inmates Close to Home</i> , U.S. DEPARTMENT OF JUSTICE OFFICE OF THE INSPECTOR GENERAL (Sept. 25, 2025)	20
Br. of Appellant, <i>Gooch v. Young</i> , 24 F.4th 624 (7th Cir. 2022) (No. 21-1702)	26, 27
Br. of Appellant, <i>McGuire-Mollica v. Fed. Bureau of Prisons</i> , 146 F.4th 1308 (11th Cir. 2025) (No. 24-11081)	21, 22, 23
Br. of Appellant, <i>Rager v. Augustine</i> , 760 F. App’x 947 (11th Cir. 2019) (No. 18-10834)	24, 25

Br. of Appellees, <i>McGuire-Mollica v. Fed. Bureau of Prisons</i> , 146 F.4th 1308 (11th Cir. 2025) (No. 24-11081)	23
Brian Nam-Sonenstein, <i>Cut-Rate Care: The Systemic Problems Shaping ‘Healthcare’ Behind Bars</i> , PRISON POLICY INITIATIVE (Feb. 2025)	20
Brian Nam-Sonenstein, <i>In Federal Prisons, The Grievance System Is Designed to Reject Nearly All Complaints About Medical Care</i> , PRISON POLICY INITIATIVE (Mar. 24, 2026)	14, 19
Bruce Bernstein, <i>The Federal Bureau of Prisons Administrative Grievance Procedure: An Effective Alternative to Prisoner Litigation</i> , 13 AM. CRIM. L. REV. 779 (1976).....	5, 6, 7
Christie Thompson et al., <i>‘Rejected’: How Federal Prisons Stonewall Grievances and Deny Care for Years</i> , THE MARSHALL PROJECT (June 17, 2026).....	18, 19, 21, 24
Christie Thompson & Joseph Shapiro, <i>In Federal Prisons, Some Guards Use Fear and Violence to Stifle Complaints</i> , THE MARSHALL PROJECT (June 13, 2026).....	17

<i>Civil Rights for Institutionalized Persons: Hearings on H.R. 2439 and H.R. 5791 Before the Subcomm. on Courts, Civil Liberties & the Admin. of Justice of the H. Comm. on the Judiciary, 95th Cong. 714 (1977)</i>	11
CLEMENS BARTOLLAS, A MODEL OF CORRECTIONAL LEADERSHIP: THE CAREER OF NORMAN A. CARLSON (2010)	9
<i>Corrections: Hearing before Subcomm. No. 3 on the Judiciary, Part III - Prisoners' Representation, 92nd Cong. 130 (Nov. 10, 1971)</i>	7
David M. Bierie, <i>Procedural Justice and Prison Violence: Examining Complaints Among Federal Inmates (2000-2007)</i> , 19 PSYCHOL. PUB. POL'Y & L. 15 (2013)	5
Federal Bureau of Prisons, <i>Annual Report – 1973</i>	8
Gregory Hooks & Wendy Sawyer, <i>Mass Incarceration, COVID-19, and Community Spread</i> , PRISON POLICY INITIATIVE (Dec. 2020)	15
Health, PRISON POLICY INITIATIVE (2026)	16
J. MICHAEL KEATING, JR. ET AL., GRIEVANCE MECHANISMS IN CORRECTIONAL INSTITUTIONS (1975)	5, 27

John W. Roberts, <i>View from the Top</i> , 1 FED. PRISONS J. 27 (1990)	9
Kenneth McGinnis et al., <i>Federal Bureau of Prisons: Special Housing Unit Review and Assessment</i> (2014).....	14
Laura M. Maruschak et al., <i>Survey of Prison Inmates, 2016: Medical Problems Reported by Prisoners</i> , BUREAU OF JUSTICE STATISTICS (June 2021).....	15
Petition for Certiorari, <i>Rager v. Augustine</i> , 589 U.S. 1306 (2020) (No. 19-6410)	26
Priyah Kaul et al., <i>Prison and Jail Grievance Policies: Lessons from a Fifty-State Survey</i> , MICHIGAN LAW PRISON INFORMATION PROJECT (Oct. 18, 2015)	19
Program Statement 1330.18, Administrative Remedy Program, U.S. DEPARTMENT OF JUSTICE (Jan. 16, 2014).....	18
Reply Br. of Petitioner-Appellant in Support of Certiorari, <i>Rager v. Augustine</i> , 589 U.S. 1306 (2020) (No. 19-6410)	25, 26

U.S. Department of Justice, Office of the Inspector General, <i>Inspection of the Federal Bureau of Prisons’ Federal Medical Center Devens,</i> Report No. 25-009 (2024)	13
U.S. Department of Justice, Office of the Inspector General, <i>Investigation and Review of the Federal Bureau of Prisons’ Conditions of Confinement and Medical Treatment of Frederick Mervin Bardell and Related Representations to the Court, Upon Referral by Senior U.S. District Judge Roy B. Dalton, Jr,</i> Report No. 26-007 (2026)	13
Walter Pavlo, <i>Bureau of Prisons Continues To Have Issues With Medical Care: OIG, FORBES</i> (Jan. 14, 2026)	13
Warren E. Burger, <i>The Condition of the Judiciary: Year-End Report</i> (Jan. 3, 1976)	12
Warren E. Burger, <i>Report on the Federal Judicial Branch—1973,</i> 59 A.B.A.J. 1125 (1973)	8, 9

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INTEREST OF *AMICI CURIAE*¹

The Roderick and Solange MacArthur Justice Center (“RSMJC”) is a civil rights non-profit organization founded in 1985 by the family of J. Roderick MacArthur to advocate for human rights and social justice through litigation. Through its Supreme Court and Appellate Program, RSMJC

¹ No counsel for a party authored this brief in whole or in part, and no counsel for a party (nor a party itself) made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici* or their counsel made a monetary contribution to this brief’s preparation or submission.

litigates cases before this Court and appellate courts nationwide in order to vindicate the civil rights of persons who have been subjected to mistreatment by the criminal legal system. In particular, RSMJC regularly represents incarcerated people in federal prisons who have attempted to use the Bureau of Prisons' Administrative Remedy Program to seek administrative relief. This experience gives RSMJC expertise in and perspective into the ways in which the grievance procedure fails to address serious medical issues like those at issue in this case.

The Prison Policy Initiative ("PPI") is a non-profit, non-partisan research organization that studies the broader harm of mass criminalization and advocates for concrete reforms to bring about a more just society. PPI specializes in analyses of national and state level data relating to the criminal justice system and transforms these data into powerful and informative graphics. PPI conducted an extensive review of data from the Administrative Remedy Program in a study revealing the procedure's systematic failure to provide meaningful relief.

INTRODUCTION

Petitioner Francis Nielsen asks this Court to narrow or eliminate *Carlson v. Green*, 446 U.S. 14 (1980), and the crucial protections it provides based on a clear historical error. In Petitioner’s mind, the Bureau of Prisons created the Administrative Remedy Program in 1979, years after the events at issue in *Carlson*. Br. for Petitioner at 10. Based on that assumption, Petitioner claims that the *Carlson* Court never considered this grievance procedure, and that alone makes any subsequent case—even one factually identical to *Carlson*—a new *Bivens* context. *See id.* at 32. Petitioner is simply wrong about history.

Norman A. Carlson—the Director of the Bureau of Prisons and named defendant in *Carlson*—instituted the Administrative Remedy Program in 1974, more than a year before the events at issue in that case. Drawing on input from Chief Justice Warren Burger and other federal judges, Carlson envisioned the procedure as an added way for incarcerated people and prison officials to resolve issues, especially minor ones that did not require judicial review. In 1973, Carlson conducted a pilot program in three federal prisons, before implementing the Administrative Remedy Program across the Bureau of Prisons’ facilities the following year. When Carlson notified Congress of the full implementation, he was explicit that this procedure would not supplant the federal courts, emphasizing that an incarcerated person “may, if he chooses, . . . file his law suit directly with the appropriate court.” 120 Cong. Rec. 8300 (Mar. 26, 1974).

Accordingly, the Administrative Remedy Program was in effect when Joseph Jones, Jr., died in custody

at the federal penitentiary in Terre Haute, Indiana. The plaintiff's complaint in *Carlson* even noted that letters were sent to Carlson challenging the prison's notoriously inadequate medical care. The Supreme Court not only had this information when it decided the case, but also knew about the Administrative Remedy Program from Chief Justice Burger's involvement in its creation. Accordingly, the basic premise of Petitioner's argument is incorrect. That is reason enough to reject it.

Petitioner's argument is deeply flawed for another reason, as well. Petitioner portrays the Administrative Remedy Program as an alternative remedial scheme, but it is anything but that. As more than a decade of data shows, claims raising serious medical issues like those suffered by Respondent Kekai Watanabe are almost always rejected in the Administrative Remedy Program. Specifically, *amicus* Prison Policy Initiative's study found that relief was granted in less than 1% of cases. This abysmal rate reflects the many traps in the system that ensnare meritorious claims, including the rigid application of byzantine rules and deadlines, prison officials' inaction and delays, and outright misconduct like obstruction and retaliation.

As a result, *Bivens* actions are critical for ensuring that adequate medical care is provided to people in federal prisons. Petitioner's notion that federal courts should abdicate their responsibility for preserving the Eighth Amendment's guarantee of adequate medical care because the Administrative Remedy Program, of all things, is filling that role is farcical.

ARGUMENT

I. The Bureau Of Prisons Instituted The Administrative Remedy Program In 1974, Before The Events At Issue In *Carlson*.

The Bureau of Prisons (“BOP”) instituted its modern administrative grievance procedure six years before *Carlson v. Green*, 446 U.S. 14 (1980), and more than a year before the events at issue in that case. See *Green v. Carlson*, 581 F.2d 669, 670 (7th Cir. 1978) (noting Joseph Jones, Jr.’s death in August 1975). Effective April 1, 1974, the Director of the BOP, Norman A. Carlson, instituted the “Administrative Remedy Procedure” (“ARP”) to “handle complaints from inmates in Federal correctional institutions.” 120 Cong. Rec. 8300 (Mar. 26, 1974); see J. MICHAEL KEATING, JR. ET AL., GRIEVANCE MECHANISMS IN CORRECTIONAL INSTITUTIONS 36 (1975) (noting that “[a]ll persons in the care of the Bureau, or approximately 23,000 prisoners, are served by the procedure”).² “The system has remained intact and substantively unchanged since that time.” David M. Bieri, *Procedural Justice and Prison Violence: Examining Complaints Among Federal Inmates (2000—2007)*, 19 Psychol. Pub. Pol’y & L. 15, 16 (2013).

Like the ARP in effect today, the ARP adopted in 1974 provided an opportunity for informal resolution, followed by “three levels of review” initiated by the filing of a formal grievance. Bruce Bernstein, *The Federal Bureau of Prisons Administrative Grievance Procedure: An Effective Alternative to Prisoner*

² <https://catalog.hathitrust.org/Record/000213973>.

Litigation, 13 AM. CRIM. L. REV. 779, 779 (1976). The procedure encouraged prison officials “to resolve problems via informal action before the filing of a formal grievance.” *Id.* at 784. If those efforts were unsuccessful, the incarcerated person could “trigger the operation of the mechanism by filing an official complaint with the warden’s office.” *Id.* at 785. From there, the person could appeal to the Regional Director “overseeing the prisons in his region,” and then to “the General Counsel’s Office of the Bureau in Washington, D.C.” *Id.* In October 1974, the BOP ordered 50,000 copies of the forms used to initiate the three levels of review—BP-DIR-9, BP-DIR-10, and BP-DIR-11—for distribution to its prisons, including 2,200 forms for the federal penitentiary at Terre Haute, Indiana, where the events of *Carlson* took place. See App. 23-24 (Operations Memorandum 2001.15, Fed. Bureau of Prisons (Oct. 10, 1974)).

In adopting the ARP, Carlson made clear that “the new procedure [was] not intended to supplant legal avenues of redress for prisoner grievances.” 120 Cong. Rec. 8300. Rather, the ARP was designed to provide “an additional vehicle for internal solution of problems.” *Id.* Carlson emphasized that an incarcerated person “may, if he chooses, . . . file his law suit directly with the appropriate court.” *Id.* Carlson did so knowing that there had “been an increase in the number of suits filed by inmates naming specific staff members as defendants.” App. 21 (Operations Memorandum 2001.14, Fed. Bureau of Prisons (Sept. 27, 1974)).

Keeping access to federal courts open was consistent with the BOP’s prior practice. Before the ARP, the primary means for raising issues in federal

prisons was the prison mailbox. *See Administrative Ombudsman: Hearing on S. 1195 Before the Subcomm. on Admin. Prac. and Proc. of the S. Comm. on the Judiciary*, 90th Cong. 35 (Jan. 16, 1968) (statement of Dr. Myrl E. Alexander, Dir. of the Bureau of Prisons).³ Each federal prison maintained a “special letterbox” through which letters could be “forwarded unopened” to “the Attorney General; to any Congressman or Senator; to the Board of Parole; to any Federal judge; to the Director, Bureau of Prisons; and others in Government.” *Id.* Under that system, “access to the courts” was “open and unrestricted.” *Id.* at 37. The BOP’s rules made clear that any letters addressed to federal courts would “be separated from other [prison mailbox] correspondence and forwarded directly to the addressee without inspection,” and “at government expense.” *Corrections: Hearing before Subcomm. No. 3 of the H. Comm. on the Judiciary, Part III – Prisoners’ Representation*, 92nd Cong. 130 (Nov. 10, 1971) (reproduction of BOP Policy Statement 7300.2A—Prisoners Mail Box (Dec. 28, 1967)). Reflecting on the prison mailbox system, Carlson’s predecessor, Myrl Alexander, noted that denying federal prisoners the ability to raise issues directly with courts and other outside institutions “would be stupid indeed,” and that communication through the prison mailbox was

³ The BOP also maintained a “chaotic and ineffective” procedure known as the “Cop-Out,” by which an incarcerated person “informally lodge[d] his complaint with the prison administration, but no specific official within the institution [was] appointed to receive such complaints.” Bernstein, *supra*, at 783. There was no requirement that any response be provided, or any other “system-wide rules” governing the procedure. *Id.* The “inadequacies” of this procedure were “obvious.” *Id.* at 784.

“the most valuable safety valve of the entire system.” *Administrative Ombudsman Hearing*, *supra*, at 35-36.

Rather than supplant federal courts, a primary purpose of the ARP was to address more efficiently minor disputes for which judicial review was unnecessary. In announcing the ARP in 1974, Carlson cited Chief Justice Warren Burger as a key inspiration for the procedure. 120 Cong. Rec. 8300 (Mar. 26, 1974); *see also* Federal Bureau of Prisons, *Annual Report – 1973*, at 24 (noting that “Chief Justice Warren E. Burger suggested” developing the procedure).⁴ In a report on the federal judiciary in 1973, Chief Justice Burger asked whether “other and better methods may be available” to address the growing number of petitions concerning disputes like a prison official taking “seven packages of cigarettes” away from an incarcerated person, without “making a federal case out of it.” Warren E. Burger, *Report on the Federal Judicial Branch—1973*, 59 A.B.A.J. 1125, 1128 (1973). Chief Justice Burger made clear he was not suggesting “at all that federal courts deny protection”; rather, he proposed “that we use some common sense and devise procedures that give prompt attention to valid complaints without calling on eleven federal judges and a train of other public employees to deal with three dollars worth of cigarettes.” *Id.* For such matters, Chief Justice Burger thought it would be “sheer nonsense” to “engage the primary attention of one district judge twice, three circuit judges on appeal, and six others in a secondary sense—to say nothings of lawyers, court clerks,

⁴ <https://babel.hathitrust.org/cgi/pt?id=coo.31924112763275>.

bailiffs, court reporters, and all the rest.” *Id.*⁵ Consistent with Chief Justice Burger’s input, Carlson also cited a meeting with judges of the Eighth Circuit Court of Appeals, who told him that their “dockets were overwhelmed with inmate complaints” about “such trivial matters as ill-fitting shoes and breakfast cereal that was cold.” John W. Roberts, *View from the Top*, 1 Fed. Prisons J. 27, 40 (1990) (excerpting Nov. 30, 1989 interview with Carlson); *see also* App. 18 (Letter from Hon. Adrian A. Spears, District Judge, W.D. Texas, to Norman Carlson, Dir. Federal Bureau of Prisons (Mar. 14, 1974)) (noting the proposed ARP allowed some grievances to “be handled administratively,” “especially those that do not rise to the constitutional level”).

Although the ARP had been in effect since 1974, the BOP did not formally seek to publish the rules governing the procedure until 1977. *See* 42 Fed. Reg. 64082 (Dec. 21, 1977). The BOP did so in response to a final judgment issued by the United States District Court for the District of Columbia on February 16, 1977. *See* App. 9 (Civil Docket Sheet, *Ramer v. Kleindienst*, Civil Action No. 294-73 (D.D.C.)). In that case, two federal prisoners sued the U.S. Attorney General and Carlson under the Administrative Procedure Act, challenging the BOP’s failure to

⁵ *See also Sparks v. Fuller*, 506 F.2d 1238, 1239 (1st Cir. 1974) (urging prisons to resolve minor issues like whether incarcerated people could keep cats as pets); CLEMENS BARTOLLAS, A MODEL OF CORRECTIONAL LEADERSHIP: THE CAREER OF NORMAN A. CARLSON 141 (2010) (“Norm wanted to come up with a procedure to expedite the courts’ handling of what seemed to be impossible caseloads from federal correctional institutions, often of a trivial or minor nature.”).

publish its policy statements in the Federal Register. See App. 15 (Complaint at ¶ 12, *Ramer*, Civil Action No. 294-73 (Feb. 15, 1973)). The plaintiffs argued that the BOP's failure to publish deprived them of "adequate notice or knowledge of the rules and requirements embodied in the 'policy statements.'" App. 15-16 (*Id.* ¶ 13). In 1977, the district court directed the defendants to publish "certain rules and regulations" addressed in the suit. See App. 9 (Civil Docket Sheet, *Ramer*, Civil Action No. 294-73).

To comply with that judgment, the BOP published the ARP. See 44 Fed. Reg. 62248 (Oct. 29, 1979) ("A consent order entered in the U.S. District Court for the District of Columbia pertaining to aspects of the Administrative Remedy Procedure requires an implementation date of November 1, 1979."). Carlson ordered all BOP wardens to "post copies of these regulations in the places that will ensure the widest coverage," including the "law library." App. 67 (Operations Memorandum 2200.1 CH-2, Bureau of Prisons (Dec. 29, 1977)). The proposed rules noted that the BOP's processes were previously set forth in "Policy Statements and Operations Memoranda." 42 Fed. Reg. 64082 (Dec. 21, 1977). Following the notice and comment period, the BOP published the final rules in 1979. 44 Fed. Reg. 62248 (Oct. 29, 1979).

As the above history shows, the ARP was in effect during the events at issue in *Carlson*. On August 15, 1975, Joseph Jones, Jr. died while in federal custody at Terre Haute, due to an asthma attack brought on by prison officials' failure to treat his known condition. *Green*, 581 F.2d at 671. At the time, the ARP had been available to raise medical issues for over a year; in fact, Carlson specifically directed prison wardens to

track grievances raising “Medical” issues. *See* App. 19-20 (Operational Memorandum 2001.11, Fed. Bureau of Prisons (Apr. 29, 1974)); *see also* App. 25-26, 29 (Norman A. Carlson, Director’s Letter (Dec. 19, 1974)) (attaching chart showing that 14 medical grievances were filed at Terre Haute from April to September 1974); App. 30, 35 (Norman A. Carlson, Director’s Letter (Apr. 8, 1976)) (attaching chart showing that 32 medical grievances were filed at Terre Haute in 1975). Mr. Jones’s mother’s complaint indicated that “[l]etters were written to Director CARLSON and Warden BENSON complaining of the lack of proper medical care” at Terre Haute, which had led to the deaths of multiple incarcerated people. App. at 11, *Carlson*, 446 U.S. 14 (No. 78-1261), 1979 U.S. S. Ct. Briefs LEXIS 1541, at *14; *see also id.* at *26 (defendants admitting “complaint letters were received about the medical facilities”). Mr. Jones could have used the ARP to challenge the inadequate care he received, although he would not have been obligated to do so, as it expressly provided that he could “file his law suit directly with the appropriate court.” *Civil Rights for Institutionalized Persons: Hearings on H.R. 2439 and H.R. 5791 Before the Subcomm. on Courts, Civil Liberties & the Admin. of Justice of the H. Comm. on the Judiciary*, 95th Cong. 714 (1977) (reproduction of Bureau of Prisons Policy Statement 2001.6A (Oct. 18, 1974)).

Therefore, Petitioner is incorrect when he claims that the ARP “became effective in late 1979,” “years after [Mr. Jones’s] death in that case.” Br. for Petitioner 32, 38. Mr. Jones “could have used” the ARP in 1975, *id.* at 38, as the Supreme Court would have known in *Carlson*—especially given Chief Justice Burger’s role in the procedure’s creation.

Indeed, in his 1976 report on the condition of the federal judiciary, Chief Justice Burger specifically commented on “the past year’s experience” with the ARP. Warren E. Burger, *The Condition of the Judiciary: Year-End Report* (Jan. 3, 1976); *see also* Federal Bureau of Prisons, *Annual Report – 1976*, at 8.⁶

II. The ARP Has Become A System For Rejecting Claims, Providing Relief For Less Than 1% Of Medical Grievances.

Petitioner’s argument based on the ARP is deeply flawed for another reason, as well. Petitioner suggests that the ARP provides a remedy today that was “unavailable in *Carlson*.” Br. for Petitioner 38. But the truth is quite the opposite. Far from providing remedies, the ARP is a buzzsaw for denying requests for relief, especially those raising serious medical issues.

Medical care in prisons, and specifically in the Federal Bureau of Prisons, has long been notoriously inadequate. *See, e.g.*, App. 48 (Robert L. Brutsche, Summary of Terre Haute Medical Problems Over the Past 1½ Years (Sept. 23, 1976)) (finding “significant problems” in Mr. Jones’s care, including the “lack of aggressive treatment in the face of acute asthmatic symptoms” and “failure of the physician to come to the hospital despite several calls”); App. 82 (George A. Ralston, Jr., Advisory Report on U.S. Penitentiary Terre Haute, at 15 (Jan. 6, 1982)) (concluding the Terre Haute hospital “failed to provide adequate procedures and safeguards for proper inmate care”);

⁶ <https://babel.hathitrust.org/cgi/pt?id=coo.31924112763275>.

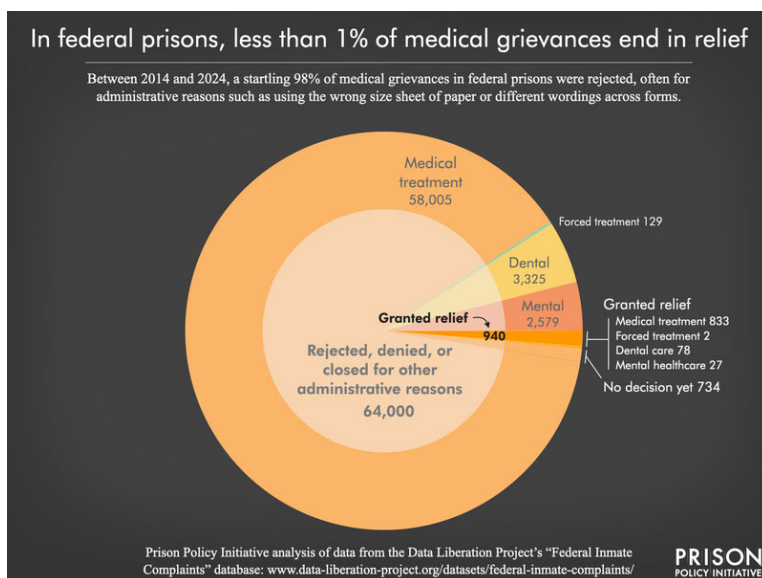
Walter Pavlo, *Bureau of Prisons Continues To Have Issues With Medical Care: OIG*, FORBES (Jan. 14, 2026).⁷ Multiple OIG investigations of individual cases or facilities have revealed systemic problems with medical care within the Bureau of Prisons, caused by chronic staffing shortages, a lack of appropriate follow-up care, and a lack of attention to urgent medical issues. *See, e.g.*, U.S. Department of Justice, Office of the Inspector General, *Investigation and Review of the Federal Bureau of Prisons' Conditions of Confinement and Medical Treatment of Frederick Mervin Bardell and Related Representations to the Court, Upon Referral by Senior U.S. District Judge Roy B. Dalton, Jr.*, Report No. 26-007, iii-iv (2026) (finding “serious job performance and management failures at multiple levels within FCI Seagoville”);⁸ U.S. Department of Justice, Office of the Inspector General, *Inspection of the Federal Bureau of Prisons' Federal Medical Center Devens*, Report No. 25-009, i (2024) (finding “substantial shortages of healthcare employees and Correctional Officers—which is an issue at many BOP institutions but particularly problematic for a medical institution—have created widespread and troubling operational challenges at FMC Devens”).⁹ Unsurprisingly, these failures lead to thousands of incarcerated people submitting grievances through the ARP related to inadequate medical care each year.

⁷ <https://www.forbes.com/sites/walterpavlo/2026/01/14/bureau-of-prisons-continues-to-have-issues-with-medical-care-oig/>.

⁸ <https://oig.justice.gov/sites/default/files/reports/26-007.pdf>.

⁹ <https://oig.justice.gov/sites/default/files/reports/25-009.pdf>.

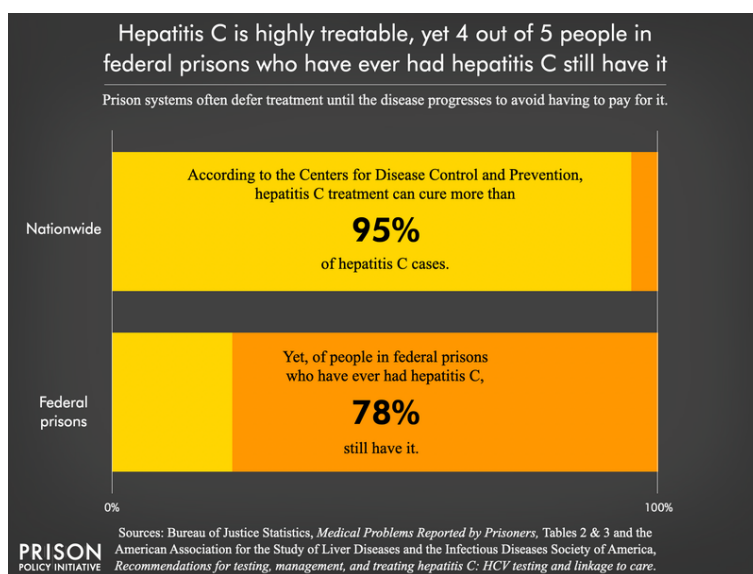
And yet, less than 1% of medical grievances result in relief. In a Prison Policy Initiative analysis of ARP records from 2014 to 2024, only 1% of cases over the decade had a status indicating they were granted relief. See Brian Nam-Sonenstein, *In Federal Prisons, The Grievance System Is Designed to Reject Nearly All Complaints About Medical Care*, PRISON POLICY INITIATIVE (Mar. 24, 2026).¹⁰ This amounts to a grand total of just 940 cases granted out of 65,712. *Id.*¹¹



¹⁰ https://www.prisonpolicy.org/blog/2026/03/24/federal_grievance_system/.

¹¹ Consistent with this data, a study of restrictive housing in federal prisons found that out of 404 grievances by people housed in Special Management Units and 285 grievances by people in Special Housing Units, 0% were granted. Kenneth McGinnis et al., *Federal Bureau of Prisons: Special Housing Unit Review and Assessment*, at iii, 108 (2014), https://www.bop.gov/news/pdfs/CNA-SHURReportFinal_123014_2.pdf.

The harms from this systematic rejection of claims cannot be overstated. To take just one example, infectious diseases spread more easily in congregate settings like prisons and can then spread to other facilities and communities through staff and transfers. According to the Bureau of Justice Statistics' 2016 *Survey of Prison Inmates*, an estimated 4.4% of people incarcerated in federal facilities were infected with Hepatitis B, C, or HIV/AIDS. See Laura M. Maruschak et al., *Survey of Prison Inmates, 2016: Medical Problems Reported by Prisoners*, BUREAU OF JUSTICE STATISTICS, Table 3 (June 2021).¹²



Similarly, mass incarceration was a key contributor to the high COVID-19 caseloads in certain communities in 2020. See Gregory Hooks & Wendy

¹² <https://bjs.ojp.gov/sites/bjs/files/media/document/mprpspi16st.pdf>.

Sawyer, *Mass Incarceration, COVID-19, and Community Spread*, PRISON POLICY INITIATIVE (Dec. 2020).¹³ These kinds of serious medical issues are treatable, but only if adequate medical care is provided.

Ensuring the mental and physical health of incarcerated people not only directly benefits incarcerated people themselves, but also correctional officers and other staff. While incarcerated people experience medical neglect directly, prison staff are impacted by the consequences, as well. For example, 61% of correctional supervisors witnessed an incarcerated person die by suicide in the last year, and 65% witnessed non-suicide deaths. These working conditions contribute to 34% of corrections officers reporting post-traumatic stress disorder and 31% reporting depression. *See* Health, PRISON POLICY INITIATIVE.¹⁴ Permitting these dangerous conditions to continue only exacerbates the burden for prison staff and administrators.

The low rates of relief provided through the ARP reflect failing medical and grievance systems. Director Carlson envisioned the ARP serving as an additional mechanism for resolving issues in prison quickly and efficiently, but instead, it has become a dead end.

¹³ <https://www.prisonpolicy.org/reports/covidspread.html>.

¹⁴ <https://www.prisonpolicy.org/health.html>.

III. Too Often, Claims Fail In The ARP Due To Its Byzantine Rules, Inaction By Prison Officials, And Blatant Misconduct.

As *amici* know from experience, in countless cases claims fail in the ARP not because they lack merit, but because of the system itself. The types of traps that can foil a meritorious claim submitted through the ARP are myriad, including the byzantine rules that incarcerated people must follow, inaction and delays by prison officials, and blatant misconduct. See Aala Abdullahi & Christie Thompson, *Grievances in Federal Prison Rarely Succeed. Here's How Prisoners Would Change That*, THE MARSHALL PROJECT (June 14, 2026) (finding that “obtaining relief” through the ARP’s “complex maze of paperwork” “is nearly impossible”);¹⁵ Christie Thompson & Joseph Shapiro, *In Federal Prisons, Some Guards Use Fear and Violence to Stifle Complaints*, THE MARSHALL PROJECT (June 13, 2026) (“An unknown number of cases, especially those involving physical and sexual violence, go unreported, as the same officers accused of abuse can silence those trying to seek help.”).¹⁶ These kinds of traps have existed since the inception of the ARP. See App. 51-56 (Memorandum from the National Prison Project of the ACLU to Mike Quinlan, U.S. Bureau of Prisons, Regarding P. S. 2001.6A and the Administrative Remedy Process (June 23, 1977)) (detailing recurring incidents of prison officials failing to respond for “as long as nine months,” refusing to

¹⁵ <https://www.themarshallproject.org/2026/07/14/federal-prison-lawyer-prisoner-advice>.

¹⁶ <https://www.themarshallproject.org/2026/07/13/california-federal-prison-abuse>.

provide ARP forms necessary to file grievances, and harassing people “because they have filed an administrative remedy complaint”); App. 62-63 (Norman A. Carlson, Director’s Letter (Oct. 4, 1977)) (reminding all BOP staff that “there should be no staff intimidation or making real or implied threats against inmates for filing” grievances).

Byzantine Rules. One of the most common roadblocks in the ARP is the rules themselves: Prison officials require rigid adherence to technical rules and instructions, and reject grievances for any errors, however minor or trivial. This occurs despite the fact that BOP policy requires flexibility and responsiveness in addressing ARP grievances, expressly discouraging the sort of nitpicking that happens in practice. See Program Statement 1330.18: Administrative Remedy Program, U.S. DEPARTMENT OF JUSTICE, at 8 (Jan. 16, 2014) (“When deciding whether to reject a submission, Coordinators, especially at the institution level, should be flexible, keeping in mind that major purposes of this program are to solve problems and be responsive to issues inmates raise.”).¹⁷

There are countless examples of rejections based on minor errors that should not have prevented the request from being reviewed on the merits, such as “writing with a pencil instead of a pen, or a woman reporting sexual abuse who was rejected for misspelling her abuser’s last name.” Christie Thompson et al., *‘Rejected’: How Federal Prisons Stonewall Grievances and Deny Care for Years*, THE

¹⁷ https://www.bop.gov/policy/progstat/1330_018.pdf.

MARSHALL PROJECT (June 17, 2026).¹⁸ Some examples are absurd to the point of being Kafkaesque. For example, a “Spanish-speaking prisoner filed a grievance asking for translation services, but was rejected for writing it in Spanish.” *Id.* Ultimately, as *amicus* Prison Policy Initiative discovered in their review of a decade of grievances, nearly 83% of all medical grievances were closed for administrative reasons or rejected because they were “‘improperly filed’ according to one administrative rule or another.” Nam-Sonenstein, *In Federal Prisons*, *supra* (finding that 32% of all medical complaints had been rejected as “improperly filed,” and another 51% were closed for administrative reasons).

Even if the BOP followed its own policy requiring flexibility and responsiveness, the strict time limits and deadlines set out in the grievance requirements are detached from the realities of incarceration and prevent many people from obtaining relief. The ARP starts the filing clock at the time of the relevant incident. See Priyah Kaul et al., *Prison and Jail Grievance Policies: Lessons from a Fifty-State Survey*, MICHIGAN LAW PRISON INFORMATION PROJECT, at 20 (Oct. 18, 2015).¹⁹ This creates two critical problems: First, for evolving injuries—like those of Mr. Watanabe—the clock may begin running before the true extent of the injury is discovered. Second, because the ARP’s remedies are limited to the prison system, officials can simply wait out the problem until

¹⁸ <https://www.themarshallproject.org/2026/06/17/health-federal-alabama-prison-complaint>.

¹⁹ <https://sites.lsa.umich.edu/policyclearinghouse/wp-content/uploads/sites/1479/2026/02/FOIARreport10.18.15.2.pdf>.

the injured person is released, eliminating any possible remedy. Here, for example, medical care was denied until Mr. Watanabe was released and thus was never provided. This kind of stalling is a common tactic used by medical providers in prisons. *See* Brian Nam-Sonenstein, *Cut-Rate Care: The Systemic Problems Shaping ‘Healthcare’ Behind Bars*, PRISON POLICY INITIATIVE (Feb. 2025).²⁰

Frequent transfers between facilities also make it more difficult to fit medical issues neatly into the confines of the ARP process. Among formerly incarcerated people surveyed by the Bureau of Justice Statistics, “three quarters of former inmates had served time in more than one prison facility; nearly 1 in 8 had served time in 5 or more prison facilities before their release.” Allen J. Beck et al., *Sexual Victimization Reported by Former State Prisoners, 2008*, BUREAU OF JUSTICE STATISTICS 20 (May 2012);²¹ Aleks Kajstura et al., *Advocates to Census Bureau: End Prison Gerrymandering in 2030*, PRISON POLICY INITIATIVE (Nov. 21, 2022).²² In other words, as the Department of Justice has recognized, incarcerated people “enter, exit, and transfer within BOP continuously.” *Audit of the Federal Bureau of Prisons’ Efforts to Place Inmates Close to Home*, U.S. DEPARTMENT OF JUSTICE OFFICE OF THE INSPECTOR

²⁰ <https://www.prisonpolicy.org/reports/healthcare.html#costcontrol>.

²¹ <https://bjs.ojp.gov/content/pub/pdf/svrfsp08.pdf>.

²² https://www.prisonersofthecensus.org/news/2022/11/21/2022_frn/#lf-fnref:5.

GENERAL (Sept. 25, 2025).²³ These frequent transfers can disrupt people’s ability to complete the ARP process within its strict timeframe. And failing to meet a deadline provides yet another ground for officials to deny a claim without reviewing its merits.

Inaction by Prison Officials. Even when an incarcerated person manages to follow all of the BOP’s rules, prison officials can stymie the process by simply refusing to act.

Take *amicus* Roderick & Solange MacArthur Justice Center’s former client Terri McGuire-Mollica, for example. In 2016, while she was incarcerated at FCI-Aliceville, a BOP physician diagnosed her with a small uterine fibroid that was causing abnormal uterine and vaginal bleeding. *McGuire-Mollica v. Fed. Bureau of Prisons*, 146 F.4th 1308, 1311 (11th Cir. 2025). At the time, the fibroid was small enough—approximately six centimeters—that it could have been removed through a minimally intrusive laparoscopic procedure. *Id.* Instead, prison officials did nothing. *Id.*; Thompson, ‘*Rejected*’, *supra*.

For nearly four years, Ms. McGuire-Mollica sought treatment for increasingly severe pain and bleeding, pleading for medication and surgery to remove the fibroid. *Id.*; Br. of Appellant at 5-8, *McGuire-Mollica*, 146 F.4th 1308 (No. 24-11081). She started fainting during periods so heavy that she had to use five menstrual pads at a time and blood still soaked through her pants. Thompson, ‘*Rejected*’, *supra*. Two years after her diagnosis, Ms. McGuire-Mollica’s

²³ <https://oig.justice.gov/reports/audit-federal-bureau-prisons-efforts-place-inmates-close-home>.

fibroid had grown to the size of a grapefruit and “her uterus swelled as though she were nearly five months pregnant.” *Id.*

Yet BOP physicians repeatedly refused to send her out for surgery, even after two outside physicians recommended it. *McGuire-Mollica*, 146 F.4th at 1311. The fibroid continued to grow; by 2022 it was eight inches long and weighed nearly 20 pounds. *Id.*; Br. of Appellant at 8, *McGuire-Mollica*, 146 F.4th 1308 (No. 24-11081). Surgery now would require “removal of ‘her entire uterus . . . and possibly other organs.’” *McGuire-Mollica*, 146 F.4th at 1311-12.

In December 2019, Ms. McGuire-Mollica began utilizing the ARP, first filing an informal resolution form requesting to see a specialist or surgeon. *Id.* at 1312. That form was returned to her as “unresolved.” *Id.* She filed an official request for administrative relief on a Form BP-9, again asking to see an outside specialist or surgeon. *Id.* Pursuant to the BOP’s own regulations, the warden was required to respond within 20 days, 28 C.F.R. § 542.18, but Ms. McGuire-Mollica did not receive a response from the warden for more than six months, *McGuire-Mollica*, 146 F.4th at 1312; Br. of Appellant at 10, *McGuire-Mollica*, 146 F.4th 1308 (No. 24-11081).

She appealed again, and although the BOP’s regulations required an official response within 30 days, 28 C.F.R. § 542.18, Ms. McGuire-Mollica did not receive a response from the Regional Director for six months, *McGuire-Mollica*, 146 F.4th at 1312; Br. of Appellant at 10-11, *McGuire-Mollica*, 146 F.4th 1308 (No. 24-11081). That response claimed that there was “no evidence of a . . . malignant uterine growth” and that surgery was not recommended. *McGuire-Mollica*,

146 F.4th at 1312. In fact, by that time, the fibroid had tripled in size, had caused intense pain, excessive bleeding, and a hernia, and an outside physician had recommended surgery, Br. of Appellant at 7, 11, *McGuire-Mollica*, 146 F.4th 1308 (No. 24-11081).

Accordingly, Ms. McGuire-Mollica initiated her final appeal, sending Form BP-11 to the General Counsel using the prison mailroom, which provided her with a certified mail tracking number. *McGuire-Mollica*, 146 F.4th at 1312. As the BOP later acknowledged, Ms. McGuire-Mollica “properly completed and mailed her final appeal.” Br. of Appellees at 13-17, *McGuire-Mollica*, 146 F.4th 1308 (No. 24-11081). But once her appeal was received by the prison mailroom, it disappeared; her appeal was never docketed by the BOP General Counsel’s office, and they maintain that they never received it. *McGuire-Mollica*, 146 F.4th at 1312.

Remarkably, the BOP turned around and argued that Ms. McGuire-Mollica should be barred from suing in federal court because “the appeal was never ‘logged’ and therefore, [it was] never ‘filed.’” Br. of Appellees at 13-17, *McGuire-Mollica*, 146 F.4th 1308 (No. 24-11081). In their view, the fact that Ms. McGuire-Mollica had done everything the ARP rules required of her, including properly mailing the appeal form, was “irrelevant.” *Id.* In other words, after years of delays, not only did the ARP fail to provide Ms. McGuire-Mollica any relief, but BOP officials attempted to use the system’s failure as a reason to

deny Ms. McGuire-Mollica access to federal courts, as well.²⁴

Obstruction and Intimidation. Finally, prison officials can use their immense power to stop people from pursuing relief through obstruction and intimidation.

For example, while *amicus* Roderick & Solange MacArthur Justice Center’s former client Donald Rager was incarcerated at FCI Marianna, he asked a corrections official to investigate improperly confiscated food items from his locker. Br. of Appellant at 2, *Rager v. Augustine*, 760 F. App’x 947 (11th Cir. 2019) (No. 18-10834). When he followed up with the officer a few days later, the officer assaulted him, knocking Mr. Rager face-first into a brick wall, punching him several times in the back, where he wore a brace to protect several broken vertebrae, and twisting his right wrist, which was in a soft cast. *Id.* The officer then handcuffed Mr. Rager painfully tightly, causing his hands to swell and turn blue. *Id.* at 2-3. Mr. Rager was then taken to the Special Housing Unit (SHU)—in other words, solitary confinement—and kept there for 127 days. *Id.* at 3. His back brace and cast were confiscated, and he was

²⁴ The Eleventh Circuit properly rejected the BOP’s argument about administrative exhaustion. See *McGuire-Mollica*, 146 F.4th at 1317. But on remand, the district court dismissed Ms. McGuire-Mollica’s complaint because it held her claim presented a new context under *Bivens*. *McGuire-Mollica v. Griffin*, No. 7:20-cv-01768, 2026 WL 1735036, at *2-5 (N.D. Ala. June 16, 2026). As of June 2026, Ms. McGuire-Mollica still had not been scheduled for surgery. Thompson, ‘*Rejected*’, *supra*.

not provided any medical attention, including for his facial abrasions, leaving him permanently scarred. *Id.*

While in the SHU, Mr. Rager filed a grievance against the officer. *Id.* For months afterwards, officers and the warden urged him to withdraw his grievance, telling him, “things would be easier for him” if he did and “threatening further detention and transfer to a more dangerous facility ‘where staff would not protect him’” because of his grievance history. *Id.* at 4.

Mr. Rager did not withdraw his grievance, but the ARP did not provide Mr. Rager with any relief. Instead, he exchanged over 100 pieces of correspondence with the BOP attempting to navigate the ARP, all while the BOP continually missed deadlines, refused to follow their own rules, and misrouted Mr. Rager’s grievances and appeals. Reply Br. of Petitioner-Appellant in Support of Certiorari at 1, *Rager v. Augustine*, 589 U.S. 1306 (2020) (No. 19-6410). For example, Mr. Rager waited two months to receive a response to his Form BP-9 grievance—over a month beyond the BOP’s own deadline. *Id.* at 4. Pursuant to BOP policy permitting prisoners to “consider the absence of a response to be a denial at that level,” Mr. Rager appealed to the next level. *Id.* But his appeal was rejected for not attaching the prison’s response to his Form BP-9—the very response the warden failed to provide by the deadline. *Id.* Mr. Rager re-appealed, explaining that he could not attach a response that did not exist, but the BOP rejected the appeal again for failing to attach the response. *Id.* at 5.

This cycle was repeated 23 times. Appellant’s App’x Vol. II at 4, *Rager*, 760 F. App’x 947 (No. 18-10834). Mr. Rager did not receive responses to

grievances until the time had passed for him to appeal those responses at least 15 times. *Id.* And on five occasions, grievances that he appealed to the Central Office were mysteriously re-routed to the Regional Office and then rejected for being sent to the wrong place; when Mr. Rager re-submitted to the correct office, he was told his appeals were untimely. *Id.* In all, Mr. Rager spent over three years attempting to navigate the ARP with little success. Petition for Certiorari at ii, *Rager*, 589 U.S. 1306 (No. 19-6410); *see also* Reply Br. of Petitioner-Appellant in Support of Certiorari at 1-2, *Rager*, 589 U.S. 1306 (No. 19-6410).

Amicus Roderick & Solange MacArthur Justice Center’s former client Eric Gooch’s efforts to use the ARP were stymied before he could even submit the first form. Two corrections officials told another prisoner that Mr. Gooch had stolen from him and encouraged that prisoner to “take action on this matter.” *Gooch v. Young*, 24 F.4th 624, 625-26 (7th Cir. 2022). That prisoner attacked Mr. Gooch with a lock tied to a belt. Br. of Appellant at 6, *Gooch*, 24 F.4th 624 (No. 21-1702). When Mr. Gooch attempted to defend himself, one of the officers ordered him to lie down on the floor where the prisoner then attacked him again. *Gooch*, 24 F.4th at 626.

The following day, Mr. Gooch met with his correctional counselor to discuss the attack and to file a complaint. *Id.* But when he asked for a grievance form, the counselor refused saying, “I’m not giving you a form to file on that and you better watch out snitching on staff.” *Id.* Over the next several days, guards walked by Mr. Gooch’s cell, calling him a “rat” and saying, “[G]o ahead and write staff up[;] the next

time you're gonna die." *Id.* Afraid for his life, and prevented any access to the prison's ARP, Mr. Gooch never filed a formal grievance. Br. of Appellant at 7, *Gooch*, 24 F.4th 624 (No. 21-1702).²⁵

These examples are just a handful of countless variations occurring in federal prisons across the country. Collectively, they help explain the data showing that the ARP is not a remedial scheme at all. Rather, it has become a system used by BOP officials to frustrate attempts by prisoners to resolve real and significant problems.

Thus, Petitioner's notion that this Court should close federal courts to claims of serious constitutional violations in federal prisons because of the ARP is baseless. The ARP is no alternative to *Bivens* actions, which are essential for ensuring that adequate medical care is provided to people in federal prisons. Without *Bivens* actions, people incarcerated in federal prisons would lack meaningful recourse when their rights are violated.²⁶ Accordingly, Petitioner's argument for narrowing *Carlson* based on an

²⁵ Echoing Mr. Gooch's experience, a study of correctional institutions in 1974 found that people in BOP custody were often unwilling to use the ARP to address "situations that were expected to be viewed as serious." KEATING, *supra*, at 9. Only 4.8% of those surveyed would use the ARP if they "had a serious complaint about institutional policy," and 0% surveyed would use the ARP if they "were treated very unfairly by a staff member." *Id.*

²⁶ People incarcerated in federal prisons can sue using the Federal Tort Claims Act (FTCA), but *Carlson* expressly recognized that the "FTCA is not a sufficient protector of the citizens' constitutional rights." 446 U.S. at 23.

imagined “new context” created by the ARP should be rejected.

CONCLUSION

For the foregoing reasons, this Court should affirm the judgment of the Court of Appeals for the Ninth Circuit.

Respectfully submitted,

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