No. ____

In the Supreme Court of the United States

AARON MURRAY, PETITIONER,

v.

JEANNETTE MIRANDA, ET AL., RESPONDENTS.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether alternative remedies (such as the Bureau of Prisons' Administrative Remedy Program) should be considered at "step one" or "step two" of the *Bivens* analysis.

2. Whether a case presenting "non-lethal physical injuries" creates a new context under this Court's decision in *Carlson* v. *Green*, 446 U.S. 14 (1980).

PARTIES TO THE PROCEEDING

Petitioner (plaintiff-appellant below) is Aaron Murray. Respondents (defendants-appellees below) are Jeannette Miranda, Linda Criswell, Richard Qi Li, and Michelle Cortopassi.

RELATED PROCEEDINGS

United States District Court (M.D. Fla.):
Murray v. *Miranda*, No. 21-424 (Aug. 14, 2024).

United States Court of Appeals (11th Cir.):
Murray v. *Carlton*, No. 24-13126 (Oct. 27, 2025).

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OPINIONS BELOW

The opinion of the Court of Appeals for the Eleventh Circuit (App. 1a–10a) is unpublished but is reported at 2025 WL 3003523. The written order of the District Court for the Middle District of Florida (App. 11a–29a) is unpublished but is reported at 2024 WL 6887075.

JURISDICTION

The judgment of the court of appeals was entered on October 27, 2025. App. 1a. The court of appeals denied a timely petition for rehearing on January 20, 2026. App. 35a–36a. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Eighth Amendment provides, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

INTRODUCTION

While Petitioner Aaron Murray was incarcerated, he experienced excruciating pain from a life-threatening medical emergency caused by gallstones and a gallbladder infection. Respondents were deliberately indifferent to Murray's medical needs, repeatedly refusing to treat him or attend to him. In some circuits, that would have been enough for Murray to assert a *Bivens* claim to recover for the cruel and unusual punishment inflicted on him. Unfortunately for Murray, the Eleventh Circuit sees it differently. Murray is incarcerated in Florida and was required to file his *Bivens* action there. He accordingly fell on the losing side of two circuit splits, resulting in the dismissal of his action on grounds that he would have prevailed upon in other jurisdictions.

The first split concerns the application of this Court's two-step test for analyzing the availability of actions under *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971). At step one of the test, courts are to consider whether the claim arises in a "new" *Bivens* context—that is, a context that is meaningfully different from the handful of cases where this Court has approved *Bivens* claims. Only if the case presents a new context does the reviewing court proceed to step two. There, the court asks whether "special factors" suggest that Congress, rather than the Judiciary, should determine in that new context whether to permit a private claim for damages against federal officials.

The lower courts are divided on where alternative remedial schemes (such as administrative remedies required by the Bureau of Prisons) fit in this two-step inquiry. Most circuits that have squarely decided the issue hold that the availability of an alternative remedy

is relevant only to step two—it goes to whether courts should fashion a private remedy in a new context. But the Eleventh Circuit in *Carlson* cases, and the Fifth and Seventh Circuits in other *Bivens* actions, hold that an alternative remedial scheme applies at step one. The consequence of this approach is that an alternative remedy not considered in this Court's previous *Bivens* cases presents a new "context" even if the plaintiff's allegations are otherwise identical to a case where this Court has already approved a *Bivens* action.

This Court touched on alternative remedies in *Bivens* actions four years ago in *Egbert* v. *Boule*, 596 U.S. 482 (2022), but that decision has not resulted in a uniform application of *Bivens* in the lower courts. Many courts correctly understand that *Egbert* left the two-step *Bivens* framework intact and "held only that, at the second step of the analysis, the administrative remedy there counseled against extending the *Bivens* remedy to a new context." *Arias* v. *Herzon*, 150 F.4th 27, 40–41 (1st Cir. 2025). But some judges view *Egbert* as more transformative, opining that this "Court has reframed the *Bivens* inquiry, discarded *Carlson's* reasoning, and directed courts to presume that *Bivens* does not apply." *Cross* v. *Buschman*, No. 22-3194, 2024 WL 3292756, at *3 (3d Cir. July 3, 2024) (Matey, J., concurring) (citing *Egbert*, 596 U.S. at 490–94). This Court's intervention is necessary. See S. Ct. R. 10(a).

The second circuit split concerns claims which stem from non-lethal injuries suffered by incarcerated persons. This Court approved a *Bivens* claim for deliberate indifference to a prisoner's medical needs in *Carlson* v. *Green*, 446 U.S. 14 (1980). The prisoner in *Carlson* ultimately died from the medical condition that prison officials failed to treat. The issue that has divided the

circuits is whether a fatality is necessary to bring a *Bivens* action in the *Carlson* context. Four circuits correctly hold that a prisoner's *Bivens* claim arises in the same context as *Carlson* when prison officials' deliberate indifference causes a serious (but non-fatal) injury. Three other circuits (including the Eleventh) have indicated, by contrast, that the claim may arise in a new context if the defendant's conduct does not cause a prisoner's death. This circuit split likewise requires this Court's intervention.

The Court should grant review in this case to clarify how lower courts ought to conduct the *Bivens* two-step framework after *Egbert*, and whether serious (but non-fatal) injuries arise in the same context as *Carlson*. This case—a stark example of federal officials' deliberate indifference to a prisoner's medical needs—is the right vehicle to do so.

STATEMENT OF THE CASE

I. Legal Framework

1. This Court approved *Bivens* claims in three prior cases, which now establish the "contexts" in which future *Bivens* claims must arise. In 1971, this Court first recognized an implied cause of action against federal agents who conducted a warrantless search in violation of the Fourth Amendment. See *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971). Eight years later, the Court recognized an implied cause of action against a Congressman who terminated a staff member because of her sex, in violation of the Fifth Amendment. *Davis* v. *Passman*, 442 U.S. 228 (1979). And, as relevant here, the Court in 1980 again found an implied cause of action against federal prison officials for failure to provide adequate medical care to a prisoner, in violation of

the Eighth Amendment. *Carlson* v. *Green*, 446 U.S. 14 (1980). These three cases represent the "only instances in which the Court has approved of an implied damages remedy under the Constitution itself." *Ziglar* v. *Abbasi*, 582 U.S. 120, 131 (2017).

2. This Court has continued to uphold this *Bivens* trilogy, see *Ziglar*, 582 U.S. at 134; *Hernandez* v. *Mesa*, 589 U.S. 93, 113–14 (2020); *Egbert*, 596 U.S. at 502, even as it has rejected attempts to extend *Bivens* into new contexts. See *Goldey* v. *Fields*, 606 U.S. 942, 946 (2025). The Court has accordingly established a "two-step inquiry" to determine whether a plaintiff can bring a damages action against a federal employee for constitutional violations. See *Ziglar*, 582 U.S. at 139.

At step one, courts assess "whether the case presents a new *Bivens* context," meaning that the case is "meaningfully different from the three cases in which the Court has implied a damages action." *Egbert*, 596 U.S. at 492. If the case arises in an established (rather than a new) *Bivens* context, then a *Bivens* claim is available as compelled by precedent, and the inquiry ends. But if the case does present a "new context," courts must proceed to step two of the *Bivens* framework.

At step two, courts ask whether "there are special factors indicating that the Judiciary is at least arguably less equipped than Congress to weigh the costs and benefits of allowing a damages action to proceed." *Egbert*, 596 U.S. at 492 (quotation marks omitted). If special factors are identified, "that is, if [courts] have reason to pause before applying *Bivens* in a new context or to a new class of defendants—[courts must] reject the request," and find that the plaintiff has no available cause of action for damages stemming from his or her alleged constitutional injury. *Hernandez*, 589 U.S. at 102.

3. This Court's 2022 decision in *Egbert* v. *Boule* addressed alternative remedial schemes in step two of the *Bivens* framework. The Court did not disturb or replace the two-step process for assessing the viability of a cause of action under *Bivens*.

Egbert was a step-two case. This Court accepted "the Court of Appeals' [concession] that [the plaintiff's] Fourth Amendment claim presented a new context for *Bivens* purposes." *Egbert*, 596 U.S. at 494. A new context means that courts must proceed to step two of the *Bivens* framework. At step two, a court "faces only one question: whether there is any rational reason (even one) to think that Congress is better suited to 'weigh the costs and benefits of allowing a damages action to proceed.'" *Id*. at 496 (quoting *Ziglar*, 582 U.S. at 136). In its step-two analysis, this Court considered alternative remedies as one "special factor" weighing against "superimpos[ing] a *Bivens* remedy." *Id.* at 497–98; see also *Ziglar*, 582 U.S. at 137 (observing that the presence of an "alternative remedial structure … may limit the power of the Judiciary to infer a new *Bivens* cause of action"); *Goldey*, 606 U.S. at 942 (same).[1]

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[1] Terminology may have engendered some of the confusion because each step of the *Bivens* inquiry requires consideration of "special factors"—but not the same factors, and not for the same purpose. Compare *Ziglar*, 582 U.S. at 140, with *Egbert*, 596 U.S. at 492. This Court has been clear that at step one courts consider special factors related to whether "the case is different in a meaningful way from previous Bivens cases," *Ziglar*, 582 U.S. at 139, and at step two, courts must consider whether "there are 'special factors' indicating that the Judiciary is at least arguably less equipped than Congress to 'weigh the costs and benefits of allowing a damages action to proceed.'" *Egbert*, 596 U.S. at 492 (quoting *Ziglar*, 582 U.S. at 136).

Egbert did not overrule or otherwise alter this Court's two-step framework to determine whether a plaintiff has a viable cause of action for damages under *Bivens*. Nor did *Egbert* hold that a lower court can abandon the two-step inquiry altogether if the court manages to pick out an alternative remedial scheme tangentially related to the case. And this Court did not hold in *Egbert* that alternative remedies create a new context—it had no occasion to. See *Egbert* v. *Boule,* Oral Argument Tr., at 7:3–9 (Assistant Solicitor General Harris arguing that "I don't think you have to resolve exactly what is or is not a new context because this case, I think, is really about what happens when there is a *Bivens* extension on the table *when there is something that is absolutely a new context* and what factors should courts be considering in order to resolve that question") (emphasis added); see also *Cooper Indus., Inc.* v. *Aviall Servs.,* 543 U.S. 157, 170 (2004) ("Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedent." (citation omitted)).

The step-two question after *Egbert* remains "whether [the court], rather than the political branches, is better equipped to decide whether existing remedies should be augmented by the creation of a new judicial remedy." *Egbert*, 596 U.S. at 493. A congressionally created alternative remedial scheme is often evidence that courts are not so equipped.

II. Proceedings Below

1. Petitioner Murray's claim here arises in the same context as *Carlson*, where this Court approved a prisoner's *Bivens* claim for deliberate indifference to his medical needs. Like the prisoner in *Carlson*, Murray

alleges that federal prison officials were indifferent to his life-threatening medical condition in violation of the Eighth Amendment. Murray suffered from gallstones and a gallbladder infection that required urgent remedial surgery. The excruciating pain he experienced also exacerbated his lifelong heart condition (Bicuspid Aortic Valve Disease), causing high blood pressure and risking heart attack if not properly managed. App. 5a; see also App. 47a, 52a–53a.

Murray made five sick-call requests for medical attention. App. 11a–14a. The first time, he was told to return to his unit and that he would be called back later that day. App. 48a. He never was. *Ibid.* The second time, the same thing happened. App. 48a. Murray told one of the prison medical staff that he was "in extreme pain," but that made no difference. He attempted a third visit the next day, but the prison did not host sick calls on Wednesdays. *Ibid.*; see also App. 11a. Even so, his correctional officer observed that Murray "was having a medical emergency" and took him to health services anyway. There, Murray was "chastis[ed] for complaining" and told to "drink a lot of water." App. 49a. On his third completed visit to sick call the next day, Murray refused to leave the waiting room. *Ibid.* When prison officials again turned him away, Murray resorted to begging a prison lieutenant to be seen. *Ibid.* When the lieutenant directed Respondent Jeannette Miranda to evaluate Murray, she again told him to "drink a lot of water." *Id.* at 50a. The same course of events happened during the fourth sick call visit, though this time Respondent Linda Criswell identified three-millimeter gallstones in Murray's pelvis via X-ray and noted his high blood pressure. *Id.* at 50a–51a. She again told Murray to drink water. *Ibid.*

Only after Murray was unable to stand or walk, and was taken to the prison's health services in a wheelchair, was he sent to the hospital to receive medical attention. App. 51a. The EMT remarked that "he could not believe the other medical staff members ignored" Murray's medical needs all week. *Ibid.* The hospital physician told prison officials on March 16, 2019 that Murray "need[ed] surgery in the very near future" and prescribed him hydrocodone every six hours until that surgery. App. 12a; App. 52a.

Three months later, after numerous requests for medical attention, Murray was finally seen for a surgical consultation. The physician remarked that he "would recommend to the BOP that [Murray] be moved to the top of the list, as the pain and high blood pressure could negatively affect his heart condition." App. 56a.

Murray's surgery was ultimately performed on December 18, 2019—*nine months* after he was diagnosed—while his symptoms persisted throughout the entire period—and was only scheduled as a result of Murray's ceaseless sick call visits and administrative requests for medical attention.

By this point, the damage was already done. Murray was denied his prescribed pain medication for that entire nine-month period (apart from the three days after his first hospital visit), forcing him to live in extreme pain for the better part of a year and putting undue pressure on his already weak heart. App. 61a.

2. Murray filed a *Bivens* claim in the District Court for the Middle District of Florida. The district court found that his claim arose in a new context at step one, relying on the Eleventh Circuit's decision in *Johnson* v. *Terry*, 119 F.4th 840 (11th Cir. 2024). The court reasoned that because the Federal Bureau of Prisons has

an administrative remedy program ("BOP ARP") and because Murray "d[id] not present a claim that he 'died from an asthma attack when officials failed to provide the medical care required' like the plaintiff in *Carlson*," his case was meaningfully different from *Carlson*, which compelled dismissal. App. 17a (quoting *Johnson*, 119 F.4th at 859).

The Eleventh Circuit affirmed on the ground that Murray's case arises in a "new context." App. 6a–7a. The court of appeals reasoned that because this Court in *Carlson* did not consider "whether there were *any* alternative remedies available to the federal prisoner," the existence of alternative remedies here renders Murray's case meaningfully different at step one. *Ibid.* (emphasis in original). The court of appeals then considered the BOP ARP a second time at step two when concluding that the Judiciary should not extend *Bivens* to address Murray's claim for damages in what the Court had deemed a new *Bivens* context. App. 7a.

The Eleventh Circuit also held that Murray's claim arose in a new context because, unlike *Carlson*, "Murray only alleges non-fatal physical injuries." App. 5a. Though he could have died, the court of appeals observed, "[u]ltimately, Murray did receive surgery to remove his gallbladder and gallstones," *ibid.*, whereas "the prisoner in *Carlson* [] died from an asthmatic attack." *Id.* at 7a.

REASONS FOR GRANTING THE PETITION

The circuits are divided 5-3-4 in how to apply this Court's *Bivens* precedent. Five circuits continue to utilize this Court's two-step framework and correctly hold that the availability of alternative remedies is relevant only at step two. Three circuits disagree. The Eleventh

Circuit has squarely held that the BOP ARP is a factor to be considered at step one. And two other circuits have likewise, in other *Bivens* contexts, interpreted *Egbert* as requiring consideration of alternative remedies at step one. Another four circuits have issued decisions in both camps or have entirely done away with the two-step methodology. The Eleventh Circuit's decision in this case also squarely presents another important division over whether a prisoner must sustain a lethal injury for a claim to arise in the established *Carlson* context.

Both questions presented are important and worthy of review. The first question provides an opportunity for clarification as to the *Bivens* two-step inquiry after *Egbert*. The second question asks whether federal prisoners continue to have a remedy under *Carlson* when mistreatment by prison officials is cruel and unusual but does not ultimately cause the prisoner's death.

This case is the ideal vehicle to resolve these important questions, which have divided the courts of appeals. As the Eleventh Circuit interprets this Court's *Bivens* cases, each question presented provided a sufficient basis to dismiss Murray's claim for deliberate indifference to his medical needs. If he had only been incarcerated in another jurisdiction, his claim could have gone forward.

Murray's *Bivens* claim has striking similarities to *Carlson*, including a repeated pattern by federal prison officials of disregarding symptoms, denying prescribed medication, and delaying transfer to a hospital. See *infra* n.6. The panel below nonetheless held that Murray's claim presents a new *Bivens* context at step one, finding that his allegations are meaningfully different from *Carlson* because this Court in *Carlson* did not apply the "alternative remedies analysis" supposedly established

in *Egbert*, and because Murray "alleges only non-lethal physical injuries." App. 6a–7a. Had the Eleventh Circuit properly applied this Court's two-step framework, Murray's claim would have fallen squarely within *Carlson,* and he would have prevailed on appeal.

This Court should grant the petition and reverse the Eleventh Circuit below as to both questions presented.

I. There are Two Deep Circuit Splits

A. The courts of appeals are fractured over which step of this Court's *Bivens* test is proper to address alternative remedies.

After *Egbert*, the circuits are divided 5-3-4 over whether to consider the existence of alternative remedies at step one or step two of the *Bivens* inquiry. Five circuits continue to follow this Court's two-step methodology and correctly consider alternative remedies only at step two; three circuits now misapply step one by considering alternative remedies at that step; and another four circuits either issue decisions on both sides of the divide or have abandoned the two-step test entirely. The split continues to grow, notwithstanding a recent summary reversal by this Court that explicitly considers "an alternative remedy structure … for federal prisoners" at step two. *Goldey*, 606 U.S. at 944. This Court's intervention is needed to bring about uniform application of *Bivens* in the lower courts.

1. Five circuits adhere to this Court's decisions requiring that alternative remedies be considered at step two.

The First, Sixth, Eighth, Ninth, and D.C. Circuits continue to apply the two-step *Bivens* inquiry after this Court's decision in *Egbert* and correctly hold that the

existence of alternative remedies is relevant only at step two.

The **First Circuit** considers the presence of alternative remedies—including the BOP ARP—at step two, guided by this Court's decisions in *Egbert* and *Ziglar*. See *Arias*, 150 F.4th at 41–43. As the First Circuit explained, "the [Supreme] Court ha[s] [not] []—even once—relied on the introduction of such an administrative remedy to find a context new." *Id*. at 44; see also *Hornof* v. *United States*, 107 F.4th 46, 66 (1st Cir. 2024) (same). The court of appeals recognized that an alternative remedy is relevant to step two, where courts evaluate whether the Judiciary should refrain from creating a damages remedy, but rejected the notion that "any factor that would counsel hesitation in extending *Bivens* to a new context is necessarily also a factor that makes a context new." *Ibid*.

The **Sixth Circuit** employed the same two-step analytical framework in *Enriquez-Perdomo* v. *Newman*, 149 F.4th 623, 636 (6th Cir. 2025), addressing alternative remedies at step two; see also *Myers* v. *FCI Ashland*, No. 22-6111, 2024 WL 3085079, at *2 (6th Cir. Jan. 4, 2024) ("[T]he BOP's grievance process provides an alternative method of obtaining relief, and implying a cause of action in this context presents a risk of interference with prison administration.").

The **Eighth Circuit** also considers alternative remedies at step two. See *Farah* v. *Weyker*, 926 F.3d 492, 501–02 (8th Cir. 2019); *Ahmed* v. *Weyker*, 984 F.3d 564, 571 (8th Cir. 2020) (considering Hyde Amendment as an alternative remedy that precluded extending *Bivens* to a new context).

The **Ninth Circuit**'s view is the same: "In keeping with *Ziglar*, our cases are also uniform in treating the

ARP as a special factor only at step two." *Schwartz* v. *Miller*, 153 F.4th 918, 931 (9th Cir. 2025) (collecting cases); *id.* at 928 ("[A]lternative remedies are not typically relevant at step one where they do not distinguish the context of the violation, but merely speak to the appropriateness of a judicial remedy.").

The **D.C. Circuit** likewise joins the five-circuit majority and properly considers alternative remedies only at step two. See *Jones* v. *United States Secret Serv.,* 143 F.4th 489, 494–95 (D.C. Cir. 2025) (declining to extend *Bivens* as "Congress has charged [DHS] with investigating 'complaints and information indicating possible abuses of civil rights or civil liberties.'" (citing *Egbert*, 596 U.S. at 496)); see also *Buchanan* v. *Barr*, 71 F.4th 1003, 1006 (D.C. Cir. 2023) (considering alternative remedies at step two).

2. Three circuits, including the Eleventh Circuit in the decision below, consider alternative remedies at step one.

The Fifth, Seventh, and Eleventh Circuits altered their application of this Court's two-step test after *Egbert* and now hold that alternative remedies can render a case meaningfully different from previous *Bivens* cases at step one.

Most notably, the **Eleventh Circuit** stands alone in holding, in the context of *Carlson* claims, that alternative remedies categorically create a new context at step one. First in *Johnson* v. *Terry*, and then in the decision below, the court of appeals assessed the BOP ARP at step one and held that "[t]he fact that *Carlson* did not consider the existence of alternative remedies under the framework explained in *Egbert* renders *Johnson's* claim different from the one in *Carlson*." *Johnson*, 119 F.4th

at 858 (holding plaintiff's claim is "meaningfully different" from *Carlson* because "alternative remedies existed for prisoners in *Johnson's* position besides bringing a *Bivens* action, namely submission of a grievance form through the BOP administrative remedy program"). While the Eleventh Circuit nods to this Court's two-step test, it misapplies it in the *Carlson* context by considering alternative remedies at step one. See App. 4a–7a.

In the Fourth Amendment *Bivens* context, the **Fifth Circuit** has similarly determined that a plaintiff's "claim does indeed present a new context for *Bivens*—[when] it … has an alternative remedial structure provided by Congress." *Hernandez* v. *Causey*, 124 F.4th 325, 334 (5th Cir. 2024) (finding new context where plaintiff alleged violation of Fourth Amendment by ICE Agent, in part, based on DHS' grievance procedure), cert. denied, 145 S. Ct. 1930 (2025).

And in prison failure to protect cases, the **Seventh Circuit** has interpreted *Egbert* to require finding a new context "if Congress has crafted a relevant alternative remedial structure since the original *Bivens* cases." *Sargeant* v. *Barfield,* 87 F.4th 358, 367 (7th Cir. 2023); see also *Thomas* v. *Carmichael*, 164 F.4th 1058, 1065 (7th Cir. 2026) (dismissing failure to protect claim at step one, in part because the "prison grievance system provide[s] inmates like Thomas with an alternative remedial path").

3. The remaining four circuits have issued conflicting decisions on both sides of the split or have collapsed the inquiry into a single question.

The Second, Third, and Fourth Circuits issue rulings on both sides of the split, applying the two-step test in some cases but not in others. The Tenth Circuit appears

to have done away with this Court's two-step approach entirely.

The **Second Circuit** has produced inconsistent opinions, creating an apparent intra-circuit conflict. See *Sigalovskaya* v. *Braden*, 149 F.4th 226, 239 (2d Cir. 2025) (per curiam); *id.* at 233 (Lee, J., concurring); *id.* at 237 (Pérez, J., concurring) (reasoning "that an alternative remedial scheme 'alone' is a 'special factor' under the Supreme Court's *Bivens* jurisprudence that terminates the action"); *id.* at 239 (Lynch, J., dissenting in part) ("I [] disagree with Judge Pérez that the mere presence of a special factor, here, an alternative remedial regime, is sufficient to preclude a *Bivens remedy* ...."). The court of appeals simply "dismisses [] *Bivens* claim[s] without being able to agree on a rationale for distinguishing *Bivens*." *Id.* at 239 (Lynch, J., dissenting in part). The same pattern is demonstrated in *Edwards* v. *Gizzi*, 107 F.4th 81 (2d Cir. 2024); compare *id.* at 85–86 (Park, J., concurring) with *id.* at 87 (Robinson, J., concurring) and *id.* at 89 (Parker, J., dissenting).[2]

The **Third Circuit** has likewise produced inconsistent rulings. For example, in *Fisher* v. *Hollingsworth*, the court of appeals sought to "align Third Circuit law

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[2] The Second Circuit's unpublished decisions, on the other hand, reflect a mixed approach. See *Crespo* v. *Carvajal*, No. 24-1138, 2025 WL 635497, at *1 (2d Cir. Feb. 27, 2025) (step two); *Lewis* v. *Bartosh*, No. 22-3060, 2023 WL 8613873, at *1 (2d Cir. Dec. 13, 2023) ("[I]f there is an 'alternative remedial structure,' a *Bivens* remedy is generally unavailable."); *MC Mgmt. of Rochester LLC* v. *Biden,* No. 23-1086, 2024 WL 2350505, at *2 (2d Cir. May 23, 2024) (treating alternative remedies as dispositive outside of the two-step inquiry as they "independently foreclose a *Bivens* action").

with … *Egbert*," and in so doing, "h[e]ld that the BOP's Administrative Remedy Program precludes a *Bivens* remedy" at step two. 115 F.4th 197, 208 (3d Cir. 2024); see also *Freeman* v. *Lincalis*, 158 F.4th 166, 182 (3d Cir. 2025) (same). One week after *Fisher*, however, the same court of appeals decided *Kalu* v. *Spaulding*, where it held that plaintiff's claim arose in a "new context" at step one because "the PLRA and the BOP's remedy program are 'features that were not considered' by the Supreme Court when it decided *Carlson*." 113 F.4th 311, 328 (3d Cir. 2024); see also *Muniz* v. *United States*, 149 F.4th 256, 264 (3d Cir. 2025) ("As this Court noted in *Kalu*, the BOP ARP creates a new context at step one of the Bivens inquiry.").[3]

The **Fourth Circuit** sometimes properly considers alternative remedies at step two. See, e.g., *Mays* v. *Smith*, 70 F.4th 198 (4th Cir. 2023). This Court seemingly agreed with that approach just last Term, when reviewing a Fourth Circuit decision. Although it summarily reversed the Fourth Circuit on the merits, this Court—like the Fourth Circuit—addressed alternative remedies at step two and without regard to whether the plaintiff availed himself of those remedies. See *Fields* v. *Federal Bureau of Prisons*, 109 F.4th 264, 280 (4th Cir.

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[3] Judge Restrepo's concurrence from the panel opinion in *Muniz* v. *United States* highlights this intra-circuit split. 149 F.4th at 266 (Restrepo, J., concurring to "highlight the different and superior approach"). Per Judge Restrepo, "our binding precedent in *Kalu* v. *Spaulding*, requires us to consider alternative remedial structures as a special factor at step one … However, as we recognized in *Fisher* v. *Hollingsworth*, *Egbert* 'modified,' the Court's approach in *Abbasi* and now controls our analysis." *Id*. at 266 (internal citations omitted).

2024) (reasoning a *Bivens* remedy was proper where prison officials denied a plaintiff access to alternative remedies), rev'd sub nom. *Goldey* v. *Fields*, 606 U.S. 942 (2025). However, at other times and more recently, the court of appeals has adopted the opposite approach. For instance, in *Spivey* v. *Breckon*, the Fourth Circuit found a new context at step one because "Congress enacted the Prison Litigation Reform Act (PLRA) approximately 15 years after *Carlson* was decided." 173 F.4th 174, 180 (4th Cir. 2026).

The **Tenth Circuit** goes even further, collapsing the two-step inquiry into a per se rule that forecloses *Bivens* actions where any alternative remedy is present. See, e.g., *Silva* v. *United States*, 45 F.4th 1134, 1141 (10th Cir. 2022) ("[C]ourts may dispose of Bivens claims for two independent reasons: Congress is better positioned to create remedies in the context considered by the court, and the Government already has provided alternative remedies that protect plaintiffs." (alteration and quotation marks omitted)); *Logsdon* v. *U.S. Marshal Serv.*, 91 F.4th 1352, 1359 (10th Cir. 2024) (describing *Egbert* as providing "a second independent ground for not recognizing a *Bivens* action"); see *Noe* v. *United States*, No. 23-1025, 2023 WL 8868491, at *3 (10th Cir. Dec. 22, 2023) (reasoning that the "availability of the ARP is sufficient to foreclose a *Bivens* claim despite any factual similarity" with recognized precedent), cert. denied, 144 S. Ct. 2562 (2024).

This inconsistent approach by the lower courts to remedying violations of core constitutional rights cannot continue. This Court should restore uniformity by reaffirming the two-step framework for consideration of *Bivens* claims, and by clarifying that an alternative remedial scheme is relevant only at step two.

B. There is Also a Circuit Split as to Whether Non-Lethal Physical Injuries Create a "New Context" under *Carlson*

The courts of appeals are also divided over whether a plaintiff's injury must be fatal to proceed under *Carlson*. Three circuits have suggested that non-lethal physical injuries present "a new context" under *Carlson*, eliminating *Carlson* actions for any individual who survived his or her mistreatment. By contrast, four circuits do not categorically preclude surviving plaintiffs from bringing a *Bivens* claim in the *Carlson* context.

1. Three Circuits hold that non-lethal injuries qualify as a "new context."

The First, Tenth, and Eleventh Circuits have indicated that a claim may present a new context if officials' medical indifference does not result in a plaintiff's death.[4]

The **First Circuit** has all but limited *Carlson* claims to wrongful death actions. See *Waltermeyer* v. *Hazlewood*, 136 F.4th 361, 367–68 & n.4 (1st Cir. 2025); but see *id*. at 371 (Breyer, J., dissenting) ("To conclude that a claim extends *Carlson* because it is weaker than the claim in *Carlson* is to undermine *Carlson* itself—the very thing the Supreme Court has asked us not to do.").

The **Tenth Circuit** too limits *Carlson* claims to situations where "[t]he prisoner died as a result" of medical indifference by federal officials. *Rowland* v.

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[4] The Fourth Circuit has found a meaningful difference from *Carlson* even where numerous instances of indifference metastasized into significant health issues, including plaintiff's inability to properly walk, but did not ultimately cause death. *See Masias* v. *Hodges*, No. 21-6591, 2023 WL 2610230, at *2 (4th Cir. Mar. 23, 2023).

Matevousian, 121 F.4th 1237, 1243 (10th Cir. 2024); see also *Walker* v. *Hudson*, No. 24-3148, 2025 WL 1577808, at *2 (10th Cir. June 4, 2025) (finding *Carlson* inapplicable because, among other things, "importantly, the prisoner [in *Carlson*] died as a result").

And the **Eleventh Circuit** decision below—in an extension of its precedent in *Johnson* v. *Terry*—finds that "non-lethal physical injuries to [a plaintiff's] body" are insufficiently harmful to fall within *Carlson*. App. 7a (quoting *Johnson*, 119 F.4th at 859).

2. Four Circuits do not require a fatal injury to bring a claim in the *Carlson* context.

By contrast, the Third, Fifth, Seventh, and Ninth Circuits expressly do not stake the viability of a cause of action in the *Carlson* context on the prisoner's death.

The **Third Circuit** does not require a fatal injury to state a claim under *Carlson*, reasoning that "the difference between amputation and death" "neither provides insight into congressional intent nor meaningfully changes the remedial analysis the Supreme Court already undertook in *Carlson*." *Muniz*, 149 F.4th at 262.

And the **Fifth Circuit** holds that differences are not sufficiently meaningful to create a new context where "[u]nlike the plaintiff in *Carlson*, [the plaintiff here] did not die from a failure to provide medical attention, and his need for medical attention did not relate to asthma." *Vaughn* v. *Bassett*, No. 22-10962, 2024 WL 2891897, at *3 (5th Cir. June 10, 2024). For instance, the court of appeals upheld a *Carlson* action where federal prison officials' indifference caused plaintiff's teeth to crack and break. *Carlucci* v. *Chapa*, 884 F.3d 534, 538 (5th Cir. 2018).

The **Seventh Circuit** agrees. As Judge Easterbrook explained, "the [] gravity of the condition … seem[s] more pertinent to the merits than to determining the scope of the holding in *Carlson*." *Brooks* v. *Richardson*, 131 F.4th 613, 615 (7th Cir. 2025) (holding failure to treat ruptured appendix resulting in "agonizing pain" fell under *Carlson*); see also *Watkins* v. *Mohan*, 144 F.4th 926, 936 (7th Cir. 2025) (reasoning that "*Carlson* [] also dealt with management of a chronic, non-emergent medical condition requiring continuous, periodic treatment over many months" such that a prisoner's eventual death need not occur to fall under *Carlson*), petition for cert. pending sub nom. *Mohan* v. *Watkins*, No. 25-952 (filed Feb. 10, 2026).

Lastly, the **Ninth Circuit** similarly holds that "deliberate indifference to chronic and non-life-threatening conditions can support a *Carlson* action." *Schwartz*, 153 F.4th at 931 (explicitly rejecting arguments that "the severity—of the medical condition or the officers' conduct—constituted a meaningful difference under *Ziglar's* framework for analyzing *Bivens* claims"); see also *Watanabe* v. *Derr*, 115 F.4th 1034, 1042 (9th Cir. 2024) (finding that "even if [the plaintiff's medical need] is not technically life-threatening," his *Carlson* claim could proceed), petition for cert. pending sub nom. *Nielsen* v. *Watanabe*, No. 25-417 (filed Oct. 3, 2025).

II. The Questions Presented Are Important, and These Issues Are Recurring

The two questions presented display widespread methodological confusion in the lower courts that is often case dispositive and should be addressed by this Court. See *Megginson* v. *United States*, 556 U.S. 1230,

1230 (2009) (Alito, J., dissenting from summary reversal) (concluding full review was warranted as the case "presented an important question regarding the meaning and specificity" of this Court's Fourth Amendment test for roadside arrests).

It is important that this Court course-correct the courts of appeals—particularly the Eleventh Circuit—that have effectively declared *Carlson* overruled, particularly given that those decisions leave federal prisoners without any remedy at all for violations of their constitutional rights.

A. Lower-court confusion is widespread.

This Court routinely grants certiorari to resolve lingering circuit conflict or dispel confusion in the lower courts that stems from its prior rulings. It should do so here. See, e.g., *Flowers* v. *Mississippi*, 588 U.S. 284, 316 (2019) (granting certiorari only to correct an application of the Court's *Batson* test); *Groff* v. *DeJoy*, 600 U.S. 447, 473 (2023) (same). This function is particularly important where, as here, "a considerable number of suits are pending in the lower courts which will turn on resolution of these issues, and [there is] a conflict among the circuits." *Massachusetts Trs. of E. Gas & Fuel Assocs.* v. *United States*, 377 U.S. 235, 237 (1964).

The Court's two-step *Bivens* framework serves as the blueprint for lower-court adjudication of the thousands of *Bivens* cases filed each year. Yet the lower courts reach different outcomes. This concern is particularly pressing with respect to *Carlson* claims, which have prompted circuit court judges to request this Court's guidance. See, e.g., *Arias*, 150 F.4th at n.11 (Lynch, J., concurring in part and dissenting in part) ("The Supreme Court may wish to address these circuit splits,

reflecting the need for additional guidance to lower court judges, who in good faith have reached different outcomes."); *Watkins*, 144 F.4th at 951 (Kirsch, J., concurring in the judgment in part and dissenting in part) ("Appellate courts continue to struggle with the Court's limited guidance on how to conduct a 'new context' analysis … The result has been a flood of inconsistent case law across and within circuits.").

Bivens and *Carlson* claims also occur in contexts where uniformity is of paramount importance. A federal prisoner's ability to obtain a remedy for constitutional violations should not turn on which facility the Bureau of Prisons happens to send him to. And federal officials should be held to the same standards of conduct—and on notice of the same penalties—countrywide. Courts of appeals like the Eleventh Circuit which grievously misapply the two-step framework have done so to the detriment of "prisoners [who] are uniquely vulnerable to the officials who control every aspect of their lives." *Maryland* v. *Shatzer*, 559 U.S. 98, 127 (2010) (Stevens, J., concurring in the judgment).[5]

B. Courts on the wrong side of these splits depart from this Court's decisions.

This Court's intervention is needed not only to restore uniformity to *Bivens* analyses in the lower courts,

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[5] Which factors are properly considered at step one is particularly important, as courts are unlikely ever to extend *Bivens* to a new context at step two. Under the Court's recent precedents, a "new context = no *Bivens* claim." *Byrd* v. *Lamb*, 990 F.3d 879, 883 (5th Cir. 2021) (Willett, J., concurring); see also *Johnson*, 119 F.4th at 850 (collecting cases and observing that "[w]e are not the only court to have taken to heart what the Supreme Court has said on this subject.").

but also to bring the Eleventh Circuit, among other circuits, into conformity with this Court's decisions.

In the decision below, the Eleventh Circuit reasoned that Murray's claim is materially distinguishable from *Carlson* because "the Supreme Court [in *Carlson*] 'did not apply the current alternative remedies analysis to the claim.'" App. 6a (internal citation omitted). That is to say, Murray's *Carlson* claim is foreclosed because this Court did not explicitly consider the BOP ARP in *Carlson*. But if the existence of the BOP ARP in federal prisons is sufficient to meaningfully distinguish a claim from *Carlson*, then *no federal prisoner* can ever bring a *Carlson* claim. See *Cross*, 2024 WL 3292756, at *3 (Matey, J., concurring) ("Presumably, the same result would follow in any action by a federal prisoner against federal officials for damages."); see also *Noe*, 2023 WL 8868491, at *3 ("availability of the ARP is sufficient to foreclose a *Bivens* claim despite any factual similarity" with *Carlson*). *Carlson* has thus been effectively overruled in the Eleventh Circuit because this reasoning "render[s] unavailable in any context the remedy that [was] deemed necessary in the context that *Bivens* itself presented." *Arias*, 150 F.4th at 49. See *Agostini* v. *Felton*, 521 U.S. 203, 237 (1997) ("[W]e do not hold[ ] that other courts should conclude our more recent cases have, by implication, overruled an earlier precedent.").

This Court has gone out of its way to emphasize that *Bivens* and its progeny, including *Carlson*, are still good law. See, e.g., *Ziglar*, 582 U.S. at 134; *Egbert*, 596 U.S. at 502. It is of no moment that *Carlson* "might have been different" if it "were decided today." *Ziglar*, 582 U.S. at 134. Something has gone awry when the lower courts make all potential applications of this Court's precedent into a null set.

C. Courts' methodological errors at step one have concrete impacts on plaintiffs suing under *Bivens*, particularly on federal prisoners.

Courts of appeals (including the Eleventh Circuit in the decision below) that consider alternative remedies at step one and require a lethal injury to state a claim under *Carlson* have created parallel, inconsistent spheres for remediation of constitutional violations. The availability of relief for constitutional violations now turns on geography, rather than the merits of the claim.

Absent further clarity from this Court, many federal prisoners have no remedy for damages when federal officials are deliberately indifferent to their medical needs in violation of the Eighth Amendment. In fact, these federal prisoners are left without *any* remedy at all against individual officers—in part because Congress has since legislated against the backdrop of *Bivens* to provide "complementary" remedies. See, e.g., *Carlson,* 446 U.S. at 20 (observing that it is "crystal clear … Congress view[ed the] FTCA and *Bivens* as parallel, complementary causes of action" (internal citation omitted)); *Hernandez*, 589 U.S. at 111 & n.9 (noting that Congress's 1988 amendment to the FTCA "left *Bivens* where it found it"); *United States* v. *Smith*, 499 U.S. 160, 166–67 (1991) (finding that through the Westfall Act Congress expressly "preserv[ed] employee liability for *Bivens* actions"). What's more, federal prisoners in three circuits are also foreclosed from bringing an action under *Carlson* because those circuits require that a prisoner's injury be fatal to bring a claim for relief.

This Court has recognized that, "though his rights may be diminished by the needs and exigencies of the

institutional environment, a prisoner is not wholly stripped of constitutional protections when he is imprisoned for crime." *Wolff* v. *McDonnell*, 418 U.S. 539, 555–56 (1974). Indeed, "[t]here is no iron curtain drawn between the Constitution and the prisons of this country." *Ibid.* Yet in the Eleventh Circuit and other circuits that shirk this Court's *Bivens* methodology, "all courthouse doors—both state and federal—[are] slammed shut[,] … such wholesale immunity induce[s] impunity, giving the federal government a pass to commit one-off constitutional violations[.]" *Byrd*, 990 F.3d at 884 (Willett, J., concurring); see *Ziglar*, 582 U.S. at 140 ("[T]he purpose of *Bivens* is to deter the officer." (quoting *F.D.I.C.* v. *Meyer*, 510 U.S. 471, 485 (1994))). When courts of appeals treat *Bivens* and its progeny, including *Carlson*, as implicitly overruled, not only does it undermine this Court's precedents, but it disrupts the congressional scheme that is orchestrated around the existence of and adherence to *Bivens* and related cases.

III. The Decision Below Is Wrong

The Eleventh Circuit's decision incorrectly applies this Court's two-step framework by considering alternative remedies (specifically, the BOP ARP) at step one, and separately, by requiring that Murray sustain fatal injuries to fall under *Carlson*.

A. The existence of alternative remedies should not create a new *Bivens* context at step one.

The Eleventh Circuit held in *Johnson* that the BOP ARP was an alternative remedy sufficient to create a new context because this Court in *Carlson* had not considered it. 119 F.4th at 858–59. This is incorrect as a matter of both method and application.

The Eleventh Circuit misconstrued this Court's two-step framework under the mistaken impression that *Egbert* limited the *Bivens* inquiry to identification of any alternative remedy at step one. This is wrong. Alternative remedies are relevant at step two because "an alternative remedial structure … may … limit the power of the Judiciary to infer a new *Bivens* cause of action." *Ziglar*, 582 U.S. at 137. But before asking "who decides whether to create a new remedy?"—the quintessential step-two question—courts must first determine that this Court did not already recognize a remedy in the established *Bivens* trilogy. That is, courts must have already moved past step one.

Indeed, *Carlson* itself considered alternative remedies when determining whether to recognize a private cause of action—the step-two question. This Court in *Carlson* highlighted that plaintiffs like Murray cannot avail themselves of the Federal Tort Claims Act, 28 U.S.C. 1346(b), 2671–2680, as it does not permit tort claims against *individual federal employees*. *Carlson*, 446 U.S. at 21 ("Because the *Bivens* remedy is recoverable against individuals, it is a more effective deterrent than the FTCA remedy against the United States."); but see 28 U.S.C. 2679(b)(2) (preserving constitutional claims "against an employee of the Government").

Although the BOP ARP already existed when this Court decided *Carlson*, the Court did not address it in that decision. If it had, the Court might have noted that, like the FTCA, the BOP ARP also is not a substitute for *Bivens* because the program allows for only prospective relief. When an inmate raises a tort claim for *retrospective* relief (rather than injunctive relief for prison conditions), the program directs the Bureau of Prisons to "refer the inmate to the appropriate statutorily-mandated

procedures"—the FTCA. See 28 C.F.R. 542.10(c). The BOP ARP is a mechanism to air grievances related to prison conditions, where the best-case outcome is injunctive relief from the Bureau. Retroactive or monetary relief is unavailable under the BOP ARP.

This Court has repeatedly found complementary overlap between administrative processes and *Bivens* remedies, which also counsels against the Eleventh Circuit's bright-line rule. See *Porter* v. *Nussle*, 534 U.S. 516, 524 (2002) ("[F]ederal prisoners suing under *Bivens* … must first exhaust inmate grievance procedures just as state prisoners must exhaust administrative processes prior to instituting a Section 1983 suit."); see *Arias*, 150 F.4th at 30 (declining to find new context based on alternative remedy, in part, because "the Supreme Court has reaffirmed the existence of [*Bivens*] in the years after that now decades-old legislative development"). This Court has also reaffirmed the availability of *Carlson* actions while also discussing the BOP ARP itself. See *Corr. Servs. Corp.* v. *Malesko*, 534 U.S. 61, 74 (2001). And the Court's analysis in *Ziglar*—without discussion of the BOP ARP—suggests the Court did not view this alternative remedy as creating a new *Carlson* context at step one. *Ziglar* too involved "allegations of injury [that] are just as compelling as those at issue in *Carlson*" and allegations of "serious violations of Bureau of Prisons policy." 582 U.S. at 147. The BOP ARP existed when this Court decided *Ziglar*, just as it exists now. Where was the discussion of the BOP ARP in *Ziglar* if it bars *Bivens* relief wholesale? If the BOP ARP was a special factor significant enough to render a case meaningfully different from the *Bivens* trilogy, this Court would have said so. The Eleventh Circuit was wrong to conclude otherwise.

B. Petitioner did not need to die from his injuries to state a claim under *Carlson*.

This Court has not once held that a plaintiff's ability to bring a damages action under *Bivens*—whether or not that claim is meritorious in the end—turns on the lethality of the injuries he sustained as a result of indifference by federal officials.

In this case, Petitioner Murray was in agonizing pain for a prolonged period, during which prison officials denied him the pain mitigation measures prescribed by his physician. Even when faced with direct evidence of a medical emergency—through X-ray images of his gallbladder and a measurement of his high blood pressure—with knowledge of his heart condition, Murray was told repeatedly to "drink water" and left to fend for himself within the prison walls for nine months. App. 12a; App. 52a–56a. To the Eleventh Circuit, however, such blatant medical indifference by prison officials does not fall within *Carlson* because Murray lived to tell the tale and file this lawsuit.[6]

This Court in *Ziglar* provided a list of factors that "might" render a context meaningfully different from the *Bivens* trilogy—not a single factor described the extent of the plaintiff's injury.[7] *Ziglar*, 582 U.S. at 140.

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[6] Like this case, *Carlson* involved prison officials' mismanagement of a prolonged medical condition—in addition to the asthma attack that ultimately caused the plaintiff's death. For example, prison officials failed to provide the plaintiff with medication ordered by his outside physician. See *Green* v. *Carlson*, 581 F.2d 669, 671 (7th Cir. 1978), aff'd, 446 U.S. 14 (1980).

[7] These factors included: "the rank of the officers involved; the constitutional right at issue; the generality or specificity of the official action; the extent of judicial guidance as to how an officer should

That is because if a defendant believes that a plaintiff's claim is "weaker than the claim in *Carlson*," "they should file a motion to dismiss or for summary judgment on that basis," rather than argue that the case arises in an entirely "new context." *Waltermeyer*, 136 F.4th at 371 (Breyer, J., dissenting); see also *Brooks*, 131 F.4th at 616 (Easterbrook, J.) ("What we will not do is smuggle a potential defense into the pleading stage and use it as a reason why the claim does not exist."). In truth, the *Bivens* inquiry endeavors to determine whether a plaintiff "has asserted a cause of action, [which this Court has made clear] depends not on the quality or extent of her injury, but on whether the class of litigants of which [plaintiff] is a member may use the courts to enforce the right at issue." *Davis*, 442 U.S. at 239–40 & n.18. This Court has further advised that "[t]he focus must therefore be on the nature of the right" rather than the severity of the injury caused by the violation of that right. *Ibid.*

The Eleventh Circuit plainly misapplied this Court's two-step framework in the decision below, and in so doing, established an exceedingly high barrier to relief that is out of step with this Court's precedents. Review is warranted, or the Court should consider summary reversal.

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respond to the problem or emergency to be confronted; the statutory or other legal mandate under which the officer was operating; the risk of disruptive intrusion by the Judiciary into the functioning of other branches; or the presence of potential special factors that previous *Bivens* cases did not consider." *Ziglar*, 582 U.S. at 140.

IV. This Case is a Clean Vehicle to Address the Questions Presented, and There are Impediments to Review in Other Pending Petitions

This case presents a clean vehicle to address both questions presented. In contrast to pending petitions in *Nielsen* and *Mohan*, which include fact-bound requests,[8] this case presents a suitable vehicle to address the legal error generating significant post-*Egbert* confusion.

First, this case presents two straightforward methodological questions regarding the proper application of this Court's two-step *Bivens* framework after *Egbert* and whether lethality is a required component of that framework as it relates to *Carlson* claims. By contrast, *Nielsen* seeks a fact-bound declaration from this Court that the Ninth Circuit erred in finding allegations involving "a fractured coccyx in a prison gang fight" meaningfully different from *Carlson*. See *United States* v. *Johnston*, 268 U.S. 220, 227 (1925) ("We do not grant a certiorari to review evidence and discuss specific facts."). And *Mohan*, for its part, seeks review of *Carlson's* application to injuries sustained at a pretrial detention center, among other highly fact-sensitive aspects of the lower court's decision. See *Buford* v. *United States*, 532 U.S. 59, 65–66 (2001) ("[T]he fact-bound nature of the decision limits the value of appellate court precedent, which may provide only minimal help when other courts

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[8] See *Nielsen* v. *Watanabe,* petition for cert. pending, No. 25-417 (filed Oct. 3, 2025) and *Mohan* v. *Watkins*, petition for cert. pending, No. 25-952 (filed Feb. 10, 2026). As set forth herein, Petitioner submits that his case is a more appropriate vehicle to resolve the questions presented. Should the Court grant a petition in *Nielsen* or *Mohan*, Petitioner respectfully requests that the Court hold his petition pending a decision in those cases.

consider other [factual circumstances]."). To be sure, *Bivens* cases always involve some factual considerations that may pose challenges to announcing bright-line holdings, but the unusually fact-bound requests for review in *Nielsen* and *Mohan* are particularly ill-suited for providing much needed procedural clarity to the lower courts.

Second, the facts of this case reflect a prototypical *Carlson* claim, allowing the Court to resolve a question of general applicability. Here, Murray developed a naturally occurring medical condition while serving out the sentence for which he was convicted. He had an underlying health issue and availed himself of the proper mechanisms for medical attention by visiting the institution's sick call, filing administrative complaints and requests for assistance, and working with his correctional officer and others to obtain the help he so desperately needed. The facts of this case provide the Court with a look into the standard experience of federal prisoners whose medical needs are met with indifference by federal prison officials.

By contrast, the plaintiff in *Mohan* alleges medical indifference beginning while he was a pretrial detainee rather than a convicted federal prisoner. As a result, his alleged mistreatment occurred between two facilities with two sets of prison officials, and his claims fall under both the Fifth and Eighth Amendments. *Mohan* v. *Watkins*, 2026 WL 401306, at *4–6; see *Mohan*, 144 F.4th at 948 (Kirsch, J., concurring) (explaining that "[w]hile Watkins's post-conviction care is subject to the Eighth Amendment, any claims arising from alleged mistreatment before his guilty plea are governed by the Fifth Amendment."). This backdrop has little general application to most *Bivens* claims.

Third, the Eleventh Circuit's holding was unequivocal and dispositive of the case. The court of appeals was clear that Murray's claim constituted a new context at step one for two reasons: "Murray only alleges non-fatal physical injuries," and *Carlson* did not consider "whether there were any alternative remedies available to the federal prisoner" there. App. 5a–7a. By contrast, the decisions in *Nielsen* and *Mohan* reversed dismissals of plaintiffs' claims, leaving the federal defendants an opportunity to further litigate the merits, including by arguing that the conduct at issue was not sufficiently severe to constitute medical indifference or a violation of the Eighth Amendment. The dispositive nature of the decision below in this case facilitates review, whereas the other petitions' interlocutory posture counsels against consideration. See *Nat'l Football League* v. *Ninth Inning, Inc.,* 141 S. Ct. 56, 56–57 (2020) (Kavanaugh, J., respecting denial of certiorari) (noting "interlocutory posture … counsel[s] against … review" of appellate opinion reversing district court's dismissal).

Fourth, Murray would have been permitted to proceed had the Eleventh Circuit properly applied this Court's two-step framework. Murray alleged "that prison officials delayed scheduling his surgery to remove his gallbladder and gallstones and failed to give him the pain medication that a doctor had prescribed him—namely, hydrocodone." App. 5a. And further, that "[b]eing in chronic pain for an extended period of time caused a documented increase in [his] blood pressure, which in turn caused an unnecessary strain to be put on his heart." *Ibid.* The only factors the court of appeals deemed meaningfully different from *Carlson* were the BOP ARP and the fact that Petitioner survived his mistreatment by prison officials.

The facts of this case are typical of *Carlson* claims. The reasoning of the courts below is clear and squarely addresses the two questions presented. If the Court is inclined to clarify the *Bivens* methodology after *Egbert*, it should be through this case.

CONCLUSION

The petition for a writ of certiorari should be granted. The Court may wish to consider summary reversal.

Respectfully submitted.

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APPENDIX

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 24-13126
Non-Argument Calendar

AARON MICHAEL MURRAY,

Plaintiff-Appellant,

versus

E.K. CARLTON,
Individual Capacity as Prior
Warden of FCI Coleman Medium, *et al.*,

Defendants,

JEANETTE MIRANDA,
Individual Capacity as FNP BC,

LINDA CRISWELL,
Individual Capacity as PA-C,

RICHARD QI LI,
Individual Capacity as M.D.,

MICHELLE CORTOPASSI,
Individual Capacity as Unit C-3 Counselor,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 5:21-cv-00424-KKM-PRL

Before NEWSOM, LAGOA, and WILSON, Circuit Judges.

PER CURIAM:

Aaron Murray seeks review of the district court's order disposing of his *Bivens* action[1] against federal prison officials. In short, Murray alleged that the officials were deliberately indifferent to his medical needs, in violation of the Eighth Amendment. The district court (1) granted judgment on the pleadings to two defendants, (2) granted a motion to dismiss for failure to state a claim to a third defendant, and (3) dismissed *sua sponte* the claim against the remaining defendant.

The district court held that Murray's *Bivens* claims were not cognizable because his case presented a "new *Bivens* context" and because an alternative remedy existed—specifically, the Federal Bureau of Prisons' grievance system. Murray argues on appeal that his case does not present a new *Bivens* context because his case is "materially indistinguishable" from *Carlson v. Green*, 446 U.S. 14 (1980), in which the Supreme Court permitted a *Bivens* claim brought by the estate of a federal prisoner for failure to provide medical care. After careful review, we affirm the district court's order.

The facts are known to the parties, and we repeat them here only as necessary to resolve the case.[2]

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[1] *Bivens v. Six Unknown Named Agents of Fed. Bur. of Narc.*, 403 U.S. 388 (1971).

[2] We review a court's dismissal under Federal Rule of Civil Procedure 12(b)(6) de novo. *Almanza v. United Airlines, Inc.*, 851 F.3d 1060, 1066 (11th Cir. 2017). We also conduct de novo review of both a court's *sua sponte* dismissal for failure to state a claim under 28 U.S.C. § 1915A(b)(1), *Christmas v. Nabors*, 76

In *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, the Supreme Court recognized a damages action alleging that federal law-enforcement agents had violated the Fourth Amendment's prohibition on unreasonable searches and seizures. 403 U.S. 388, 397 (1971). In the ensuing decade, the Court expanded the *Bivens* remedy and recognized two additional causes of action against federal officials: for a claim that a congressman had engaged in sex discrimination in violation of the Fifth Amendment, *see Davis v. Passman*, 442 U.S. 228 (1979); and, as relevant here, for a claim that federal prison officials had exhibited deliberate indifference to an inmate's medical needs in violation of the Eighth Amendment, *see Carlson v. Green*, 446 U.S. 14 (1980).

Since then, though, the Supreme Court has "consistently refused to extend *Bivens* to any new context or new category of defendants." *Ziglar v. Abbasi*, 582 U.S. 120, 135 (2017) (quoting *Correctional Servs. Corp. v. Malesko*, 534 U.S. 61, 68 (2001)). Indeed, the Court has "stated that expansion of *Bivens* is 'a "disfavored" judicial activity,'" *Hernandez v. Mesa*, 589 U.S. 93, 101 (2020) (quoting *Ziglar*, 582 U.S. at 135), and that "it is doubtful that we would have reached the same result" "if 'the Court's three *Bivens* cases [had] been . . . decided today,'" *id.* at 101–02 (quoting *Ziglar*, 582 U.S. at 134) (alteration in original).

To determine whether a *Bivens* claim is cognizable, we engage in a two-step analysis. *Egbert v. Boule*,

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F.4th 1320, 1328 (11th Cir. 2023), and a court's ruling on a motion for a judgment on the pleadings, *Cannon v. City of W. Palm Beach*, 250 F.3d 1299, 1301 (11th Cir. 2001).

596 U.S. 482, 492 (2022); *Johnson v. Terry*, 119 F.4th 840, 851 (11th Cir. 2024). We first "ask 'whether the case presents a new *Bivens* context—*i.e.*, is it meaningfully different from the three cases in which the Court has implied a damages action.'" *Johnson*, 119 F.4th at 851 (quoting *Robinson v. Sauls*, 102 F.4th 1337, 1342 (11th Cir. 2024)).

If the answer is "yes," we then ask whether "there are special factors indicating that the Judiciary is at least arguably less equipped than Congress to weigh the costs and benefits of allowing a damages action to proceed." *Id.* (quoting *Egbert*, 596 U.S. at 492). And, if "there is *any* rational reason (even one) to think that *Congress* is better suited" to that task, then we must conclude that a *Bivens* remedy is unavailable. *Egbert*, 596 U.S. at 496 (emphasis in original). One reason to think that Congress is better suited to the task is if it, either on its own or through the Executive Branch, has put in place "an alternative remedial structure." *Id.* at 493 (quoting *Ziglar*, 582 U.S. at 137).

Murray contends that his case does not present a new *Bivens* context because his case is "materially indistinguishable" from *Carlson*. We disagree.

In *Carlson*, the estate of a federal prisoner sued federal prison officials alleging that their acts and omissions in the treatment of the prisoner led to his death. *Carlson*, 446 U.S. at 16 & n.1. More specifically, the estate alleged that prison officials "failed to give [the prisoner] competent medical attention for some eight hours after he had an asthmatic attack, administered contra-indicated drugs which made his attack more severe . . . and delayed for too long a time his transfer to an outside hospital," all of which resulted in his death. *Id.* at 16 n.1.

Here, Murray only alleges non-fatal physical injuries. He alleges that he suffered severe physical pain from gallstones and inflammation of the gallbladder over the course of nine months due to the indifference of prison officials and medical providers. In particular, he alleges that prison officials delayed scheduling his surgery to remove his gallbladder and gallstones and failed to give him the pain medication that a doctor had prescribed him—namely, hydrocodone. He alleges that "[b]eing in chronic pain for an extended period of time caused a documented increase in [his] blood pressure, which in turn caused an unnecessary strain to be put on his heart," which was already weak because he suffered from Bicuspid Aortic Valve Disease. Ultimately, Murray did receive surgery to remove his gallbladder and gallstones.

While both *Carlson* and Murray's case involve the same constitutional right—namely, the Eighth Amendment right not to be treated with deliberate indifference—and mechanism of injury, that does not make them indistinguishable, as Murray contends. *Johnson*, 119 F.4th at 851 ("[F]or a case to arise in a previously recognized *Bivens* context, it is not enough that the case involves the same constitutional right and 'mechanism of injury.'" (quoting *Ziglar*, 582 U.S. at 139)). "[E]ven small differences can 'easily satisf[y]' the new context inquiry so long as they are meaningful." *Id.* at 859 (quoting *Ziglar*, 582 U.S. at 149) (alteration in original); *see id.* at 851 (listing examples of ways cases can differ).[3]

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[3] For example:

> "A case might differ in . . . meaningful way[s] because of the rank of the officers involved; the constitutional right at issue; the generality or specificity of the official action; the extent of judicial guidance as to

Last year, this Court decided a case similar to Murray's in *Johnson v. Terry*, 119 F.4th 840 (11th Cir. 2024).[4] In *Johnson*, we held that a federal prisoner's Eighth Amendment deliberate-indifference claims presented a new *Bivens* context because (1) the *Carlson* Court "did not consider whether there were alternative remedies under the current alternative remedy analysis," *id.* at 858 (citing *Ziglar*, 582 U.S. at 148), and (2) "[t]he severity, type, and treatment of Johnson's injuries differ[ed] significantly from those of the prisoner in *Carlson*," *id.* at 859. Like Murray, Johnson alleged that "prison officials" and "medical officers in the prison" deprived him of "'medically necessary assistance,' including the treatment prescribed by a doctor" for non-lethal physical injuries. *Id.* (citation omitted).

We agree with the district court that *Johnson* applies foursquare here. It is true here, as it was there, that *Carlson* is distinguishable because the Supreme Court there "did not apply the current alternative remedies analysis to the claim." *Id.* When

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> how an officer should respond to the problem or emergency to be confronted; the statutory or other legal mandate under which the officer was operating; the risk of disruptive intrusion by the Judiciary into the functioning of other branches; or the presence of potential special factors that previous *Bivens* cases did not consider."

Johnson, 119 F.4th at 851 (quoting *Ziglar*, 582 U.S. at 139–40).

[4] Murray argues that *Johnson* was wrongly decided. However, we are bound to follow *Johnson* under our prior precedent rule. *See United States v. Archer*, 531 F.3d 1347, 1352 (11th Cir. 2008). "Under that rule, a prior panel's holding is binding on all subsequent panels unless and until it is overruled or undermined to the point of abrogation by the Supreme Court or by this court sitting *en banc*." *Id.*

it decided *Carlson*, the Court considered not whether there were *any* alternative remedies available to the federal prisoner but, rather, whether "Congress ha[d] provided an alternative remedy which it explicitly declared to be a *substitute* for recovery directly under the Constitution and viewed as equally effective." *Carlson*, 446 U.S. at 18–19 (emphasis in original). And just as was the case in *Johnson*, another meaningful difference is"[t]he severity, type, and treatment" of Murray's alleged injuries. *Johnson*, 119 F.4th at 859. Unlike the prisoner in *Carlson*, who died from an asthmatic attack, Murray alleges only "non-lethal physical injuries to his body that were eventually treated by the defendants." *Id.* Therefore, Murray's case—like Johnson's—arises in a new *Bivens* context.

We next turn to step two of the *Bivens* analysis. "If there is even a single reason to pause before applying *Bivens* in a new context, a court may not recognize a *Bivens* remedy." *Id.* (quoting *Egbert*, 596 U.S. at 492). In *Johnson*, we identified a reason to pause: "Congress, through the Executive Branch, ha[d] authorized an alternative remedy" for federal prisoners—"the BOP's [Bureau of Prisons'] administrative remedy program." *Id.* Here, the BOP's administrative remedy program was available to Murray, and the record shows that Murray used it. Thus, "[w]e cannot extend *Bivens* here because doing so would 'arrogate legislative power' and allow federal prisoners to bypass the grievance process put in place by Congress through the Executive Branch." *Id.* at 862 (quoting *Egbert*, 596 U.S. at 492).

Because we conclude that Murray's *Bivens* claims are not cognizable, we need not address whether

Murray has properly stated deliberate-indifference claims.

* * *

For the foregoing reasons, we hold that Murray's claims are not cognizable, and we affirm the district court's order granting judgment on the pleadings to Jeannette Miranda and Richard Qi Li, granting Linda Criswell's motion to dismiss, and *sua sponte* dismissing the claim against Michelle Cortopassi.

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 24-13126

AARON MICHAEL MURRAY,

Plaintiff-Appellant,

versus

E.K. CARLTON,
Individual Capacity as Prior
Warden of FCI Coleman Medium, et al.,

Defendants,

JEANETTE MIRANDA,
Individual Capacity as FNP BC,

LINDA CRISWELL,
Individual Capacity as PA-C,

RICHARD QI LI,
Individual Capacity as M.D.,

MICHELLE CORTOPASSI,
Individual Capacity as Unit C-3 Counselor,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida D.C.
Docket No. 5:21-cv-00424-KKM-PRL

JUDGMENT

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: October 27, 2025

For the Court: DAVID J. SMITH, Clerk of Court

APPENDIX B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

Case No. 5:21-cv-424-KKM-PRL

AARON MICHAEL MURRAY

Plaintiff,

v.

JEANNETTE MIRANDA, *et al.*,

Defendants.

ORDER

Aaron Michael Murray brings an amended pro se civil rights complaint under *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). (Docs. 5, 40.) Defendant Linda Criswell moves to dismiss (Doc. 53), and Defendants Jeannette Miranda and Richard Qi Li move for judgment on the pleadings (Doc. 58.) Murray opposes the motions (Docs. 57, 61.) Having considered the motions and their respective responses, the Court grants the motions and dismisses the claims against Defendants with leave to amend.

I. MURRAY'S ALLEGATIONS

Murray is an inmate at Federal Correctional Complex, Coleman (Coleman). (Doc. 40, p. 3.) On March 8, 2019, Murray began experiencing abdominal pain. (*Id.*, p. 9.) On March 11, March 12, and March 13, Murray visited Coleman's health services

department to seek treatment but was turned away. (*Id.*, pp. 9–11.) On March 14, Murray attempted to seek treatment again and was almost turned away a fourth time, but a lieutenant ordered nurse Jeannette Miranda to examine Murray. (*Id.*, p. 11.) Miranda told Murray to drink a lot of water and return if his condition worsened. (*Id.*) On March 15, Murray returned to health services because the pain worsened and began spreading. (*Id.*) Physician assistant Linda Criswell examined Murray, noted that his blood pressure was high, and ordered an x-ray that revealed calcified bodies measuring three millimeters in Murray's right lower pelvis. (*Id.*, p. 12.) Criswell told Murray to return to his unit, drink a lot of water, and return to health services if his symptoms worsened, but she did not diagnose Murray's condition. (*Id.*)

The next day, Murray returned to health services feeling lethargic, lightheaded, dizzy, and unable to stand or walk. (*Id.*) An EMT, not named in this suit, noted that Murray's blood pressure was "extremely high" and gave him a ketorolac injection for the pain. (*Id.*) Murray was transferred to the Leesburg Regional Medical Center (Leesburg) where he was diagnosed with gallstones and inflammation of the gallbladder and surrounding organs. (*Id.*) The Leesburg physicians notified prison officials that Murray would require surgery in the near future. (*Id.*, pp. 12–13.) Leesburg physicians prescribed Murray hydrocodone for his pain and returned him to Coleman. (*Id.*, p. 13.)

When Murray returned to prison, Miranda examined Murray and prescribed him hydrocodone only for an additional three days because his pain was less severe, and his blood pressure was lowered. (*Id.*,

p. 14.) Before his prescription ran out, Murray requested refills multiple times from Dr. Richard Li and other providers who ignored him. (*Id.*) Without pain medication, Murray's pain and high blood pressure returned. (*Id.*)

On March 21, Murray returned to health services. (*Id.*) Miranda found Murray's blood pressure was "extremely high" and prescribed him lisinopril to manage his blood pressure and naproxen for his pain. (*Id.*) Murray claims the medication was not sufficient to manage his pain and Miranda would not prescribe him anything else. (*Id.*) Murray claims that he sent requests for help that were ignored, but also claims that on March 26, Criswell examined him and noted his blood pressure was still high. (*Id.*, pp. 14–15.) Criswell increased Murray's lisinopril dose and gave him Tylenol. (*Id.*) On April 5, Miranda increased Murray's lisinopril to address his still elevated blood pressure. (*Id.*, p. 15.) Throughout April, Murray returned to health services multiple times a week to request help but was ignored. (*Id.*)

In May, Murray contacted Li and Warden E.K. Carlton to request help, but they ignored him. (*Id.*) Because Murray received no response from Li or Carlton, he filed an administrative complaint that Counselor Michelle Cortopassi reviewed. (*Id.*, pp. 15–16.) Cortopassi called the health services supervisor who told Cortopassi that Murray would be scheduled for a consultation with a specialist. (*Id.*, p. 16.) On May 16, Murray had a surgery consultation with a gastroenterologist regarding his gallstones. (*Id.*)

In June, Murray underwent an echocardiogram of his heart.1 (*Id.*) Over the next few months Murray again petitioned Li, Carlton, and the "health care provider Defendants" for help. (*Id.*, pp. 15–18.) Murray requested that Cortopassi allow him to file another administrative remedy request, but she told him the issue was already resolved by his previous request. (*Id.*, p. 17.) Murray went to another unit counsel who allowed him to file the complaint. (*Id.*) In December, Murray underwent surgery. (*Id.*, pp. 18–19.)

II. ANALYSIS

A. Motion to Dismiss Standard

To survive a motion to dismiss under Rule 12(b)(6), a plaintiff must plead sufficient facts to state a claim that is "plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 570 (2007)). A claim is plausible on its face when it "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* When deciding whether to grant a motion to dismiss under 12(b)(6), a court must accept the allegations in the complaint as true and construe them in the light most favorable to the nonmoving party. *Erickson v. Pardus*, 551 U.S. 89, 93–94 (2007). This tenet is "inapplicable to legal conclusions." *Iqbal*, 556 U.S. at 678. "While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations." *Id.* at 679. "A motion for judgment on the pleadings is governed by the same standard as a motion to

[1] It is not clear how the echocardiogram is connected to this claim or whether it has anything to do with Murray's gallstone or gallbladder issues.

dismiss under Rule 12(b)(6)." *Carbone v. Cable News Network, Inc.*, 910 F.3d 1345, 1350 (11th Cir. 2018).

B. Murray's Request to Strike Criswell's Motion to Dismiss

In Murray's response to Criswell's motion to dismiss, he asks the Court to strike Criswell's motion as untimely. (Doc. 57, pp. 5–6.) The Court liberally construes this request as a motion to strike. Criswell's response to the amended complaint was due by September 13, 2023, but she did not file a motion for enlargement of time to respond to the amended complaint until September 18, 2023. (Doc. 51.) The Court granted the motion for enlargement of time and Criswell had until October 13, 2023, to respond to the complaint. (Doc. 52.) Criswell responded to the complaint by filing her motion to dismiss on October 12, 2023. (Doc. 53.) Because the Court granted Criswell's motion for enlargement of time, her response was timely.

Furthermore, under the Prison Litigation and Reform Act (PLRA), this Court must dismiss a complaint *sua sponte* if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant who is immune from such relief. *See* 28 U.S.C. §§ 1915A, 1915(e)(2); *see also Bilal v. Driver*, 251 F.3d 1346, 1348 (11th Cir. 2001) (noting that dismissal is "mandatory" under the PLRA). Therefore, even if the Court strikes Criswell's motion to dismiss, it is required to dismiss Murray's claim against Criswell because he fails to state a claim upon which relief can be granted.

Thus, Murray's motion to strike is denied. *See Perez v. Wells Fargo, N.A.*, 774 F.3d 1329, 1332 (11th

Cir. 2014) ("[W]e have a strong preference for deciding cases on the merits—not based on a single missed deadline—whenever reasonably possible.").

C. The *Bivens* Framework

In *Bivens*, the Supreme Court recognized an implied right of action for damages against federal officers—sued in their individual capacities—for violations of the Fourth Amendment. 403 U.S. at 394–97. The Court extended the *Bivens* remedy in two other contexts: a Fifth Amendment equal protection claim for sex discrimination in employment, *Davis v. Passman*, 442 U.S. 228, 248–49 (1979); and an Eighth Amendment claim against federal prison officials for failure to provide medical treatment, *Carlson v. Green*, 446 U.S. 14, 19–23 (1980). After deciding *Bivens*, *Davis*, and *Carlson*, the Supreme Court "adopted a far more cautious course before finding implied causes of action[,]" and thus, "has 'consistently refused to extend *Bivens* to any new context or new category of defendants,'" *Ziglar v. Abbasi*, 582 U.S. 120, 132, 135 (2017) (quoting *Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 68 (2001)). The Supreme Court "has made clear that expanding the *Bivens* remedy is now a 'disfavored' judicial activity." *Ziglar*, 582 U.S. at 135 (citation omitted).

To determine whether a claim is actionable under *Bivens*, courts make a two-step inquiry. First, courts "ask whether the case presents a new *Bivens* context—i.e., is it meaningfully different from the three cases in which the [Supreme] Court has implied a damages action." *Egbert v. Boule*, 596 U.S. 482, 492 (2022) (cleaned up). Second, if the case presents a new context, "a *Bivens* remedy is unavailable if there are 'special factors' indicating that the Judiciary is at least arguably less equipped than Congress to 'weigh

the costs and benefits of allowing a damages action to proceed.'" *Id.* (quoting *Ziglar*, 582 U.S. at 136).

"[F]or a case to arise in a previously recognized *Bivens* context, it is not enough that the case involves the same constitutional right and 'mechanism of injury[]'" as a previously recognized context. *Johnson v. Terry*, No. 23-11394, 2024 WL 3755110, at *7 (11th Cir. Aug. 12, 2024) (citing *Ziglar*, 582 U.S. at 138–39). "The inquiry is 'whether the two cases have any relevant differences, not whether they are mostly the same.'" *Johnson v. Terry*, No. 23-11394, at *14. Even the smallest differences can present a new context. *Id.* In *Johnson v. Terry*, the Eleventh Circuit found plaintiff's claim, that "involve[d] prison officials, medical officers in the prison, and the deprivation of 'medically necessary assistance[,]'" did not arise in the "same context" as *Carlson* because the two cases shared only "superficial similarities." *Id.* Further, the Eleventh Circuit found "[t]he fact that *Carlson* did not consider the existence of alternative remedies under the framework explained in *Egbert* render[ed] Johnson's claim different from the one in *Carlson*." *Id.* at *13 (citations omitted). The Eleventh Circuit's reasoning in *Johnson v. Terry* applies equally to this case as Murray does not present a claim that he "died from an asthma attack when officials failed to provide the medical care required" like the plaintiff in *Carlson*. *Id.* at *14. Thus, Murray's claim presents a new *Bivens* context.

Regarding the special factors analysis, "[i]f there is even a single reason to pause before applying *Bivens* in a new context, a court may not recognize a *Bivens* remedy." *Id.* In *Johnson v. Terry*, the Eleventh Circuit also found the Federal Bureau of Prison's administrative remedy program was an alternative

remedy for an Eighth Amendment deliberate indifference claim, and its existence counseled hesitation in extending *Bivens* to Johnson's claim. *Id.* at *15–16 (citation omitted). Here, the Federal Bureau of Prison's administrative remedy program similarly provided a remedy to Murray. Consequently, expanding *Bivens* to this context, "would 'arrogate legislative power' and allow federal prisoners to bypass the grievance process put in place by Congress through the Executive Branch." *See id.* at *16. Therefore, Murray's claim is not cognizable under *Bivens*.

However, even if the claim was cognizable, Murray fails to state a claim of deliberate indifference against the Defendants.

D. Deliberate Indifference to a Serious Medical Need

"To prevail on a deliberate indifference to [a] serious medical need claim, [a plaintiff] must show: (1) a serious medical need; (2) the defendant's deliberate indifference to that need; and (3) causation between that indifference and the plaintiff's injury." *Mann v. Taser Intern., Inc.*, 588 F.3d 1291, 1306–07 (11th Cir. 2009). A serious medical need is "one that, if left unattended, 'pos[es] a substantial risk of serious harm[.]'" *Taylor v. Adams*, 221 F.3d 1254, 1258 (11th Cir. 2000) (citing *Estelle v. Gramble*, 429 U.S. 97, 104 (1976); *Farmer v. Brennan*, 511 U.S. 825, 834 (1994)). To demonstrate a defendant's deliberate indifference, a plaintiff must show that the "defendant actually knew that his conduct—his own acts or omissions—put the plaintiff at substantial risk of serious harm." *Wade v. McDade*, 106 F.4th 1251, 1253, 1257, 1261–62 (11th Cir. 2024) (citing *Farmer*, 511 U.S. at 839) (clarifying confusion regarding whether the deliberate indifference standard requires

"more than mere negligence" or "more than gross negligence" and holding that the correct standard is one of "subjective recklessness as used in the criminal law").

"[E]ven if the defendant 'actually knew of a substantial risk to inmate health or safety,' he cannot be found liable . . . if he 'responded reasonably to th[at] risk.'" *Wade*, 106 F.4th at 1253 (quoting *Farmer*, 511 U.S. at 844). Only "indifference that can offend 'evolving standards of decency'" is "sufficiently harmful to evidence deliberate indifference to serious medical needs." *McElligott v. Foley*, 182 F.3d 1248, 1254 (11th Cir. 1999) (citation omitted). A "complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment." *Id.* (citation omitted).

Murray alleges a medical need mandating treatment because he alleges that he suffered from constant abdominal pain caused by gallstones and inflammation of the gallbladder that required surgery to correct. (Doc. 40, pp. 12–13. Thus, Murray alleges an objectively serious medical need. *See Hill v. Dekalb Regional Youth Det. Ctr.*, 40 F.3d 1176, 1187 (11th Cir. 1994) (an "objectively serious medical need" is "one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention[]"); *see e.g.*, *Estrada v. Montalvo*, No. 5:12-CV-149-OC39PRL, 2019 WL 11343466, at *15 (M.D. Fla. Mar. 29, 2019) (plaintiff sufficiently alleged an objectively serious medical need when he was diagnosed with gallstones, among other things, that required surgery). I will address whether the Defendants acted with deliberate

indifference to Murray's serious medical need separately.

a. Murray's Claim Against Criswell

Murray claims that Criswell was deliberately indifferent to his serious medical need. (*See* Doc. 40.) In response, Criswell claims that Murray does not state a claim of deliberate indifference because he fails to allege a serious medical need, calls her medical judgment into question, and does not allege causation. (Doc. 53, pp. 2, 12–19.)

Murray asserts two specific factual instances involving Criswell. The first occurred when Murray sought treatment from Criswell on March 15, 2019, for abdominal pain. (Doc. 40, pp. 10–11.) Criswell performed an x-ray and instructed Murray to drink a lot of water and return if his condition worsened but did not give him any pain medication or a diagnosis. (*Id.*, pp. 11–12.) Murray's condition worsened and he was transferred to Leesburg where he was diagnosed with gallstones and told he needed to undergo surgery. (*Id.*, p. 12.) The second instance occurred on March 26, 2019, after Murray's Leesburg visit, when Criswell examined Murray and increased his lisinopril to address his high blood pressure. (*Id.*, pp. 14–15.)

These instances fail to demonstrate deliberate indifference for three reasons. First, to demonstrate deliberate indifference, Murray must allege that Criswell acted with subjective recklessness as used in the criminal law. *See Wade*, 106 F.4th at 1255 (quoting *Farmer*, 511 U.S. at 839). To allege subjective recklessness, Murray must allege facts to show that Criswell's conduct put him at a risk of serious harm and that she was subjectively aware of

the risk. *Id.* Murray does not allege how Criswell's conduct put him at risk and it is not apparent from a reading of the facts. Further, as Criswell reasonably responded to Murray's ailments by monitoring his condition and adjusting his prescription accordingly, she "'cannot be found liable' under the Eighth Amendment[.]" *See Wade*, 106 F.4th at 1255 (quoting *Farmer*, 511 U.S. at 837, 844).

Second, allegations that a provider should have administered a different treatment do not amount to deliberate indifference. *See Waldrop v. Evans*, 871 F.2d 1030, 1033 (11th Cir. 2007) (alleging a "simple difference in medical opinion" does not state a deliberate indifference claim). In response to Murray's complaints, Criswell chose to monitor Murray's condition and instructed him to drink water in the first instance, and increased Murray's medication dose to address his rising blood pressure in the second instance. Thus, Criswell treated Murray and he cannot state a claim of deliberate indifference by arguing that she should have administered a different treatment.

Third, Murray does not allege that Criswell's conduct caused him any injury. In the first instance, when Murray's condition worsened and he returned to health services (as Criswell instructed him to) he was taken to Leesburg where he was diagnosed and further treated. In the second instance, after Criswell increased Murray's medication in response to Murray's rising blood pressure, Murray does not allege that this had any effect on him besides failing to actually alleviate his symptoms. The fact that Criswell failed to diagnose Murray's gallstones in the first instance does not amount to deliberate indifference. *See McElligott*, 182 F.3d at 1254 (cita-

tion and quotations omitted) ("[A] complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment."). In addition, the fact that Criswell's treatments were ultimately unsuccessful does not, by itself, render her care so "grossly inadequate" as to constitute deliberate indifference. *See Steele v. Shah*, 87 F.3d 1266, 1269–70 (11th Cir. 1996).

Murray fails to state a claim of deliberate indifference against Criswell. Accordingly, Criswell's motion to dismiss is **GRANTED** and Murray's claim against her is **DISMISSED**.

b. Murray's Claim Against Miranda

Murray claims that Miranda was deliberately indifferent to his serious medical need. (*See* Doc. 40.) In response, Miranda argues that the hypothetical risk alleged by Murray does not amount to deliberate indifference and Murray's claim contests Miranda's medical judgment, which is not actionable under the Eighth Amendment. (Doc. 58, pp. 6–8.)

Murray's first interaction with Miranda occurred on March 14, before Murray went to Leesburg, when Miranda instructed him to drink a lot of water and return if his abdominal pain worsened. (Doc. 40, 10–13.) When Murray returned from Leesburg, Miranda examined Murray and prescribed him hydrocodone for an additional three days. (*Id.*, p. 14.) Murray alleges that Miranda should have continued to prescribe hydrocodone until his surgery because the pain and high blood pressure returned without it. (*Id.*) In response to Murray's symptoms, Miranda prescribed him lisinopril to manage his rising blood pressure and naproxen for pain. (*Id.*) In April,

Miranda further increased Murray's lisinopril dosage to address his elevated blood pressure. (*Id.*, p. 15.)

As with Murray's claim against Criswell, Murray's disagreements with how Miranda treated him cannot form the basis of a deliberate indifference claim. The fact that Miranda prescribed different medications than those preferred by Murray does not establish deliberate indifference. *See Hodge v. Sec'y, Fla. Dep't of Corr.*, 464 F. App'x 810, 812 (11th Cir. 2012) (the plaintiff's contention that defendant "acted with deliberate indifference by prescribing primarily Tylenol when it was less effective than hydrocodone" was "a simple difference in medical opinion between the prison's medical staff and the inmate"); *Waldrop*, 871 F.2d at 1033.

In addition, Murray's allegations that Miranda continued to treat him according to his complaints does not demonstrate that she subjectively knew her actions would cause him substantial harm or that she responded unreasonably to any risk. *See Wade*, 106 F.4th at 1261–62 (citations omitted) ("even if the defendant 'actually knew of a substantial risk to inmate health or safety,' he 'cannot be found liable under the Cruel and Unusual Punishments Clause' if he 'responded reasonably to the risk'"); *see also Harris v. Thigpen*, 941 F.2d 1495, 1505 (11th Cir. 1991) (quoting *Rogers v. Evans*, 792 F.2d 1052, 1058 (11th Cir. 1986)) ("Medical treatment violates the [E]ighth [A]mendment only when it is 'so grossly incompetent, inadequate, or excessive as to shock the conscience or to be intolerable to fundamental fairness.'"). Therefore, Murray fails to state a claim of deliberate indifference against Miranda.

Accordingly, Miranda's motion for a judgment on the pleadings is **GRANTED** to the extent that Murray's claim against her is **DISMISSED**.

c. Murray's Claim Against Li

Murray also claims that Li was deliberately indifferent to his serious medical need. (*See* Doc. 40.) In response, Li argues that Murray does not allege a widespread custom or policy, Murray does not allege Li's personal involvement, and the hypothetical risk that Murray alleges does not amount to deliberate indifference. (Doc. 58, pp. 8–10.)

Li cannot be liable solely because of his position as a supervisor. *See Gonzalez v. Reno*, 325 F.3d 1228, 1234 (11th Cir. 2003) ("It is well established in this circuit that supervisory officials are not liable under [*Bivens*] for the unconstitutional acts of their subordinates 'on the basis of respondeat superior or vicarious liability.'") (citations omitted). Murray can attribute liability to Li in one of two ways. First, Murray could allege that Li, as the Coleman Medical Director, was responsible for instituting a custom or policy of deliberate indifference that led to the violation of his rights. *See Ireland v. Prummell*, 53 F.4th 1274, 1289 (11th Cir. 2022) (citation omitted). Murray does not allege that any policies or customs caused the violation of his rights and must therefore show Li's liability in the second way, by alleging that Li personally participated in the constitutional violation. *See id.*

Murray does not allege that Li was the provider examining or treating him, but instead alleges that Li was deliberately indifferent by not responding to Murray's complaints about another provider's treatment. Failing to respond to an inmate's complaint

alone does not amount to deliberate indifference. *Gillis v. Smith*, No. 522CV00027TESCHW, 2022 WL 1516311, at *8 (M.D. Ga. May 13, 2022), *report and recommendation adopted*, No. 522CV00027TESCHW, 2022 WL 2287929 (M.D. Ga. June 24, 2022) (collecting cases among the federal circuit courts) ("[a] supervisor is not 'personally involved' in a constitutional violation merely because he fails to respond to complaints from a prisoner[]"); *Kline v. Maiorana*, No. 3:21CV1006-LC-HTC, 2022 WL 980280, at *5 (N.D. Fla. Feb. 8, 2022), *report and recommendation adopted*, No. 3:21CV1006-LC-HTC, 2022 WL 972428 (N.D. Fla. Mar. 31, 2022) (collecting cases among the federal circuit courts) ("Filing a grievance with a supervisory person does not, alone, make the supervisor liable for the allegedly violative conduct brought to light by the grievance, even if the grievance is denied."); *Magwood v. Fla. Dep't of Corr.*, No. 3:12CV14/MCR/CJK, 2012 WL 5279178, at *4 (N.D. Fla. Oct. 11, 2012), *report and recommendation adopted*, No. 3:12CV14/MCR/CJK, 2012 WL 5279170 (N.D. Fla. Oct. 25, 2012); *Rickerson v. Gills*, No. 5:11cv279/MP/GRJ, 2012 WL 1004733, at *3 (N.D. Fla. Feb. 8, 2012), *report and recommendation adopted*, 2012 WL 1004724 (N.D. Fla. Mar. 22, 2012) (finding a prisoner failed to state a § 1983 claim against a prison official whose sole involvement was to review and deny plaintiff's administrative grievance).

From March, when Murray was diagnosed with gallstones, to December, when Murray underwent surgery, Murray alleges that he constantly requested help from Li. (Doc. 40, pp. 14–17.) Although Murray claims that his requests went unanswered, he simultaneously alleges multiple instances in which he was seen and treated by Coleman providers while

he awaited surgery. (*Id.*, pp. 12–15.) In those instances, medical staff evaluated Murray's condition and altered his treatments accordingly. During the time Murray was allegedly being ignored, Murray also had a surgery consultation with an outside specialist and received an echocardiogram. (*Id.*)

The fact that Murray may not have received the exact care that he requested between his diagnosis and surgery, does not demonstrate Li's criminal recklessness in responding to Murray's requests. *See Adams v. Poag*, 61 F.3d 1537, 1545 (11th Cir. 1995) (citation omitted) ("the question of whether governmental actors should have employed additional diagnostic techniques or forms of treatment 'is a classic example of a matter for medical judgment' and therefore not an appropriate basis for grounding liability under the Eighth Amendment[]"); *Hamm v. Dekalb Cnty.*, 774 F.2d 1567, 1575 (11th Cir. 1985) (disagreement over the mode of treatment does not constitute deliberate indifference under the Eighth Amendment); *See also Hoffer v. Sec'y, Fla. Dep't of Corr.*, 973 F.3d 1263, 1271 (11th Cir. 2020) (citing *Harris*, 941 F.2d at 1505, 1510) ("[T]he Eighth Amendment doesn't require it to be 'perfect, the best obtainable, or even very good[,]' but rather, '[m]edical treatment violates the [E]ighth [A]mendment only when it is so grossly incompetent, inadequate, or excessive as to shock the conscience or to be intolerable to fundamental fairness.'"). At most, Li's conduct evidences "inadvertence or error in good faith." *Stone v. Hendry*, 785 F. App'x 763, 769 (11th Cir. 2019) (quoting *Whitley v. Albers*, 475 U.S. 312, 319 (1986)) ("Deliberate indifference is not about 'inadvertence or error in good faith,' but rather about 'obduracy and wantonness'—a deliberate refusal to

provide aid despite knowledge of a substantial risk of serious harm.").

Murray fails to state a claim of deliberate indifference against Li. Accordingly, Li's motion for a judgment on the pleadings is **GRANTED** to the extent that Murray's claim against him is **DISMISSED**.

d. Murray's Claim Against Cortopassi

Murray similarly claims that Cortopassi was deliberately indifferent to his serious medical need. Cortopassi does not join the other Defendants in their motions, but I find their arguments equally apply to Cortopassi and therefore dismiss the claim against her *sua sponte*. *See* 28 U.S.C. §§ 1915A, 1915(e)(2); *Bilal*, 251 F.3d at 1348.

Murray alleges that he filed an administrative complaint regarding his medical issues. (Doc. 40, pp. 15–16.) Counselor Michelle Cortopassi reviewed Murray's complaint and called the health services supervisor who told Cortopassi that Murray would be scheduled for a consultation with a specialist. (*Id.*, p. 16.) Murray subsequently met with a gastroenterologist to consult for surgery. (*Id.*) Later, when Murray's requests for additional treatment went unanswered, he asked Cortopassi to allow him to file another administrative complaint. (*Id.*, at 17.) Cortopassi told Murray the issue was already resolved by his previous complaint and did not allow him to file another complaint. (*Id.*) Murray went to another unit counselor who allowed him to file the administrative complaint. (*Id.*)

The first instance plainly does not evidence deliberate indifference because, in response to Murray's complaint, Cortopassi contacted health services on his behalf and Murray was subsequently seen by a

specialist to consult for surgery. The second instance also does not allege deliberate indifference. Even if Cortopassi's refusal to file another administrative complaint demonstrated her subjective knowledge that her conduct posed a substantial risk to Murray, her conduct did not cause Murray any injury because another unit counselor allowed him to file the complaint anyway.

Therefore, Murray fails to state a claim of deliberate indifference against Cortopassi and the claim against her is **DISMISSED.**

Accordingly, the Court **ORDERS**:

1. Defendant Linda Criswell's Motion to Dismiss (Doc. 53) is **GRANTED**.
2. Defendants Jeannette Miranda and Richard Qi Li's Motion for Judgment on the Pleadings (Doc. 58) is **GRANTED**.
3. Murray's claims against Defendants Criswell, Miranda, Li, and Cortopassi are **DISMISSED**.
4. Murray's claims are **DISMISSED without prejudice** to Murray filing a second amended complaint **no later than September 3, 2024**.
    a. To amend his complaint, Murray should place the case number in this action on a blank civil rights complaint form and mark the form "Second Amended Complaint."
    b. The second amended complaint must be re-written in its entirety on the form. The second amended complaint will supersede the original and amended complaints.

Therefore, the second amended complaint must contain all claims for relief. It must not refer to or incorporate the original and amended complaints.

5. If Murray fails to file a second amended complaint within the time allotted, this order dismissing the amended complaint will become a final judgment. "[A]n order dismissing a complaint with leave to amend within a specified time becomes a final judgment if the time allowed for amendment expires without the plaintiff [amending his complaint or] seeking an extension. And when the order becomes a final judgment, the district court loses 'all its prejudgment powers to grant any more extensions' of time to amend the complaint.'" *Auto. Alignment & Body Serv., Inc. v. State Farm Mut. Auto. Ins. Co.*, 953 F.3d 707, 720–21 (11th Cir. 2020) (quoting *Hertz Corp. v. Alamo Rent-A-Car, Inc.*, 16 F.3d 1126 (11th Cir. 1994)).

6. Murray must advise the Court of any change of address. **The failure to comply with this order will result in the dismissal of this case without further notice**.

7. The **CLERK** is directed to send Murray a standard form for filing a prisoner civil rights complaint.

ORDERED in Ocala, Florida on August 14, 2024.

/s/ Kathryn Kimball Mizelle
Kathryn Kimball Mizelle
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

Case No. 5:21-cv-424-KKM-PRL

AARON MICHAEL MURRAY

Plaintiff,

v.

JEANNETTE MIRANDA, et. al.,

Defendants.

ORDER

Murray, a prisoner at Coleman Federal Correctional Complex, filed an amended complaint under *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). (Doc. 40). Defendant Linda Criswell moved to dismiss, and Defendants Jeannette Miranda and Richard Qi Li moved for judgment on the pleadings. (Docs. 53, 58). The Court granted the motions and dismissed the amended complaint. (Doc. 62). Murray now moves for reconsideration of the Order dismissing this case. (Doc. 63). Upon consideration, the Motion is **DENIED**.

A court's reconsideration of a prior order is an "extraordinary remedy" that should be used "sparingly." *Taylor Woodrow Constr. Corp. v. Sarasota/Manatee Airport Auth.*, 814 F. Supp. 1072, 1072–73 (M.D. Fla. 1993); *Griffin v. Swim-Tech*

Corp., 722 F.2d 677, 680 (11th Cir. 1984). Such a motion may arise under Rule 59(e) or Rule 60(b). *See* Fed. R. Civ. P. 59(e), 60(b). Under either Rule, a motion to reconsider cannot be used to "relitigate old matters, [or] raise argument[s] or present evidence that could have been raised [earlier]." *Michael Linet, Inc. v. Vill. of Wellington, Fla.*, 408 F.3d 757, 763 (11th Cir. 2005). To prevail on a motion to reconsider, the movant must identify "manifest errors of law or fact" or extraordinary circumstances. *Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007) (quotation omitted).

In his Motion for Reconsideration, Murray rehashes his previous arguments and disagrees with the Court's conclusions of law regarding the application of *Bivens*. (*See* Doc. 63). First, Murray claims that a *Bivens* remedy already exists for an Eighth Amendment deliberate indifference claim and this Court did not articulate how his claim meaningfully differs from previously recognized deliberate indifference claims. (*Id.* at 2–3). Murray is correct that the Supreme Court previously recognized a *Bivens* remedy for a deliberate indifference claim in *Carlson*. *See Carlson v. Green*, 446 U.S. 14, 19–23 (1980). But, under the Supreme Court's current *Bivens* framework, not all deliberate indifference claims are cognizable.

To determine whether a claim is cognizable under *Bivens*, courts look to whether a claim "meaningfully differs from" cases in which the Supreme Court has implied a damages action under *Bivens*, not whether the claim asserts the same constitutional right. *Ziglar v. Abbasi*, 582 U.S. 120, 132, 135 (2017). In *Johnson*, the Eleventh Circuit noted that even the smallest differences can present a new *Bivens*

context. *Johnson v. Terry*, No. 23-11394, 2024 WL 3755110, at *14 (11th Cir. Aug. 12, 2024). The Eleventh Circuit concluded that Johnson's deliberate indifference claim presented a new context because he did not claim that he "died from an asthma attack when officials failed to provide the medical care required" like the plaintiff in *Carlson*. *Id.* This Court is bound by the Eleventh Circuit's opinion in *Johnson*, and it consequently concluded in the Order that Murray's claim was meaningfully different from *Carlson* because, like Johnson, Murray did not present a claim that he "died from an asthma attack when officials failed to provide the medical care required[.]" (Doc. 62 at 6–7).

Second, Murray argues that the Federal Bureau of Prison's administrative remedy program is not an alternative remedy to pursue his claim "much less an 'adequate' or 'effective' one." (Doc. 63 at 6–7). The Eleventh Circuit and Supreme Court say otherwise. The Supreme Court stated in *Malesko* that the BOP's administrative remedy program is an alternative remedy to a *Bivens* claim. *See Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 74 (2001). Further, the Eleventh Circuit stated in *Johnson* that the existence of the Federal Bureau of Prison's administrative remedy program is a special factor counseling hesitation in extending *Bivens* to a deliberate indifference claim. *Johnson v. Terry*, 2024 WL 3755110, at *15. The Eleventh Circuit further elaborated that "the only consideration is whether there is a remedial process in place that is intended to redress the kind of harm faced by those like the plaintiff[,]" not whether the process is adequate or effective. *Id.* (stating that "[a]lthough Johnson believes he was, in essence, not allowed to access the grievance procedure, that is not enough to disqualify it as a special factor").

Third, Murray argues that "[g]iven the Supreme Court's holding in *Estelle v. Gramble*, 429 U.S. 97 [(1976)] [his] deliberate indifference claims do[] not arise in a new context under *Bivens*." (Doc. 63 at 13). The Supreme Court's holding in *Estelle* has no effect on this Court's ruling as *Estelle* was brought against state officials under 42 U.S.C. § 1983, not federal officials under *Bivens*. Therefore, regarding *Bivens*, Murray does not assert a manifest error of law but rather attempts to relitigate old matters by reasserting already refuted arguments.

Regarding the merits of Murray's deliberate indifference claims, Murray again uses this as an attempt to relitigate old matters by reasserting the facts from his complaint and his previously raised arguments. This Court granted Murray an opportunity to amend his complaint in the Order dismissing his claims, but even when liberally construing Murray's Motion for Reconsideration as an amended complaint, Murray does not assert any additional facts that would state a claim of deliberate indifference. Even if Murray could demonstrate a claim of deliberate indifference, his claims are not cognizable under *Bivens*.

For the reasons stated, Murray fails to justify reconsideration. Accordingly, the following is **ORDERED**:

1. Murray's Motion for Reconsideration is **DENIED**.[1] (Doc. 63).

DONE and ORDERED in Tampa, Florida, on September 9, 2024.

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[1] Signed by Judge Mary S. Scriven to expedite the resolution of this action. This case remains assigned to Judge Kathryn Mizelle.

/s/ Mary S. Scriven
Mary S. Scriven
United States District Judge

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

[Issued: 01/20/2026]

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No. 24-13126
Non-Argument Calendar

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AARON MICHAEL MURRAY,

Plaintiff-Appellant,

versus

E.K. CARLTON,
Individual Capacity as Prior
Warden of FCI Coleman Medium, *et al*.,

Defendants,

JEANETTE MIRANDA,
Individual Capacity as FNP BC,

LINDA CRISWELL,
Individual Capacity as PA-C,

RICHARD QI LI,
Individual Capacity as M.D.,

MICHELLE CORTOPASSI,
Individual Capacity as Unit C-3 Counselor,

Defendants-Appellees.

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Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 5:21-cv-00424-KKM-PRL

———

ON PETITION FOR REHEARING AND
PETITION FOR REHEARING EN BANC

Before NEWSOM, LAGOA, and WILSON, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. FRAP 40. The Petition for Rehearing En Banc is also treated as a Petition for Rehearing before the panel and is DENIED. FRAP 40, 11th Cir. IOP 2.

APPENDIX E

UNITED STATES DISTRICT COURT
for the
Middle District of _Florida_
Ocala Division

[Filed: 02/02/23]

Case No. _5 :21—cv-00424—KKM—PRL_
(to be filled in by the Clerk's Office)

AARON MICHAEL MURRAY

Plaintiff(s)
(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs. cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

See Attached

Defendant(s)
(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.

AMENDED
COMPLAINT FOR VIOLATION OF CIVIL RIGHTS
(Prisoner Complaint)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only:* the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

DEFENDANTS

1. E.K. CARLTON

2. RICHARD QI LI

3. LINDA CRISWELL

4. JEANNETTE MIRANDA

5. JANE DOE #1

6. JANE DOE #2

7. MICHELLE CORTOPASSI

I. The Parties to This Complaint

A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	Aaron Michael Murray
All other names by which you have been known:	N/A
ID Number	BOP Registration Number: 58878-018
Current Institution	Federal Correctional Complex — Coleman Low
Address	P.O. Box 1031 Coleman (*City*) FL (*State*) 33521-1031(*Zip Code*)

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title *(if known)* and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name	E.K. Carlton
Job or Title *(if known)*:	Prior Warden of FCC Coleman Medium
Shield Number	N/A
Employer	Federal Bureau of Prisons
Address	846 N.E. Terrace Coleman (*City*) FL (*State*) 33521-1021(*Zip Code*)

☒Individual capacity ☐ Official capacity

Defendant No. 2

Name	Richard Qi Li
Job or Title *(if known)*:	Prior Medical Doctor of FCC Coleman Medium
Shield Number	N/A
Employer	Federal Bureau of Prisons
Address	846 N.E. Terrace Coleman (*City*) FL (*State*) 33521-1021(*Zip Code*)

☒Individual capacity ☐ Official capacity

Defendant No. 3

Name	Linda Criswell
Job or Title *(if known)*:	Prior Physician Assistant of FCC Coleman Medium

Shield Number N/A

Employer Federal Bureau of Prisons

Address 846 N.E. Terrace
Coleman (*City*)
FL (*State*)
33521-1021(*Zip Code*)

☒Individual capacity ☐ Official capacity

Defendant No. 4

Name Jeannette Miranda

Job or Title *(if known)*: Prior Nurse Practitioner of FCC Coleman Medium

Shield Number N/A

Employer Federal Bureau of Prisons

Address 846 N.E. Terrace
Coleman (*City*)
FL (*State*)
33521-1021(*Zip Code*)

☒Individual capacity ☐ Official capacity

See Attached for Additional Defendants

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the "deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws]." Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971),* you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against *(check all that apply):*
☒ Federal officials (a *Bivens* claim)
☐ State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the "deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws]." 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

N/A

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens,* what constitutional right(s) do you claim is/are being violated by federal officials?

Eighth Amendment rights against subjecting a prisoner to cruel and unusual punishment

B. The Defendant(s)

Defendant No. 5

Name	Jane Doe #1
Job or Title	Prior Nurse of FCC Coleman Medium
Shield Number	N/A
Employer	Federal Bureau of Prisons
Address	846 N.E. Terrace Coleman, FL 33521-1021 [X] Individual Capacity

Defendant No. 6

Name	Jane Doe #2
Job or Title	Prior Nurse of FCC Coleman Medium
Shield Number	N/A
Employer	Federal Bureau of Prisons
Address	846 N.E. Terrace Coleman, FL 33521-1021 [X] Individual Capacity

Defendant No. 7

Name	Michelle Cortopassi
Job or Title	Prior Unit Counselor of FCC Coleman Medium
Shield Number	N/A
Employer	Federal Bureau of Prisons
Address	846 N.E. Terrace Coleman, FL 33521-1021 [X] Individual Capacity

D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens,* explain how each defendant acted under color of federal law. Attach additional pages if needed.

See Additional Page

III. Prisoner Status

Indicate whether you are a prisoner or other confined person as follows *(check all that apply):*

☐ Pretrial detainee

☐ Civilly committed detainee Immigration detainee

☐ Convicted and sentenced state prisoner

☒ Convicted and sentenced federal prisoner

☐ Other *(explain)* _____

IV. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

A. If the events giving rise to your claim arose outside an institution, describe where and when they arose.

N/A

B. If the events giving rise to your claim arose in an institution, describe where and when they arose.

At FCC Coleman Medium between March 11, 2019 thru December 18, 2019

II. Basis for Jurisdiction

D. The Defendants were all employed by the Federal Bureau of Prisons and worked at FCC Coleman Medium. The Defendants personally participated in the Eighth Amendment violation, as they were all personally aware that Plaintiff had a serious medical need, they all acted with deliberate indifference to that need, and Plaintiff's injury was caused by their wrongful conduct. The Defendants also had subjective knowledge of Plaintiff's risk of serious harm, they disregarded that risk, and their conduct was more than mere negligence. Deliberate indifference to the serious medical needs of a prisoner (Plaintiff) constitutes unnecessary and wanton infliction of pain proscribed by the Eighth Amendment, regardless of whether the indifference is manifested by prison staff (Defendants) in response to a prisoner's needs or by intentionally denying or delaying treatment once prescribed. Therefore, deliberate indifference to a federal prisoner's serious illness or injuries states a cause of action against federal prison staff, as they acted under color of federal law.

C. What date and approximate time did the events giving rise to your claim(s) occur?

See facts underlying claims for exact dates and times.

D. What are the facts underlying your claim(s)? *(For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)*

See Attached

V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

See Attached

VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

See Attached

IV. Statement of Claim

D. What are the facts underlying your claim(s)?

1. Plaintiff is a 30-year-old federal prisoner serving a sentence in the custody of the Federal Bureau of Prisons ("BOP") at the Federal Correctional Complex ("FCC") Coleman Low in Coleman, Florida.

2. Plaintiff was previously incarcerated at FCC Coleman Medium, where the defendants worked and where the events giving rise to his claim arose.

3. Plaintiff has had Bicuspid Aortic Valve Disease ("BAVD") since birth and his medical history confirms this fact. The aortic valve is a one-way valve between the heart and the aorta, the main artery from the heart that distributes oxygen-rich blood to the body. Normally, the aortic valve has three (3) small flaps or leaflets that open widely and close securely to regulate blood flow, allowing blood to flow from the heart to the aorta and preventing blood from flowing backwards into the heart. In BAVD, the valve has only two (2) leaflets. With this deformity, the valve doesn't function correctly and causes regurgitation of blood to flow into the left ventricle. This regurgitation is also called aortic valve insufficiency. The heart then must pump that same blood out again, causing strain on the heart's lower left chamber, the left ventricle. Over time, the ventricle will dilate, or overexpand. It also causes other circulatory problems. BAVD results in adverse cardiac outcomes related to the valve and puts a large burden on the cardiovascular system. Any Cardiologist can testify to the above medical information.

4. On Friday, March 8, 2019, Plaintiff began to have abdominal pain. He attempted self-treatment,

but the abdominal pain grew more severe over the weekend.

5. On Monday March 11, 2019, at approximately 7:00am, Plaintiff went to sick call at FCC Coleman Medium's Health Services Department. His primary complaint related to severe abdominal pain and swelling. Plaintiff filled out a Sick Call request form and sat in the waiting room. After waiting several minutes, Jane Doe #1, a medical provider and nurse of the Health Services Department, instructed Plaintiff that he had to return to his unit and that she would call him back later that day. As the Sick Call nurse, Jane Doe #1's position was effectively a gatekeeper and she was responsible for controlling access to the back of Health Services, where treatment was offered. Plaintiff returned to his unit, but Jane Doe #1 never called him back. Multiple witnesses can testify that Plaintiff went to Sick Call.

6. On Tuesday March 12, 2019, at approximately 7:00am, Plaintiff went to Sick Call for a second time. After filling out another Sick Call request form, he sat in the waiting room. After about an hour, Jane Doe #1 told Plaintiff to return to his unit. Plaintiff explained to her that he was in extreme pain and that she told him to return to his unit the day before, but he was never called. Jane Doe #1 ensured Plaintiff that she would personally call him back later that day. Plaintiff returned to his unit, but Jane Doe #1 failed to call him back again. Multiple witnesses can testify that Plaintiff went to Sick Call.

7. On Wednesday March 13, 2019, Plaintiff's abdominal pain grew more sever. Plaintiff also began to have lower back pain and he started suffering from light-headedness. Due to the fact that the prison did not hold Sick Call on Wednesdays, Plaintiff followed

FCC Coleman Medium's Policy and A&O Handbook, which stated that he had "the right to address any concern regarding [his] health care to any member of the institution staff". Plaintiff notified his housing unit's Correctional Officer ("C.O."), K. Torres, that he was in severe abdominal pain and that he went to Sick Call the previous two days, but was ignored. Despite the fact that C.O. K. Torres had no medical training, Plaintiff's serious medical need was so obvious that even a lay person could easily recognize the necessity for a doctor's attention. C.O. K. Torres called Health Services and told them that Plaintiff was having a "medical emergency" and that she was sending him to be seen for a medical consultation. Upon arriving at Health Services, Jane Doe #2, another nurse who routinely worked as a gatekeeper to treatment, began chastising Plaintiff for complaining to a C.O. Despite Plaintiff's serious medical need being obvious to even a lay observer, Jane Doe #2 refused to evaluate his condition, stated that there was "no emergency", and instructed him to return to his unit and to "drink a lot of water". While Jane Doe #2 was a health care provider, she never examined Plaintiff and she could not determine a treatment without the permission of her direct supervisor. Jane Doe #2's conduct was so grossly incompetent and inadequate as to shock the conscience, but Plaintiff followed her instructions by returning to the unit and drinking water. C.O. Torres and multiple other witnesses can testify that Plaintiff was sent to Health Services.

8. On Thursday March 14, 2019, at approximately 7:00am, Plaintiff went to Sick Call for the third time. He filled out a Sick Call request form and was told by Jane Doe #1 to return to his housing unit. Plaintiff notified Jane Doe #1 that he was suffering

from a serious medical need and that it was an emergency, but she blew him off and left the room. Instead of returning to his housing unit as instructed, Plaintiff sat in the waiting room. After waiting almost seven (7) hours, Health Services' staff told everyone that Medical was closed for the day and that everyone had to return to their units for count. Plaintiff explained his situation and asked to please be seen, as he was in pain and was ignored all week. Plaintiff was told to leave and to come to Sick Call the following day. Plaintiff demanded to be seen, as he was in severe pain, and to speak to one of the lieutenants. Upon the lieutenant's arrival, Plaintiff explained his situation and the Lieutenant ordered that Plaintiff be examined. Plaintiff was finally seen by Jeannette Miranda, FNP-BC, at 2:53pm. She told him to "drink a lot of water" and to return to Sick Call if his condition worsened. Despite the fact that Plaintiff was obviously in severe pain, Plaintiff's condition remained undiagnosed and Jeannette Miranda, FNP-BC recommended drinking water as "treatment". The Lieutenant's identity can be uncovered during discovery and he can testify to the above information.

9. On Friday March 15, 2019, at approximately 7:00am, Plaintiff went to Sick Call for the fourth time, as his condition has worsened, the pain was spreading, and it began to hurt him to breathe. He filled out another Sick Call request form and was told by Jane Doe #2 to return to his housing unit.

Again, Plaintiff remained in the waiting room instead of returning to the unit. After several hours of waiting, Plaintiff was seen by Linda Criswell, PA-C, at 9:43am. She noted that Plaintiff's blood pressure was high, possibly due to pain, and ordered

an x-ray. Upon completion of the x-ray, it was discovered that Plaintiff had a pair of calcified bodies measuring up to 3 mm in his right lower pelvis. Without being treated or given any pain medication, Plaintiff was told to return to his housing unit, to drink a lot of water, and to return to Sick Call if his condition worsened. Again, despite the fact that Plaintiff was obviously in severe pain, Plaintiff's condition remained undiagnosed and Linda Criswell, PA-C, recommended drinking water as "treatment".

10. On Saturday March 16, 2019, Plaintiff's condition became much worse. At approximately, 1:45pm, Plaintiff was in excruciating pain, he was lethargic, light-headed, and dizzy. Plaintiff was also unable to stand-up or walk. Several inmates notified C.O. Torres, who called Health Services to report another "medical emergency". Plaintiff was taken by wheelchair to Health Services and was examined by Raul Castro, EMT, at 1:53pm. Raul Castro, EMT, took Plaintiff's blood pressure, which was extremely high, noted that his abdomen was hot to the touch, and gave Plaintiff a Ketorolac Injection for the pain. When Plaintiff came-to and was able to speak, Raul Castro, EMT, reviewed Plaintiff's medical records and stated that he could not believe the other medical staff members ignored Plaintiff's serious medical needs all week. Plaintiff was transferred from the prison to the Emergency Room at Leesburg Regional Medical Center ("LRMC") for an advanced evaluation. Raul Castro, EMT, C.O. K. Torres, and other witnesses can testify to the above information.

11. After arriving at LRMC, a variety of tests were performed on Plaintiff. After the tests, he was diagnosed with Cholelithiasis (Gallstones) and Panniculitis (inflammation) of the gallbladder and surr-

ounding organs. Once Plaintiff's condition became known, the C.O.s that transported him to the hospital notified prison staff of the situation and requested from the E.R. physician if Plaintiff had to be admitted for surgery or if he could be returned to the prison. The C.O.s also told the physician that prison staff want Plaintiff returned to the prison and that they would schedule him for surgery at a future date. The E.R. physician informed the C.O.s that, if Plaintiff was not going to be admitted, he would "need surgery in the very near future" and that he would need to be returned to the hospital if: 1) his pain became worse; 2) his pain was not helped by medications; 3) his symptoms suddenly got worse; and/or 4) he kept feeling sick to his stomach and throwing up. The E.R. physician also prescribed Plaintiff Hydrocodone tablets to be taken every six (6) hours for pain management until surgery and noted that Plaintiff had to be kept on pain management medication to ensure that his blood pressure remained normal. Plaintiff was discharged from LRMC at 10:39pm and was returned to the prison at approximately 11:30pm. The E.R. physician and the two transportation C.O.s can testify to the above information.

12. The severe pain Plaintiff was in caused his blood pressure to rise above normal levels. High blood pressure forces a heart to work harder to pump blood to the rest of the body. This causes part of the heart (the left ventricle) to thicken. A thickening left ventricle increases a person's risk of heart attack, heart failure, and sudden cardiac death. Over time, the strain on a heart caused by high blood pressure can cause the heart muscle to weaken and work less efficiently. Eventually, an overwhelmed heart begins to fail. Having a heart condition and a compromised

heart that is defined by a left ventricle abnormality increases the effects of high blood pressure when compared to a normal functioning heart.

Being in chronic pain for an extended period of time caused a documented increase in Plaintiff's blood pressure, which in turn caused an unnecessary strain to be put on his heart with BAVD. A BAVD heart is already compromised and should never have been placed in a preventable situation, such as an elevated blood pressure due to chronic pain. The left ventricle was already under stress due to Plaintiff's BAVD. The added stress placed on his heart due to chronic pain caused an extreme blood pressure elevation, which may have negatively exacerbated his heart condition. At the very least, it put Plaintiff's circulatory system under unnecessary stress that could have become life threatening. Linda Criswell, Jeannette Miranda, Jane Doe #1, and Jane Doe #2 were all health care providers who had access to Plaintiff's medical records, they all had subjective knowledge of a risk of serious harm, and they all disregarded that risk. Any cardiologist can testify to the above medical information.

13. On Sunday March 17, 2019, at 11:43am, Jeannette Miranda, FNP-BC, performed a Medical Trip Return Encounter with Plaintiff at Health Services. Due to the fact that Plaintiff was on LRMC's Hydrocodone tablets to manage the pain, the pain was less severe and his blood pressure was lower. Jeannette Miranda, FNP-BC, reviewed the records from LRMC, but would only prescribe Plaintiff Hydrocodone tablets for three (3) days. Plaintiff was told to return to the housing unit and to drink lots of water, which he did. Later that night, when he went to Pill Line to pick up his medication,

Plaintiff was told that no pain medication was available.

14. Over the next several days, Plaintiff was able to receive his pain medication. However, he sent multiple requests to Dr. Richard Qi Li, MD, and the other health provider Defendants at Health Services in an attempt to be placed on a new pain management prescription before he ran out. On Wednesday March 20, 2019, after all his requests were ignored, Plaintiff ran out of pain medication. His abdominal pain, high blood pressure, and other symptoms returned in full force. Multiple witnesses can testify that Plaintiff was not given any pain medication and that he was in severe pain.

15. On Thursday March 21, 2019, at approximately 7:00am, Plaintiff went to Sick Call at Health Services. He was seen by Jeannette Miranda, FNP-BC, at 11:01am, after several hours of waiting. As Plaintiff's blood pressure was extremely high again, she prescribed Plaintiff Lisinopril for sixty (60) days to manage his blood pressure, but she refused to prescribe him anything stronger than Naproxen for the pain, despite the fact that Plaintiff's increased blood pressure was specifically caused by the pain.

16. On Friday March 22, 2019, and several days thereafter, Plaintiff's pain and symptoms returned. The over-the-counter prescription prescribed to Plaintiff did nothing to manage his pain. During that time, Plaintiff sent several requests for help to the health provider Defendants, but they never answered his requests.

17. On Tuesday March 26, 2019, at approximately 7:00am, Plaintiff went to Sick Call at Health Services. After several hours of waiting, Plaintiff was seen

by Linda Criswell, PA-C, at 12:51pm. She increased Plaintiff's Lisinopril dose, as his blood pressure was extremely high again, but she refused to provide him with needed pain medication. Instead, she would only prescribe him Acetaminophen (Tylenol) for thirty (30) days. Plaintiff's severe pain and other symptoms continued, without any affect from the medication he was taking, and all of his requests to the health provider Defendants went unanswered.

18. On Friday April 5, 2019, at approximately 7:00am, Plaintiff went to Sick Call at Health Services. He was seen several hours later by Jeannette Miranda, FNP—BC, at 1:25pm. Despite the fact that Plaintiff's primary complaint was the severe pain he was in, which was causing his high blood pressure, she would only increase Plaintiff's dose of Lisinopril for his high blood pressure. Jeannette Miranda, FNP—BC, refused to provide Plaintiff with proper pain management medication.

19. Over the month of April, Plaintiff returned to Sick Call multiple times per week and sent several requests for help to the health provider Defendants. Plaintiff was simply following the physician at LRMC's emergency room discharge instructions to notify medical staff if his pain worsened, if his pain was not helped by medications, and if he kept feeling sick to his stomach or throwing up. Despite Plaintiff's requests for help, he was ignored, and the health provider Defendants completely ignored his heart condition and risk of serious harm caused by high blood pressure, as well as his severe pain.

20. On May 1, 2019, after spending almost two (2) months in severe pain, Plaintiff directly contacted Dr. Richard Qi Li, MD, and Warden Carlton by an Inmate Request to Staff. Plaintiff specifically asked

to meet with both Defendants, as he was being treated with "deliberate indifference", but they ignored his requests. Plaintiff's Sick Call requests were also ignored.

21. On May 9, 2019, after failing to receive a response to his Inmate Requests to Staff, Plaintiff filed an Informal Resolution Form ("BP-8"), which is the prison's internal grievance procedure, to begin the Administrative Remedy process. Plaintiff stated that he was in severe pain and that he was being treated with "deliberate indifference". In an attempt to informally resolve the grievance, Counselor Michelle Cortopassi called the new Health Services supervisor, who reviewed Plaintiff's medical records. The supervisor ensured Counselor Cortopassi and Plaintiff that he would be scheduled for a consultation with an outside specialist.

22. On May 16, 2019, Plaintiff was finally seen by the Gastroenterologist for the surgery consultation. Dr. Maohao Han, MD, ordered a Laparoscopic Cholecystectomy surgery to completely remove Plaintiff's gallbladder and gallstones, as well as a biopsy of the surrounding organs that were inflamed. Although Dr. Han had no say into when Plaintiff would be scheduled for surgery, he informed Plaintiff that he would recommend to the BOP that Plaintiff be moved to the top of the list, as the pain and high blood pressure could negatively affect his heart condition. Dr. Maohao Han, MD, and the transportation C.0.s can testify to the above information.

23. On June 26, 2019, after another month of the health provider Defendants ignoring all of Plaintiff's requests for help, Plaintiff finally received an Echocardiogram of his heart. His BAVD is suppose to be monitored by a cardiologist at least once a year,

but, despite Plaintiff's requests, it took almost four (4) years to have it checked. It took Plaintiff experiencing three (3) months of severe pain and high blood pressure before the health provider Defendants monitored his heart condition.

24. On July 22, 2019, after spending another month in severe pain, Plaintiff went to Sick Call and sent an Inmate Request to Staff to both Dr. Richard Qi Li, MD, and Warden Carlton. Plaintiff notified both Defendants that he had sent them several requests to speak with them, that he was being treated with "deliberate indifference", and that he was in extreme pain. None of Plaintiff's requests were answered.

25. On August 5, 2019, after two (2) weeks of Plaintiff's Inmate Requests to Staff going unanswered by Dr. Richard Qi Li, MD, and Warden E. K. Carlton, Plaintiff sent them both a "simple reminder letter", which included another copy of his July 22, 2019 Inmate Requests to Staff. Again, Plaintiff notified them that he was in severe pain, that his serious medical condition was diagnosed by a physician, and that he was being treated with "deliberate indifference". Both letters were ignored.

26. Over the next several weeks, Plaintiff sent multiple other requests for help to the health provider Defendants, but those requests went unanswered. On August 29 , 2019, Plaintiff requested that Counselor Michelle Cortopassi allow him to file a Request for Administrative Remedy ("BP-9") to Warden Carlton, as Plaintiff was in extreme pain and the health provider Defendants were treating him with deliberate indifference. Counselor Cortopassi refused to issue a BP-9, stating that she had already informally resolved the issue when she called the

Health Services supervisor on May 9, 2019. Despite knowing Plaintiff's serious medical condition and risk of harm, Counselor Cortopassi was deliberately indifferent to his serious medical need and she attempted to prevent Plaintiff from filing a grievance through the only available avenue. Plaintiff went to a counselor for another unit and was able to file a BP-9 to Warden Carlton. Plaintiff complained about his serious medical needs being ignored and the health provider Defendants' deliberate indifference to his risk. Warden Carlton did not timely respond to Plaintiff's BP-9.

27. On September 19, 2019, outside the administrative remedy process, Plaintiff sent Warden Carlton a personal electronic request to staff. Plaintiff explained his entire situation and also asked Warden Carlton to please answer his BP-9. Plaintiff also personally spoke to Warden Carlton at mainline later that day. Thus, Warden Carlton was personally aware of Plaintiff's substantial risk of serious harm and did not take reasonable measures to alleviate that risk. Warden Carlton's response to Plaintiff's substantial risk was objectively unreasonable. Warden Carlton eventually answered Plaintiff's BP-9, but it was for "Informational Purposes Only" and none of Plaintiff's concerns were answered or even acknowledged.

28. On or about September 27, 2019, Plaintiff attempted to get a Regional Administrative Remedy Appeal ("BP-10") from Counselor Cortopassi to appeal Warden Carlton's failure to take proper action for Plaintiff's serious medical needs. Again, Counselor Cortopassi refused to issue Plaintiff a BP-10, so he had to retrieve one from another unit counselor. Thus, Counselor Cortopassi was deliberately indif-

ferent to Plaintiff's serious medical needs and risk of harm, as she attempted to block Plaintiff from receiving medical care. Plaintiff was able to retrieve a BP-10 from another unit's counselor and file it with the Regional Director.

29. On October 3, 2019, Plaintiff sent Dr. Richard Qi Li, MD, and the other health provider Defendants an electronic request to staff. Plaintiff explained that he was in severe pain and that he had been sending numerous requests for help and going to Sick Call, but he was being treated with deliberate indifference. Plaintiff's request, like every single other request he sent before was ignored.

30. On October 7, 2019, Plaintiff sent another electronic request to staff to Dr. Richard Qi Li, MD, and the health provider Defendants explaining that his condition has worsened and that he needed help. Again, Plaintiff's requests were ignored.

31. On October 9, 2019, Plaintiff forwarded the October 7, 2019 electronic request to staff that he sent the health provider Defendants to Warden Carlton. Plaintiff explained his situation and stated that his staff were "deliberately indifferent" to his serious medical needs. On October 11, 2019, Warden Carlton responded, blowing off Plaintiff's concerns and telling him to speak with the Associate Warden.

32. In November 2019, Plaintiff sent numerous requests to the health provider Defendants and continued to go to Sick Call. None of Plaintiff's requests for help were answered.

33. On December 18, 2019, after being left in daily pain and suffering for over nine (9) months, Plaintiff finally received the Laparoscopic Cholecystectomy surgery at LRMC to remove his gallbladder and

gallstones. Multiple irregular dark brown stone—like structures measuring 1.0 x 0.5 x 0.3 cm in total were found inside Plaintiff's gallbladder once removed. Dr. Maohao Han, MD, wrote his final report diagnosing Plaintiff with Chronic Cholecystitis with Cholelithias and, because of the focal mesenteric inflammation along surrounding organs, possible Mesenteric Panniculitis or Epiploic Appendagitis.

34. The Defendants were deliberately indifferent to the risks Plaintiff's conditions posed to his health and safety. They all had subjective knowledge of Plaintiff's risk of serious harm, they disregarded that risk, and their conduct is more than mere negligence. The Defendants were all prison officials and their deliberate indifference to the known, substantial risk of serious harm Plaintiff, a federal inmate, faced violated the Eighth Amendment. The conditions of Plaintiff's confinement created an unreasonable risk of harm to his health and safety. None of the Defendants responded reasonably to the risk and they failed to take reasonable measures to alleviate the risk.

35. Plaintiff has numerous witnesses, both federal employees and other federal inmates, who can corroborate that Plaintiff spent over nine (9) months in severe pain, that he was not given proper pain medication while awaiting surgery, and that his needed treatment was improperly delayed.

V. Injuries

Plaintiff spent over nine (9) months in severe pain and suffering. Despite being diagnosed with Cholelithiasis and Panniculitis, which mandated Laparoscopic Cholecystectomy surgery, Plaintiff's serious medical need went untreated and the health

provider Defendants refused to provide him with needed pain medication. The pain caused Plaintiff to suffer from high blood pressure and, combined with Plaintiff's BAVD, put his circulatory system under unnecessary stress that could have become life threatening. All of the Defendants were deliberately indifferent to Plaintiff's serious medical needs in violation of the Eighth Amendment's ban against Cruel and Unusual Punishment.

VI. Relief

Plaintiff would like to proceed to trial to prove the violations of his constitutional rights and would like to seek money damages for his injuries. Plaintiff has found several deliberate indifferent lawsuits by federal prisoners where juries have awarded $60,000 for several weeks of ankle pain, $150,000 for sixteen days without mental health treatment, and $115,000 for seven days of chest pain, dizziness, and weakness. Therefore, taking the average of the above cases, Plaintiff is seeking about $2,720,000 in actual / punitive damages for the 272 days he was in severe pain and suffering. However, Plaintiff would like to leave the actual damages award to the discretion of the jury.

VII. Exhaustion of Administrative Remedies Administrative Procedures

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Administrative remedies are also known as grievance procedures. Your case may be dismissed if you have not exhausted your administrative remedies.

A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

☒ Yes

☐ No

If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

FCC Coleman Medium

B. Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?

☒ Y es []

☐ No []

☐ Do not know

C. Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?

☒ Yes

☐ No

☐ Do not know

If yes, which claim(s)?

Eighth Amendment violation against Cruel and Unusual punishment for staff's deliberate indifference.

D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose concerning the facts relating to this complaint?

☒ Yes

☐ No

If no, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

☐ Yes

☐ No

E. If you did file a grievance:

1. Where did you file the grievance?

FCC Coleman Medium - (BP-8 and BP-9) BOP S.E. Regional Office - (BP-10) BOP Central Office - (BP-11)

2. What did you claim in your grievance?

That staff were deliberately indifferent to my serious medical needs.

3. What was the result, if any?

BP-9 - Warden Carlton failed to respond to concerns in a timely manner. Response was for "informational purposes only."

BP-10 - The Regional Director failed to respond to concerns in a timely manner. Response was for "informational purposes only."

BP-11 - The Central Office failed to respond to concerns, stating that the BOP "defer[s] diagnostic testing and treatment to the health services staff at the local level."

4. What steps, if any, did you take to appeal that decision? Is the grievance process completed? If not, explain why not. *(Describe all efforts to appeal to the highest level of the grievance process.)*

   Plaintiff appealed to the highest level of the grievance process by filing a BP-11 with the BOP's Central Office in Washington, D.C.

F. If you did not file a grievance:

1. If there are any reasons why you did not file grievance, state them here:

   N/A

2. If you did not file a grievance but you did inform officials of your claim, state who you informed, when and how, and their response, if any:

   N/A

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

Despite the BOP's attempt to thwart Plaintiff from taking advantage of the grievance process through machination, misrepresentation, and intimidation, he exhausted the BOP's entire administrative remedy process. The BOP's administrative remedy process was merely "on the books" and was not "available."

(Note: You may attach as exhibits to this complaint any documents related to the exhaustion ofyour administrative remedies.)
*** See Exhibits attached to the original Complaint** (Doc #1) for **complete exhaustion efforts.**

VIII. Previous Lawsuits

The "three strikes rule" bars a prisoner from bringing a civil action or an appeal in federal court without paying the filing fee if that prisoner has "on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

To the best of your knowledge, have you had a case dismissed based on this "three strikes rule"?

☐ Yes

☒ No

If yes, state which court dismissed your case, when this occurred, and attach a copy of the order if possible.

N/A

A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

☐ Yes

☒ No

B. If your answer to A is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

   Plaintiff(s) N/A

   Defendant(s) N/A

2. Court *(if federal court, name the district; if state court, name the county and State)*

   N/A

3. Docket or index number

   N/A

4. Name of Judge assigned to your case

   N/A

5. Approximate date of filing lawsuit

   N/A

6. Is the case still pending? [] Yes [] No

   ☐ Yes

   ☒ No

   If no, give the approximate date of disposition. N/A

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

   N/A

C. Have you filed other lawsuits in state or federal court otherwise relating to the conditions of your imprisonment?

   ☐ Yes

   ☒ No

D. If your answer to C is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

   Plaintiff(s) N/A

   Defendant(s) N/A

2. Court *(if federal court, name the district; if state court, name the county and State)*

   N/A

3. Docket or index number

   N/A

4. Name of Judge assigned to your case

   N/A

5. Approximate date of filing lawsuit

   N/A

6. Is the case still pending? [] Yes [] No

   ☐ Yes

   ☒ No

   If no, give the approximate date of disposition. N/A

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

   N/A

IX. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case—related papers may be served. I understand that my failure to keep a current address on file with

the Clerk's Office may result in the dismissal of my case.

Date of signing: 1-30-23

Signature of Plaintiff /s/ Aaron Murray

Printed Name of Plaintiff Aaron Michael Murray

Prison Identification # 58878-018

Prison Address FCC Coleman Low –
P.O. Box 1031
Coleman (*City*)
FL (*State*)
33521-1031(*Zip Code*)

B. For Attorneys

Date of signing: N/A

Signature of Attorney N/A

Printed Name of Attorney N/A

Bar Number N/A

Name of Law Firm N/A

Address N/A
(City)
(State)
(Zip Code)

Telephone Number N/A

E-mail Address N/A

Aaron Murray
Reg. # 58878-018, Unit B-4
Federal Correction Complex-
Coleman Low
P.O. Box 1031
Coleman, FL 33521-1031

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By USMS

LEGAL MAIL

Clerk of the Court
U.S. District Courthouse
207 N.W. 2nd Street,
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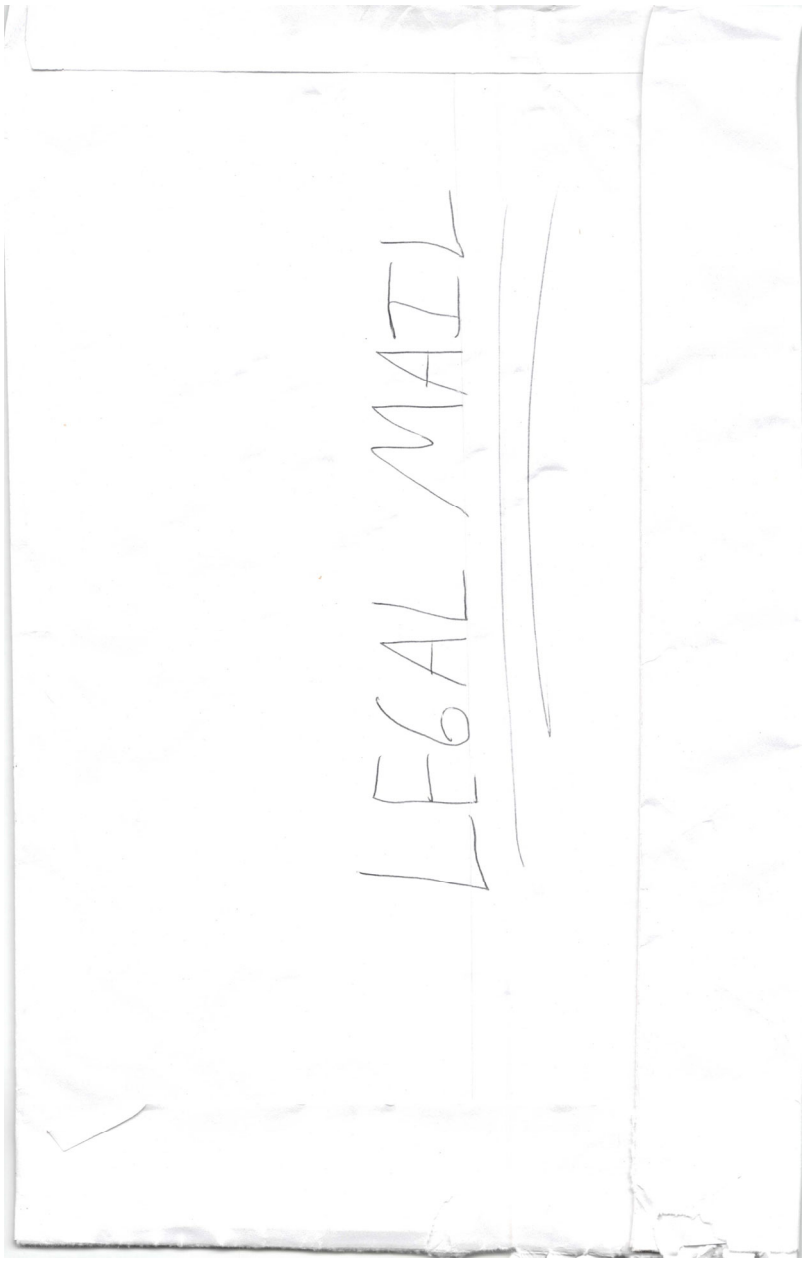
Ocala, FL 34475-6666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