No. 25-952

IN THE

Supreme Court of the United States

BRIJ MOHAN, ET AL.,

Petitioners,

v.

JORDAN WATKINS,

Respondent.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the cause of action this Court recognized in *Carlson v. Green*, 446 U.S. 14 (1980) for deliberate indifference to a prisoner's serious medical needs in violation of the Eighth Amendment continues to exist for a prisoner whose complaints of excruciating pain and severe swelling after hernia repair surgery were ignored by the federal officials responsible for his care.

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INTRODUCTION

This Court has repeatedly reaffirmed that federal prisoners may pursue a damages remedy against officials who are deliberately indifferent to their serious medical needs in violation of the Eighth Amendment. *See Carlson v. Green*, 446 U.S. 14, 20−22 (1980); *Goldey v. Fields*, 606 U.S. 942, 944 (2025). Jordan Watkins brought an unexceptional version of precisely such a claim. After hernia repair surgery, Watkins complained to prison officials of acute excruciating pain and severe swelling, with his testicles "swell[ing] to the size of a grapefruit." Pet. App. 3a. Those officials—including Petitioner Dr. Brij Mohan—ignored his complaints, gave him ineffective medication, and denied his requests for follow-up care. Once transferred to another correctional facility, Watkins required additional surgery to address his debilitating pain.

The Seventh Circuit correctly held that Watkins's Eighth Amendment claims arise in the same context as *Carlson*. Like the *Carlson* plaintiff, Watkins alleged that federal prison officials violated his Eighth Amendment right not to suffer from deliberate indifference to his serious medical needs. Pet. App. 2a, 8a. Because there were no meaningful differences between Watkins's case and *Carlson*, the court reversed the district court's threshold dismissal and remanded for further proceedings.

Nothing about this run-of-the-mill *Carlson* case warrants review. Petitioners are unable to clearly and concretely define any circuit split worthy of this Court's intervention. Instead, they gesture vaguely at supposed "conflicting decisions reflecting a wide range of views about *Carlson*'s scope and continuing vitality." Pet. 18. To the extent Petitioners can be pinned

down as to what the supposed conflict is, the two they seem to land on do not present circuit splits warranting this Court's attention.

The first purported conflict—over whether *Carlson* covers "chronic" versus "acute" conditions—has a host of problems. For one, that question is not actually presented: Watkins alleges deliberate indifference to acute suffering, not a chronic condition. For another, Petitioners fail to identify a single court of appeals that has adopted a bright-line rule that claims of deliberate indifference to "chronic" medical issues arise in a meaningfully different context from *Carlson*. The cases simply reflect that courts are properly identifying and applying this Court's modern, fact-specific *Bivens* analysis, and reaching different conclusions based on different factual settings. Petitioners may quibble with how one court or another has applied settled principles, but that is not the same as doctrinal confusion warranting this Court's intervention.

The second alleged conflict boils down to an outlier decision in which the Eleventh Circuit suggested that any claim brought in a world where there is a Bureau of Prisons Administrative Remedy Program (ARP), *see* 28 C.F.R. §§ 542.10–19, arises in a new context to which *Carlson* should not be "extended." *Johnson v. Terry*, 119 F.4th 840, 852 (11th Cir. 2024), *cert. denied*, 146 S. Ct. 101 (2025). That would be a peculiar conclusion, because as Petitioners concede (at 12), *Carlson* itself was decided in a world where the ARP already existed. For now, the Eleventh Circuit has taken the liberty of declaring a decision of this Court wrong on the day it was decided, but it is far from clear that the court will adhere to that view. Subsequent to the Eleventh Circuit's decision in *Johnson*, this Court reaffirmed that *Carlson* remains good law and that

"[t]he existence of . . . alternative remedial procedures" is a factor to be considered at *step two* of the analysis for claims that do *not* fall within a recognized cause of action. *Goldey*, 606 U.S. at 944−45; *see also* Pet. 12. Granting certiorari here just to address the Eleventh Circuit's *de facto* overruling of *Carlson* is particularly unwarranted in a case where no party appears willing to champion the Eleventh Circuit's cause. Rather than offer full-throated advocacy, Petitioners offer neutral color commentary, merely observing that this Court "may well" agree with that approach. Pet. 16 (cleaned up). Under these circumstances, it is far too premature to say whether the Eleventh Circuit's wayward ruling will eventually warrant this Court's intervention. If Petitioners are right about the importance of the issue, there will be no shortage of vehicles, and this Court can prudently await a case arising from the (very) short side of the asserted split.

The very structure of the petition betrays its lack of merit. Petitioners frame the question presented as an exceedingly fact-bound question—whether *Carlson* permits a claim of "deliberate indifference to an inmate's chronic pain after a surgery," Pet. i. The first, and longest, argument in the petition (at 7−18), simply argues for error-correction, treating the purported circuit splits as an afterthought that do not even neatly track Petitioners' merits arguments. The obvious reason for Petitioners' unconventional approach to requesting review is that by conventional standards, review is unwarranted.

The petition should be denied.

STATEMENT

A. Legal Background

In *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), the Court recognized a damages remedy against federal officers who committed an unreasonable search and seizure in violation of the Fourth Amendment. After *Bivens*, the Court recognized two additional circumstances in which a plaintiff may recover damages against federal officials for violations of their constitutional rights: federal employees alleging gender discrimination in violation of the Fifth Amendment, *Davis v. Passman*, 442 U.S. 228 (1979), and federal prisoners alleging that federal prison officials were deliberately indifferent to their serious medical needs in violation of the Eighth Amendment, *Carlson*, 446 U.S. at 20–22.

In *Carlson*, the prisoner's estate alleged that prison officials failed to adequately treat the prisoner's "serious[] . . . chronic asthmatic condition," which led to the prisoner's death. 446 U.S. at 16 n.1. Among other things, the *Carlson* plaintiff alleged that prison officials kept the prisoner in the prison facility "against the advice of doctors, 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, attempted to use a respirator known to be inoperative," and unduly delayed his transfer to a hospital, in violation of the Eighth Amendment. *Id.*; *see also* Pet. App. 12a–13a.

After recognizing a cause of action for deliberate indifference claims in *Carlson*, the Court has "consistently refused to extend *Bivens* liability to any new

context." *Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 68 (2001). It has just as consistently declined to overrule *Bivens*, *Davis*, or *Carlson*, instead reaffirming those decisions as "settled" and "fixed principle[s] of law" within their respective spheres. *Ziglar v. Abbasi*, 582 U.S. 120, 134 (2017); *see also, e.g.*, *Egbert v. Boule*, 596 U.S. 482, 490−91 (2022); *Hernandez v. Mesa*, 589 U.S. 93, 103 (2020).

Under the Court's modern *Bivens* framework, courts apply "a two-step test." *Goldey*, 606 U.S. at 944.

First, a court asks "whether the case presents 'a new *Bivens* context'—that is, whether the case 'is different in a meaningful way' from the cases in which this Court has recognized a *Bivens* remedy." *Id.* (quoting *Ziglar*, 582 U.S. at 139). This Court has provided an "instructive" set of examples of what differences might be "meaningful" for purposes of establishing a new context, including differences in the "rank of the officers involved," "the constitutional right at issue," the "extent of judicial guidance as to how an officer should respond to the problem," and the "statutory or other legal mandate under which the officer was operating." *Ziglar*, 582 U.S. at 139–40. The Court has cautioned, however, that "[s]ome differences . . . will be so trivial that they will not suffice to create a new *Bivens* context." *Id.* at 149.

Second, if—and only if—a case presents a "new context," a court will consider at step two "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.'" *Goldey*, 606 U.S. at 944 (quoting *Egbert*, 596 U.S. at 492). Such factors include, but are not limited to, whether there is an alternative

remedial scheme available, because such a remedial scheme "may limit the power of the Judiciary to infer a new *Bivens* cause of action." *Ziglar*, 582 U.S. at 137, 148; *see also Egbert*, 596 U.S. at 493 (discussing alternative remedies at step two).

B. Factual Background

1. Watkins was detained at Metropolitan Correctional Center (MCC) in Chicago, Illinois from October 2018 to July 2019, first as a pretrial detainee and then following conviction. Pet. App. 3a. On June 12, 2019, Watkins underwent hernia repair surgery at a local hospital. Pet. App. 3a. After returning to MCC, Watkins "immediately" complained of severe pain and swelling in his groin, with his testicles swelling "to the size of a grapefruit." Pet. App. 3a. His pain and swelling became so severe that he could not sit or sleep. Pet. App. 3a.

Immediately after surgery, Watkins informed MCC medical staff, including Petitioner Mohan, of his extreme post-operative pain and swelling. Pet. App. 3a. Petitioner Mohan and others dismissed Watkins's complaints as "routine and benign side effect[s] of the hernia repair surgery." Pet. App. 3a. MCC staff, including Petitioner Mohan, gave Watkins ineffective pain medication and denied his requests to seek follow-up treatment from his surgeon. Pet. App. 3a.

Watkins was convicted on July 18, 2019. Pet. App. 3a. He continued to complain to MCC officials about his extreme pain and swelling until he was transferred to a different federal facility on July 29, 2019. Pet. App. 3a. Watkins later underwent corrective surgery to address the complications arising from his initial hernia repair surgery. Pet. App. 3a–4a.

2. After timely exhausting his administrative remedies under the ARP, Watkins filed suit *pro se* in federal court. Pet. App. 4a. Watkins brought four claims against Petitioner Mohan and unnamed MCC medical and correctional staff seeking damages for deliberate indifference to his serious medical needs in violation of the Eighth Amendment. Pet. App. 4a. Watkins also brought one claim against the United States for negligent medical treatment under the Federal Tort Claims Act (FTCA), 28 U.S.C. § 1346(b). Pet. App. 4a.

The district court dismissed each of Watkins's claims. Pet. App. 70a−71a. Relevant here, the district court reasoned that Watkins's Eighth Amendment claims presented factual and legal differences that would require extending *Bivens* to a new context. Pet. App. 66a.

3. The Seventh Circuit reversed. Pet. App. 36a. The majority concluded that, "[u]nder a straightforward application of *Carlson* and the Supreme Court's current legal framework for evaluating *Bivens* claims," Watkins's Eighth Amendment deliberate indifference claims could go forward. Pet. App. 2a. The court expressly declined to address the viability of any other *Bivens* claim. Pet. App. 10a–11a & n.3.

After recounting the history, precedent, and framework informing today's *Bivens* analysis, Pet. App. 6a−7a, the court resolved the Eighth Amendment deliberate indifference claims "at step one of the *Bivens* inquiry," Pet. App. 7a. The Seventh Circuit reasoned that Watkins's claims "fit squarely within the *Bivens* claim recognized by *Carlson*" because Watkins alleged that "federal prison officials violated his Eighth Amendment right to be free from cruel and

unusual punishment by giving him constitutionally inadequate care after his surgery." Pet. App. 8a.

The court declined to find that Watkins's Eighth Amendment deliberate indifference claims were "meaningfully different" from *Carlson* because they were "no more disruptive or intrusive than what *Carlson* itself already approved." Pet. App. 9a, 13a. Relying on *Carlson*, *Ziglar*, and then-Chief Judge Sykes's decision for the Seventh Circuit in *Snowden v. Henning*, 72 F.4th 237 (7th Cir. 2023), *cert. denied*, 145 S. Ct. 137 (2024), the court explained that factual and legal differences are "meaningful" if they "alter the policy balance that initially justified the implied damages remedies in the *Bivens* trilogy." Pet. App. 9a (quoting *Snowden*, 72 F.4th at 239). Here, such differences were lacking because Watkins's claims involved officers of the same rank, the same constitutional right, the same "generality or specificity of the official action," and abundant judicial guidance. Pet. App. 11a, 14a−16a. The court reasoned that, like the *Carlson* plaintiff, Watkins challenged "discrete acts and omissions of particular medical and correctional personnel," rather than "any broadly applicable BOP policy." Pet. App. 11a.

The court rejected Petitioner Mohan's argument below that Watkins's "transitionary status" in a pretrial detention facility implicated any new "administrative considerations" beyond those addressed in *Carlson*. Pet. App. 12a–13a; *see also* Pet. App. 16a. As the court explained, "all federal detainees and prisoners are subject to transfer to different facilities at any time for a host of reasons." Pet. App. 11a−12a. Indeed, as the Seventh Circuit observed, *Carlson* too involved "allegations about prison assignment and transfer." Pet. App. 13a (citing *Carlson*, 446 U.S. at

16 n.1). For that reason, even if Watkins's claims could be read to "implicate administrative considerations regarding scheduling, outside consultation, or prison assignment, that would not remove them from *Carlson*'s ambit." Pet. App. 12a.

Judge Kirsch concurred in part and dissented in part. Pet. App. 37a. In Judge Kirsch's view, Watkins's "transitory" status—coupled with his "chronic" rather than "acute" injury—presented sufficiently meaningful differences from *Carlson*. Pet. App. 41a–42a.

Although divided on the *Bivens* claims, the panel unanimously agreed that Watkins's FTCA claim should be remanded to the district court for further fact-finding to evaluate whether equitable tolling excused the untimely filing. Pet. App. 27a; *see also* Pet. App. 37a.

The Seventh Circuit denied a petition for rehearing and rehearing en banc on November 3, 2025, with no judge of the Seventh Circuit requesting a vote. Pet. App. 72a–73a.

REASONS FOR DENYING THE PETITION

I. Petitioners Identify No Concrete Circuit Conflict Warranting This Court's Review.

Painting with a broad brush, Petitioners assert that *Carlson* claims have "generated 'a flood of inconsistent case law across and within circuits'" in recent years. Pet. 18 (quoting Pet. App. 45a). Yet Petitioners cannot identify any concrete circuit split. Instead, Petitioners ask the Court to grant certiorari to review a handful of purportedly "conflicting decisions" that do not bear on the question presented as Petitioners

themselves framed it. Pet. 18, 23; *see also* Pet. i, 20. The Court should deny the petition.

A. There Is No Circuit Split Over Whether *Carlson* Draws a Distinction for Deliberate Indifference to "Chronic" Versus "Acute" Medical Needs.

Petitioners maintain that the issue most worthy of this Court's consideration is whether "a case involving allegations of inadequate care for chronic pain, not an acute medical emergency, sufficiently differs from *Carlson* to preclude a judicially inferred cause of action." Pet. 7; *see also* Pet. 20. Their framing of the question presented confirms as much, focusing on whether the recognized *Carlson* cause of action encompasses "deliberate indifference to an inmate's chronic pain after a surgery." Pet. i.

There is no circuit split as to whether a claim of "deliberate indifference to an inmate's chronic pain after surgery," Pet. i, falls within the same context as *Carlson*. Indeed, Petitioners fail to identify a single decision that has drawn their proposed chronic/acute distinction. Petitioners instead point to cases in which courts have purportedly parted ways over whether a prisoner's underlying injury is insufficiently severe to merit relief under *Carlson*—specifically, whether a plaintiff must allege a life-threatening injury or death to have a claim. Pet. 20. But any alleged split on the issue of severity is illusory. The supposedly divergent outcomes that Petitioners identify reflect nothing more than a reasonable application of the Court's case-specific, fact-driven *Bivens* inquiry.

1. No circuit has adopted a categorical rule that either endorses or rejects the proposition that the

severity of a plaintiff's injury represents a "meaningful" difference from *Carlson*. Petitioners assert that the Seventh and Ninth Circuits are out of step with other circuits because, to date, they have allowed *Carlson* claims to proceed even if they involve "a different type of injury or different type of treatment" than what was at issue in *Carlson*. Pet. 20–21. Petitioners overstate these courts' approach and ignore that the Third, Fourth, and Fifth Circuits have similarly reasoned that a different injury does not reflexively create a "new context."

The Seventh Circuit has twice concluded that, under the facts alleged, the severity of the injuries in the cases before it did not constitute a "meaningful" difference from *Carlson*. In *Brooks v. Richardson*, 131 F.4th 613 (7th Cir. 2025), the Seventh Circuit concluded that there was no meaningful difference from *Carlson* where the plaintiff had alleged mistreatment of his appendicitis, which led to a ruptured appendix, peritonitis, and "agonizing pain." *Id.* at 614–16. Writing for the unanimous panel, Judge Easterbrook explained that "the duration of the poor care or the gravity of the condition . . . seem[ed] more pertinent to the merits than to determining the scope of the holding in *Carlson*." *Id.* at 615. The panel did not, however, adopt a categorical rule that differences in the degree or nature of the medical condition could *never* be meaningfully different from *Carlson*. The decision in the present case did nothing more than follow the same reasonable approach. *See infra* pp. 20–22.

The Ninth Circuit has taken a similar approach. In *Watanabe v. Derr*, for example, the Ninth Circuit held that "the allegations, on their face," presented a *Carlson* claim because the plaintiff alleged he was denied adequate medical care after he was seriously

injured in a gang fight. 115 F.4th 1034, 1038, 1040 (9th Cir. 2024), *pet. for cert. filed*, No. 25-417 (U.S. Oct. 3, 2025). The court reasoned that "[a] plaintiff need not suffer death or a life-threatening injury for his claim to be sufficiently analogous to *Carlson*." *Id.* at 1041. Rather, it was sufficient that the plaintiff had alleged an injury that "resulted in a serious medical condition, and the condition has caused extreme pain ever since." *Id.*

The Third Circuit is in accord. In *Muniz v. United States*, the court concluded there was no meaningful "difference between amputation and death" because the prisoner's injuries and treatment did not "provide[] a 'reason[] to think Congress might doubt the efficacy or necessity of a damages remedy' in this context." 149 F.4th 256, 262–63 (3d Cir. 2025) (quoting *Egbert*, 596 U.S. at 491). In the court's view, "this difference 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.

The Fourth Circuit similarly focuses on whether a prisoner's claims "rest on a dissatisfaction with the prison system's institutional decisions" or "the types of deliberate malfeasance that provided the basis for the plaintiff's claims in *Carlson*." *Spivey v. Breckon*, 173 F.4th 174, 180 (4th Cir. 2026). Accordingly, the Fourth Circuit has rejected claims based on the delayed treatment of a tooth cavity due to dental staffing shortages, as well as the refusal to place a prisoner in a psychology class because of disciplinary issues, *id.*, while allowing a claim based on the outright failure to provide a necessary surgical repair for torn ligaments, *Masias v. Hodges*, No. 21-6591, 2023 WL 2610230, at *1–2 (4th Cir. Mar. 23, 2023) (allegations did not

"present a new context" even where injuries were "not likely to cause permanent damage or death") (citing *Langford v. Joyner*, 62 F.4th 122, 126–27 (4th Cir. 2023)).

And the Fifth Circuit has concluded that a prisoner's alleged inadequate treatment for a facial fracture arose in the same context as *Carlson*, even though the prisoner "did not die" and "his need for medical attention did not relate to asthma" as under the specific facts of *Carlson*. *Vaughn v. Bassett*, No. 22-10962, 2024 WL 2891897, at *3–4 (5th Cir. June 10, 2024) (citing *Carlucci v. Chapa*, 884 F.3d 534, 540 (5th Cir. 2018)).

2. Despite Petitioners' attempts to manufacture a split, *see* Pet. 20–21, the First, Tenth, and Eleventh Circuits have employed the same fact-dependent inquiry. None of these courts has categorically foreclosed or endorsed a *Bivens* remedy where the severity of a prisoner's injury differs from the fatal result in *Carlson*.

The First Circuit's position is far more modest than Petitioners suggest. Petitioners claim that the First Circuit "effectively limited *Carlson* to 'wrongful death-like action[s]' involving 'medically contraindicated' treatments and 'failure to adequately treat . . . a life-threatening condition or extreme pain.'" Pet. 20 (alterations in original) (quoting *Waltermeyer v. Hazelwood*, 136 F.4th 361, 366–67 (1st Cir. 2025)). The First Circuit did no such thing. Given the facts alleged, the court determined that a prisoner's request for knee surgery differed meaningfully from *Carlson* because the prisoner "received numerous treatments and accommodations to treat his condition, and the procedures and treatments provided were in accordance with doctors'

recommendations." 136 F.4th at 366. Nowhere did that court adopt a categorical rule requiring that a plaintiff suffer a life-threatening injury (or death) for a claim to be cognizable.

Nor has the Tenth Circuit adopted such a categorical rule. In *Rowland v. Matevousian*, the court reasoned that the facts "meaningful[ly]" differed from *Carlson* for several reasons, including that prison officials did not "act contrary to the doctor's recommendations"; "give 'contraindicated drugs'"; "knowingly keep [plaintiff] in a medical facility that was 'grossly inadequate'"; or "prescribe or use a medical instrument that was 'known to be inoperative.'" 121 F.4th 1237, 1242–43 (10th Cir. 2024) (first alteration in original). Like other circuits, *Rowland* reached a holistic conclusion based on all the facts alleged and did not adopt any categorical rule.

Finally, Petitioners cite in a parenthetical the Eleventh Circuit's decision in *Johnson*, in which the court "noted" that the plaintiff's alleged harm "differ[ed] . . . from those of the prisoner in *Carlson*." Pet. 20 (quoting *Johnson*, 119 F.4th at 859). But as Petitioners concede, that observation bears no weight: "[O]ther aspects of the court's reasoning" had already foreclosed relief, even before the court considered the severity of the alleged injury. Pet. 20; *see infra* pp. 15, 18. On this score, *Johnson* is not inconsistent with any other circuit.

In short, courts are properly taking a case-by-case approach to determine whether the facts before them establish meaningful differences from *Carlson*. They are heeding this Court's instructions of what types of differences count as meaningful. And as one would expect, they sometimes find a meaningful difference and sometimes do not. No circuit has adopted a

bright-line rule that chronic injury claims categorically fall outside the context of *Carlson*. Nor has any circuit adopted a bright-line rule that anything short of death or life-threatening injury creates a meaningful difference from *Carlson*. This Court does not usually intervene just because the same test applied to different facts sometimes yields different results, and there is no reason to do so here.

B. Review Is Not Warranted to Correct a Different Circuit's Outlier Decision Nullifying *Carlson*.

Petitioners claim to identify "conflicting decisions" over whether the ARP's existence effectively nullifies the cause of action recognized in *Carlson*. Pet. 18–19. That purported "conflict" is badly lopsided at best. Petitioners' argument hinges on *Johnson*, which broke from every other circuit and "adopted reasoning that effectively forecloses any more *Carlson* claims." Pet. 19. As Petitioners concede, the ARP existed when this Court decided *Carlson*, *see* Pet. 12, which in the Eleventh Circuit's view means that *Carlson* had no prospective effect from the day it was decided, because *Carlson* "did not consider the existence of alternative remedies under the framework explained in *Egbert*," *Johnson*, 119 F.4th at 858.

The outlier decision in *Johnson* is hardly a reason to grant certiorari here. *See infra* pp. 31–32. As Petitioners concede, no other court of appeals—including the court below—has adopted its extreme position. *See* Pet. 19. Petitioners do not even seem to offer a full-throated endorsement of *Johnson*. Time will tell if the Eleventh Circuit clarifies or walks back its bold suggestion that a decision of this Court had no prospective application from the day it was decided, or if

other circuits will find that surprising result persuasive. For now, there is no reason to grant certiorari, and certainly not in this case. *See infra* pp. 31–34.

1. Since its inception in 1979, the ARP has operated as a limited, administrative grievance procedure providing federal prisoners an opportunity to resolve disputes within the prison system. Although the program has been amended, these changes have not substantively altered its basic function. *See, e.g.*, Administrative Remedy Program, 61 Fed. Reg. 88 (Jan. 2, 1996) (codified at 28 C.F.R. § 542) (extending deadlines to file and respond to complaint). The ARP allows prisoners to file complaints for alleged mistreatment in prison, 28 C.F.R. § 542.13(b), but unlike *Bivens*, the ARP "ordinarily cannot provide monetary relief," Administrative Remedy Program: Excluded Matters, 67 Fed. Reg. 50804, 50804 (2002) (codified at 28 C.F.R. § 542).

Following *Egbert*, no other court of appeals analyzing *Carlson* claims has held that the ARP's mere existence renders the claim a "new context." Instead, these courts have generally adhered to this Court's two-step *Bivens* framework and reserved consideration of potential "alternative remedies," like the ARP, until step two of the analysis. *See, e.g.*, *Watanabe*, 115 F.4th at 1042 (declining to consider ARP because alternative remedy programs are relevant to the "*second* step of the *Bivens* analysis," which the court did not reach); *Brooks*, 131 F.4th at 616 (no discussion of alternative remedies because suit did not present a "new context"); *Vaughn*, 2024 WL 2891897, at *3–4 (similar, and declining to find it "meaningful" that "prisoners now have access to an administrative remedy process through which they can address their grievances"); *see also Spivey*, 173 F.4th at 180 (no

discussion of ARP at step one); *Waltermeyer*, 136 F.4th at 368 & n.7 (same); *Rowland*, 121 F.4th at 1243–44 (considering alternative remedies only after concluding case presented a "new context").

That approach is the only way to reconcile the Court's continued recognition of the cause of action in *Carlson* with its guidance in *Egbert*. The Court has repeatedly reaffirmed that *Carlson* represents an existing *Bivens* context. *See, e.g.*, *Egbert*, 596 U.S. at 490–91; *Hernandez*, 589 U.S. at 103; *Ziglar*, 582 U.S. at 131. In *Egbert*, the Court clarified that an "alternative remedial structure[]" will "limit the power of the Judiciary to infer a *new Bivens* cause of action"—but said nothing about foreclosing an *existing* cause of action, like *Carlson*. 596 U.S. at 493 (emphasis added). It follows that if a claim arises under an existing *Bivens* context, like *Carlson*, there is no need to consider "alternative remedies" because the cause of action is not "new"—it was established by *Carlson*.

Petitioners cite (at 19–20) the Third Circuit in support of this purported split, but that court has not endorsed the Eleventh Circuit's approach. In *Muniz*, the Third Circuit made clear that "[t]he mere existence of the BOP ARP cannot meaningfully distinguish" a case from *Carlson*. 149 F.4th at 265 n.5. Rather, the court reasoned that "[t]he availability of the BOP ARP" to an individual plaintiff would "distinguish[]" the case from *Carlson*. *Id.* at 264–65. But the court was careful to reinforce that "*Carlson* relief remains available to inmates in limited circumstances," such as where "prison administrators thwart inmates from taking advantage of the ARP." *Id.* (cleaned up). Whether that is right or wrong, it is not a second vote for the Eleventh Circuit's position that *Carlson* claims are defunct and have been from Day 1.

2. The Eleventh Circuit's departure from this Court's direction does not warrant granting certiorari here. In *Johnson*, the Eleventh Circuit did not engage with this Court's repeated affirmation that *Carlson* remains settled law. Nor did it follow *Egbert*'s instruction to consider alternative remedies at step two. Rather, it collapsed *Bivens*'s two steps into one and held that the ARP's mere existence rendered plaintiff's claim "different from the one in *Carlson*." 119 F.4th at 858.

No judge of the Seventh Circuit, including the dissenting judge in this case, adopted this approach. Nor do Petitioners urge the Court to adopt the Eleventh Circuit's reasoning here. Instead, Petitioners point to the Eleventh Circuit to tepidly suggest that the Court "may well determine that *Carlson* claims are no longer viable," Pet. 16–17 (cleaned up), without ever asking the Court to overrule *Carlson*, Pet. 3, 16−17, 25 n.2, or *Bivens*, Pet. 25 n.2.

Petitioners' noncommittal attitude is understandable. The Eleventh Circuit's reasoning not only departs significantly from this Court's teachings, *see supra* pp. 2−3, 15, but the reasoning, if accepted, would effectively bar all future *Bivens* claims. *See* Pet. 19. This Court did not apply the "framework explained in *Egbert*" in *Bivens*, *Carlson*, or *Davis*—indeed, *Egbert* was decided nearly 40 years after *Carlson*, which was the most recent of the Court's cases to recognize a *Bivens* cause of action. But the Court's use of an earlier methodology does not deprive its precedents of *stare decisis*. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024) (prior holdings "are still subject to statutory *stare decisis* despite [the Court's] change in interpretive methodology"); *see also infra* pp. 27−30.

This Court does not grant review simply to correct one circuit's error—particularly where, as here, the decision below did not commit the same error, and no party before this Court endorses that error. *See supra* pp. 15, 18; *infra* pp. 25, 33–34. This issue at minimum "would benefit from further percolation in the lower courts prior to this Court granting review," if it need be addressed at all. *Calvert v. Texas*, 141 S. Ct. 1605, 1606 (2021) (statement of Sotomayor, J., respecting denial of certiorari); *see also Box v. Planned Parenthood of Ind. & Ky., Inc.*, 139 S. Ct. 1780, 1784 (2019) (Thomas, J., concurring) (observing that "further percolation may assist our review" of the question presented). Indeed, since *Johnson*, this Court has reaffirmed that alternative remedies should be considered at step two, so it would be appropriate to allow the Eleventh Circuit time to rejoin the fold. *See* Part III.

II. The Decision Below Is Correct.

The Seventh Circuit reasonably applied the modern *Bivens* framework and concluded that Watkins's claim could proceed because it does not meaningfully differ from *Carlson*. Petitioners neither ask this Court to overrule *Carlson* nor to revisit *Bivens*. The decision below contains no error, much less one so significant or important as to warrant this Court's intervention.

A. This Case Arises in the Same Context as *Carlson*.

1. The Seventh Circuit faithfully applied the Court's *Bivens* framework and resolved this case at step one. Pet. App. 7a. This Court has repeatedly reaffirmed that *Carlson* recognized a damages remedy for when federal officials are deliberately indifferent

to a prisoner's serious medical needs. *See, e.g.*, *Egbert*, 596 U.S. at 490–91 (*Carlson* "authorize[d] a remedy for a federal prisoner's inadequate-care claim under the Eighth Amendment") (cleaned up); *Hernandez*, 589 U.S. at 103 (*Carlson* "allow[ed a] *Bivens* remedy for an Eighth Amendment claim for failure to provide adequate medical treatment"); *Ziglar*, 582 U.S. at 131 (describing *Carlson* as providing "a damages remedy" under the Eighth Amendment "for failure to provide adequate medical treatment"). Watkins alleges he suffered constitutionally inadequate medical care while a convicted prisoner in federal detention. His principal theory is thus identical to the one articulated in *Carlson* and his claims arise within an existing *Bivens* context. Pet. App. 8a.

The decision below correctly held that Watkins's Eighth Amendment claims present no meaningful difference from *Carlson*. *See* Pet. App. 9a−17a. Adhering closely to the *Ziglar* factors, the Seventh Circuit concluded there was no meaningful difference because Watkins's claims involved officers of the same rank, the same constitutional right, the same "generality or specificity of the official action," and abundant judicial guidance. Pet. App. 10a−11a, 14a−16a. Because Watkins's claims were "no more disruptive or intrusive than what *Carlson* itself already approved," his claims were allowed to proceed. Pet. App. 13a−14a. The court thus resolved the case at step one and properly declined to reach the "special factors" analysis at step two. Pet. App. 7a, 17a; *see also, e.g.*, *Stanard v. Dy*, 88 F.4th 811, 818 (9th Cir. 2023) ("Because Stanard's Eighth Amendment claims arise within an existing context, we need not proceed to the special factors inquiry."); *see also Snowden*, 72 F.4th at 239.

2. Petitioners dispute the Seventh Circuit's reasoning, arguing that Watkins's case "meaningfully differs from *Carlson* in at least four ways." Pet. 11. The first two—the severity of Watkins's injury and the ARP's existence—track Petitioners' purported "conflicting decisions." Pet. 18; *see supra* Part I. The last two—that Watkins was detained in a different type of facility and that Congress enacted the Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997e, after *Carlson*—do not. Pet. 11–14. None of these differences is "meaningful."[1]

Severity of the Injury. Petitioners argue this case meaningfully differs from *Carlson* because it "involves a different type of injury." Pet. 12. But the Court has never suggested that an inmate must suffer an acute medical emergency to pursue a *Bivens* remedy. That makes sense: Standing alone, a difference in the specific injury giving rise to a serious medical need does not necessarily alter the policy balance that initially justified the damages remedy in *Carlson*. The decedent in *Carlson* suffered from asthma, but it is difficult to believe that there would be a separation-of-powers difference between deliberate indifference to asthma and deliberate indifference to, for example, a heart attack.

Petitioners' argument (at 12–13) that Watkins seeks relief for inadequate treatment of a "chronic" condition misconstrues Watkins's allegations—to the point that the question presented is not even presented. Watkins alleges that MCC's medical and correctional staff, including Petitioner Mohan, "dismissed" his "severe pain and swelling in his groin"

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[1] Petitioners abandon any argument that Watkins's complaint can be read to allege supervisory liability. *See* Pet. App. 8a.

following hernia repair surgery. Pet. App. 3a. He further alleges that MCC's medical staff, including Petitioner Mohan, gave him "ineffective" pain medication, "denied his request to schedule a follow-up appointment with his surgical team," and "did not provide any additional care to address Watkins'[s] pain or swelling." *Id.* Based on these allegations, the Seventh Circuit correctly concluded that Watkins's Eighth Amendment claims, "like the plaintiff in *Carlson*," were focused solely on "the discrete acts and omissions of particular medical and correctional personnel who treated him or made decisions about his care," not failure to treat a "chronic" condition. Pet. App. 11a. A case involving *acute* pain from a discrete precipitating event would be a peculiar vehicle to decide whether "chronic pain," Pet. i, presents a new context.

Even if Watkins's complaint could be read to fault Petitioner Mohan and others for failing to treat a chronic condition, that would still not separate his case from *Carlson*. As the Seventh Circuit observed, *Carlson* itself dealt with deficient management of a "*chronic*, non-emergent medical condition"—asthma—which required "continuous, periodic treatment over many months, as well as all the administrative decisions that such treatment necessarily entails." Pet. App. 12a−13a (emphasis added) (discussing *Green v. Carlson*, 581 F.2d 669 (7th Cir. 1978)); *see also Ziglar*, 582 U.S. at 140 (describing cause of action "approved" in *Carlson* as "a claim against prison officials for failure to treat an inmate's asthma"). This Court's decision in *Carlson* barely dwelled on the specifics of the injury, but the very first thing this Court mentioned was the decedent's "*chronic* asthmatic condition." *Carlson*, 446 U.S. at 16

n.1 (emphasis added). Even if Watkins's claim were read as seeking relief for a "chronic" condition, therefore, that would hardly present a meaningful difference from *Carlson* as this Court itself described that case.

In any event, the severity of the underlying injury is not a "meaningful" difference under the Court's *Bivens* jurisprudence because it does not alter the policy balance that justified the implied damages remedy in *Carlson*. *See Ziglar*, 582 U.S. at 139 (discussing "trivial" differences). *Carlson* did not turn on the fact that the prisoner died from an asthma attack. Instead, the Court focused on the status of the individual officers, the lack of an effective alternative remedy, the absence of a congressional declaration foreclosing a damages remedy, and the need for a uniform rule. *See* 446 U.S. at 18–23. Those factors are present regardless of a plaintiff's underlying injury.

This Court has never concluded that a "new context" exists based on a difference in degree. In analyzing *Bivens* claims, the Court has been concerned with qualitative differences between the claims in which an implied damages remedy was allowed and the claims plaintiffs assert. *See, e.g.*, *Ziglar*, 582 U.S. at 140 (new context where claim challenged "high-level executive policy" responding to "terrorist attack" that "b[ore] little resemblance to" previously recognized *Bivens* context); *id.* at 147–49 (finding meaningful difference where claim "implicat[ed] a different constitutional right" and concluding "Congress chose not to *extend* the *Carlson* damages remedy to cases involving other *types* of prisoner mistreatment" (emphases added)); *Goldey*, 606 U.S. at 944 ("Eighth Amendment claim for excessive force" arose in different context than inadequate-care

claim in *Carlson*); *Hernandez*, 589 U.S. at 103 (new context because there is "a world of difference between" claim for warrantless arrest and "cross-border shooting claims" which would "risk . . . disruptive intrusion by the Judiciary into the functioning of other branches"). That focus makes sense because not all factual differences will impact the policy balance that initially justified a *Bivens* remedy. *See Ziglar*, 582 U.S. at 139.

ARP. Petitioners argue that the ARP's existence transforms Watkins's case into a "new context." Pet. 12. But Petitioners concede that the ARP "already existed" when *Carlson* was decided. Pet. 12 (citing, *e.g.*, Control, Custody, Care, Treatment, and Instruction of Inmates, 44 Fed. Reg. 62,248, 62,250 (Oct. 29, 1979)). As a result, Petitioners effectively argue that *Carlson* was "moribund" the day it was issued. Pet. 25 n.2; *see also* Pet. 17. Saying a case was wrong the day it was decided is not an argument that Watkins's case arises in a new context—it is an argument that *Carlson* should be overruled. Yet Petitioners do not ask the Court to overrule *Carlson*, instead asserting that "[n]o more *Carlson* claims should be viable" because "under a proper application of the framework set out in this Court's recent *Bivens* cases, *Carlson* should be obsolete." Pet. 3.

This Court has never suggested—in *Carlson* or any decision since—that the ARP's mere existence creates a "new context" for *every claim* arising under *Carlson*. Just the opposite: The Court has consistently reaffirmed *Carlson*'s continued vitality, notwithstanding the ARP. *See supra* pp. 2–3, 17.

Petitioners' argument also departs from the modern *Bivens* framework. The question of alternative remedies arises at step two: When a case presents a

"new context," courts will consider whether alternative remedies are a "special factor" counseling hesitation before recognizing an implied damages remedy. *See Ziglar*, 582 U.S. at 144–45 (discussing alternative remedies at step two); *see also Egbert*, 596 U.S. at 497–98 (same). Consistent with that guidance, below, Petitioner Mohan raised his alternative remedy argument only in step two. *See* 7th Cir. Dkt. 26 at 42. It is thus unsurprising that the Seventh Circuit did not address the ARP because it decided this case at step one. Pet. App. 7a; *see also supra* pp. 19–20; *infra* pp. 33–34.

Nature of the Facility. Petitioners assert that because Watkins suffered deliberate indifference at a pretrial detention facility, his claims arise in a new context. Pet. 13–14. According to Petitioners, such detention centers are "inherently transitory," which means "[t]he policy considerations at stake here are thus separate and distinct from those in *Carlson*." Pet. 14 (cleaned up).

The Seventh Circuit correctly reasoned that the nature of the facility is not a meaningful difference because it does not implicate policy considerations beyond those already contemplated in *Carlson*. *Carlson* itself involved allegations regarding prison assignment and transfer. 446 U.S. at 16 n.1. As the court of appeals observed, "all federal detainees and prisoners are subject to transfer to different facilities at any time for a host of reasons." Pet. App. 11a. That Watkins was transferred to another correctional facility is not a meaningful difference. *See, e.g.*, *Stanard*, 88 F.4th at 814, 817 (allowing Eighth Amendment deliberate indifference claim alleging inadequate medical care from sentencing in January to transfer

in September to proceed against doctor at federal detention center).

That Watkins "was a pretrial detainee when the alleged deliberate indifference to his medical needs began," Pet. 13, also does not create a meaningful difference foreclosing his Eighth Amendment claims. Watkins was imprisoned at MCC post-conviction from July 18 to July 29, 2019. Pet. 4; *see also* Pet. App. 3a. As the Seventh Circuit correctly explained (at 10a n.3), this Court has consistently evaluated the viability of a *Bivens* remedy on a claim-by-claim basis. *See, e.g.*, *Egbert*, 596 U.S. at 486, 494–98 (analyzing separately claims for relief under the First and Fourth Amendments); *accord Carlson*, 446 U.S. at 16 & n.1. The fact that Watkins may also have grounds to plead a Fifth Amendment claim does not mean that his Eighth Amendment post-conviction deliberate indifference claims present a "new context." Indeed, the *Carlson* plaintiff also pled a Fifth Amendment claim, but that did not preclude a *Bivens* remedy for violations of the decedent's Eighth Amendment rights. *See Carlson*, 446 U.S. at 16 & n.1.

Statutory Scheme. Petitioners are wrong that the PLRA changes the availability of a *Bivens* remedy. Pet. 11. Like the ARP, *see supra* pp. 24–25, any effect the PLRA may have on the *Bivens* analysis arises at step two, *after* a court has already concluded a plaintiff's claims arise in a new context. *See, e.g.*, *Ziglar*, 582 U.S. at 148 (describing PLRA as "a factor counseling hesitation" at step two).

In any event, the PLRA's enactment did not categorically create a meaningful difference foreclosing *Bivens* remedies for Eighth Amendment deliberate indifference claims. The PLRA simply imposed an exhaustion requirement before such claims may be

brought. *See* 42 U.S.C. § 1997e. Indeed, the PLRA presupposed the existence of at least some *Bivens* remedies, providing that no actions may be brought "under section 1983 of this title, *or any other Federal law*," before a prisoner exhausts available administrative remedies. *Id.* § 1997e(a) (emphasis added). As this Court recognized, Congress was necessarily referring to "federal prisoners suing under *Bivens*." *Porter v. Nussle*, 534 U.S. 516, 524 (2002).

This Court has confirmed that the PLRA is at its most relevant at step two. In *Ziglar*, the Court observed that the PLRA "does not provide for a standalone damages remedy," and therefore "[i]t could be argued that this suggests Congress chose not to extend the *Carlson* damages remedy to cases involving *other types* of prisoner mistreatment." 582 U.S. at 149 (emphasis added). The obvious corollary is that it *cannot* be argued that Congress was displacing "the *Carlson* damages remedy" that by then was already a fixture of the law. *Id.*[2]

B. *Stare Decisis* Counsels Against Overruling *Carlson*—or Doing the Equivalent by Declaring It "Moribund" on the Day It Was Decided.

Petitioners do not ask the Court to overrule *Carlson*. Instead, Petitioners surmise that "[n]o more

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[2] Despite this Court's reasoning in *Ziglar*, the Fourth Circuit recently considered the PLRA at step one. *Spivey*, 173 F.4th at 180. In so doing, it parted ways with its prior decision in *Bulger v. Hurwitz*, which considered the PLRA only at step two. *See* 62 F.4th 127, 140–41 (4th Cir. 2023). Despite citing *Bulger*, the *Spivey* panel neither acknowledged nor addressed this tension. This intra-circuit split has no bearing on the question presented in this petition. *See* Pet. i.

Carlson claims should be viable" because "under a proper application of the framework set out in this Court's recent *Bivens* cases, *Carlson* should be obsolete." Pet. 3; *see also* Pet. 17, 25 n.2 (describing *Carlson* as "moribund"). But this Court "does not overturn its precedents lightly," *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 798 (2014), nor does it "overturn . . . earlier authority *sub silentio*," *Shalala v. Ill. Council on Long Term Care, Inc.*, 529 U.S. 1, 17–18 (2000). Congress is free to repudiate *Carlson* at any time, but instead it has done the opposite and legislated in reliance on *Carlson*'s continued vitality. *Stare decisis* supports preserving *Carlson*.

1. To overrule precedent, "it is not alone sufficient that [the Court] would decide a case differently now." *Kimble v. Marvel Ent., LLC*, 576 U.S. 446, 455−56 (2015). Rather, the *stare decisis* factors—such as "meaningful reliance" and workability, *see Loper Bright*, 603 U.S. at 409–10—must provide "a 'special justification'" for upending the "evenhanded, predictable, and consistent development of legal principles" that precedent creates, *Kimble*, 576 U.S. at 455−56 (citations omitted). No factor justifies overruling *Carlson*.

Congress has legislated in clear reliance on *Carlson*. In the Westfall Act, Congress made the FTCA the exclusive remedy for state-law damages claims against federal officers but provided an "explicit exception for *Bivens* claims." *Hui v. Castaneda*, 559 U.S. 799, 807 (2010); *accord* 28 U.S.C. § 2679(b)(2)(A). Congress thus ratified *Carlson*'s understanding that the FTCA is "parallel" and "complementary" to a cause of action for deliberate indifference to serious medical needs. 446 U.S. at 19–20; *see also Malesko*, 534 U.S. at 68. Similarly, through the PLRA,

Congress aimed to "inhibit frivolous [prisoner] filings" by enacting administrative exhaustion requirements, *see supra* pp. 26–27, but did not eliminate the availability of a *Bivens* remedy, *Cutter v. Wilkinson*, 544 U.S. 709, 726 (2005). *Stare decisis* operates with "special force" where, as here, Congress is "free to alter what [this Court] ha[s] done," but has chosen to stay the course. *Bay Mills Indian Cmty.*, 572 U.S. at 799 (citation omitted).

Nor has *Carlson* proven unworkable. Lower courts apply *Carlson* coherently within its limited sphere, while vigilantly preventing its application to new contexts. *See, e.g.*, *Brooks*, 131 F.4th at 616–17 (applying *Carlson* to Eighth Amendment deliberate indifference claims but declining to apply it to "the formulation of medical-care guidelines, policies, or protocols in prison"); *Stanard*, 88 F.4th at 818 (declining to extend *Carlson* to Fifth Amendment claim based on the same conduct as the Eighth Amendment claim); *see also supra* pp. 11–14.

Petitioners' unsupported assertions (at 15–16) that *Carlson* has had "negative systemic consequences for prison officials," including a "demonstrated risk of 'harassing litigation,'" fail to show that *Carlson* has "caused *significant* negative jurisprudential or real-world consequences." *Ramos v. Louisiana*, 590 U.S. 83, 122 (2020) (Kavanaugh, J., concurring in part) (emphasis added). To start, the generalized statistics Petitioners provide account for *all* civil-rights suits filed by federal or *state* prisoners in district courts, not just *Carlson* claims. *See* Pet. 23. But the vast majority of such suits are brought against state or local actors under 42 U.S.C. § 1983, not *Bivens* or *Carlson*. *See* Margo Schlanger, *Prison and Jail Civil Rights/Conditions Cases:*

Longitudinal Statistics, 1970–2021 (Mich. L. Sch. L. & Econ Working Paper No. 232, 2021), https://perma.cc/2FL5-KZET. This in part follows from Congress's choice to legislate mechanisms to control the flow of federal prisoner litigation into federal courts. The PLRA provides both an administrative exhaustion requirement, *see supra* pp. 26−27, as well as a means for judges to screen out frivolous claims before they are even docketed, 28 U.S.C. § 1915A. Petitioners' statistics, if anything, demonstrate that these safeguards are serving their purpose, leaving Petitioners' claims of widespread "harassing litigation" without support. Indeed, one study placed the number of *Carlson* cases at under 1% of the total federal question cases in the federal districts surveyed. *See* Alexander A. Reinert, *Measuring the Success of Bivens Litigation and Its Consequences for the Individual Liability Model*, 62 Stan. L. Rev. 809, 833 (2010). Petitioners cite nothing to show how many "harassing" claims are permitted to proceed, let alone how such cases merit revisiting this well-entrenched precedent.

2. Petitioners do not engage with the *stare decisis* factors. Instead, Petitioners invoke the retroactivity exception for "watershed rules of criminal procedure" in *Teague v. Lane*, 489 U.S. 288, 311 (1989), and its demise in *Edwards v. Vannoy*, 593 U.S. 255 (2021), to argue that *Carlson* is "moribund." Pet. 17–18. According to Petitioners, *Vannoy* provides a "useful parallel" because, as with the *Teague* watershed exception, "the Court has time and again rejected prisoners' efforts to bring suits under *Carlson*." Pet. 17.

That analogy fails. In *Teague*, the "watershed" exception was expressly conceived as a vanishingly

narrow hypothetical. 489 U.S. at 313. The cause of action recognized in *Carlson* was not. The Court framed *Carlson* as immediately actionable relief, not an abstract hypothetical exception. *See* 446 U.S. at 24–25. This Court's decision to limit *Bivens* remedies to existing contexts bears little resemblance to its rejection of "*every* claim that a new procedural rule qualifies as a watershed rule." *Vannoy*, 593 U.S. at 267–68; *see also Egbert*, 596 U.S. at 490–91 (observing some *Bivens* claims remain viable). *Teague* and *Vannoy* provide no reason to abandon *Carlson*.

III. Neither This Case nor *Watanabe* Are Worthy of Certiorari.

The issues presented in this case and the pending petition in *Nielsen v. Watanabe*, No. 25-417 (filed Oct. 3, 2025), do not merit the Court's time and resources. Both the Seventh and Ninth Circuits correctly applied the modern *Bivens* framework to prototypical *Carlson* claims. *See supra* pp. 10–12; *see also* BIO at 27, *Nielsen v. Watanabe*, No. 25-417 (U.S. Jan. 5, 2026). Granting review in these cases would be a vehicle for little else than to reiterate this Court's frequent admonitions that *Carlson* remains good law, or otherwise engage in minor debates about the precise boundaries of that recognized cause of action when confronting differing sets of facts. *See supra* p. 14.

If any issue is remotely worthy of certiorari, it is the Eleventh Circuit's outlier view that *Carlson* is moribund based on an administrative process that existed before *Carlson* was decided. *See Johnson*, 119 F.4th at 858–59. If the Court wishes to address that anomalous holding, it should do so after giving the Eleventh Circuit an opportunity to bring its precedent into conformity with the two-step framework the Court recently reiterated. *See Goldey*, 606 U.S. at

944. Indeed, such an opportunity is currently pending. *See, e.g.*, *Carrin v. Smiledge*, 773 F. Supp. 3d 1284, 1292–93 (N.D. Fla. 2025) (granting judgment on the pleadings following *Johnson*, but "invit[ing]" plaintiff to "appeal her case to the Eleventh Circuit"), *appeal docketed*, No. 25-11330 (11th Cir. Apr. 22, 2025); *see also* Pet. 23 (representing "[q]uestions about *Carlson*'s scope arise frequently"). If the Eleventh Circuit does not correct course and fails to adhere faithfully to the two-step framework, the Court can consider granting certiorari in a case arising from that circuit, and might even conclude that summary reversal is appropriate. *See, e.g.*, *Goldey*, 606 U.S. at 945 (summarily reversing the Fourth Circuit after erroneously applying *Bivens*).

Setting aside the Eleventh Circuit's errors, this case and *Watanabe* present equally bad vehicles for three reasons: The questions presented are fact-bound, were passed over by the lower courts, and may be obviated through discovery and additional motions practice.

First, both petitions seek the Court's review on fact-bound questions, focusing on whether specific facts render the plaintiffs' claims a "new context." Petitioners here ask whether Watkins's *Carlson* claim may proceed given that he was imprisoned at a "pretrial detention center" and suffered inadequate medical care for "pain after a surgery." Pet. i. Similarly, the *Watanabe* petitioner focuses on the "immediacy and severity of the harm alleged." Petition at i, *Nielsen v. Watanabe*, No. 25-417. But this Court generally does not "grant a certiorari to . . . discuss specific facts," instead taking up petitions with implications for future cases. *Texas v. Mead*, 465 U.S. 1041, 1043 (1984) (Stevens, J., respecting denial of

certiorari) (citation omitted); *see also Kyles v. Whitley,* 514 U.S. 419, 460 (1995) (Scalia, J., dissenting) (noting fact-bound cases are "the type of case[s] in which we are *most* inclined to deny certiorari"). Answering the specific questions that the petitioners in both cases chose to ask would not offer meaningful guidance for future cases.

Second, both cases come to the Court in their earliest stages. This case and *Watanabe* were appeals from motions to dismiss. After the Seventh and Ninth Circuits reversed the dismissals, no petitioner moved to stay the mandate. Proceedings have thus resumed in the trial courts. In *Watkins*, the district court recently granted Petitioner Mohan's motion to extend his time to file an answer until June 30, 2026. Dist. Ct. Dkt. 78; *see also* Dist. Ct. Dkt. 81 (confirming answer is due June 30). *Watanabe* is stayed pending resolution of the certiorari petition. *See Watanabe v. Derr*, No. 1:22-cv-00168-JAO-RT (D. Haw. Sept. 9, 2025), ECF No. 43. In both, discovery may clarify crucial issues raised in the pleadings. Indeed, the entire Seventh Circuit panel agreed that Watkins's case needed additional fact finding on his FTCA claim. Pet. App. 31a. Additional facts will better position the district courts to assess the *Carlson* and other claims and would aid any future appellate review. *See Seattle's Union Gospel Mission v. Woods*, 142 S. Ct. 1094, 1094 (2022) (Alito, J., respecting the denial of certiorari) (noting the Court regularly denies cases in an "interlocutory posture"); *see also Nat'l Football League v. Ninth Inning, Inc.*, 141 S. Ct. 56, 56–57 (2020) (Kavanaugh, J., respecting denial of certiorari) ("interlocutory posture . . . counsel[s] against . . . review").

Third, this Court typically does not grant certiorari where "the question presented was not pressed or passed upon below." *United States v. Williams*, 504 U.S. 36, 41 (1992). According to Petitioners, the question presented implicates both the Fifth and Eighth Amendments. Pet. i. But as Petitioners concede, the Seventh Circuit did not consider Watkins's Fifth Amendment claim. *See* Pet. 24. Neither did the district court. *See* Pet. App. 10a n.3; *see also* Pet. App. 63a n.10. Nor did the Seventh Circuit consider Petitioners' argument that the ARP renders any *Carlson* claim a "new context" because Petitioners only raised the ARP at step two. *See supra* p. 25. Granting certiorari on issues passed over by the lower courts would contravene this Court's typical practice because this Court is "a court of review, not of first view." *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005).

CONCLUSION

For the foregoing reasons, the Court should deny the petition.

Respectfully submitted,

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