No. 25-952

# In the Supreme Court of the United States

BRIJ MOHAN, ET AL., PETITIONERS

*v.*

JORDAN WATKINS

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

## REPLY BRIEF FOR THE PETITIONERS

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In the decision below, the Seventh Circuit held that *Bivens* v. *Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), and *Carlson* v. *Green*, 446 U.S. 14 (1980), permit respondent, an inmate in a pretrial detention facility, to sue a member of the facility's medical staff for allegedly violating his rights under the Fifth and Eighth Amendments through deliberate indifference to his chronic pain after a surgery. Contrary to respondent's contention, that decision—like the Ninth Circuit's decision in *Watanabe* v. *Derr*, 115 F.4th 1034 (2024), petition for cert. pending *sub nom. Nielsen* v. *Watanabe*, No. 25-417 (filed Oct. 3, 2025)—conflicts with the decisions of several other courts of appeals. This Court should grant review in this case, *Nielsen*, or both cases to resolve that conflict and to clarify *Carlson*'s continuing scope and vitality.

**A. The Decision Below Is Incorrect**

1. Respondent does not dispute that, if this case arises in a new context for *Bivens*, special factors would counsel hesitation in extending *Bivens* to it. See Pet. 14-16. Respondent instead contends (Br. in Opp. 19-27) only that this case arises in the same context as *Carlson*. But this case differs from *Carlson* in several meaningful ways. See Pet. 11-14.

First, since *Carlson*, Congress has enacted the Prison Litigation Reform Act of 1995 (PLRA), 28 U.S.C. 1915A. See Pet. 11. Respondent dismisses (Br. in Opp. 26-27) the PLRA's relevance, but as this Court has explained, the statute shows that "Congress had specific occasion to consider the matter of prisoner abuse" yet declined to "provide for a standalone damages remedy." *Ziglar* v. *Abbasi*, 582 U.S. 120, 148-149 (2017); see *Goldey* v. *Fields*, 606 U.S. 942, 944 (2025) (per curiam) ("Congress has actively legislated in the area of prisoner litigation but has not enacted a statutory cause of action for money damages."). Respondent also contends that the PLRA "presupposed the existence of at least some *Bivens* remedies" by requiring exhaustion of remedies before a prisoner sues "'under section 1983 of this title, or any other Federal law.'" Br. in Opp. 27 (quoting 42 U.S.C. 1997e(a)) (emphasis omitted). But the quoted provision's generic reference to "any other Federal law" presupposes only that prisoners may sue under federal laws other than Section 1983, not that they may sue under *Carlson* in particular.

Second, the Bureau of Prisons (Bureau) has established an Administrative Remedy Program, through which inmates may seek administrative review of issues relating to their confinement. See Pet. 11-12. Respondent notes (Br. in Opp. 24) that the program existed when

this Court decided *Carlson*, but the program did not exist when the inmate in *Carlson* died and was not mentioned in the Court's opinion. See Pet. 12. Respondent also insists (Br. in Opp. 24) that the existence of alternative remedies is relevant only at the second step of the *Bivens* analysis (which asks whether special factors counsel hesitation), not at the first step (which asks whether a case arises in a new context). But that rigid dichotomy between the two steps ignores this Court's admonition that "a case presents a new *Bivens* context" if it involves "potential special factors that previous *Bivens* cases did not consider," *Abbasi*, 582 U.S. at 139-140, and that the two steps "often resolve to a single question," *Egbert* v. *Boule*, 596 U.S. 482, 492 (2022).

Third, this case involves a different type of injury. See Pet. 12-13. Respondent quibbles (Br. in Opp. 22-23) about whether the injury in *Carlson* is properly described as acute and whether the injury here is properly described as chronic, but that misses the point. *Carlson* involved an intentional failure to treat a one-time medical emergency (an asthmatic attack that led to the inmate's death). See 446 U.S. at 16 n.1. This case, by contrast, involves an alleged failure to prioritize treatment of a long-term medical condition (post-surgery pain). See Pet. App. 3a. Contrary to respondent's suggestion (Br. in Opp. 23), that is a meaningful difference: "Because prison medical facilities are generally designed to treat occasional, acute illnesses, the long-term management of chronic conditions necessarily involves substantial non-medical considerations beyond those incident to emergency treatment." Pet. App. 41a (Kirsch, J., concurring in the judgment in part and dissenting in part).

Finally, the inmate in *Carlson* was a convicted prisoner, while respondent was a pretrial detainee when the alleged deliberate indifference to his medical needs be-

gan. See Pet. 13-14. Respondent dismisses that distinction because "all federal detainees and prisoners are subject to transfer to different facilities at any time for a host of reasons." Br. in Opp. 25 (citation omitted). But a pretrial detention center is "inherently transitory" in a way that a prison is not. Pet. App. 42a (Kirsch, J., concurring in the judgment in part and dissenting in part). Further, a pretrial detainee's claim of deliberate indifference to medical needs rests on the Fifth Amendment, while a convicted prisoner's claim rests on the Eighth Amendment. See Pet. 13. Though respondent denies (Br. in Opp. 26) the significance of that distinction, this Court has already concluded that the distinction renders a context new. See *Abbasi*, 582 U.S. at 148 ("[A] case can present a new context for *Bivens* purposes if it implicates a different constitutional right[.] * * * The constitutional right is different here, since *Carlson* was predicated on the Eighth Amendment and this claim is predicated on the Fifth.").

2. In the course of resolving this case (or *Nielsen*), this Court should "provide some greater clarity as to what, if anything, is left of *Carlson*." *Watanabe* v. *Derr*, 139 F.4th 1056, 1077 (9th Cir. 2025) (Collins, J., dissenting from the denial of rehearing en banc). Specifically, the Court should make clear that *Carlson* claims are no longer viable and that *Carlson* is now moribund. See Pet. 16-18.

Contrary to respondent's contention (Br. in Opp. 27-31), this Court need not apply the *stare decisis* factors or overrule *Carlson*. The government is not asking the Court to change existing law. Instead, it is asking the Court to apply the existing *Bivens* framework and to recognize that, under that framework, every *Carlson* case going forward will present a new context to which *Bivens* should not be extended. Put another way, "the

Court's *current* standards," "if faithfully applied," would "finish off *Carlson* entirely." *Watanabe*, 139 F.4th 1077 (Collins, J., dissenting from the denial of rehearing en banc). *Stare decisis* does not preclude the Court from "forthrightly acknowledging reality." *Edwards* v. *Vannoy*, 593 U.S. 255, 272 (2021).

Respondent's appeal to *stare decisis* is particularly inapt given Congress's enactment of the PLRA in the years since *Carlson*. See p. 2, *supra*. As a result of that statute, this case and future cases will arise against a different legal backdrop than *Carlson* did—and will therefore present new *Bivens* contexts. See *Abbasi*, 582 U.S. at 148 (concluding that a case arose in a new context because it had "features that were not considered in the Court's previous *Bivens* cases"). This Court need not apply the *stare decisis* factors to determine the effect of a post-*Carlson* statute on *Carlson*'s continuing viability. Cf. *McCutcheon* v. *FEC*, 572 U.S. 185, 200 (2014) (plurality opinion) (determining that a constitutional precedent "d[id] not control" because it had addressed a "different statutory regime" and arose against a "distinct legal backdrop").

**B. The Question Presented Warrants This Court's Review**

Respondent insists (Br. in Opp. 9-19) that the courts of appeals' decisions applying *Carlson* have largely been consistent with each other. That is incorrect. As multiple courts and judges have observed, *Carlson* has generated "a flood of inconsistent case law across and within circuits." Pet. App. 45a (Kirsch, J., concurring in the judgment in part and dissenting in part); see Pet. 21-23 (collecting sources).

To begin, as even respondent concedes (Br. in Opp. 15-19), the Seventh Circuit's decision in this case and the Ninth Circuit's decision in *Nielsen* conflict with the

Eleventh Circuit's decision in *Johnson* v. *Terry*, 119 F.4th 840 (2024), cert. denied, 146 S. Ct. 101 (2025), that *Carlson* claims may not proceed because the Bureau of Prisons' Administrative Remedy Program "by itself is enough to rule out inferring a *Bivens* cause of action." *Id.* at 861. Respondent errs in suggesting (Br. in Opp. 18) that the government does not defend the Eleventh Circuit's decision. In fact, the government agrees with that court that the Administrative Remedy Program alone suffices to foreclose any further *Carlson* claims, see Pet. 11-12, 16, though the government relies on other arguments as well, see Pet. 11-16.

The Seventh and Ninth Circuits' decisions also conflict with the Third Circuit's decision in *Muniz* v. *United States*, 149 F.4th 256 (2025), under which the Administrative Remedy Program precludes *Carlson* claims, except potentially in cases where prison officials thwart inmates' access to that program. See Pet. 19-20. This case and *Nielsen*—which do not involve allegations that prison officials thwarted access to administrative remedies—thus could not have gone forward in the Third Circuit, but unless this Court intervenes, they will proceed in the Seventh and Ninth Circuits. Respondent emphasizes (Br. in Opp. 17) that the Third Circuit's decision "is not a second vote for the Eleventh Circuit's position that *Carlson* claims are defunct," but that does not diminish the conflict with *Nielsen* and the decision below.

The Seventh and Ninth Circuits' decisions likewise conflict with decisions of the First and Tenth Circuits. See Pet. 20-21; contra Br. in Opp. 10-15. The First and Tenth Circuits have concluded that cases arise in new contexts when they involve different types of injuries than *Carlson*. See *Waltermeyer* v. *Hazlewood*, 136 F.4th 361, 366-367 (1st Cir. 2025) ("Waltermeyer's claims are

meaningfully different from those at issue in *Carlson* because here * * * [t]he claim does not involve a wrongful death–like action and at no time did the alleged failure to adequately treat concern either a life-threatening condition or extreme pain."); *Rowland* v. *Matevousian*, 121 F.4th 1237, 1243 (10th Cir. 2024) ("The prisoner [in *Carlson*] died as a result [of the mistreatment.] * * * These allegations are significantly different from the ones presented by Mr. Rowland."). By contrast, the Seventh and Ninth Circuits have broadly interpreted *Carlson* to permit claims of "constitutionally inadequate medical care in a federal prison." Pet. App. 8a; see *Watanabe*, 115 F.4th at 1038 ("In *Carlson*, the Supreme Court recognized an implied cause of action under the Eighth Amendment against prison officials who acted with deliberate indifference to an incarcerated individual's serious medical needs."). Those courts are not simply applying "the same test" to different facts, Br. in Opp. 15; rather, the First and Tenth Circuits are distinguishing *Carlson* in ways that the Seventh and Ninth Circuits are not.

Finally, since the filing of the petition for a writ of certiorari, the circuit conflict has deepened with the Fourth Circuit's decision in *Spivey* v. *Breckon*, 173 F.4th 174 (2026). There, the Fourth Circuit concluded that a case arose in a different context than *Carlson* both because Congress enacted the PLRA after *Carlson* and because the injuries there were less severe than those in *Carlson*. See *id.* at 179-180. Each of those rationales would foreclose the claims in this case and *Nielsen*. Respondent dismisses (Br. in Opp. 27 n.2) that decision on the ground that it conflicts with the Fourth Circuit's earlier decision in *Bulger* v. *Hurwitz*, 62 F.4th 127 (2023), but that is not correct; *Bulger*, like *Spivey*, ultimately *rejected* an inmate's attempt to bring a *Carl-*

*son* claim on the ground that it arose in a new context to which *Bivens* should not be extended. See *id.* at 137-142. In any event, even on respondent's account, *Spivey* confirms that *Carlson* has generated "a flood of inconsistent case law across and within circuits." Pet. App. 45a (Kirsch, J., concurring in the judgment in part and dissenting in part).

### C. This Case And *Nielsen* Are Both Appropriate Vehicles For Reviewing The Question Presented

1. As the petition for a writ of certiorari explains (at 24), this case and *Nielsen* are both suitable vehicles for addressing the question presented. Respondent's contrary arguments lack merit.

First, respondent is wrong to suggest (Br. in Opp. 32-33) that the petitions for writs of certiorari in this case and *Nielsen* seek fact-bound error correction. Both petitions ask this Court to resolve circuit conflicts about *Carlson*'s scope and continuing vitality. And though the Court would have the option of resolving the cases on narrow grounds, the government's principal contention is that, given the PLRA and the Bureau's Administrative Remedy Program, no further *Carlson* claims are viable. A ruling to that effect would provide "meaningful guidance for future cases." *Id.* at 33.

Second, respondent emphasizes (Br. in Opp. 33) that this case and *Nielsen* come to this Court at the motion-to-dismiss stage. But the Court often reviews *Bivens* cases in that posture. See, *e.g.*, *Goldey*, 606 U.S. at 943-944; *Abbasi*, 582 U.S. at 130; *Minneci* v. *Pollard*, 565 U.S. 118, 121-122 (2012); *Ashcroft* v. *Iqbal*, 556 U.S. 662, 669-670 (2009). Contrary to respondent's contention (Br. in Opp. 33), additional factual development will not affect the resolution of the purely legal question whether

respondent's claim arises in a context different from *Carlson*.

Third, respondent observes (Br. in Opp. 34) that, in the Seventh Circuit, petitioners invoked the Bureau's Administrative Remedy Program at the second step rather than the first step of the *Bivens* framework. As noted above, however, respondent's rigid dichotomy between the two steps overlooks that "those steps often resolve to a single question." *Egbert*, 596 U.S. at 492. It also ignores that, "[o]nce a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below." *Yee* v. *City of Escondido*, 503 U.S. 519, 534 (1992). In particular, "[b]ecause recognizing a *Bivens* cause of action 'is an extraordinary act that places great stress on the separation of powers,' [this Court] ha[s] 'a concomitant responsibility' to evaluate any grounds that counsel against *Bivens* relief." *Egbert*, 596 U.S. at 497 n.3 (citations omitted). In all events, respondent's objection does not apply to *Nielsen*, where the Ninth Circuit rejected the invocation of the Administrative Remedy Program at the first step. See *Watanabe*, 115 F.4th at 1042 (concluding that a claim "d[id] not present a new *Bivens* context, notwithstanding the fact that the incarcerated individual had access to and used the [Bureau's] administrative complaint system").

2. The petition for a writ of certiorari in this case explained (at 24) that, though this case is a suitable vehicle for clarifying *Carlson*'s scope and continuing vitality, *Nielsen* is an even better vehicle. As the petition noted (*ibid.*), the claim in this case arises in part under the Fifth Amendment and in part under the Eighth Amendment, while the claim *Nielsen* arises entirely under the Eighth Amendment. The claim in *Nielsen* is thus more

typical of the cases in the circuit conflict and of *Carlson* claims more generally.

The respondent in *Nielsen* contends that, because *Nielsen* is more typical of *Carlson* claims, "review [t]here would not clarify the outer bounds of *Carlson*." Resp. First Supp. Br. at 3, *Nielsen*, *supra* (No. 25-417). That is incorrect. Courts of appeals have reached different results in cases that involve the fact pattern in *Nielsen*, see pp. 5-8, *supra*, and granting review in *Nielsen* would enable this Court to address that conflict. Regardless, if this Court shares the concern raised by the respondent in *Nielsen*, it could either grant certiorari in this case, or grant certiorari in both cases and consolidate them for briefing and argument.

* * * * *

This Court should grant the petition for a writ of certiorari in *Nielsen*, this case, or both cases. If it grants certiorari only in *Nielsen*, it should hold the petition for a writ of certiorari in this case pending the resolution of *Nielsen*.

Respectfully submitted.

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