No. 26A-_____

IN THE SUPREME COURT OF THE UNITED STATES

AARON MURRAY,

Applicant,

v.

JEANETTE MIRANDA, ET AL.

APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

TO THE HONORABLE CLARENCE THOMAS, ASSOCIATE JUSTICE OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE ELEVENTH CIRCUIT**:**

Pursuant to Supreme Court Rules 13.5 and 30.2, Applicant Aaron Murray respectfully requests a 59-day extension of time, to and including June 18, 2026,[1] within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case. The court of appeals issued an opinion and entered judgment on October 27, 2025. App. A; App. B. The court of appeals denied a petition for rehearing on January 20, 2026. App. C. Unless extended, the time to file a petition for a writ of certiorari will expire on April 20, 2026. The jurisdiction of this Court would be invoked under 28 U.S.C. 1254(1).

There is good cause for the requested extension to file a petition for a writ of certiorari on the critical question presented, given the impediments to direct

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[1] June 19, 2026 is a federal holiday. Alternatively, Applicant Murray requests a 30-day extension to and including May 20, 2026.

communication between Applicant and counsel and the heavy press of other matters, as set forth below.

1. This case presents two important questions on the application of this Court's *Bivens* case law to federal officials' unconstitutional deliberate indifference to the medical needs of incarcerated individuals: Whether injuries that result from medical indifference must be fatal to recover damages under *Bivens* and its progeny, specifically *Carlson*, and whether longstanding prisoner dispute resolution programs render such claims "a new context" barring damages entirely. The courts of appeal are fractured on both questions.

2. Applicant Aaron Murray's case arises out of federal correctional officers' disregard of his gallstones and gallbladder infection and subsequent nine-month refusal to provide him with physician-prescribed pain medicine leading up to his remedial surgery. During the nine months when officers snubbed Mr. Murray's physical and psychological need for pain mitigation, the combination of his lifelong heart defect (of which the officers were aware) and daily agony awaiting surgery had a life-threatening effect on his blood pressure.[2]

3. Mr. Murray filed a complaint against the prison officials alleging that they were deliberately indifferent to his medical needs in violation of the Eighth Amendment under *Bivens* v. *Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). The district court dismissed Mr. Murray's claims on the grounds that the existence of the Federal Bureau of Prisons' grievance system

[2] The Court of Appeals "repeat[ed] the[] [facts] [] only as necessary to resolve the case," App. A at 3, so all factual references are taken from Murray's underlying district court complaint.

("BOP ARP") presented a "new *Bivens* context" under this Court's test in *Egbert* v. *Boule*, 596 U.S. 482 (2022). App. A at 2.

4. On appeal, the Court of Appeals for the Eleventh Circuit appointed Brian G. Liegel, of Weil, Gotshal & Manges LLP to represent Mr. Murray *pro bono* for purposes of his appeal before that court. After briefing, the Eleventh Circuit affirmed the district court's decision, rejecting Mr. Murray's argument on appeal that his allegations are "materially indistinguishable" from *Carlson* v. *Green*, 446 U.S. 14 (1980). App. A at 5–8. Applying *Johnson* v. *Terry*, 119 F.4th 840 (11th Cir. 2024), *cert. denied*, No. 24-1170 (Oct. 6, 2025), the court of appeals found that Mr. Murray's case differs from *Carlson* because (1) the BOP ARP created a new *Bivens* context; and (2) Mr. Murray's "non-lethal" injuries were not as severe as those in *Carlson* because Mr. Murray survived. *Ibid.* The Eleventh Circuit denied Mr. Murray's petition for rehearing *en banc*. App. C.

5. This case reveals the fundamental incompatibility of *Johnson* with *Bivens* and its progeny, warranting review by this Court as it is the ideal vehicle to resolve the circuit split created by *Johnson* regarding the viability of *Carlson* actions after this Court's decisions in *Ziglar* v. *Abbasi*, 582 U.S. 120 (2017) and *Egbert* v. *Boule*, 596 U.S. 482 (2022).

6. *First*, the Eleventh Circuit now imposes a higher burden to obtain relief under *Bivens* than required by this Court's decisions, demanding that a prisoner's injury be fatal to state a claim. *See* App. A at 7–8 (applying *Johnson* to hold "non-lethal physical injuries to [the] body that [are] eventually treated by the defendants" create a "new *Bivens* context"). This bright-line rule requiring a lethal injury to bring a claim under *Carlson* departs from this Court's precedent yet still divides the lower courts. Notably, this Court in *Ziglar* described the plaintiffs' injuries, including being

slammed into walls; having their arms, wrists, and fingers twisted; and suffering broken bones, as "just as compelling as those at issue in *Carlson*." *Ziglar*, 582 U.S. at 147. The Eleventh Circuit's rule departs from that of the Third, Fourth, Fifth, Seventh, and Ninth Circuits, each of which reject a bright-line "lethality" test. *See Muniz* v. *United States*, 149 F.4th 256, 262 (3d Cir. 2025); *Masias* v. *Hodges*, No. 21-6591, 2023 WL 2610230, at *2 (4th Cir. Mar. 23, 2023); *Vaughn* v. *Bassett*, No. 22-10962, 2024 WL 2891897, at *5 (5th Cir. June 10, 2024); *Watkins* v. *Mohan*, 144 F.4th 926, 936 (7th Cir. 2025); *Stanard* v. *Dy*, 88 F.4th 811, 817 (9th Cir. 2023). This case is therefore an ideal candidate to resolve this circuit split deepened by the Eleventh Circuit's decision in *Johnson*.

7. *Second*, *Johnson* has created a second circuit split because it requires courts within the Eleventh Circuit to consider the BOP's ARP as a "special factor" under step one of *Bivens* (the identification of a "new context"), rather than at step two (the creation of a new remedy). *Johnson*, 119 F.4th at 857–59; *see also id.* at 861–62. *Johnson* therefore nullifies this Court's decision in *Carlson* by holding that the BOP's ARP creates a "new *Bivens* context," despite the alternative relief program forming part of the factual context of *Carlson* itself. *Id.* at 858–59 ("Because an alternative remedy existed to remedy the type of harm Johnson allegedly suffered . . . Johnson's case is different from *Carlson*."); *see also* Administrative Remedy Program, 44 Fed. Reg. 62250 (Oct. 29, 1979) (codifying the BOP ARP at 28 C.F.R. 542). Thus, in contrast to other circuits, *Johnson* bars wholesale *Carlson* actions for deliberate indifference to a serious medical need because the context in *Carlson*—involving the existence of a BOP ARP—is necessarily a "new context" under *Johnson*.

8. Had Aaron Murray been in the Fourth, Fifth, Sixth, Seventh, or Ninth Circuits, all of which still treat this Court's decision in *Carlson* as binding precedent and recognize that the BOP ARP is not to be considered at step one, he likely would have prevailed on appeal. *See, e.g.*, *Masias*, 2023 WL 2610230, at *2; *Vaughn*, 2024 WL 2891897, at *5; *Koprowski* v. *Baker*, 822 F.3d 248, 256–57 (6th Cir. 2016); *Brooks* v. *Richardson*, 131 F.4th 613, 615–16 (7th Cir. 2025); *Watanabe* v. *Derr*, 115 F.4th 1034, 1042 (9th Cir. 2024). *Johnson* therefore has created a circuit split. *See also Watanabe* v. *Derr,* 139 F.4th 1056, 1076 (9th Cir. 2025) (Collins, J., dissenting from denial of reh'g en banc) ("[T]here is a limit to how much clarity we would ultimately have been able to provide . . . there is a substantial degree of internal doctrinal tension within the Supreme Court's current *Bivens* caselaw . . . particularly pronounced in the context of the . . . inadequate-prisoner-medical-care claim at issue here.").

9. This case calls for the Court's review for the reasons stated above. However, Applicant Aaron Murray respectfully requests a 59-day extension of time, to and including June 18, 2026, within which to file a petition for a writ of certiorari. The Eleventh Circuit's decision presents an important question regarding access to relief for violations of the Eighth Amendment and strict adherence to this Court's decisions. The decision below is the latest in a line of cases following *Johnson* which disregards this Court's precedents.

10. Moreover, the extension is warranted because Mr. Murray and counsel have been unable to speak directly since the court of appeals denied rehearing. Counsel understands that the institution where Mr. Murray is housed has suffered staffing shortages and lockdowns due to illness-related quarantines. As such, the institution has not responded to counsel's several requests for direct communication as of the date of this filing. Counsel has taken diligent steps to communicate with Mr.

Murray in light of the institution's lack of response, including sending letters to Mr. Murray informing him of the Eleventh Circuit's denial of rehearing. Yet, due to the inability to speak directly, counsel only received confirmation of Mr. Murray's desire to pursue a petition for a writ of certiorari to this Court on March 13, 2026, through communication with his family members. An extension of time would provide counsel with time to sufficiently confer with Mr. Murray prior to filing a petition for a writ of certiorari on his behalf and to prepare the petition in light of these communication-related delays.

11. Additionally, an extension is warranted because the attorneys with principal responsibility for drafting the petition have been heavily engaged with other matters. Among other matters, undersigned counsel has been responsible for briefing on multiple motions for summary adjudication and other pre-trial briefing in the Superior Court of the State of California for the County of Santa Clara, *see Ampere Computing, LLC* v. *FICT, Ltd.*, No. 23-423653 (Cal. Super. Ct. 2023), including briefs filed on March 10, March 30, and opposition and reply papers on the pending motions for summary adjudication due on April 24 and May 1, as well as hearings to present argument set for March 26, April 7, and May 14. Undersigned counsel has also been responsible for briefing in the District Court for the District of Columbia, where the reply brief was filed March 26, *see United States ex rel. O'Connor* v. *United States Cellular Corp.,* No. 20-2070 (D.D.C. 2020); in the Eleventh Circuit, where a reply brief is due April 13, *see Moriah Aharon* v. *PetroChina Int'l., Inc.*, No. 25-12241 (11th Cir. 2025); and in a consolidated appeal in the Appellate Court of Maryland, where an opposition brief is due April 27, *see United Healthcare Servs., Inc.* v. *United Therapeutics Corp.*, No. 25-1809 (Md. App. Ct. 2025). Undersigned counsel additionally has a principal brief due within the month of April in the First Circuit,

see In re: Fin. Oversight and Mgmt. Bd. of Puerto Rico, No. 25-1750 (1st Cir. 2025); an opposition brief due June 23 in this Court, *see Salazar* v. *Paramount*, No. 25-459 (S. Ct. 2025); and a principal brief due July 15 in the Ninth Circuit, *see Dib* v. *Apple*, No. 26-1801 (9th Cir. 2026). Accordingly, additional time is needed to permit the preparation and printing of an effective petition in this matter.

WHEREFORE, Applicant requests that an extension of time, to and including June 18, 2026, be granted within which Applicant may file a petition for a writ of certiorari. Alternatively, Applicant requests a 30-day extension of time to and including May 20, 2026.

Respectfully submitted,

/s/ Gregory Silbert

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April 2, 2026

Appendix A

NOT FOR PUBLICATION

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

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

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]

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

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[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 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).

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*, 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]

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

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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 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

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 four-square 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 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

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undermined to the point of abrogation by the Supreme Court or by this court sitting *en banc*." *Id.*

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.

Appendix B

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 C

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

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.