

25-417 NIELSEN V. WATANABE

DECISION BELOW: 115 F.4th 1034

LOWER COURT CASE NUMBER: 23-15605

QUESTION PRESENTED:

This case concerns the judicially created damages remedy first recognized in *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). In *Carlson v. Green*, 446 U.S. 14 (1980), the Court extended *Bivens* to an Eighth Amendment claim of deliberate indifference to medical needs where prison officials failed to address an inmate's acute asthma attack and exacerbated it, causing his death on-site within hours.

Since then, this Court has emphasized that the creation of damages actions rests with Congress, not courts. The judicially created *Bivens* remedy thus cannot be extended to any "new *Bivens* context" if any "special factor counsel[s] hesitation" in doing so. *Ziglar v. Abbasi*, 582 U.S. 120, 139-140 (2017). "[T]he new-context inquiry is easily satisfied," encompassing cases with "'meaningful[ly]'" different facts, or "'potential special factors'" -including "alternative remedial structures" - "not consider[ed]" in the Court's prior cases. *Egbert v. Boule*, 596 U.S. 482, 492-493 (2022). "[A] court may not recognize a *Bivens* remedy" if "there is any reason to think that Congress might be better equipped to create a damages remedy." *Id.* at 492.

In this case, respondent alleged that he suffered a fractured coccyx in a prison gang fight, causing chronic pain, but was not sent to a hospital. The Ninth Circuit held the suit did not present a "new" context from *Carlson* - notwithstanding an alternative remedial scheme this Court did not consider in *Carlson*, and despite significant factual differences such as the immediacy and severity of the harm alleged. The question presented is:

Whether the Ninth Circuit here erred in recognizing a *Bivens* cause of action.

CERT. GRANTED 6/22/2026