No.

# 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*

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTION PRESENTED

In *Carlson* v. *Green*, 446 U.S. 14 (1980), this Court recognized a cause of action under *Bivens* v. *Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), for a claim that federal prison staff had violated the Eighth Amendment through deliberate indifference to a prisoner's (ultimately fatal) asthmatic attack. The question presented is whether *Carlson* permits an inmate's claim that prison staff at a pretrial detention center violated the Fifth and Eighth Amendments through deliberate indifference to an inmate's chronic pain after a surgery.

## PARTIES TO THE PROCEEDING

Petitioners (defendants-appellees below) are Brij Mohan and the United States of America. Respondent (plaintiff-appellant below) is Jordan Watkins. The complaint also named Jane Does and John Does as fictitious defendants.

## RELATED PROCEEDINGS

United States District Court (N.D. Ill.):

*Watkins* v. *Mohan*, No. 21-cv-2045 (Dec. 8, 2023)

United States Court of Appeals (7th Cir.):

*Watkins* v. *Mohan*, No. 24-1151 (July 16, 2025)

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### OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-46a) is reported at 144 F.4th 926. The memorandum opinion and order of the district court (App., *infra*, 47a-71a) is available at 2023 WL 8527414.

### JURISDICTION

The judgment of the court of appeals was entered on July 16, 2025. A petition for rehearing was denied on November 3, 2025 (App., *infra*, 72a-73a).

### INTRODUCTION

In *Bivens* v. *Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), this Court created a cause of action that enables private plaintiffs to sue certain federal officers for certain violations of the Fourth Amendment. Applying *Bivens* in *Carlson* v. *Green*, 446 U.S. 14 (1980), the Court created a cause of

action that enabled the estate of a deceased prisoner to sue federal prison-staff members who had allegedly violated the Eighth Amendment through their deliberate indifference to the prisoner's life-threatening asthmatic attack. But for the last 45 years, the Court has consistently refused to extend *Bivens* and *Carlson* to new contexts. See *Goldey* v. *Fields*, 606 U.S. 942, 945 (2025) (per curiam). Recognizing new *Bivens* actions is a "disfavored judicial activity" now that the Court has recognized that the Constitution vests the power to create new causes of action in Congress alone. *Egbert* v. *Boule*, 596 U.S. 482, 491 (2022).

In the decision below, however, the Seventh Circuit held that *Carlson* permits 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. In the Seventh Circuit's view, this suit "fit[s] squarely within the *Bivens* claim recognized by *Carlson*" because it concerns "constitutionally inadequate care in a federal prison." App., *infra*, 8a. Judge Kirsch's dissent responded that this case "differs meaningfully" from *Carlson* and that the Seventh Circuit has "extend[ed] *Carlson* to a new context despite th[is] Court's explicit instruction not to." *Id.* at 37a, 40a.

The Seventh Circuit's decision is incorrect. Under this Court's cases, a *Bivens* claim may not proceed if it arises in a new context and "there is a rational reason to think" that Congress, not courts, "'should decide whether to provide a damages remedy'" in that context. *Egbert*, 596 U.S. at 492 (citation omitted). This case arises in a context different from *Carlson* because the relevant statutory landscape has changed since *Carlson*, because the Bureau of Prisons' Administrative

Remedy Program provides an alternative remedial scheme that the Court did not consider in *Carlson*, because damages suits alleging a failure to address a chronic condition raise different concerns than do suits alleging a failure to address a life-threatening medical emergency, and because this case concerns a pretrial detention facility rather than a prison. There are also good reasons to think that Congress is better suited than courts to weigh the costs and benefits of a damages remedy; most importantly, courts lack the constitutional authority and institutional competence to set policies relating to the administration of prisons.

In fact, under a proper application of the framework set out in this Court's recent *Bivens* cases, *Carlson* should be obsolete. Given statutory developments and the Bureau's Administrative Remedy Program, every new prisoner suit will necessarily arise in a context that meaningfully differs from *Carlson*. And given courts' lack of authority and expertise in setting prison policy, there will always be a reason to pause before extending *Carlson* to a new context. No more *Carlson* claims should be viable.

This Court should grant review to clarify the scope and continuing vitality of *Carlson*. In the last two years, *Carlson* has produced a "flood of inconsistent case law" in the courts of appeals. App., *infra*, 45a (Kirsch, J., concurring in the judgment in part and dissenting in part). One court of appeals, the Eleventh Circuit, has adopted reasoning that effectively precludes any further *Carlson* claims. Another court, the Third Circuit, has largely cut off *Carlson* claims but left open the possibility of relief when a particular inmate is precluded from accessing administrative remedies. Two other courts, the First and Tenth Circuits, have effectively limited *Carlson* to its facts, refusing to extend it to in-

juries or treatments that differ from those involved there. In stark contrast, two courts, the Seventh and Ninth Circuits, continue to apply *Carlson* broadly, interpreting that decision to permit a wide range of claims of constitutionally inadequate medical care in federal prisons. Appellate judges have called on this Court to "resolve the multiple deep circuit splits over *Carlson*-related *Bivens* actions," *Watanabe* v. *Derr*, 139 F.4th 1056, 1064 (9th Cir. 2025) (R. Nelson, J., dissenting from the denial of rehearing en banc), petition for cert. pending, No. 25-417 (filed Oct. 3, 2025), and to "provide some greater clarity as to what, if anything, is left of *Carlson*," *id.* at 1077 (Collins, J., dissenting from the denial of rehearing en banc).

The pending petition for a writ of certiorari in *Nielsen* v. *Watanabe*, No. 25-417 (filed Oct. 3, 2025), already presents an opportunity for this Court to clarify the scope and continuing vitality of *Carlson*. Both *Nielsen* and this case would be suitable vehicles for resolving that issue, but *Nielsen* is marginally better because it (like the typical *Carlson* suit) involves a convicted prisoner, while this case involves a pretrial detainee. This Court should therefore grant the petition in *Nielsen* and hold this petition. Alternatively, the Court should grant this petition.

## STATEMENT

1. Respondent Jordan Watkins was detained in the Metropolitan Correctional Center in Chicago—first as a pretrial detainee from October 22, 2018, to July 18, 2019, and then as a convicted prisoner from July 18 to July 29. App., *infra*, 3a. On June 12, while he was still a pretrial detainee, he underwent surgery at an outside hospital to repair a hernia. *Ibid.* But he claims that,

once he returned to the detention facility, he began to experience severe pain and swelling in his groin. *Ibid.*

Respondent alleges that, around three days after his surgery, he told petitioner Dr. Brij Mohan, the facility's clinical director, of his pain and swelling. App., *infra*, 3a. According to respondent, medical staff dismissed his swelling as a routine side effect of the surgery, gave him medication that proved ineffective, denied his request to schedule a follow-up appointment with his surgical team, and provided no further care. *Ibid.*

On July 29, 2019, respondent was transferred to a new detention facility. App., *infra*, 3a-4a. He alleges that his condition persisted until he received a follow-up surgery in February 2020. *Id.* at 4a.

Respondent filed a request for an administrative remedy under the Bureau of Prisons' Administrative Remedy Program. App., *infra*, 4a. The Bureau denied the request. *Ibid.*

2. Respondent brought this suit in the United States District Court for the Northern District of Illinois. App., *infra*, 4a. He sued the United States under the Federal Tort Claims Act, ch. 753, Tit. IV, 60 Stat. 842, and Dr. Mohan under *Bivens* v. *Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). App., *infra*, 4a.[1] He claimed that Dr. Mohan had violated the Eighth and Fourteenth Amendments through deliberate indifference to his medical needs. *Id.* at 4a-5a n.1. The court of appeals later stated that he "might wish to seek leave to amend his complaint to clarify that treatment of a federal pretrial detainee is

[1] Although the United States is a party to this case and joins this petition for a writ of certiorari, it is not a defendant to respondent's *Bivens* claim.

governed by the Fifth Amendment rather than the Fourteenth." *Id.* at 5a n.1.

The district court dismissed the complaint. App., *infra*, 47a-71a. In dismissing the *Bivens* claim, the court reasoned that this case involves a new context to which *Bivens* should not be extended. *Id.* at 60a-70a. The court emphasized that the political branches have provided alternative remedies for claims like respondent's —namely, tort suits against the United States under the FTCA and administrative remedies under the Bureau's Administrative Remedies Program. *Id.* at 66a-70a.

3. A divided panel of the Seventh Circuit reversed and remanded. App., *infra*, 1a-46a.

The court of appeals invoked *Carlson* v. *Green*, 446 U.S. 14 (1980), a case in which this Court extended *Bivens* to cover certain claims that federal prison staff had provided constitutionally inadequate medical care. App., *infra*, 2a. The court of appeals reasoned that, because respondent's claims involve "constitutionally inadequate medical care in a federal prison," they "fit squarely within the *Bivens* claim recognized by *Carlson*." *Id.* at 8a. The court rejected petitioners' contention that this case differs from *Carlson* because (1) this case "involves inadequate postoperative care, not an acute medical emergency, as in *Carlson*," and (2) respondent "was a pretrial detainee for part of his time and medical care," meaning that prison staff "had to address his medical needs amidst uncertainty about whether and when he might be transferred to a different facility." *Id.* at 10a. The court reasoned that those distinctions are not "meaningful differences that would defeat [respondent's] claims." *Id.* at 11a.

Judge Kirsch concurred in the judgment in part and dissented in part. App., *infra*, 37a-46a. He concluded that this case differs from *Carlson* because (1) respond-

ent's medical condition was less acute and less severe than the condition in *Carlson* and (2) respondent was held in a pretrial detention center, an "inherently transitory facility." *Id.* at 42a; see *id.* at 39a-45a.

## REASONS FOR GRANTING THE PETITION

The court of appeals erred in recognizing a cause of action that enables respondent to bring this damages suit against Dr. Mohan. Its decision contravenes this Court's precedents, conflicts with the decisions of other courts of appeals, and threatens significant harm to the government and its employees. This Court should grant the petition for a writ of certiorari in *Nielsen* v. *Watanabe*, No. 25-417 (filed Oct. 3, 2025), which raises essentially the same question as this case, and hold the petition in this case pending the resolution of *Nielsen*. Alternatively, the Court should grant this petition.

### A. The Court Of Appeals Erred In Extending *Bivens* And *Carlson* To This Case

In *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), this Court created causes of action for certain types of constitutional claims. But the Court has since narrowed those decisions, stating that creating *Bivens* actions is now "a disfavored judicial activity." *Egbert* v. *Boule*, 596 U.S. 482, 491 (2022) (citation omitted). Contrary to those more recent decisions, the court of appeals erroneously extended *Carlson* to a new context. Indeed, later developments have effectively superseded *Carlson*, for every new prisoner suit will now present a new context to which *Carlson* should not be extended. At the least, this Court should confirm that 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.

### *1. This Court has consistently declined to extend* Bivens *and* Carlson *to new contexts*

"Constitutional rights do not typically come with a built-in cause of action to allow for private enforcement in courts." *DeVillier* v. *Texas*, 601 U.S. 285, 291 (2024). "Instead, constitutional rights are generally invoked defensively in cases arising under other sources of law, or asserted offensively pursuant to an independent cause of action designed for that purpose." *Ibid.* Such causes of action are ordinarily created through statutes enacted by Congress. See, *e.g.*, 42 U.S.C. 1983.

In *Bivens*, this Court created a cause of action against federal narcotics agents who had allegedly manacled the plaintiff, threatened his family, and searched his house without a warrant. See 403 U.S. at 397. Then, in *Davis* v. *Passman*, 442 U.S. 228 (1979), it created a cause of action for a Fifth Amendment equal-protection claim brought by a former congressional staffer alleging discrimination based on sex. See *id.* at 230-231. Finally, in *Carlson*, the Court created a cause of action for certain claims that prison staff violated the Eighth Amendment's ban on cruel and unusual punishment through deliberate indifference to a prisoner's serious medical needs. See 446 U.S. at 18-23. According to the allegations in *Carlson*, the prison staff, motivated "in part" by "racial prejudice," had "failed to give [the prisoner] competent medical attention for some eight hours after he had an asthmatic attack, administered contraindicated drugs which made his attack more severe, attempted to use a respirator known to be inoperative which further impeded his breathing, and delayed for

too long a time his transfer to an outside hospital"—causing the prisoner's death. *Id.* at 16 n.1.

Since then, this Court has come to recognize that courts lack the power to fashion new causes of action. See *Egbert*, 596 U.S. at 491; *Alexander* v. *Sandoval*, 532 U.S. 275, 286 (2001). "At bottom, creating a cause of action is a legislative endeavor." *Egbert*, 596 U.S. at 491. The Court has accordingly described the creation of a *Bivens* action as "a disfavored judicial activity" and an "extraordinary act that places great stress on the separation of powers." *Id.* at 491, 497 n.3 (citations omitted). In the 45 years since *Carlson*, the Court has consistently rejected every proposed *Bivens* action it has considered. See, *e.g.*, *id.* at 493-494, 498-499; *Hernández* v. *Mesa*, 589 U.S. 93, 113-114 (2020); *Wilkie* v. *Robbins*, 551 U.S. 537, 562 (2007); *FDIC* v. *Meyer*, 510 U.S. 471, 486 (1994); *Schweiker* v. *Chilicky*, 487 U.S. 412, 425 (1988); *United States* v. *Stanley*, 483 U.S. 669, 678 (1987); *Bush* v. *Lucas*, 462 U.S. 367, 390 (1983); *Chappell* v. *Wallace*, 462 U.S. 296, 304 (1983).

Notably, this Court has repeatedly declined to extend *Carlson* to new contexts. In *Correctional Services Corp.* v. *Malesko*, 534 U.S. 61 (2001), it declined to extend *Carlson* itself to claims against private companies that operate prisons on behalf of the federal government. In *Minneci* v. *Pollard*, 565 U.S. 118 (2012), it declined to extend *Carlson* to claims against employees at privately operated prisons. In *Ziglar* v. *Abbasi*, 582 U.S. 120 (2017), it determined that *Carlson* did not encompass claims challenging the policy governing the detention of aliens after the September 11 terrorist attacks or claims that a prison warden had violated the Fifth Amendment by allowing prison guards to abuse detainees. And in *Goldey* v. *Fields*, 606 U.S. 942 (2025) (per curiam), the Court summarily reversed a decision

in which a court of appeals had extended *Carlson* to claims that prison staff had violated the Eighth Amendment by using excessive force against a prisoner.

#### 2. *This case presents a new context to which* Bivens *and* Carlson *should not be extended*

This Court has applied a two-step test to decide whether to allow a *Bivens* claim to proceed. See *Egbert*, 596 U.S. at 492. The Court first asks whether the case presents "a new *Bivens* context"—*i.e.*, whether the case "meaningfully" differs from the three cases in which the Court has recognized a *Bivens* remedy. *Ibid.* (brackets and citation omitted). "A case might differ in a meaningful way 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 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." *Abbasi*, 582 U.S. at 139-140. "[T]he new-context inquiry is easily satisfied." *Id.* at 149. A case presents a new context even if it differs from earlier *Bivens* cases in "small" ways, for "even a modest extension is still an extension." *Id.* at 147, 149.

If a case arises in a new *Bivens* context, the Court then asks whether "'special factors'" indicate that courts are "at least arguably less equipped than Congress" to weigh the costs and benefits of a damages remedy. *Egbert*, 596 U.S. at 492. (citation omitted). "If there is even a single 'reason to pause before applying *Bivens* in a new context,' a court may not recognize a *Bivens* remedy." *Ibid.* (citation omitted).

Under that framework, respondent's claim may not proceed. This case involves a new context to which *Bivens* and *Carlson* should not be extended.

***New context.*** The court of appeals resolved this case at the first step of the *Bivens* framework, holding that this case presents the same context as *Carlson*. App., *infra*, 6a-17a. As Judge Kirsch recognized, that holding was wrong. *Id.* at 37a. This case meaningfully differs from *Carlson* in at least four ways.

First, this case arises against a different statutory backdrop than existed at the time of *Carlson*. Around 15 years after *Carlson*, Congress enacted the Prison Litigation Reform Act of 1995 (PLRA), 28 U.S.C. 1915A, a statute that reformed the way in which prisoners' suits are litigated in federal court. Though "Congress had specific occasion to consider the matter of prisoner abuse and to consider the proper way to remedy those wrongs," it did not "provide a standalone damages remedy." *Abbasi*, 582 U.S. at 148-149.

In *Abbasi*, this Court identified the enactment of the PLRA as a reason for concluding that a detainee suit with "significant parallels" to *Carlson* nonetheless arose in a new *Bivens* context. *Abbasi*, 582 U.S. at 147; see *id.* at 148-149. And in *Goldey*, the Court emphasized that "Congress has actively legislated in the area of prisoner litigation but has not enacted a statutory cause of action for money damages." 606 U.S. at 944. The enactment of the PLRA therefore meaningfully distinguishes this case from *Carlson*.

Second, this case involves a "potential special factor[] that [was] not consider[ed]" in *Carlson*—namely, "the existence of alternative administrative remedies" for respondent's claims. *Abbasi*, 582 U.S. at 140, 148. "[A] court may not fashion a *Bivens* remedy" if the political branches have established "'an alternative remedial

structure.'" *Egbert*, 596 U.S. at 493 (citation omitted). Here, the Bureau of Prisons has established an Administrative Remedy Program, under which an inmate may "seek formal review of an issue relating to any aspect of his/her own confinement." 28 C.F.R. 542.10(a). This Court has identified that program as a special factor that counsels against allowing prisoners to bring *Bivens* suits. See *Goldey*, 606 U.S. at 944; *Malesko*, 534 U.S. at 74. More broadly, it has explained that the availability of a regulatory grievance procedure "independently foreclose[s] a *Bivens* action." *Egbert*, 596 U.S. at 497.

To be sure, the Bureau's Administrative Remedy Program already existed in some form by the time this Court decided *Carlson* in 1980 (though it did not when the inmate in *Carlson* died in 1975). See 44 Fed. Reg. 62,250 (Oct. 29, 1979); *Muniz* v. *United States*, 149 F.4th 256, 265 n.5 (3d Cir. 2025). But *Carlson* did not even mention the program, much less analyze its effect on the viability of a *Bivens* claim. That alone shows that this case arises in a new context. This Court has explained that "a new context arises when there are 'potential special factors that previous *Bivens* cases did not consider.'" *Egbert*, 596 U.S. at 492 (quoting *Abbasi*, 582 U.S. at 140).

Third, this case involves a different type of injury than *Carlson*. The prisoner in *Carlson* "experienced an acute medical emergency that should have received immediate treatment to avoid serious injury or death." App., *infra*, 40a (Kirsch, J., concurring the judgment in part and dissenting in part). "By contrast, [respondent] had a chronic, non-emergent medical condition that required continuous, periodic treatment over several months." *Ibid.* "Because prison medical facilities are generally designed to treat occasional, acute illnesses, the long-term management of chronic conditions neces-

sarily involves substantial non-medical considerations beyond those incident to emergency treatment." *Id.* at 41a. "For example, because prisons do not traditionally house specialists or diagnostic and testing equipment, chronically ill prisoners in need of these services frequently must be seen by offsite providers." *Ibid.* "And because prisoners must be transported and monitored by armed guards at all times, these visits generate significant costs and risks on top of the need to schedule and pay for the care itself." *Ibid.* In short, respondent's claim "directly implicates broader issues within the prison healthcare system—namely, how prisons must contract, schedule, and coordinate appointments with outside providers." *Id.* at 42a. "This is a factual distinction that 'might alter the cost-benefit balance that justified an implied damages remedy' in *Carlson*, creating a new context." *Ibid.* (citation omitted). Moreover, a complaint about longer-term medical care is not just more likely to involve a question about policy or systemic management; it is also more likely amenable to resolution in response to an administrative complaint than is a complaint about an individual employee's discrete acts responding to the handling of an acute medical emergency (as in *Carlson*).

Finally, respondent was a pretrial detainee when the alleged deliberate indifference to his medical needs began; by contrast, *Carlson* involved a convicted prisoner. See App., *infra*, 42a-43a (Kirsch, J., concurring in the judgment in part and dissenting in part). This Court has already determined that, because "*Carlson* was predicated on the Eighth Amendment and [a pretrial detainee's] claim is predicated on the Fifth," a pretrial detainee's claim arises in a new context. *Abbasi*, 582 U.S. at 148; see *Egbert*, 596 U.S. at 498 ("[A] new context arises when there is a new 'constitutional right at

issue.'") (citation omitted). A pretrial detention center, moreover, is "inherently transitory." App., *infra*, 42a (Kirsch, J., concurring in the judgment in part and dissenting in part). Such centers "face a unique set of challenges given the type and number of detainees they house on a temporary basis." *Id.* at 43a. "The policy considerations at stake here are thus separate and distinct from those" in *Carlson*. *Ibid.*

***Special factors.*** Because this case meaningfully differs from *Carlson*, the court of appeals should have asked "whether there is *any* rational reason (even one) to think that *Congress* is better suited to 'weigh the costs and benefits of allowing a damages action to proceed.'" *Egbert*, 596 U.S. at 496 (citation omitted). There are many good reasons to think that Congress is better equipped than courts to decide whether to create a damages remedy for deliberate-indifference claims such as the one brought by respondent in this case.

"[T]he operation of our correctional facilities is peculiarly the province of the Legislative and Executive Branches of our Government, not the Judicial." *Bell* v. *Wolfish*, 441 U.S. 520, 548 (1979). "Running a prison is an inordinately difficult undertaking that requires expertise, planning, and the commitment of resources." *Turner* v. *Safley*, 482 U.S. 78, 84-85 (1987). Federal courts lack the legal authority and institutional competence to address those problems. Though courts "must take cognizance of the valid constitutional claims of prison inmates," they owe substantial "deference to the appropriate prison authorities." *Ibid.* The serious "separation of powers concerns" raised by the "'involvement of the federal courts in affairs of prison administration'" provide ample reason not to extend *Bivens* to this suit. *Id.* at 85, 89 (citation omitted); cf. *Egbert*, 596 U.S. at 494 (declining to extend *Bivens* to "the border-

security context" because "'foreign policy and national security are rarely proper subjects for judicial intervention'") (citation omitted); *Chappell*, 462 U.S. at 301 (declining to extend *Bivens* to military cases because "[j]udges are not given the task of running the Army") (citation omitted).

Extending *Carlson* could, moreover, "have negative systemic consequences for prison officials." *Goldey*, 606 U.S. at 944. Congress has directed the Bureau of Prisons to ensure that "each prisoner * * * has access to necessary medical care, mental health care, and medicine." 18 U.S.C. 3621(g)(1). In carrying out that task, prison staff must consider not only inmates' medical needs, but also resource constraints, the security risks posed by transporting prisoners to outside hospitals, and (in cases such as this one) the administrative challenges posed by an inmate's impending transfer from a pretrial detention facility to a prison. At a minimum, a court cannot reliably "predict the 'systemwide' consequences" of making prison staff personally liable for deliberate indifference to pretrial detainees' chronic conditions. *Egbert*, 596 U.S. at 493 (citation omitted). "That uncertainty alone is a special factor that forecloses relief." *Ibid.*; see App., *infra*, 44a (Kirsch, J., concurring in the judgment in part and dissenting in part).

Compounding those problems, prisoner suits pose a distinctive risk of abuse. Prisoner suits "account for an outsized share of filings" in federal court. *Woodford* v. *Ngo*, 548 U.S. 81, 94 n.4 (2006). This Court has noted that "[m]ost of these cases"—including those "claiming civil rights violations"—"have no merit." *Jones* v. *Bock*, 549 U.S. 199, 203 (2007). "Prisoners have ample time on their hands and have demonstrated a proclivity for frivolous suits to harass their accusers, the guards, and others who caused or manage their captivity." *Lewis* v.

*Sullivan*, 279 F.3d 526, 528-529 (7th Cir. 2002). The demonstrated risk of "harassing litigation" provides yet another reason to pause before extending *Carlson* to a new context. *Egbert*, 596 U.S. at 499 (citation omitted).

The existence of "alternative remedial procedures" provides a final reason not to extend *Carlson*. *Goldey*, 606 U.S. at 944. As discussed above, inmates may seek redress for improper medical care through the Bureau of Prisons' Alternative Remedy Program. See pp. 11-12, *supra*. Separately, prisoners who receive improper care often may file tort claims against the United States under the FTCA; indeed, respondent filed such a claim here. See App., *infra*, 4a. This Court has previously cited the availability of similar tort remedies in refusing to extend *Carlson* to suits against employees of privately operated federal prisons. See *Minneci*, 565 U.S. at 126-131. And although the Court observed in *Carlson* that "the *Bivens* remedy is more effective than the FTCA remedy," 446 U.S. at 20, that rationale "carries little weight because it predates [the Court's] current approach * * * and diverges from the prevailing framework in * * * important ways." *Egbert*, 596 U.S. at 500-501 (citing *Carlson*, 446 U.S. at 18-19). The Court has since made clear that the existence of alternative procedures can foreclose a *Bivens* suit even where a court believes that they are "not as effective," *id.* at 498 (citation omitted).

#### *3. This Court may well determine that* Carlson *claims are no longer viable*

Given the multiple reasons the court of appeals erred in failing to recognize that this case presents a different context than did *Carlson*, this Court could resolve this case (or *Nielsen*) without addressing the continuing viability of *Carlson* claims. But this Court's method of

analyzing what constitutes a new context could make clear that *Carlson* claims can longer be sustained.

This Court's decision in *Edwards* v. *Vannoy*, 593 U.S. 255 (2021), provides a useful parallel. Three decades before *Edwards*, a plurality held in *Teague* v. *Lane*, 489 U.S. 288 (1989), that new rules of criminal procedure generally do not apply retroactively to cases on collateral review, but made an exception for "watershed rules of criminal procedure." *Id.* at 311. In the ensuing years, the Court repeatedly determined that new rules, including "landmark and historic criminal procedure decisions," did not fit within that exception. *Edwards*, 593 U.S. at 271. In *Edwards*, the Court explained that it was "time—probably long past time—to make explicit what ha[d] become increasingly apparent to bench and bar over the last 32 years": "no new rules of criminal procedure can satisfy the watershed exception." *Id.* at 271-272.

If the Court finds that the enactment of the PLRA and the establishment of the Administrative Remedy Program are sufficient to establish a new context, then it will be recognizing that *Carlson*, like *Teague*'s watershed exception, is now "moribund." *Edwards*, 593 U.S. at 272. But that will be only the logical extension of what the Court has already said. Over the past quarter century, the Court has time and again rejected prisoners' efforts to bring suits under *Carlson*. See *Goldey*, 606 U.S. at 945; *Abbasi*, 582 U.S. at 149; *Minneci*, 565 U.S. at 131; *Malesko*, 534 U.S. at 74. It has made clear that, even if the "parallels" with *Carlson* are "significant" and the "differences" are "small," "the new-context inquiry is easily satisfied." *Abbasi*, 582 U.S. at 147, 149.

Going forward, no new prisoner suit could ever proceed under a proper application of this Court's two-step

*Bivens* framework. Every prisoner suit will necessarily arise in a context different from *Carlson*, both because Congress's enactment of the PLRA has materially altered the statutory backdrop and because the suit would involve a potential special factor that was not considered in *Carlson* (the Bureau's Administrative Remedy Program). See pp. 11-12, *supra*. And in every such case, a court will have at least one rational reason to think that Congress might be better positioned than the Judiciary to assess the costs and benefits of extending *Carlson*. See pp. 14-16, *supra*. The Court's *Bivens* framework will therefore lead to the same outcome in every case where a prisoner brings a *Carlson* claim: The claim may not proceed.

Either *Nielsen* or this case could serve as the opportunity to make that point explicit. "Continuing to articulate a theoretical [cause of action under *Carlson*] that never actually applies in practice offers false hope to [plaintiffs], distorts the law, misleads judges, and wastes the resources of defense counsel, [plaintiffs' counsel], and courts." *Edwards*, 593 U.S. at 272. "Moreover, no one can reasonably rely on [a cause of action] that is non-existent in practice, so no reliance interests can be affected by forthrightly acknowledging reality." *Ibid.* This Court would therefore be able to declare that *Carlson* "must 'be regarded as retaining no vitality.'" *Ibid.* (citation omitted).

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

In recent years, *Carlson* has generated "a flood of inconsistent case law across and within circuits." App., *infra*, 45a (Kirsch, J., concurring in the judgment in part and dissenting in part). Courts of appeals have issued conflicting decisions reflecting a wide range of views about *Carlson*'s scope and continuing vitality.

One court of appeals, the Eleventh Circuit, has adopted reasoning that effectively forecloses any more *Carlson* claims. In *Johnson* v. *Terry*, 119 F.4th 840 (11th Cir. 2024), cert. denied, 146 S. Ct. 101 (2025), the court determined that a deliberate-indifference claim with "'significant parallels'" to *Carlson* nonetheless arose in a new context in part because *Carlson* "did not consider whether there were alternative remedies." *Id.* at 857-858 (citation omitted). The court then determined that the Bureau's Administrative Remedy Program "is a special factor that by itself is enough to rule out inferring a *Bivens* cause of action." *Id.* at 861. The plaintiff in that case alleged that "he was denied access to the program," but the court rejected the argument, explaining that, because "the ultimate question is whether Congress or the Executive created an alternative remedy," courts may not "look at the adequacy or efficacy of the alternative remedy in general or in relation to a specific plaintiff." *Id.* at 860. "Although [the plaintiff] believe[d] he was, in essence, not allowed to access the grievance procedure, that [wa]s not enough to disqualify it as a special factor and authorize the creation of a new *Bivens* remedy." *Id.* at 861. One district court in the Eleventh Circuit has since stated that *Johnson* "calls into doubt the continuing existence of the *Bivens* remedy in *Carlson*-like situations." *Carrin* v. *Smiledge*, 773 F. Supp. 3d 1284, 1292 (N.D. Fla. 2025).

Another court of appeals, the Third Circuit, has stopped a step short of the Eleventh Circuit's decision in *Johnson*. In *Muniz* v. *United States*, *supra*, the Third Circuit reasoned that, because the Bureau's Administrative Remedy Program "did not factor into the Supreme Court's remedial analysis in *Carlson*, the availability of that mechanism to [an inmate] creates a new context at the first step." 149 F.4th at 264. "In

addition to creating a new context at step one," the Third Circuit continued, the program "'forecloses the need to fashion a new, judicially crafted cause of action' at the second step as well." *Ibid.* (brackets and citation omitted). But then, in dicta, the court stated that "*Carlson* relief remains available to inmates in limited circumstances." *Id.* at 265. Specifically, the court left open the possibility that an inmate could bring a *Carlson* claim "should 'prison administrators thwart inmates from taking advantage'" of the Administrative Remedy Program. *Ibid.* (citation omitted).

Two more courts of appeals, the First and Tenth Circuits, have confined *Carlson* closely to the facts it involved. In *Waltermeyer* v. *Hazelwood*, 136 F.4th 361 (2025), 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." *Id.* at 366-367. Similarly, in *Rowland* v. *Matevousian*, 121 F.4th 1237 (2024), the Tenth Circuit suggested that valid *Carlson* claims involve allegations that "[p]rison officials acted against the doctor's orders," "[t]he prisoner was 'administered contra-indicated drugs," and "[t]he prisoner died as a result." *Id.* at 1243 (brackets and citation omitted). (The Eleventh Circuit in *Johnson* likewise noted that "[t]he severity, type, and treatment of [the inmate's] injuries differ[ed] significantly from those of the prisoner in *Carlson*," 119 F.4th at 859, but as discussed above, other aspects of the court's reasoning foreclose *Carlson* claims irrespective of those factual distinctions.)

By contrast, the Seventh and Ninth Circuits have concluded that *Carlson* continues to allow prisoners to bring a wide range of Eighth Amendment deliberate-indifference claims. In *Brooks* v. *Richardson*, 131 F.4th

613 (2025), the Seventh Circuit reasoned that *Carlson* permits claims "that a federal prison's staff provided constitutionally deficient medical care." *Id.* at 615. And in the decision below, the Seventh Circuit reiterated that claims of "constitutionally inadequate medical care in a federal prison * * * fit squarely within the *Bivens* claim recognized by *Carlson*." App., *infra*, 8a. The majority opinion expressly rejected the contention (accepted by Judge Kirsch) that a case arises in a different context than *Carlson* if it involves a different type of injury or different type of treatment implicating different "issues within the prison healthcare system." *Id.* at 42a (Kirsch, J., concurring in the judgment in part and dissenting in part); see *id.* at 9a-17a.

The Ninth Circuit, similarly, has determined that *Carlson* permits claims that a prisoner "suffered deliberate medical indifference while incarcerated, in violation of the Eighth Amendment's proscription against cruel and unusual punishment." *Watanabe* v. *Derr*, 115 F.4th 1034, 1036 (2024), petition for cert. pending, No. 25-417 (filed Oct. 3, 2025). In the Ninth Circuit's view, "the existence of alternative remedial structures does not render [a] case a new context." *Id.* at 1042. The Ninth Circuit has also concluded that "[a] plaintiff need not suffer death or a life-threatening injury for his claim to be sufficiently analogous to *Carlson*." *Id.* at 1041. The Ninth Circuit has reached similar conclusions in other cases. See *Schwartz* v. *Miller*, 153 F.4th 918, 923 (2025); *Stanard* v. *Dy*, 88 F.4th 811, 818 (2023).

Several appellate judges have acknowledged that multi-sided circuit conflict. For example:

- The Third Circuit has observed that "a circuit split has arisen" on the scope of *Carlson*. *Muniz*, 149 F.4th at 264 n.4.

- In a statement respecting the Ninth Circuit's denial of rehearing en banc in *Watanabe*, Judge Paez recognized that "the circuits have split on the role of alternative remedies and the continued viability of *Carlson* actions." *Watanabe* v. *Derr*, 139 F.4th 1056, 1057 (2025).
- Judge Ryan Nelson, dissenting alongside nine other judges from the denial of rehearing en banc in *Watanabe*, stated that "the Supreme Court will hopefully resolve the multiple deep circuit splits over *Carlson*-related *Bivens* actions," that "there are multiple entrenched *Carlson*-related circuit splits that deserve th[is] Court's attention," and that "the inter-circuit tension on the availability of Eighth Amendment claims under *Bivens*" highlights "the need for Supreme Court review." 139 F.4th at 1064, 1073.
- Judge Collins, also dissenting from the denial of rehearing en banc in *Watanabe*, observed that "the Supreme Court has rejected all of the premises on which *Carlson* was based; it has instructed [lower courts] that the contours of what remains of *Carlson*'s cause of action are to be evaluated under the Court's *current* standards; and those standards, if faithfully applied, would seemingly finish off *Carlson* entirely." 139 F.4th at 1077. "Against this backdrop," he continued, "trying to discern when the largely gutted decision in *Carlson* * * * remains controlling * * * is a challenging endeavor." *Ibid.* He expressed hope that this Court would "provide some greater clarity as to what, if anything, is left of *Carlson*." *Ibid.*
- In this case, Judge Kirsch observed that "[a]ppellate courts continue to struggle with the Court's

> limited guidance" and that the Seventh Circuit's decision "adds to th[e] growing discordance" among lower courts. App., *infra*, 44a-45a (dissenting opinion).

Questions about *Carlson*'s scope arise frequently. During the 12-month period ending March 31, 2025 (the most recent period for which statistics are available), prisoners filed more than 19,000 civil-rights suits in district courts, accounting for more than 7% of all civil cases. See Admin. Office of the U.S. Courts, *Federal Judicial Caseload Statistics* Tbl. C-2 (Mar. 31, 2025). Many of those suits involve Eighth Amendment claims of deliberate indifference. As discussed above, in just 2024 and 2025, six courts of appeals (the First, Third, Seventh, Ninth, Tenth, and Eleventh Circuits) issued conflicting decisions about the viability of such claims. See pp. 21-23, *supra*.

Finally, the question presented is important. "[T]he realities of running a penal institution are complex and difficult." *Jones* v. *North Carolina Prisoners' Labor Union, Inc.*, 433 U.S. 199, 126 (1977). The court of appeals' decision adds to those challenges by countermanding the political branches' policy judgments about the proper remedies for inadequate care in prisons, by exposing prison staff to harassing litigation, and by confronting staff with the risk of "personal financial liability." *Carlson*, 446 U.S. at 21. The court's decision also undermines the separation of powers by usurping a function, the creation of new causes of action, that the Constitution reserves to Congress.

### C. This Court Should Grant The Petition In *Nielsen* v. *Watanabe* And Hold The Petition In This Case

The pending petition for a writ of certiorari in *Nielsen* v. *Watanabe*, *supra*, presents the question whether

the Ninth Circuit erred in recognizing a cause of action under *Bivens* and *Carlson* for a prisoner who alleged deliberate indifference to his chronic pain. See Pet. at i, *Nielsen*, *supra* (No. 25-417). Like this case, *Nielsen* provides an opportunity to clarify *Carlson*'s scope and continuing vitality.

Though this case is a suitable vehicle for addressing that issue, *Nielsen* is an even better vehicle. The claim in this case arises in part under the Fifth Amendment and in part under the Eighth Amendment because the alleged constitutional violation began while respondent was still a pretrial detainee and then continued after his conviction and sentencing. Although the government argued that Fifth Amendment claims arise in a different context than *Carlson*, the Seventh Circuit declined to address some aspects of that issue, stating that "courts assess the viability of multiple *Bivens* claims * * * on a claim-by-claim basis" and that it would "leave further sorting out of these nuances to the district court on remand." App., *infra*, 10a n.3. The claim in *Nielsen*, by contrast, arises entirely under the Eighth Amendment, see *Watanabe*, 115 F.4th at 1036, making it more typical of the cases arising in the circuit conflict and of *Carlson* claims more generally. Granting certiorari in *Nielsen* would enable this Court to avoid any complications raised by the pretrial-detention context.

In addition, certiorari-stage briefing in *Nielsen* was already complete by the time of the filing of this petition for a writ of certiorari. Granting review in *Nielsen* could enable a prompter resolution of the question presented than granting review in this case.

This Court should therefore grant the petition for a writ of certiorari in *Nielsen* and hold the petition in this

case. If the Court does not grant review in *Nielsen*, it should grant this petition.[2]

**CONCLUSION**

This Court should hold this petition for a writ of certiorari pending resolution of the petition in *Nielsen* v. *Watanabe*, No. 25-417 (filed Oct. 3, 2025). Alternatively, the Court should grant this petition.

Respectfully submitted.

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FEBRUARY 2026

[2] The petition for a writ of certiorari in *Nielsen* further invites (at 31-32) this Court to overrule *Bivens*. Although the Court could clarify that *Carlson* is now moribund, the Court (as in *Egbert*) "need not reconsider *Bivens* itself." *Egbert*, 596 U.S. at 502. To the extent the Court wishes to consider whether to overrule *Bivens* altogether, it should do so in the context of a Fourth Amendment case that more closely resembles *Bivens* itself.

# APPENDIX

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**APPENDIX A**

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

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No. 24-1151

JORDAN WATKINS, PLAINTIFF-APPELLANT

*v.*

BRIJ MOHAN, ET AL., DEFENDANTS-APPELLEES

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Argued: Nov. 8, 2024
Decided: July 16, 2025

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Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division
No. 1:21-cv-02045—**Franklin U. Valderrama**, *Judge*

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Before RIPPLE, HAMILTON, and KIRSCH, *Circuit Judges*.

HAMILTON, *Circuit Judge*. While he was in federal custody, plaintiff-appellant Jordan Watkins underwent a hernia repair operation at an outside hospital. He began experiencing severe pain and swelling in his groin. Medical staff at the correctional facility allegedly told Watkins that his pain and swelling were ordinary side effects of his surgery. The medication they gave him did not relieve his pain or swelling, and they refused to schedule a follow-up appointment with his surgical team before he was transferred to another federal facility.

Watkins brought *Bivens* claims alleging that medical and correctional staff had been deliberately indifferent to his serious medical needs. See generally *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). He also brought a claim under the Federal Tort Claims Act (FTCA) against the United States for negligent medical treatment. See 28 U.S.C. § 1346(b). The district court dismissed all of his claims on the pleadings under Federal Rule of Civil Procedure 12(b)(6). The court thought the Supreme Court's current framework for evaluating *Bivens* claims should bar Watkins' *Bivens* claims and that he sued too late on his FTCA claim. We reverse on both grounds.

In *Carlson v. Green*, 446 U.S. 14 (1980), the Supreme Court recognized an implied damages remedy under *Bivens* against federal prison staff for providing constitutionally inadequate medical care. Over the last eight years, starting with *Ziglar v. Abbasi*, 582 U.S. 120 (2017), the Court has sharply curtailed the extension of *Bivens* to new contexts. Nevertheless, *Carlson* remains good law. It allows federal prisoners to sue for damages resulting from deliberate indifference to their serious medical needs. Under a straightforward application of *Carlson* and the Supreme Court's current legal framework for evaluating *Bivens* claims, Watkins' constitutional claims may go forward. Also, although Watkins' suit under the FTCA is untimely, he may be able to establish the requirements for equitable tolling.

## I. *Factual and Procedural Background*

The following facts are drawn from the allegations of the complaint, which we must accept as true when reviewing the grant of a motion to dismiss on the plead-

ings. *Sargeant v. Barfield*, 87 F.4th 358, 361 (7th Cir. 2023).

A. *Watkins' Surgery and its Aftermath*

Watkins was in federal custody in Chicago at the Metropolitan Correctional Center (MCC) as a pretrial detainee from October 22, 2018 to July 18, 2019 and as a convicted prisoner from July 18, 2019, when he was sentenced, to July 29, 2019, when he was transferred to another prison. On June 12, 2019, he underwent hernia repair surgery at an outside hospital. His discharge instructions said he should schedule a follow-up appointment with the hospital within two weeks of his surgery. After returning to MCC, Watkins "immediately" began experiencing severe pain and swelling in his groin, with his testicles swelling "to the size of a grapefruit." His pain and swelling became so severe that he could not sit or sleep.

Around three days after his surgery, Watkins told MCC medical staff, including defendant and Clinical Director Dr. Brij Mohan, of his pain and swelling. The medical staff dismissed his swelling as a "routine and benign side effect of the hernia repair surgery." They gave Watkins medication, but it was ineffective for relieving his pain or reducing the severe swelling in his scrotum. MCC staff denied his request to schedule a follow-up appointment with his surgical team. They did not provide any additional care to address Watkins' pain or swelling.

Watkins continued to report post-operative pain during the remainder of his custody at MCC. Despite his "progressively worsening medical condition," MCC medical staff cleared him for transfer from MCC. He was transferred to a new correctional facility on July 29,

2019. Watkins did not undergo surgery to address the ongoing complications from his hernia repair surgery until February 12, 2020.

B. *Procedural Background*

During the fall of 2019, Watkins began pursuing administrative remedies for the inadequate medical care he believes he received at MCC. He first submitted a request for an Informal Resolution Administrative Remedy in October 2019. Then, in November 2019, Watkins submitted a Request for Administrative Remedy to the United States Department of Justice. The Bureau of Prisons (BOP) issued a final denial of Watkins' request for administrative remedy on July 20, 2020.

Watkins filed suit in the Northern District of Illinois on August 7, 2020, just eighteen days after the Bureau issued its Final Denial. Complaint, *Watkins v. Mohan*, No. 20-cv-4662 (N.D. Ill. Aug. 7, 2020), ECF No. 1 (*Watkins I*). That suit was dismissed for reasons explained below. Watkins filed this second suit on March 24, 2021, asserting essentially the same claims as in *Watkins I*. The district court granted his request for attorney representation and recruited trial counsel to represent him. Through his recruited counsel, Watkins submitted a new operative complaint.

In his complaint, Watkins brought four claims under *Bivens* against Dr. Mohan and unnamed MCC medical and correctional staff. He alleged that Dr. Mohan and other MCC staff violated his constitutional rights by providing inadequate medical care. Watkins also asserted one claim under the Federal Tort Claims Act, 28 U.S.C. § 1346(b), against the United States for negligent medical treatment. The Department of Justice repre-

sents all the defendants and moved to dismiss Watkins' claims under Federal Rule of Civil Procedure 12(b)(6). It argued that Watkins had failed to state a claim for relief under *Bivens* and that Watkins' FTCA claim was time-barred. Watkins opposed the motion to dismiss on the grounds that his *Bivens* claims fit within the cause of action recognized by *Carlson v. Green* and that equitable tolling excused the untimely filing of his FTCA claim.

The district court granted defendants' motion to dismiss. It held that Watkins' constitutional claims fail because they arose in a "new context" to which *Bivens* should not be extended. It also held that equitable tolling is not available for Watkins' FTCA claim because he did not exercise reasonable diligence in filing this second lawsuit. *Watkins v. Mohan*, 2023 WL 8527414 (N.D. Ill. Dec. 8, 2023). Watkins has appealed.[1]

We reverse. In Part II, we explain that Watkins' Eighth Amendment claims fall well within the right of action recognized by the Supreme Court in *Carlson v. Green*. In Part III, we explain that the dismissal of Watkins' FTCA claim was premature because he has shown that he may be able to benefit from equitable tolling.

---

[1] Watkins' operative complaint identifies as the constitutional grounds for his claims the Eighth and Fourteenth Amendments. Complaints need not identify legal theories, of course, but on remand, Watkins might wish to seek leave to amend his complaint to clarify that treatment of a federal pretrial detainee is governed by the Fifth Amendment rather than the Fourteenth.

II. *Watkins' Bivens Claims*

We review de novo a district court's dismissal of a complaint for failure to state a claim. *Fosnight v. Jones*, 41 F.4th 916, 921 (7th Cir. 2022). We take all the facts alleged in Watkins' complaint as true and give him the benefit of all reasonable inferences. *Id.*

A. *Same Context as Carlson*

Since this nation's founding, federal courts have awarded damages against federal officers for violating the legal rights of United States citizens and others. See James E. Pfander, *Constitutional Torts and the War on Terror* 3-18 (Oxford: Oxford University Press 2017); *id.* at 9 (in the nineteenth century, courts "came to understand that their duty was to apply the law and determine, often with the help of a jury, the legality of official action. The burden of ameliorating the financial consequences of personal liability fell to Congress. . . . "); see also *Bivens*, 403 U.S. at 395-96 (noting precedents for damages actions). The Supreme Court continued that historical practice in *Bivens* when it recognized a right of action for damages directly under the Constitution for violations of individual rights by federal officials.

In *Bivens*, the plaintiff sought damages against federal officers who entered and searched his home without a warrant and arrested him using unreasonable force. 403 U.S. at 389. But the Court did not limit *Bivens* to Fourth Amendment claims. First, in *Davis v. Passman*, the Court recognized an implied damages action against a member of Congress for workplace sex discrimination in violation of the equal protection prong of the Fifth Amendment. 442 U.S. 228, 248-49 (1979). Then, in *Carlson*, the Court extended *Bivens* to a claim

against federal prison officials for failing to provide adequate medical care in violation of the Eighth Amendment. 446 U.S. at 18-19.

Since then, the Supreme Court has limited *Bivens* in a variety of ways, most importantly now in refusing to authorize *Bivens* actions in "new contexts." See *Ziglar v. Abbasi*, 582 U.S. 120, 135 (2017) (collecting cases refusing to recognize an implied damages remedy). But the Court has repeatedly declined to overrule *Bivens*, *Davis*, or *Carlson*. See *Egbert v. Boule*, 596 U.S. 482, 491, 502 (2022) (rejecting *Bivens* in new context but refraining from reconsidering *Bivens*); *Snowden v. Henning*, 72 F.4th 237, 242 (7th Cir. 2023) ("the Court has stopped short of overruling the *Bivens* trilogy").

Instead, the Court has fashioned a two-step framework to determine whether a *Bivens* action may proceed. Under the first step of the Court's current approach, a plaintiff's damages action against a federal official may proceed if it arises in an existing *Bivens* context. *Egbert*, 596 U.S. at 492. But if the plaintiff's case presents a "new *Bivens* context," the court must consider whether special factors indicate that "the Judiciary is at least arguably less equipped than Congress to 'weigh the costs and benefits of allowing a damages action to proceed.'" *Id.*, quoting *Ziglar*, 582 U.S. at 139, 136. Most recently, the Court held that a claim of excessive force under the Eighth Amendment presented a new context, implicitly beyond the scope of the *Carlson* context of deliberate indifference in prison health care. *Goldey v. Fields*, 606 U.S. —, 2025 WL 1787625 (2025).

We resolve this case at step one of the *Bivens* inquiry. We recently reiterated in *Brooks v. Richardson* that *Carlson* makes relief available for claims that "a federal

prison's staff provided constitutionally deficient medical care." 131 F.4th 613, 615 (7th Cir. 2025). Watkins asserts 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. Because Watkins' claims arise from allegedly constitutionally inadequate medical care in a federal prison and his principal theory is identical to that of the plaintiffs in *Carlson* and *Brooks*, his claims fit squarely within the *Bivens* claim recognized by *Carlson.* See *Brooks*, 131 F.4th at 614, 616 (reversing dismissal of similar *Bivens-Carlson* claim where plaintiff sought damages for prison staff's failure to diagnose or treat his appendicitis); see also *Stanard v. Dy*, 88 F.4th 811, 817 (9th Cir. 2023) (recognizing a *Bivens-Carlson* claim because plaintiff sought "a damages remedy for failure to provide medical attention evidencing deliberate indifference to serious medical needs"); *Watanabe v. Derr*, 115 F.4th 1034, 1041 (9th Cir. 2024) (same).

Defendant Mohan points to a few allegations in Watkins' complaint about his supervisory responsibilities as evidence that Watkins' claims rely on a theory of respondeat superior, which cannot form the basis of *Bivens* liability. See *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009) (in a *Bivens* action, "Government officials may not be held liable for the unconstitutional conduct of their subordinates under a theory of *respondeat superior*"). The Supreme Court's general rejection of respondeat superior liability for *Bivens* claims is clear, but the government's argument here relies on too narrow a reading of Watkins' complaint, one that is inconsistent with the standard for review on a motion to dismiss. To survive a motion to dismiss for failure to state a claim, a plaintiff need only plead "factual content that allows the court to

draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* at 678, citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2006).

Watkins alleges that he informed Dr. Mohan himself of his post-operative pain and swelling and that Dr. Mohan failed to take any action to address his serious medical needs. Watkins is therefore challenging the personal acts and omissions of Dr. Mohan, not merely seeking to hold him responsible for the conduct of the staff he supervises. The allegations in Watkins' complaint about Dr. Mohan's supervision of other MCC medical and nursing staff do not defeat all his *Bivens* claims. See also *Brooks*, 131 F.4th at 615 (local supervisors are exposed to *Bivens* claims but "may prevail on the merits because *Bivens* does not create vicarious liability" (citing *Iqbal*, 556 U.S. at 677)).

B. *No Meaningful Differences*

Defendants argue that Watkins' case is meaningfully different from *Carlson* such that his constitutional claims should be deemed to have arisen in a new "context" so that they should be dismissed. The Supreme Court has explained that a context is new if the plaintiff's claim "is different in a meaningful way" from an earlier *Bivens* claim authorized by the Court. *Ziglar*, 582 U.S. at 139. A meaningful difference is one that "might alter the policy balance that initially justified the implied damages remedies in the *Bivens* trilogy." *Snowden*, 72 F.4th at 239. It is not the case, however, that any degree of variation will preclude a *Bivens* remedy. "Some differences, of course, will be so trivial

that they will not suffice to create a new *Bivens* context." *Ziglar*, 582 U.S. at 149.[2]

Defendants have identified two distinctions that they argue are meaningful in terms of "the generality or specificity of the official action," "the risk of disruptive intrusion by the Judiciary," and "the extent of judicial guidance." See *Ziglar*, 582 U.S. at 140. First, defendants say, Watkins' case involves inadequate postoperative care, not an acute medical emergency, as in *Carlson*. Second, Watkins was a pretrial detainee for part of his time and medical care at MCC, so MCC staff had to address his medical needs amidst uncertainty about whether and when he might be transferred to a different facility. According to defendants, these features of Watkins' claims "implicate and challenge broader-level and more systemic issues within the BOP." They specifically identify the "housing and transfer of pre-trial detainees and inmates between facilities; the resource allocation, security, and timing decisions relating to outside consultation; and the scheduling of care" as issues over which *Carlson* did not authorize judicial oversight.[3]

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[2] Our *Bivens* analysis applies to Dr. Mohan and the unnamed members of MCC's medical and correctional staff designated in Watkins' complaint, so we refer to "defendants" collectively throughout this section.

[3] Defendants also argue that Watkins' case is meaningfully different from *Carlson* because his treatment as a pretrial detainee was subject to the Fifth Amendment rather than the Eighth Amendment. The dissenting opinion makes the same argument. In the district court, however, that distinction was not drawn at all, let alone addressed, by the parties or the district court. *Watkins*, 2023 WL 8527414, at *7 n.10. No one in the district court appears to have focused on the distinction between the Fourteenth Amendment's Due Process Clause, which applies to state pretrial detainees, and

Under the Supreme Court's current framework for assessing *Bivens* claims and our case law applying that framework, neither Watkins' transitionary status nor his complaints of post-operative pain constitute meaningful differences that would defeat his claims. First, there is no difference between "the generality or specificity of the official action" challenged in this case and in *Carlson*. See *Ziglar*, 582 U.S. at 140. As a threshold matter, all federal detainees and prisoners are subject to transfer to different facilities at any time for a host of reasons, which might or might not implicate medical treatment. Watkins' complaint does not identify any broadly applicable BOP policy, and the record is plainly insufficient to assess whether his claims implicate any such policies. But even if factual development reveals later that he was treated pursuant to a broadly applicable policy, Watkins, like the plaintiff in *Carlson*, is challenging the discrete acts and omissions of particular medical and correctional personnel who treated him or made decisions about his care. If Watkins was treated pursuant to a BOP policy, he can still challenge the ap-

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the Fifth Amendment's Due Process Clause, which applies to federal pretrial detainees. We note that the plaintiff in *Carlson* alleged violations of the Fifth Amendment's Due Process Clause and its equal protection component, as well as the Eighth Amendment. See *Green v. Carlson*, 581 F.2d 669, 671 (7th Cir. 1978), *aff'd*, 446 U.S. 14 (1980). Although Watkins' legal status changed from pretrial detainee to convicted prisoner, the MCC medical staff defendants always had a constitutional duty to respond reasonably to his known serious medical needs. Moreover, courts assess the viability of multiple *Bivens* claims as they do all others—on a claim-by-claim basis. E.g., *Egbert v. Boule*, 596 U.S. 482 (2022) (assessing separately the viability of First and Fourth Amendment claims). We leave further sorting out of these nuances to the district court on remand.

plication of that policy to the facts of his case. See *Stanard*, 88 F.4th at 817-18 (fact that plaintiff challenged defendant's application of "broadly applicable BOP policy governing HCV treatment protocol in federal prisons" did not take his claim out of *Carlson* context).[4]

To the extent that Watkins' claims implicate administrative considerations regarding scheduling, outside consultation, or prison assignment, that would not remove them from *Carlson*'s ambit. Defendants misapprehend the scope of the cause of action recognized in *Carlson* and assert an argument that *Brooks* rejected.

Careful attention to the facts of *Carlson* shows that the Court anticipated that its decision would lead to judicial scrutiny of administrative decisions by federal prisons in the context of health care. While *Carlson* might be best remembered for involving prison medical officials' mishandling of a prisoner's asthma attack and that prisoner's subsequent death, the plaintiff's allegations were not so limited. The plaintiff also alleged that the defendants mismanaged the prisoner's asthma throughout his incarceration. See *Green v. Carlson*, 581 F.2d 669, 671 (7th Cir. 1978) (plaintiff alleged that prison medical officials had failed to give the deceased prisoner proper medication or the steroid treatments ordered by his outside physician), *aff'd*, 446 U.S. 14 (1980). *Carlson* thus also dealt with management of a

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[4] Because Watkins is challenging only the specific actions of medical and correctional officers who were involved in his care, his case does not present a challenge "to the formulation of medical-care guidelines, policies, or protocols in prison." *Brooks*, 131 F.4th at 616. It therefore does not run afoul of the *Brooks* holding that such challenges present a new context to which *Bivens* and *Carlson* should not be extended. See *id.* at 616-17.

chronic, non-emergent medical condition requiring continuous, periodic treatment over many months, as well as all the administrative decisions that such treatment necessarily entails. The decision was not limited—explicitly or implicitly—in the ways defendants argue.

Moreover, *Carlson* also involved allegations about prison assignment and transfer. 446 U.S. at 16 n.1 (plaintiff alleged that the defendants "being fully apprised of the gross inadequacy of medical facilities and staff at [FCC Terre Haute] and of the seriousness of Jones' chronic asthmatic condition, nonetheless kept him in that facility against the advice of doctors"). These allegations reflect, and *Carlson* recognized, the reality that in prison, medical care is not hermetically sealed off from non-medical decision-making. In light of *Carlson*'s facts, Watkins' allegations that defendants failed to give him proper medication, failed to follow his surgical team's instructions, and failed to delay his transfer to another facility are no more disruptive or intrusive than what *Carlson* itself already approved.[5]

Even if *Carlson* had not spoken directly to the differences defendants rely upon to distinguish it, their argument would still be flawed. The main thrust of defendants' argument is that "claims that bear on general administrative and scheduling concerns are not cognizable

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[5] In *Sargeant v. Barfield*, we affirmed dismissal of a claim for failure to protect the plaintiff from violence from another prisoner. 87 F.4th 358 (7th Cir. 2023). We reasoned that the claim challenged prison officials' housing assignments, thus presenting a "new context" beyond *Carlson* because it implicated non-medical decisions. *Id.* at 367. Because *Carlson* itself involved allegations about prison assignment and transfer in the context of medical care, *Sargeant*'s reasoning does not block Watkins' claims.

under *Bivens*." This is a variation on a theme that *Brooks* already rejected. As our opinion explained, *all* requests for medical care implicate resource constraints and therefore entail decisions about scheduling and priorities. 131 F.4th at 615-16. So, the fact that Watkins' requests for medical care required defendants to allocate scarce resources among competing demands does not distinguish this case from *Carlson* or *Brooks*, or indeed from the mine-run of medical deliberate-indifference cases.[6]

The dissenting opinion suggests that allowing Watkins' claims to proceed will launch a new era of judicial interference with BOP operations. Post at 42-43. Not at all. Federal courts have been hearing a wide variety of federal prison health-care cases for more than fifty years since *Bivens* was decided and more than forty years since *Carlson* was decided. We also hear even greater numbers of cases involving health care for prisoners in state prisons and detainees in county jails. Medical and correctional staff can consult decades of circuit precedent applying the deliberate-indifference standard in cases involving the management of long-term ailments, consultation with outside providers, and prison assignment or transfer. E.g., *Arce v. Wexford Health Sources Inc.*, 75 F.4th 673, 679-81 (7th Cir. 2023) (no de-

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[6] The dissenting opinion takes the government's arguments even further, proposing that the context of *Carlson* be narrowed based on different types of BOP facilities, different diagnoses, different degrees of medical urgency, different severity of injuries, different transfer schedules for prisoners, and different roles played by BOP medical staff v. outside medical providers. Those arguments come close to urging that *Carlson* be limited to its facts. Neither the Supreme Court nor this court has tried to slice so finely the "new context" inquiry in *Bivens* jurisprudence.

liberate indifference where prison medical staff delayed follow-up care until ten days after initial hospital visit and failed to prescribe more potent painkillers); *Walker v. Wexford Health Sources, Inc.*, 940 F.3d 954, 966 (7th Cir. 2019) (no deliberate indifference where there was no evidence that defendant's "actions or inaction caused any of the scheduling delays" with post-surgery follow-up appointment); *Zaya v. Sood*, 836 F.3d 800, 805-07 (7th Cir. 2016) (jury could find deliberate indifference where prison doctor waited nearly seven weeks to authorize follow-up appointment to off-site orthopedic specialist treating plaintiff's broken wrist); *Cotts v. Osafo*, 692 F.3d 564, 565-66 (7th Cir. 2012) (prison officials at two different prisons delayed surgical hernia repair by outside surgeon for a combined period of 13 months); *Roe v. Elyea*, 631 F.3d 843, 862-63 (7th Cir. 2011) (affirming jury verdict finding deliberate indifference where "inmates were denied further testing and treatment for HCV infection *categorically* based on the expected length of their continued incarceration in an IDOC facility"); *Berry v. Peterman*, 604 F.3d 435, 441-42 (7th Cir. 2010) (delay of two months in referring prisoner to off-site dentist; jury could find that doctor decided prisoner could endure his pain until upcoming transfer to another prison); *Lee v. Young*, 533 F.3d 505, 510-12 (7th Cir. 2008) (no deliberate indifference where asthmatic prisoner complained, among other things, that he should have been transferred to a different facility to avoid exposure to secondhand smoke); *Hudson v. McHugh*, 148 F.3d 859, 863-64 (7th Cir. 1998) (holding that prisoner stated a claim against jail officers and nurse for failing to give him his daily epileptic medicine after transfer).

In each of these cases—and many more examples could be cited—prison officials had to navigate resource,

medical, and/or security constraints. When defendants act reasonably within those constraints, they have a defense to liability. E.g., *Rasho v. Jeffreys*, 22 F.4th 703, 710 (7th Cir. 2022) ("Evidence that the defendant responded reasonably to the risk, even if he was ultimately unsuccessful in preventing the harm, negates an assertion of deliberate indifference."), citing *Farmer v. Brennan*, 511 U.S. 825, 844 (1994). But we will not "smuggle a potential defense into the pleading stage and use it as a reason why the claim does not exist." *Brooks*, 131 F.4th at 616.

That is what defendants ask us to do here. Defendants may have acted reasonably within the constraints imposed by Watkins' transitionary status. See *id.* at 615-16 (medical triage may reasonably affect a prisoner's level of care); *Elyea*, 631 F.3d at 863 ("administrative convenience and cost may be, in appropriate circumstances, *permissible factors* for correctional systems to consider in making treatment decisions"). If, as defendants suggest, Watkins needed a "long-term care plan with follow-up appointments and stable monitoring," that may not have been achievable during his time at MCC. The Constitution does not require that prisoners receive "unqualified access to health care." *Johnson v. Doughty*, 433 F.3d 1001, 1013 (7th Cir. 2006), quoting *Hudson v. McMillian*, 503 U.S. 1, 9 (1992). But these are arguments about what constituted adequate, minimum-level medical care under the circumstances, not differences that alter the policy balance that initially justified *Carlson* or that would justify dismissal on the pleadings here.

To sum up, *Carlson* has been settled law for more than forty years. Our job is to apply that settled law

consistent with the Supreme Court's current framework for evaluating the viability of *Bivens* claims. We recognize that the Court has cut back substantially on the *Bivens* remedy and its deterrent against abuse of power and authority by federal agents, perhaps the only legal deterrent not controlled by the executive branch itself. But again, the Court's latest cases are not a green light for "defendants' effort to smuggle potential substantive defenses into the question whether the suit presents a new context." *Brooks*, 131 F.4th at 616. Because Watkins' claims that MCC medical and correctional staff violated their constitutional duty to provide him with adequate medical care fall well within the right of action recognized by *Carlson*, his *Bivens* claims may go forward.

III. *Timeliness of Watkins' FTCA Claim*

A plaintiff pursuing an FTCA claim in court must meet two separate timing requirements under 28 U.S.C. § 2401(b). First, the plaintiff must present an administrative claim to the appropriate federal agency within two years of the claim accruing. Both sides agree that Watkins satisfied this requirement by presenting his administrative claim to the Bureau of Prisons within five months of his hernia repair surgery. Second, the plaintiff must file suit within six months of the "notice of final denial of the claim by the agency to which it was presented." *Id.* Both parties also agree that Watkins missed this second filing deadline because this second suit was filed approximately eight months after the Bureau of Prisons mailed its final denial of his claim.

Watkins' late filing is not necessarily fatal to his FTCA claim. Both of "the FTCA's time bars are nonjurisdictional and subject to equitable tolling." *United*

*States v. Wong*, 575 U.S. 402, 420 (2015). Equitable tolling "pauses the running of, or 'tolls,' a statute of limitations when a litigant has pursued his rights diligently but some extraordinary circumstance prevents him from bringing a timely action." *Lozano v. Montoya Alvarez*, 572 U.S. 1, 10 (2014). "The realm of equitable tolling is a 'highly fact-dependent area' in which courts are expected to employ 'flexible standards on a case-by-case basis.'" *Socha v. Boughton*, 763 F.3d 674, 684 (7th Cir. 2014) (*Socha II*), quoting *Socha v. Pollard*, 621 F.3d 667, 672 (7th Cir. 2010) (*Socha I*). Nonetheless, equitable tolling is rare. *Id.* It will not save an untimely filing caused by "a garden variety claim of excusable neglect." *Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 96 (1990). Watkins has good arguments, however, that his situation is quite different from garden variety excusable neglect.

A. *Factual Background on FTCA Claim*

Because the facts bearing on the availability of equitable tolling are not relevant to Watkins' *Bivens* claims, we set them out here.[7] This is Watkins' second suit arising from his hernia repair surgery. He filed his first pro se complaint on August 7, 2020, just eighteen days after the Bureau of Prisons issued a final denial of his administrative claim. Complaint, *Watkins v. Mo-*

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[7] In our recitation of facts, we include the date that Watkins claims he received notice of the dismissal of his first suit, *Watkins I*, even though that date was not presented to the district court. "A party appealing a Rule 12(b)(6) dismissal may elaborate on his factual allegations so long as the new elaborations are consistent with the pleadings." *Geinosky v. City of Chicago*, 675 F.3d 743, 745 n.1 (7th Cir. 2012); accord, e.g., *Veazey v. Communications & Cable of Chicago, Inc.*, 194 F.3d 850, 861 (7th Cir. 1999).

*han*, No. 20-cv-4662 (N.D. Ill. Aug. 7, 2020), ECF No. 1 (*Watkins I*). That complaint met both timing requirements imposed by section 2401(b), but it was ultimately dismissed for reasons out of Watkins' control.

Shortly after filing that original complaint, Watkins submitted three applications for leave to proceed in forma pauperis in August and September 2020. On November 2, 2020, the district court entered an order denying all three of Watkins' applications. The order explained that each application was incomplete and warned Watkins that his suit would be dismissed unless he submitted a fourth, complete application by December 4, 2020. Due to disruptions in prison mail service caused by COVID-19, however, Watkins did not receive the November 2 order until well after the district court's December 4 deadline. Because the district court never received a fourth application from Watkins, on December 21, 2020, it dismissed *Watkins I* without prejudice for failure to comply with the November 2 court order.

The dismissal of *Watkins I* left Watkins 30 days to refile his suit before the six-month time to file suit under the FTCA expired on January 20, 2020. Two obstacles prevented him from refiling during that 30-day window. First, after being exposed to someone who tested positive for COVID-19, Watkins was placed in quarantine on January 11. In quarantine, Watkins did not have access to his documents, mail, phones, or a computer, so he could not have filed a new lawsuit during that time. Second, Watkins did not receive notice of the dismissal of *Watkins I* until January 26, six days after the limitations period for his FTCA claim had already expired. Watkins was not released from quarantine until February 3.

At that point, Watkins would have needed to assess his options to determine whether and how he could pursue his FTCA claim despite the expiration of the statute of limitations. Assessing options and choosing an effective response would challenge many trained and experienced lawyers already familiar with federal civil practice. Would it be best to try a Rule 59 motion? A Rule 60 motion? An appeal? A new lawsuit? Something else? And should these procedures be used simultaneously or in a particular sequence?

Then Watkins' ability to pursue his FTCA claim was again interrupted by COVID-19 on March 3, when he reentered quarantine after testing positive for COVID-19. He did not leave quarantine until March 16. Eight days later, on March 24, Watkins delivered his complaint and summons for this lawsuit to prison staff for mailing. He also included a complete application for leave to proceed in forma pauperis and a motion for appointment of counsel. This suit was docketed in the district court three weeks later on April 15, 2021.

The district court granted Watkins' application to proceed in forma pauperis and recruited counsel to identify potential additional defendants and to determine whether an amended complaint would be appropriate. After Watkins' appointed counsel filed a second amended complaint, the defendants moved to dismiss Watkins' suit under Rule 12(b)(6). The government argued that Watkins' FTCA claim was time-barred. In response, Watkins conceded that this suit had been filed late but argued that equitable tolling should apply.

The district court agreed with the government and dismissed Watkins' FTCA claim under Rule 12(b)(6) as untimely. Both the government and the district court

thought the limitations period might have been equitably tolled until February 3, when Watkins was released from his first period of quarantine. But the court concluded that Watkins had not diligently pursued his rights during the periods when he was not in quarantine. On appeal, Watkins argues that dismissal of his FTCA claim was premature.

B. *Standard of Review*

Before addressing the merits of Watkins' equitable tolling argument, we need to clarify the standard of review that we apply to a district court's denial of equitable tolling. The proper standard of review in a particular case depends on how and when an issue is raised.

"We review de novo a district court's decision to dismiss a complaint on statute-of-limitations grounds." *Chicago Building Design, P.C. v. Mongolian House, Inc.*, 770 F.3d 610, 614 (7th Cir. 2014). Equitable tolling is one of the theories that a plaintiff may raise to defeat a statute of limitations defense. When a district court denies equitable tolling at the motion to dismiss stage, it is making a judgment that the complaint fails to state a claim for relief because it is "indisputably timebarred." *Small v. Chao*, 398 F.3d 894, 898 (7th Cir. 2005). We therefore review de novo a district court's rejection of a plaintiff's equitable tolling argument on a Rule 12(b)(6) motion to dismiss. *Rosado v. Gonzalez*, 832 F.3d 714, 716-17 (7th Cir. 2016) (reviewing de novo a district court's rejection of plaintiff's equitable tolling argument on a motion to dismiss); *Savory*

*v. Lyons*, 469 F.3d 667, 670, 673-74 (7th Cir. 2006) (same).[8]

The government argues that we should instead review the district court's decision for abuse of discretion. But that deferential standard applies only to a district court's equitable judgment based on a full record. See, e.g., *Clark v. Runyon*, 116 F.3d 275, 277 (7th Cir. 1997) ("Deferential review is particularly appropriate here, where the district court made the tolling decision after a full evidentiary hearing and where both of the tolling issues that Clark has raised on appeal are highly dependent on the facts as the court found them to be."). In the habeas context, we have explained that deferential review is not warranted when a district court rules on the issue of equitable tolling despite "an obvious need for further record development." *Famous v. Fuchs*, 38 F.4th 625, 630 n.17 (7th Cir. 2022), citing *Schmid v. McCauley*, 825 F.3d 348, 350 (7th Cir. 2016). That principle also applies in the context of general civil litigation.

At the pleading stage, there will usually be an "obvious need for further factual development" on a plaintiff's equitable tolling argument. See *Brownmark Films, LLC v. Comedy Partners*, 682 F.3d 687, 690 (7th Cir. 2012) (affirmative defenses "typically turn on facts not before the court" on motion to dismiss). Equitable tolling can require a nuanced examination of the plain-

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[8] "Though district courts have granted Rule 12(b)(6) motions on the basis of affirmative defenses and this court has affirmed those dismissals, we have repeatedly cautioned that the proper heading for such motions is Rule 12(c), since an affirmative defense is external to the complaint." *Brownmark Films, LLC v. Comedy Partners*, 682 F.3d 687, 690 n.1 (7th Cir. 2012).

tiff's conduct to determine whether the plaintiff pursued his legal rights diligently and an equitable evaluation of whether the circumstances justify extraordinary relief. *Hyson USA, Inc. v. Hyson 2U, Ltd.*, 821 F.3d 935, 941 (7th Cir. 2016) (applying similar analysis to equitable defense of acquiescence in trademark context). Without a complete factual record, a district court generally does not have a reliable foundation for making this kind of fact-dependent equitable judgment. See *id.*

The Federal Rules of Civil Procedure provide mechanisms for resolving a strong statute of limitations defense early. If a plaintiff or defendant attaches materials in evidentiary form to a motion to dismiss or response, a judge may consider those materials and convert a motion to dismiss into a motion for summary judgment after giving both sides "a reasonable opportunity to present all the material that is pertinent to the motion." Fed. R. Civ. P. 12(d). Alternatively, a defendant may plead the statute of limitations as a defense and file a motion for summary judgment with supporting affidavits. See *Early v. Bankers Life & Casualty Co.*, 959 F.2d 75, 78 (7th Cir. 1992) (describing these procedures). A district court may also hold an evidentiary hearing to supplement the record before ruling on a motion to dismiss on a statute of limitations defense. E.g., *Clark*, 116 F.3d at 276-77 (reviewing for abuse of discretion a district court's decision to deny equitable tolling after two-day bench trial). Following these procedures allows the issue to be "fully developed at trial" or to "come up to us with a full, or least a fuller, factual picture." *Early*, 959 F.2d at 78.

The district court did not convert defendants' motion to dismiss into a motion for summary judgment, nor

could it have. The generalized allegations in Watkins' response brief on which the court relied were not presented in affidavit form, as would have been required by Rule 56(c)(1)(A). The court also did not consider, at least on the record, whether an evidentiary hearing was needed to supplement the record on equitable tolling. Because the court dismissed Watkins' FTCA claim for failure to state a claim, we review de novo its rejection of Watkins' equitable tolling argument.

C. *Equitable Tolling at the Pleading Stage*

We begin our analysis by clarifying the period for which Watkins is seeking equitable tolling. The district court's analysis rested on a significant factual and legal error. It thought that Watkins needed to establish that the limitations period was tolled until April 15, 2021, the date this suit was docketed. He did not.

A plaintiff whose claim is untimely needs to establish that the limitations period was tolled until he filed his complaint. In most civil litigation, a complaint is deemed filed when it is received by the court. See Fed. R. Civ. P. 3; *Gilardi v. Schroeder*, 833 F.2d 1226, 1233 (7th Cir. 1987). But Watkins was incarcerated at the time he filed this suit, so the prison-mailbox rule applies. Under the prison-mailbox rule, Fed. R. App. P. 4(c), "an inmate's notice of appeal is deemed filed not when received by the court but rather when delivered to prison officials for mailing." *Censke v. United States*, 947 F.3d 488, 490 (7th Cir. 2020), citing *Houston v. Lack*, 487 U.S. 266, 276 (1988); *Taylor v. Brown*, 787 F.3d 851, 858-59 (7th Cir. 2015) (explaining that prison-mailbox rule also applies to all district-court filings). Assuming Watkins delivered his new complaint and summons to prison staff for mailing on March 24, 2021, his FTCA

claim was timely if the limitations period was tolled until March 24.

The district court's failure to apply the prison-mailbox rule was an error of law that caused its equitable tolling analysis to rely on an error of fact. An equitable tolling decision must rest on an accurate assessment of the period for which the plaintiff is seeking tolling. When a district court's equitable tolling analysis relies on an erroneous fact or misconception of the law, we have remanded so that the district court can take a fresh look. E.g., *Socha I*, 621 F.3d at 670-73 (clarifying the facts on which the district court relied to deny equitable tolling and remanding for further consideration). Keeping that in mind, we proceed to the core of the argument on appeal.

Watkins offers *Hill v. United States*, 762 F.3d 589 (7th Cir. 2014), for guidance. In *Hill*, the counseled plaintiff filed his FTCA claim nineteen months after the statute of limitations expired. In opposition to the government's motion for summary judgment, the plaintiff argued that equitable tolling should excuse his delay. The district court rejected the plaintiff's equitable tolling argument, reasoning that he had failed to exercise due diligence. Because we determined that the district court's decision was cursory and premature, we remanded for further fact-finding and consideration. *Id.* at 591. In Watkins' view, remand is also warranted in his case because he may be able to carry his burden on equitable tolling after developing a more robust factual record. We agree. The district court's conclusion that Watkins could not benefit from equitable tolling was at least premature.

Regardless of the stage of litigation, a district court errs when it makes an equitable tolling decision based on insufficient or incorrect facts. See *Schmid*, 825 F.3d at 350. But dismissing a complaint as untimely at the pleading stage is especially likely to be erroneous because, as explained above, the record will usually be insufficient to make a sound decision on equitable tolling.

When a plaintiff raises equitable tolling in opposition to a motion to dismiss, the district court's task is limited to determining whether the plaintiff might show that he satisfies the conditions for equitable tolling on a full record. If so, the plaintiff's claim is not "indisputably time-barred," see *Small*, 398 F.3d at 898, and dismissal for untimeliness under Rule 12(b)(6) is inappropriate. See *Early*, 959 F.2d at 80-81 (finding Rule 12(b)(6) dismissal premature where plaintiff alleged facts in his brief and at appellate oral argument that could justify equitable tolling); see also *Clark v. City of Braidwood*, 318 F.3d 764, 768 (7th Cir. 2003) (finding Rule 12(b)(6) dismissal premature where plaintiff alleged facts that could establish a defense to the statute of limitations under the discovery rule); *Sidney Hillman Health Ctr. v. Abbott Laboratories, Inc.*, 782 F.3d 922, 928-29 (7th Cir. 2015) (reversing premature dismissal).

A plaintiff defending against a motion to dismiss may, in his brief, hypothesize facts that if proven would establish the timeliness of his complaint. *Early*, 959 F.2d at 79. He need not amend his complaint with new facts or submit evidence in support of his factual allegations. *Id.* Like interpreting a complaint, determining whether equitable tolling might be available on a more complete factual record is what the Supreme Court has

called a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). If the plaintiff's factual allegations make the availability of equitable tolling ambiguous, it is best to defer decision until a full record is developed for summary judgment or trial.

D. *Watkins' Equitable Tolling Argument*

Applying those principles to Watkins' case reveals that the district court's dismissal of his FTCA claim was premature. At summary judgment or trial, a plaintiff seeking equitable tolling for his FTCA claim bears the burden of establishing "that (1) she 'diligently' pursued her claim; and (2) 'some extraordinary circumstances' prevented her from timely filing her complaint." *Blanche v. United States*, 811 F.3d 953, 962 (7th Cir. 2016), first citing *Credit Suisse Securities (USA) LLC v. Simmonds*, 566 U.S. 221, 227 (2012), and then citing *Menominee Indian Tribe of Wisc. v. United States*, 577 U.S. 250, 256 (2016).

Equitable tolling does not require perfect or "maximum feasible diligence"—reasonable diligence is enough. *Holland v. Florida*, 560 U.S. 631, 653 (2010), quoting *Starns v. Andrews*, 524 F.3d 612, 618 (5th Cir. 2008). If a plaintiff shows both extraordinary circumstances and reasonable diligence, the court must weigh those considerations against the possibility of prejudice to the defendant. *Menominee Indian Tribe*, 577 U.S. at 259 n.5; *Donald v. Cook County Sheriff's Dep't*, 95 F.3d 548, 562 (7th Cir. 1996). Watkins has shown that he may be able to establish both elements, and neither the government nor the district court has identified any prejudice caused by the delay.

1. *Extraordinary Circumstances*

Watkins has identified two potential extraordinary circumstances outside of his control that prevented him from filing this suit within the six-month limit. First, Watkins alleges that disruptions to prison mail service caused by COVID-19 caused him to receive notice of the dismissal of his timely suit in *Watkins I* after the six-month limitation period for filing his FTCA claim had already run. We have explained that "inadequate notice" is one of the "factors which may justify equitable tolling." *Donald*, 95 F.3d at 562 (internal quotation marks omitted), quoting *Baldwin County Welcome Center v. Brown*, 466 U.S. 147, 151 (1984). Until Watkins was notified of the dismissal of *Watkins I*, he did not have any reason to believe he needed to do anything more to preserve his FTCA claim. As the district court recognized, "equitable tolling may well apply until the date Watkins did learn of the dismissal (or shortly thereafter)."

Second, Watkins alleges that policies implemented by the Bureau of Prisons to prevent the spread of COVID-19 prevented him from filing his second suit on time. Specifically, he alleges that the limitations period expired while he was isolated in quarantine without access to documents, mail, phones, or a computer. The district court recognized—and we agree—that periods of quarantine can constitute extraordinary circumstances. During those periods of isolation, the judge wrote, "it was nearly impossible for Watkins to pursue his claims with reasonable diligence."

The district court, however, rejected Watkins' argument that COVID-19 restrictions broadly impeded his ability to file this suit after he left quarantine on Febru-

ary 3. It is not clear from the court's opinion whether it believed that COVID-19 restrictions other than quarantine could never be extraordinary circumstances, or only that they did not qualify as extraordinary on the facts of Watkins' case. It characterized other district courts in the Seventh Circuit as holding that "'limitations caused by the COVID-19 pandemic' in prisons . . . do not constitute 'extraordinary circumstances.'" But notwithstanding . . . that unqualified statement, the court and all the cases it cited emphasized the plaintiff's or petitioner's failure to explain how COVID-19 restrictions actually affected his ability to file on time.

To the extent the district court might have believed that COVID-19 restrictions could never be extraordinary circumstances, we respectfully believe that would have been too narrow a view of its discretion. COVID-19 restrictions other than quarantine may qualify as extraordinary circumstances. Like any other proposed extraordinary circumstances, COVID-19 restrictions would justify equitable tolling only if they actually caused Watkins' delay. But if Watkins explains more fully how COVID-19 restrictions impeded his ability to pursue his claim, it would certainly be within the district court's discretion to find that the COVID-19 pandemic and its attendant disruption were extraordinary circumstances justifying equitable tolling. See, e.g., *Rivera v. Harry*, No. 20-3990, 2022 WL 93612, at *5 (E.D. Pa. Jan. 10, 2022) (finding equitable tolling warranted because the petitioner was "unable to timely file the Petition due to the prison's safeguards against the COVID-19 pandemic").

The evaluation will need to be case-specific, considering how multiple obstacles may have worked together to

delay Watkins' response to the confounding news that his first and timely lawsuit had been dismissed. The district court specifically rejected the proposition that Watkins' limited access to the law library and legal papers could amount to extraordinary circumstances, citing district court cases rejecting those restrictions as grounds for equitable tolling. But we have previously found equitable tolling to be available where the incarcerated petitioner's limited access to his legal papers and the law library would have made it "nearly impossible . . . to craft a meaningful petition before the deadline." *Socha II*, 763 F.3d at 686-87; see also *Schmid*, 825 F.3d at 350 ("inability to access vital papers" is a potentially extraordinary circumstance). The court will also need to take into account the challenge Watkins faced when he was notified, after the six-month limitations period had already expired, that his timely lawsuit had been dismissed. It is difficult to imagine even a trained lawyer, let alone a prisoner acting pro se, responding to that challenge effectively without access to legal research materials and sufficient time to use them.

Moreover, prison restrictions caused by the COVID-19 pandemic may amount on their own to extraordinary circumstances even if they resemble prison restrictions imposed for other reasons or rejected as grounds for equitable tolling in other cases. The Supreme Court has cautioned against rigidly applying precedent when making an equitable tolling decision. *Holland*, 560 U.S. at 650 ("[Courts of equity] exercise judgment in light of prior precedent, but with awareness of the fact that specific circumstances, often hard to predict in advance, could warrant special treatment in an appropriate case."). Consistent with *Holland*, we have explained

that equitable tolling analysis requires the use of a "'flexible' standard that encompasses all of the circumstances that [a plaintiff] faced and the cumulative effect of those circumstances." *Socha II*, 763 F.3d at 686, citing *Holland*, 560 U.S. at 650. Given the flexibility inherent in the equitable tolling standard, cases that have rejected equitable tolling based on inadequate library access or similar conditions may be relevant but not dispositive. See *Estremera v. United States*, 724 F.3d 773, 777 (7th Cir. 2013) (noting that we have disallowed equitable tolling based on lack of library access "on the facts of those cases").

Right now, the record does not contain enough information to determine whether the COVID-19 restrictions at the prison where Watkins was incarcerated rose to the level of extraordinary circumstances. But on remand, Watkins may be able to show that COVID-19 restrictions made it nearly impossible for him to file this suit any sooner than he did.

2. *Reasonable Diligence*

As for reasonable diligence, the district court noted that "once 'an obstacle that prevents filing a suit is removed'" the litigant must sue within a reasonable period of time. It concluded that Watkins failed to "provide any justification for the delay in his filing" of this suit, which asserted "substantially the same claims" as *Watkins I*. Specifically, Watkins failed to show that he "did not have access to his papers, the law library, or the mail . . . while he was out of quarantine." 2023 WL 8527414, at *5.

We do not have enough information to conclude that Watkins was not reasonably diligent during the periods that he was not in quarantine. Some of the information

we do have suggests the opposite. We know that Watkins pursued his first suit diligently, even though that suit was dismissed for reasons out of his control. He filed the complaint in *Watkins I* just eighteen days after receiving a final administrative decision, and he filed an application for leave to proceed in forma pauperis before being ordered to do so by the court. Due to COVID-19 related delays in the mail, Watkins could not correct the deficiencies in his in forma pauperis applications so that his first, timely suit could go forward. While Watkins' diligence in filing *Watkins I* did not *necessarily* carry over into this suit, it is relevant context because it shows that Watkins was actively pursuing his judicial remedies. See *Irwin*, 498 U.S. at 96 ("We have allowed equitable tolling in situations where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period . . . .").

Although we can sometimes discern that a litigant was not reasonably diligent based on the pleadings, e.g., *Sidney Hillman Health Ctr.*, 782 F.3d at 930-31, that conclusion is not warranted here. After February 3, Watkins spent only 36 days out of quarantine before filing this suit. It is unlikely that Watkins could have acted immediately after leaving quarantine. As a pro se plaintiff, it would not have been immediately obvious to Watkins whether he still had a viable FTCA claim after the limitations period expired. As noted above, he would have needed to do legal research to learn that he could seek the modification of the judgment in *Watkins I* under Rule 59 or relief from the judgment under Rule 60. He would have also needed to do legal research to determine whether there were grounds for appealing the dismissal of *Watkins I* or to discover that equitable tolling was available.

In light of those procedural complexities, the district court's observation that this suit asserts the same claims as *Watkins I* is not probative of reasonable diligence. "It is hazardous to conjecture about the amount of time a filing should have taken based on the end result" because "sometimes it takes longer to review the possibilities" and "discard the least promising." *Socha II*, 763 F.3d at 688. From our vantage point it is not facially unreasonable for an unrepresented prisoner-plaintiff to take 36 days to research his legal options and decide how to proceed, especially with a problem as tricky as this one involving deadlines for appeal and possible Rule 59 and 60 motions.

We do not yet know the other ways that the COVID-19 pandemic may have affected Watkins' prison and his ability to pursue his claim, and we will not speculate at this time. Because these kinds of factual determinations are "not appropriately made at the pleadings stage," *Sidney Hillman Health Ctr.*, 782 F.3d at 928, we have remanded for fact-finding on reasonable diligence for far longer periods of delay. See *Hill*, 762 F.3d at 590-91 (remanding for fact-finding on whether plaintiff was reasonably diligent during a nineteen-month delay); *Early*, 959 F.2d at 77, 80-81 (remanding for fact-finding on whether plaintiff was reasonably diligent during a nearly year-long delay). And those cases did not involve a public health crisis, like COVID-19, that affected what qualifies as reasonable diligence. Although Watkins has not yet detailed how he was reasonably diligent during the relevant 36-day period, he could submit an affidavit explaining his efforts to refile this suit and how they were affected by COVID-19 restrictions. "It is best to await a final decision rather than leap into a subject that evidence may cast in a new light." *Reiser v.*

*Residential Funding Corp.*, 380 F.3d 1027, 1030 (7th Cir. 2004) (affirming denial of motion to dismiss where plaintiff may have been able to establish equitable tolling on more complete factual record).

3. *Proceedings on Remand*

Because Watkins has alleged facts that may amount to extraordinary circumstances, and the record does not compel the conclusion that he was not reasonably diligent, his FTCA claim is not indisputably time-barred. Watkins has done enough to have the opportunity to develop the record supporting his equitable tolling argument. The district court is best positioned to undertake this "equitable, often fact-intensive inquiry," in the first instance. *Holland*, 560 U.S. at 654, quoting *Gonzalez v. Crosby*, 545 U.S. 524, 540 (2005) (Stevens, J., dissenting). As it reconsiders Watkins' claim, we encourage the district court to "keep in mind the flexibility that is often appropriate for *pro se* litigants, who are likely not well versed in complex procedural rules." *Socha I*, 621 F.3d at 673.

We note two things in closing. First, neither the district court nor the government has suggested that tolling the limitations period would prejudice the government in any way. The administrative claim process gave the government notice of his underlying claim. In addition, Watkins timely filed his first suit, putting the government on notice of his intent to pursue the claim. If Watkins can establish extraordinary circumstances and reasonable diligence, the district court should consider the apparent lack of prejudice to the government when determining whether the balance of equities favors tolling the statute of limitations. See *Baldwin County*, 466 U.S. at 152 (absence of prejudice is "a factor

to be considered in determining whether the doctrine of equitable tolling should apply once a factor that might justify such tolling is identified" but is not independent basis for invoking doctrine), quoted in *Menominee Indian Tribe*, 577 U.S. at 259 n.5; *Hill*, 762 F.3d at 590 (finding it relevant that neither district court nor government suggested that government had been prejudiced by plaintiff's untimely filing).

Second, the government argues that even if the statute of limitations was tolled for nine days between January 11 and January 20 (the period between Watkins entering quarantine for the first time and the lapse of the six-month limitations period), that extension would toll the statute of limitations only to February 12, nine days after Watkins left his first stint in quarantine. The government cites no authority for the proposition that a district court should count up the days during which an obstacle prevents a plaintiff from filing a suit and credit him exactly that many days on the back end.

Equitable tolling does not "bring about an automatic extension of the statute of limitations by the length of the tolling period or any other definite term." *Cada v. Baxter Healthcare Corp.*, 920 F.2d 446, 452 (7th Cir. 1990). The "doctrine of equitable tolling gives the plaintiff just so much extra time as he needs, despite all due diligence on his part, to file his claim." *Heck v. Humphrey*, 997 F.2d 355, 357 (7th Cir. 1993) (emphasis omitted), aff'd on other grounds, 512 U.S. 477 (1994); accord, *Chapple v. Nat'l Starch & Chemical Co. & Oil*, 178 F.3d 501, 506 (7th Cir. 1999) (plaintiff seeking equitable tolling must have "brought the suit as soon as it was practicable"); *Booker v. Ward*, 94 F.3d 1052, 1057 (7th Cir. 1996) (equitable tolling "gives the plaintiff only the

extra time that he needs, despite all due diligence on his part, to file his claim" (citing *Heck*, 997 F.2d at 357)). On remand, if the district court finds that Watkins has established extraordinary circumstances warranting equitable tolling, the limitations period should be tolled for as long as Watkins was reasonably diligent. No more but also no less.

The judgment of the district court is REVERSED, and this case is REMANDED for further proceedings consistent with this opinion.

KIRSCH, *Circuit Judge*, concurring in the judgment in part and dissenting in part. Jordan Watkins sued medical staff at a pretrial detention center under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), alleging inadequate medical treatment for chronic pain and swelling after a hernia operation. Because this claim presents a new context that risks further intrusion on legislative and executive prerogatives, I cannot agree with the decision to reinstate it and respectfully dissent. However, I agree that we should remand Watkins's claim under the Federal Tort Claims Act, 28 U.S.C. § 1346(b), so the district court can revisit his entitlement to equitable tolling on a more developed record. I write separately on this issue because I feel the majority goes too far by instructing the district court on how it must evaluate the merits of this argument.

I

*Bivens* remains good law for now. Plaintiffs can still maintain causes of action for certain constitutional violations under *Bivens*, *Davis v. Passman*, 442 U.S. 228 (1979), and *Carlson v. Green*, 446 U.S. 14 (1980). But as the Supreme Court has made clear, if a case presents a new context that is "meaningfully different" from one of these three cases, we cannot authorize a remedy if any "special factors" counsel hesitation. *Egbert v. Boule*, 596 U.S. 482, 492 (2022) (cleaned up); *Ziglar v. Abbasi*, 582 U.S. 120, 136 (2017). This inquiry often collapses into a "single question: whether there is any reason to think that Congress might be better equipped to create a damages remedy." *Egbert*, 596 U.S. at 492.

The majority extends *Carlson* to a new context despite the Court's explicit instruction not to. Resisting

this conclusion, the majority overreads our holding in *Brooks v. Richardson*, 131 F.4th 613 (7th Cir. 2025), to declare that any claim that "a federal prison's staff provided constitutionally deficient medical care" fits "squarely" within the context of *Carlson*. *Ante*, at 7-8 (quoting *Brooks*, 131 F.4th at 615). This outcome is untenable under the Court's decisions curtailing the reach of the *Bivens* doctrine and its broad understanding of what constitutes a new context. *Ziglar*, 582 U.S. at 130; *Hernández v. Mesa*, 589 U.S. 93, 102 (2020).

As a threshold matter, the majority misapprehends the potential scope of Watkins's claim. Watkins was a pretrial detainee for most of his time at the Metropolitan Correctional Center (MCC), which serves as a temporary holding facility for pretrial detainees and inmates serving brief sentences. After pleading guilty, Watkins remained at the MCC as a convicted prisoner for 11 days until his transfer to a permanent prison facility. While Watkins's post-conviction care is subject to the Eighth Amendment, any claims arising from alleged mistreatment before his guilty plea are governed by the Fifth Amendment. This means that any claims predicated on pre-conviction conduct inevitably arise under a different constitutional provision from *Carlson*, which authorized a remedy for Eighth Amendment violations. 446 U.S. at 17-18. And as the Court instructed in *Ziglar*, we must consider "the constitutional right at issue" when analyzing *Bivens* contexts. 582 U.S. at 139-40. The majority largely ignores this issue, reasoning that "defendants always had a constitutional duty to respond reasonably to [Watkins's] known serious medical needs." *Ante*, at 10 n.3. While true, this fails to appreciate that claims under the Fifth Amendment undoubtedly present a new context from *Carlson*.

*Stanard v. Dy*, 88 F.4th 811, 818 (9th Cir. 2023) (although post-sentencing Eighth Amendment claims could proceed, "[t]here is little doubt that [plaintiff's] Fifth Amendment claim does present a new context" from *Carlson*). This blow is not necessarily fatal to the entire suit, because we analyze *Bivens* actions claim-by-claim. See *Egbert*, 596 U.S. at 493-502. But because claims arising out of conduct that occurred while Watkins was a pretrial detainee necessarily present a new context from *Carlson*, our analysis must focus more narrowly on the few days when he was held as a prisoner at the MCC.

We must therefore ask whether the alleged misconduct during these 11 days presents a new context from *Carlson*. As in *Carlson*, Watkins alleges that federal correctional staff provided constitutionally deficient medical care. But this does not end the analysis; even when a case presents "significant parallels" to an existing *Bivens* case, "a modest extension is still an extension." *Ziglar*, 582 U.S. at 147. The Court has provided a non-exhaustive list of factors to consider when deciding whether a claim involves a new context. *Id.* at 139-40. We have simplified the inquiry: a case is meaningfully different, and therefore a new context, "when it involves a factual distinction or new legal issue that might alter the policy balance that initially justified the implied damages remedies in the *Bivens* trilogy." *Snowden v. Henning*, 72 F.4th 237, 239 (7th Cir. 2023). We may not recognize a cause of action "if there is even a single reason to pause" before doing so. *Egbert*, 596 U.S. at 492 (cleaned up). There are at least two reasons in this case.

First, Watkins's injury differs meaningfully, in both nature and severity, from the medical conditions at issue in *Carlson* and *Brooks*. In both cases, prisoners experienced an acute medical emergency that should have received immediate treatment to avoid serious injury or death. *Green v. Carlson*, 581 F.2d 669, 671 (7th Cir. 1978) (prisoner died because defendants failed to give him competent medical treatment for eight hours during an extreme asthma attack); *Brooks*, 131 F.4th at 614 (prisoner with acute appendicitis was severely injured when his appendix burst because defendants refused to send him to a hospital for ten days). By contrast, Watkins had a chronic, non-emergent medical condition that required continuous, periodic treatment over several months. Courts regularly find that these types of differences create new contexts. See *Johnson v. Terry*, 119 F.4th 840, 859 (11th Cir. 2024) (new context when the "severity, type, and treatment" of the injuries "differ[ed] significantly from those of the prisoner in *Carlson*"); *Rowland v. Matevousian*, 121 F.4th 1237, 1243 (10th Cir. 2024) (new context when plaintiff did not die and defendants conservatively treated his hernia before operating); *Waltermeyer v. Hazlewood*, 136 F.4th 361, 367-68 & n.4 (1st Cir. 2025) (distinguishing *Brooks*, 131 F.4th at 614-15); see also *Bulger v. Hurwitz*, 62 F.4th 127, 138 (4th Cir. 2023) ("Even if [the plaintiff] could make out a claim for an alleged failure to provide constitutionally adequate medical treatment, a lack of competent medical care did not cause [the plaintiff's] death[,]" thus constituting a "meaningful difference").

According to the majority, these differences are but a "variation on a theme" that we already rejected in *Brooks*, *ante*, at 11-13, but this stretches *Brooks* far beyond its facts. To be sure, in *Brooks* we found the

length of time prison medical staff failed to treat an acutely ill prisoner and the fact that he did not die more pertinent to the merits than to context. *Brooks*, 131 F.4th at 615. And, as we recognized, all prison medical care implicates resource constraints. *Id.* at 615-16. But this doesn't mean the nature of the medical condition and its treatment are irrelevant to the context of a *Bivens* claim. 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. Stacy L. Gavin, *What Happens to the Correctional System When a Right to Health Care Meets Sentencing Reform*, 7 NAELA J. 249, 254-55 (2011). For example, because prisons do not traditionally house specialists or diagnostic and testing equipment, chronically ill prisoners in need of these services frequently must be seen by offsite providers. *Id.*; see also Douglas C. McDonald, *Medical Care in Prisons*, 26 Crime. & Just. 427, 443 (1999). And because prisoners must be transported and monitored by armed guards at all times, these visits generate significant costs and risks on top of the need to schedule and pay for the care itself. Gavin, *supra*, at 255.

The majority points out that the defendants in *Carlson* had mismanaged the prisoner's asthma long before the attack that led to his death. *Ante*, at 12. But while the attack was precipitated by this period of negligence, the undeniable core of the claim in *Carlson* pertained to the total failure to administer proper treatment for a life-threatening medical emergency. Thankfully, unlike the prisoners in *Carlson* and *Brooks*, Watkins's condition never came close to endangering his life. Instead, his claim is cabined to the prison's insuf-

ficient management of a chronic, non-emergent condition. Specifically, he complains that MCC medical staff conservatively treated him with pain medication and did not arrange a follow-up appointment with the outside physicians that performed his hernia operation before his transfer. In other words, Watkins asks us to wade into a dispute involving scheduling and administrative considerations that were absent in *Carlson*.

The majority dismisses this concern, assuming that the Court in *Carlson* must have anticipated judicial scrutiny of prison administration. *Ante*, at 12. This misses the mark. Of course *Carlson* "approved of some intrusion into the functioning of federal prisons." *Sargeant v. Barfield*, 87 F.4th 358, 367 (7th Cir. 2023). The question is whether a "claim threatens to intrude in ways *Carlson* did not contemplate." *Id.* In this case, Watkins's claim directly implicates broader issues within the prison healthcare system—namely, how prisons must contract, schedule, and coordinate appointments with outside providers. This is a factual distinction that "might alter the cost-benefit balance that justified an implied damages remedy" in *Carlson*, creating a new context. *Snowden*, 72 F.4th at 244. Acknowledging this factual difference is not an attempt to "smuggle" a potential defense into the pleading stage. *Ante*, at 16 (quoting *Brooks*, 131 F.4th at 616). On the contrary, the majority's decision to ignore it threatens to interfere with prison operations in ways *Carlson* did not anticipate.

Second, Watkins's injuries arose in a different context than the prisoner in *Carlson*. As a pretrial detention center, the MCC is an inherently transitory facility. Indeed, during the relevant period for his Eighth Amend-

ment claim, Watkins was facing an imminent transfer to a permanent facility. By contrast, the prisoners in *Carlson* and *Brooks* were housed in permanent prison facilities without any scheduled transfers when their claims arose. The majority diminishes these differences, since theoretically all federal prisoners are subject to transfer at any time. *Ante*, at 11. But the abstract possibility of a transfer is a far cry from Watkins's impending placement in a permanent prison. And, importantly, detention centers such as the MCC face a unique set of challenges given the type and number of detainees they house on a temporary basis. *Marquez v. Rodriguez*, 81 F.4th 1027, 1031 (9th Cir. 2023) (describing how "jails and prisons are operated differently" because "[j]ails are typically smaller than prisons, they are not intended for long-term detention, and they house a different class of inmates").

To bolster its position, the majority argues that *Carlson* already accounted for this type of policy consideration because the defendants there kept the prisoner in a particular facility against medical advice. *Ante*, at 13. But the comparison is unavailing. In this case, defendants operated out of an entirely transitory facility and, accordingly, had to balance any decisions regarding follow-up consultations, appointments with off-site providers, and long-term care against the administrative and logistical realities of Watkins's fast-approaching transfer to a new facility. Any claim in this context therefore requires us to "factor in a sensitive mixture of things we are ill-positioned to assess," as it "invariably implicate[s] housing policies" and transfer decisions particular to Watkins's transitory situation. *Sargeant*, 87 F.4th at 367. The policy considerations at stake here are thus separate and distinct from those bearing

on the decision in *Carlson* to *not* transfer a particular prisoner from his long-term placement.

At minimum, Watkins asks us to interfere with prisons in ways that *Carlson* did not contemplate. *See id.* But I am even more concerned by the systemic implications of recognizing a cause of action for these sorts of claims. It is impossible, at this juncture, to know exactly how the majority's decision will impact the operation of pretrial detention centers and their relationship to the rest of the BOP. This uncertainty is particularly troubling given the prevalence of chronic conditions in the prison population. AmeriHealth Administrators, The Challenge of Correctional Health Care 2 (2015) (estimating that approximately 40% of all prisoners report at least one serious chronic medical condition). We simply "cannot predict the 'systemwide' consequences of recognizing a cause of action" under these circumstances. *Egbert*, 596 U.S. at 493 (quoting *Ziglar*, 582 U.S. at 136); see also *Goldey v. Fields*, 606 U.S. __, 2025 WL 1787625, at *2 (2025) (declining to recognize a *Bivens* cause of action for an Eighth Amendment excessive-force claim because it "could have negative systemic consequences for prison officials and the 'inordinately difficult undertaking' of running a prison") (quoting *Turner v. Safley*, 482 U.S. 78, 84-85 (1987)). This "uncertainty alone is a special factor that forecloses relief." *Egbert*, 596 U.S. at 493. Congress, rather than the judiciary, is far "better equipped" to fashion a remedy given these competing considerations. *Id.* at 492.

Appellate courts continue to struggle with the Court's limited guidance on how to conduct a "new context" analysis. In practice, whether a given cause of action proceeds depends largely on what differences are

meaningful to a particular panel of judges. The result has been a flood of inconsistent case law across and within circuits.* In my view, today's decision adds to this growing discordance. Despite our mandate not to, it extends *Carlson* to a new context that risks further encroachment on legislative and executive functions. *Egbert*, 596 U.S. at 493. Mindful that "our watchword is caution," *Hernández*, 589 U.S. at 101, I disagree with the majority's decision to take this risk.

II

As for Watkins's FTCA claim, I agree with my colleagues that de novo review is appropriate because it was dismissed for failing to state a claim under Federal Rule of Procedure 12(b)(6). Considering this standard, I also agree that dismissal was premature. The statute of limitations is an affirmative defense, so "it is rarely a good reason to dismiss under Rule 12(b)(6)." *Reiser v. Residential Funding Corp.*, 380 F.3d 1027, 1030 (7th Cir. 2004). Watkins was not required to anticipate or overcome it in his complaint, *Sidney Hillman Health Ctr. v. Abbott Labs., Inc.*, 782 F.3d 922, 928 (7th Cir. 2015), nor was he obligated to respond to the government's motion to dismiss with an affidavit or other evi-

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* For instance, despite its permissive stance on the nature and extent of the injury for *Carlson* claims, the Fifth Circuit requires a near exact factual match in the Fourth Amendment *Bivens* context. Compare *Carlucci v. Chapa*, 884 F.3d 534, 536-38 (5th Cir. 2018), with *Oliva v. Nivar*, 973 F.3d 438, 442-43 (5th Cir. 2020). And while the Tenth Circuit considers the severity of the injury and type of treatment when assessing *Carlson* suits, it finds the presence of a warrant and location of arrest insignificant for *Bivens* actions. Compare *Rowland*, 121 F.4th at 1243, with *Logsdon v. U.S. Marshall Serv.*, 91 F.4th 1352, 1357-58 (10th Cir. 2024).

dence supporting his request for equitable tolling, *Early v. Bankers Life & Cas. Co.*, 959 F.2d 75, 79 (7th Cir. 1992). Because his claim is not undisputedly time barred, remand is warranted for further factual development. On a more complete record, the district court can properly decide whether to toll the limitations period under the standard articulated by the majority.

In my view, however, the majority places too heavy a judicial thumb on Watkins's side of the scale. It opines that 36 days is not a facially unreasonable amount of time for Watkins to research and evaluate his legal options, instructs the district court to approach equitable tolling with "flexibility" on remand, and even directs it to "consider the apparent lack of prejudice to the government." *Ante*, at 32-34 (quotation omitted). Equitable tolling is an "extraordinary remedy that is rarely granted," and it's far from clear whether Watkins can ultimately meet his burden to justify it. *Carpenter v. Douma*, 840 F.3d 867, 870 (7th Cir. 2016) (quotation omitted). While I am comfortable sending the claim back for additional factfinding, we should refrain from "prejudg[ing] the issue" as the majority seems to do. *Hill v. United States*, 762 F.3d 589, 591 (7th Cir. 2014).

**APPENDIX B**

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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No. 21-CV-02045

JORDAN WATKINS, PLAINTIFF

*v.*

UNITED STATES OF AMERICA, DR. BRIJ MOHAN, JANE DOES AND JOHN DOES, DEFENDANTS

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Filed: Dec. 8, 2023

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**MEMORANDUM OPINION AND ORDER**

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Judge FRANKLIN U. VALDERRAMA

Plaintiff Jordan Watkins (Watkins), while a federal pretrial detainee at the Metropolitan Correctional Center Chicago (MCC), underwent a hernia repair surgery. Following the surgery, Watkins complained to MCC correctional officers and Clinical Director Dr. Brij Mohan (Dr. Mohan) about groin pain, to no avail. Watkins filed suit against Dr. Mohan and unidentified MCC medical and corrections personnel under the Federal Tort Claims Act (FTCA), 28 U.S.C. § 1346(b), for negligent medical treatment, along with claims pursuant to *Bivens v. Six Unknown Named Agent of Fed. Bureau of Narcotics*, 408 U.S. 388 (1971) under the Eighth and Fourteenth Amendments for denial of proper medical treat-

ment and deliberate indifference to his serious medical condition. R.[1] 1; R. 22, SAC. Defendants moved to dismiss Watkins's second amended complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). R. 27, Mot. Dismiss. For the reasons that follow, Defendants' motion is granted.

**Background**[2]

Watkins is a prisoner at FCI Gilmer in West Virginia, a correctional facility operated by the Federal Bureau of Prisons (BOP). SAC ¶ 5. Watkins was previously incarcerated at MCC, where he was detained as a pre-trial detainee from October 2018 to July 18, 2019, and as a prisoner from July 18, 2019 to July 29, 2019. *Id.* On March 29, 2019, Watkins was evaluated by MCC's medical staff and diagnosed with a hernia. *Id.* ¶ 21. Dr. Mohan is MCC's Clinical Director and was ultimately responsible for Watkins's medical treatment during the time he was detained at MCC. *Id.* ¶¶ 6-7, 47. As Clinical Director, Dr. Mohan supervises the medical and nursing staff at MCC and administers care to inmates. *Id.* ¶¶ 6-7. On June 12, 2019, Watkins underwent surgery at Thorek Memorial Hospital to repair the hernia. *Id.* ¶ 23.

Upon returning to MCC, Watkins began complaining of severe pain and swelling in his groin, with his testicles "sw[elling] to the size of a grapefruit." SAC ¶¶ 24, 33. His pain and swelling became so severe that he had trou-

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[1] Citations to the docket are indicated by "R." followed by the docket number or filing name, and where necessary, a page or paragraph citation.

[2] The Court accepts as true all the well-pled facts in the Complaint and draws all reasonable inferences in favor of Watkins. *Platt v. Brown*, 872 F.3d 848, 851 (7th Cir. 2017).

ble sitting and sleeping. *Id.* ¶¶ 45, 59, 73. On June 15, 2019, Watkins informed the medical staff at MCC of this pain and swelling, but the complaints were dismissed as "benign side effect[s] of the hernia repair surgery." *Id.* ¶¶ 25-26. To address his complaints, Wakins was given medication, which did not treat nor alleviate his injuries. *Id.* ¶ 27. No additional treatment was provided. *Id.* ¶ 28. Between June 15, 2019 until his transfer on July 29, 2019, Watkins continued to complain to MCC medical staff about his pain. *Id.* ¶ 30. Watkins eventually underwent surgery to address his symptoms in February 2020, after he was transferred to USP Leavenworth. *Id.* ¶ 33.

At USP Leavenworth, Watkins submitted a Request for Administrative Remedy to the Department of Justice, dated November 22, 2019, complaining about his inadequate medical treatment. SAC ¶ 34. His request was received a week later. *Id.* ¶ 35. On December 9, 2019, the BOP denied Watkins's Request for Administrative Remedy. *Id.* ¶ 37. In January 2020, Watkins appealed the final denial of his Request for Administrative Remedy, which was received by the BOP. *Id.* ¶¶ 38-39. The BOP issued a Final Denial of Watkins's Claim on July 20, 2020. R. 28, Memo. Dismiss at 3 (citing R. 28-1, Exh. 1 at 3)[3]; R. 33, Resp. at 3.

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[3] Watkins's second amended complaint alleges that he "exhausted his administrative remedies prior to this lawsuit," SAC ¶ 40, but does not specify when the BOP dismissed his appeal. However, Defendants attached the BOP's Final Denial of Claim letter dated July 20, 2020 and the Court may take judicial notice of matters of public record, including administrative documents submitted or issued as part of an administrative review by the BOP. *See Palay v. United States*, 349 F.3d 418, 425 n.5 (7th Cir. 2003).

Watkins filed suit in federal court on August 7, 2020, *Watkins v. Mohan*, No. 20-cv-4662 (N.D. Ill.) (*Watkins I*), eighteen days after his final denial. SAC ¶ 41. His first three applications to proceed *in forma pauperis* were denied, and on November 2, 2020, Watkins was given a December 4, 2020 deadline to submit his fourth application. *Watkins I*, Dkt. No. 10. Watkins did not submit his fourth application or pay the requisite filing fee, and on December 21, 2020, the court dismissed his complaint without prejudice for failure to comply with a court order. *Id.* Dkt. No. 11.

On April 15, 2021, Watkins filed this suit *pro se,* asserting essentially the same claims as in *Watkins I*.[4] R. 1. On May 28, 2021, the Court granted Watkins's motion for attorney representation. R. 5. On April 8, 2022, Watkins filed his second amended complaint, which is the operative complaint in which Watkins asserts claims against Dr. Mohan and Defendants Jane Does and John Does under the FTCA (Count I) and claims pursuant to *Bivens v. Six Unknown Named Agent of Fed. Bureau of Narcotics*, 408 U.S. 388 (1971) under the Eighth and Fourteenth Amendment (Counts II through V).[5] R. 22. Defendants' fully briefed motion to dismiss is before the Court.

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[4] This lawsuit was originally assigned to the same judge assigned to *Watkins I*. It was reassigned to this Court on October 11, 2022. R. 35.

[5] Although the second amended complaint lists the *Bivens* counts as "42 U.S.C. § 1983 (Bivens Claim)," the correct vehicle for this action is a *Bivens* claim, not § 1983. *Bivens* claims are appropriate against federal officials, whereas 42 U.S.C. § 1983 is limited to state actors. *See infra* Section II (providing further explanation about *Bivens* claims).

**Legal Standard**

A motion to dismiss under Rule 12(b)(6) challenges the sufficiency of the complaint. *Hallinan v. Fraternal Order of Police of Chi. Lodge No. 7*, 570 F.3d 811, 820 (7th Cir. 2009). Under Rule 8(a)(2), a complaint must include only "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). To survive a motion to dismiss, a complaint need only contain factual allegations, accepted as true, sufficient to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* The allegations "must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555. The allegations that are entitled to the assumption of truth are those that are factual, rather than mere legal conclusions. *Iqbal*, 556 U.S. at 678-79.

**Analysis**

**I. Federal Tort Claims Act - Negligence (28 U.S.C. § 1346(b))**

In Count I, Watkins asserts a negligence claim against Defendants under the FTCA. "The FTCA constitutes a limited waiver of the United States' sovereign immunity and allows individuals to bring an action for damages against the federal government for 'personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment.'" *Arroyo v. United States*, 656 F.3d 663, 667 (7th Cir.

2011) (quoting 28 U.S.C. § 1346(b)(1)). The statute of limitations for FTCA claims—which Defendants assert bars this action—is contained in 28 U.S.C. § 2401(b) and provides that: "[a] tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless [the] action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented." Thus, the FTCA presents two separate timing requirements: first, the plaintiff must present his or her administrative claim to the appropriate Federal agency within two years of the claim accruing, and second, if the claim is denied by the agency, the plaintiff must file suit within six months of the notice of final denial. 28 U.S.C. § 2401(b).

Defendants argue that Watkins's FTCA claim is barred by the FTCA's statute of limitations. Memo. Dismiss at 4. Defendants concede that Watkins satisfied the first timing requirement, as he presented his administrative claim to the BOP in October 2019, less than two years after the date of his injuries, which he alleges took place between June 2019 and August 2019. *Id.* at 5. However, Watkins fails on the second requirement, contend Defendants, because Watkins did not file suit within six months following the BOP's final denial of his claim on July 20, 2020. *Id.* Instead, Watkins filed this complaint eight months and 26 days after the administrative claim denial. *Id.* Courts, submit Defendants, regularly dismiss FTCA suits where plaintiffs fail to comply with the FTCA's statute of limitations. *Id.* (citing, among other cases, *Ransom v. United States*, 668 Fed. App'x 169, 171 (7th Cir. 2016); *Pekin Ins. Co.*

*v. United States*, 2020 WL 207748 (N.D. Ill. Jan. 14, 2020)). Watkins's first suit, *Watkins I*, posit Defendants, does not create a new six-month filing window. *Id.* at 5-6 (citing, among other cases, *McNeil v. United States*, 964 F.2d 967, 648-49 (7th Cir. 1992); *Luckett v. Rent-A-Center, Inc.*, 53 F.3d 871, 872-73 (7th Cir. 1995)). Defendants included a chart delineating the relevant timeline in reply:

| **Date** | **Event** |
|---|---|
| July 20, 2020 | FTCA Administrative claim denied. |
| Aug. 7, 2020 | Watkins files his first suit, 20 C 4662 [*Watkins I*]. |
| Dec. 21, 2020 | [*Watkins I*] is dismissed for failure to comply with court's IFP order. |
| Jan. 11, 2021 | Watkins enters quarantine. |
| Jan. 20, 2021 | Six-month period for filing suit lapses. |
| Feb. 3, 2021 | Watkins leaves quarantine (23 days). |
| March 3, 2021 - March 16, 2021 | Watkins was in quarantine for 13 days. |
| April 15, 2021 | Watkins files current suit. |

Reply at 2.

In response, Watkins concedes that he filed this suit more than six months after the BOP's denial of his administrative claim. Resp. at 4. However, argues

Watkins, the statute of limitations should be equitably tolled due to the circumstances surrounding the dismissal of his first suit and the refiling of this suit. *Id.* To start, Watkins maintains that he was unaware of the court order denying his application to proceed *in forma pauperis* until after his first lawsuit was dismissed on December 21, 2020, due to disruptions caused by COVID-19 that affected the BOP and the United States Postal Service. Resp. at 5-6. On April 15, 2021, Watkins filed this suit. R. 1. In the months between the dismissal of *Watkins I* in December 2020 and the filing of this suit in April of 2021, Watkins was quarantined twice for suspected and confirmed cases of COVID-19.[6] Resp. at 6-7. One period of isolation was from January 11, 2021 to February 3, 2021, and the other was from March 3, 2021 to March 16, 2021. *Id.* at 6-7. During these periods, Watkins alleges he was unable to access "his personal papers, phones, computers, or incoming or outgoing mail." *Id.* at 7. Watkins insists that these circumstances are extraordinary and justify application of equitable tolling.

Not so, argue Defendants, as Watkins, the party seeking equitable tolling must, but fails to establish "(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way." R. 34, Reply at 3 (quoting *Pace v. DiGuglielmo*, 554 U.S. 408, 418 (2005)). Although Watkins diligently pursued his *first* suit, Defendants contend that the same cannot be said for his current filing. *Id.* at 4. First, Defendants point out that Watkins's contention that he was prevented from refiling this suit because he was in quaran-

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[6] In his response, Watkins submits, among other records, his medical records from FCI Gilmer.

tine is not supported by affidavit. Reply at 4. Second, Defendants insist that Watkins had ample time after he was out of quarantine to file this suit but instead waited nearly 30 days to do so. Reply at 3. Turning to the second element, Defendants posit that "because he was only quarantined for a total of 36 days, Watkins cannot establish that COVID-19 quarantine was an extraordinary circumstance," that prevented him for timely filing this suit. *Id.* at 3-4.

It is undisputed that the FTCA's time limits are subject to equitable tolling. *United States v. Wong*, 575 U.S. 402, 420 (2015). As stated above, a litigant seeking to invoke equitable tolling bears the burden of establishing "(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way." *Pace*, 544 U.S. at 418; *Molina-Garcia v. Fardon*, 754 F. App'x 475, 477 (7th Cir. 2019). The Seventh Circuit has described equitable tolling as an "extraordinary remedy that is rarely granted." *Carpenter v. Douma*, 840 F.3d 867, 870 (citing *Obriecht v. Foster*, 727 F.3d 744, 748 (7th Cir, 2013)) (cleaned up)[7]; *see also Conner v. Reagle*, 82 F.4th 542, 550 (7th Cir. 2023). Only where petitioner can satisfy both elements can the doctrine be applied. *Carpenter*, 840 F.3d at 870.

For the first element, "the diligence required for equitable tolling purposes is reasonable diligence not maximum feasible diligence." *Holland v. Florida*, 560 U.S.631, 653 (2010) (cleaned up). Thus, to qualify for

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[7] This Opinion uses (cleaned up) to indicate that internal quotation marks, alterations, and citations have been omitted from quotations. *See* Jack Metzler, Cleaning Up Quotations, 18 Journal of Appellate Practice and Process 143 (2017).

equitable tolling, Watkins must demonstrate he was reasonably diligent in pursuing his rights throughout the limitations period and until he filed his untimely complaint on April 15, 2021. It can hardly be disputed that COVID-19 and the government's response to this once-in-a-lifetime pandemic disrupted society. The question is whether Watkins exercised reasonable diligence in pursing his rights.

As an initial matter, there is no question that *Watkins I* was filed within the statute of limitations, as Watkins filed it just 18 days after the BOP denied his administrative claim. *See* Resp. at 6 (citing *Watkins I*); Memo. Dismiss at 5. As stated above, Watkins alleges he did not receive the November 2, 2020 order denying his first three *in forma pauperis* applications and requiring him to file a fourth application until after *Watkins I* was dismissed on December 21, 2020. Resp. at6. Watkins posits that, because he received the November 2, 2020 order after the dismissal of *Watkins I*, he "was unable to respond in a timely manner." *Id.* Taking that allegation as true, Watkins still does not explain how his inability to timely comply with a court order in *Watkins I* impacts the equitable tolling analysis for this suit. To be sure, such information might well have been important to a motion for reconsideration or an appeal of the dismissal order in *Watkins I*, but as Defendants point out in reply, Watkins filed neither. Reply at 5. Still, the date Watkins learned of the dismissal of *Watkins I* could be relevant to the equitable tolling analysis before the Court, as it would inform when Watkins needed to exercise reasonable diligence in filing the current lawsuit; put another way, if Watkins did not learn of the dismissal of *Watkins I* until after the statute of limitations ran on January 20, 2021, equitable tolling

may well apply until the date Watkins did learn of the dismissal (or shortly thereafter). Watkins does not specify when he learned that *Watkins I* had been dismissed, however, and he neither argues nor presents evidence that he did not receive notice of the dismissal until after January 20, 2021, much less until on or about April 15, 2021, the date he filed the instant lawsuit. *See* Resp.

Watkins focuses his equitable tolling arguments on his periods in quarantine between the dismissal of *Watkins I* and the filing of this lawsuit. Resp. at 5-7. Putting aside the lack of an affidavit and accepting as true Watkins's allegations as to his time in quarantine due to COVID-19 and his inability to access his papers and or mail while in quarantine, the Court finds that Watkins still falls short of establishing reasonable diligence. Clearly, there are instances where Watkins was unable to effectively pursue his rights. Specifically, within the limitations period and following the limitations period lapsing on January 20, 2021, Watkins was placed in extended periods of COVID-19 isolation—from January 11, 2021 to February 3, 2021 and March 3, 2021 to March 16, 2021. During these periods, without access to his documents, mail, phones, or a computer, it was nearly impossible for Watkins to pursue his claims with reasonable diligence (another way of looking at it is, during those periods, extraordinary circumstances stood in his way of filing a new lawsuit).

However, there were periods after the limitation period lapsed where Watkins was not in COVID-19 isolation but did not file this lawsuit. Specifically, from February 3, 2021 to March 2, 2021, Watkins, by his own admission was not in quarantine. Yet, he did not file

this suit during this time period. True, he returned to quarantine from March 3, 2021 to March 16, 2021, but Watkins waited almost a month after leaving quarantine on Mach 16, 2021 before he filed this suit. The question that arises once "an obstacle that prevents filing a suit is removed" is whether the "litigant . . . sue[d] within a reasonable time." *Brown v. Unknown Party*, 2023 WL 2818004, at *1 (7th Cir. 2023) (cleaned up); *see Cada v. Baxter Healthcare*, 920 F.2d 446, 452-53 (7th Cir. 1990). Watkins fails to provide any justification for the delay in his filing during these two separate periods when he was not in isolation, and instead argues in conclusory fashion that "[he] diligently pursued his rights and has faced extraordinary circumstances out of his control that resulted in the delay in refiling." Resp. at 7. "[M]ere conclusory allegations of diligence are insufficient and reasonable efforts throughout the limitations period is required." *Marberry v. Dittmann*, 904 F.3d 525, 531 (7th Cir. 2018) (citing *Carpenter*, 840 F.3d at 870).

And to the extent that Watkins takes the position that COVID-19 disrupted his ability to prepare or file this lawsuit in the two nearly month-long periods during which he was incarcerated but not in quarantine, such a contention, without more from Watkins, is unavailing. Courts have found that "limitations caused by the COVID-19 pandemic" in prisons, including restrictions to accessing the law library and access to papers, do not constitute "extraordinary circumstances, beyond [his] control, that prevent[ed] timely filing." *Wilson v. Williams*, 2023 WL 6929576, at *7 (N.D. Ill. Oct. 19, 2023) (cleaned up). This is especially true here, where Watkins's instant lawsuit brings substantially the same claims as those included in *Watkins I*, and Watkins has

proffered no allegations nor evidence that he did not have access to his papers, the law library, or the mail (apart from alleging mail delays) while he was out of quarantine between February 3, 2021 to March 2, 2021 and March 16, 2021 to April 15, 2021. *See id.* (citing, among other cases, *United States v. Reeves*, 2022 WL 17832713, at *7 (N.D. Ill. Dec. 21, 2022) (petitioner not entitled to equitable tolling due to prison disruptions caused by COVID-19 pandemic, where he did "not explain with any specificity how the disruptions caused by the pandemic interfered with his ability to communicate with [his attorney] or pursue his claims"); *United States v. Jones*, 2021 WL 3033392, at *2 (N.D. Ill. July 19, 2021) (habeas petitioner failed to show that equitable tolling was appropriate due to prison COVID-19 procedures, where petitioner "provided no information describing exactly how the lockdowns and his placement in the [segregated housing unit] actually affected his ability to file his motion on time")).

Regrettably, based on the record before it, the Court finds that Watkins has failed to meet his burden of establishing that he is entitled to the extraordinary remedy of equitable tolling, as he fails to show that he pursued his rights diligently and that some extraordinary circumstance stood in his way of timely filing his second lawsuit.[8] Accordingly, Watkins's FTCA claim is dismissed as untimely.

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[8] The Court reiterates that this finding should not be interpreted to mean that Watkins necessarily must have filed the instant suit before he left quarantine the first time on February 3, 2021, as the limitations period lapsed during his period of quarantine; however, the Court finds equitable tolling is inappropriate for the period be-

## II. *Bivens* Claims Against Corrections and Medical Defendants Under the Eighth and Fourteenth Amendments

The Court next addresses Watkins's *Bivens* claims. Watkins alleges that Defendants[9] violated his Eighth Amendment and Fourteenth Amendment rights. To properly contextualize the nature of a *Bivens* claim, a brief overview of the Supreme Court's jurisprudence on the topic is in order.

In *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), the United States Supreme Court recognized for the first time an implied right of action for an individual whose Fourth Amendment right of freedom from unreasonable search and seizure was violated by the Federal Bureau of Narcotics. *Id.* at 390. There, federal agents entered Bivens's home and arrested him without a warrant. *Id.* at 389. The agents conducted the search in front of Bivens's family and threatened to arrest his wife and children. *Id.* The Court held that Bivens could sue for damages for the Fourth Amendment violation despite the lack of any federal statute authorizing such a suit. *Id.* at 397. The Supreme Court subsequently extended *Bivens* in "two additional contexts: a claim

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tween February 3, 2021 and April 15, 2021, during which Watkins was out of quarantine for nearly two months.

[9] The Court notes that Watkins has asserted *Bivens* claims against fictious John and Jane Does defendants. Defendants state that the motion to dismiss is not brought on behalf of any fictious defendants and that any future amendment that might name actual defendants would not relate back to an earlier filed complaint. Memo. Dismiss at 6, n.4 (citing *Herrera v. Cleveland*, 8 F.4th 493, 498 (7th Cir. 2021)). The Court, however, need not decide the issue.

against a member of Congress under the Fifth Amendment for workplace discrimination, *Davis v. Passman*, 442 U.S. 228 (1979), and a claim against federal prison officials under the Eighth Amendment for failure to provide adequate medical care, *Carlson v. Green*, 446 U.S. 14 (1980)." *Snowden v. Henning,* 72 F. 4th 237, 238-39 (7th Cir. 2023).

Over the years, however, *Bivens* claims have come to be viewed skeptically by the Supreme Court. *Bivens* was decided during what the Supreme Court has described as an "*ancien regime* [during which] the Court assumed it to be a proper judicial function to provide such remedies as are necessary to make effective a statute's purpose." *Ziglar v. Abbasi*, 582 U.S. 120, 131-32 (2017) (cleaned up). In fact, the Court recently stated that if it were "called to decide *Bivens* today, [it] would decline to discover any implied causes of action in the Constitution." *Egbert v. Boule*, 596 U.S. 482, 502 (2022). This shift is premised on the principle that "[w]hen an issue involves a host of considerations that must be weighed and appraised, it should be committed to those who write the laws rather than those who interpret them." *Abbasi*, 582 U.S. at 135-36 (cleaned up). Today, "a cause of action under *Bivens* is a disfavored judicial activity" for which the "watchword is caution." *Egbert*, 596 U.S. at 491 (cleaned up).

To determine whether a *Bivens* remedy is available, courts must engage in a two-step inquiry. *Egbert*, 596 U.S. at 492. First, a court asks if the claim "presents a new *Bivens* context," meaning that the case is "meaningfully different from the three cases in which the [Supreme] Court has implied a damages action." *Id.* (cleaned up). "If the context is not new, then the claim

may proceed." *Snowden,* 72 F. 4th at 239. A non-exhaustive list of meaningful differences include:

> 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.

*Abbasi*, 582 U.S. 120 at 139-40.

If the context is new, the court must then determine if it is appropriate to imply a new private right of action to that claim. *Snowden,* 72 F. 4th at 239. In *Abbasi*, the Supreme Court reiterated that a *Bivens* remedy "will not be available if there are 'special factors' counselling hesitation in the absence of affirmative action by Congress." *Id*. at 136 (cleaned up). The "special factors" inquiry, explained the Court, "must concentrate on whether the Judiciary is well suited, absent congressional action or instruction, to consider and weigh the costs and benefits of allowing a damages action to proceed." *Id.* "Put another way, the most important question is who should decide whether to provide for a damages remedy, Congress or the courts? If there is a rational reason to think that the answer is 'Congress'—as it will be in most every case, no *Bivens* action may lie." *Egbert*, 596 U.S. at 491-92 (cleaned up). Among those factors courts may consider is whether alternative remedies exist for addressing the constitutional violations raised by the claims of a particular case. That is,

"if there is an alternative remedial structure present in a certain case, that alone may limit the power of the Judiciary to infer a new *Bivens* cause of action." *Abbasi*, 582 U.S. at 137. "If there is even a single reason to pause before applying *Bivens* in a new context, a court may not recognize a *Bivens* remedy." *Egbert*, 596 U.S. at 492 (cleaned up).

Recently, the two-step process for evaluating requests to imply new constitutional causes of action has been called into question. *Sargeant v. Barfield*, 2023 WL 8224194, at *4, --- F.4th---- (7th Cir. 2023). In *Egbert*, the Supreme Court explained that, "[w]hile our cases describe two steps, those steps often resolve to a single question: whether there is any reason to think that Congress might be better equipped to create a damages remedy." 596 U.S. at 492. "This is because the final two step-one considerations—the risk of disrupting other branches and the presence of special factors that prior cases did not consider—are similar to the second step." *Sargeant*, 2023 WL 8224194, at *4.

It is within this framework that the Court analyzes whether Watkins may assert *Bivens* claims under the Eighth and Fourteenth Amendments.

Watkins alleges that Defendants violated his Eighth and Fourteenth Amendment rights when they were deliberately indifferent to his serious medical condition.[10]

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[10] Watkins's Eighth Amendment claims relate to the time that he was a prisoner at MCC between July 18, 2019 and July 29, 2019, whereas his Fourteenth Amendment claims relate to the time that he was a pretrial detainee at MCC from October 22, 2018 to July 18, 2019. SAC ¶¶ 57, 70, 84, 95. Fourteenth Amendment medical-care claims brought by pretrial detainees are subject only to the objective unreasonableness inquiry, whereas Eighth Amend-

SAC ¶¶ 56-104. Defendants contend that Watkins cannot maintain these claims because Congress, and not the courts, is the proper entity with the power to create a cause of action under these circumstances. Memo. Dismiss at 6. In fact, argue Defendants, Congress has already created multiple alternative remedial structures that "address precisely the kinds of injuries alleged in Watkins's complaint. *Id.* at 8. These include: (1) the BOP's Administrative Remedy Program (ARP), which Watkins availed himself of in this case by submitting a request for administrative remedy and appealing it through all appropriate channels before filing suit; and (2) the FTCA, which provides an avenue for some redress. *Id.* at 8-9. Here, argue Defendants, Watkins potentially had both remedies available to him. *Id*. at 9. Defendants posit that any argument that this Court should instead fashion a remedy like the Supreme Court did in *Carlson*, 446 U.S. 14 carries little weight because *Carlson* predates the Supreme Court's new approach to implied causes of action. *Id.* at 10-12. In any event, argue Defendants, *Carlson* is distinguishable from this case. *Id*.

Predictably, Watkins disagrees. Watkins argues that his *Bivens* claims fit within the context of *Carlson* and therefore do not arise under a new context. Resp. at 8-9. In rather cursory fashion, Watkins insists that the facts of his case are materially indistinguishable from those in *Carlson*, as "[Watkins] is a federal inmate

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ment medical-care claims brought by convicted prisoners are subject to the subjective deliberate indifference standard. *Miranda v. Cnty. of Lake*, 900 F.3d 335, 352 (7th Cir. 2018). The parties do not distinguish between Watkins's Eighth and Fourteenth Amendment claims for purposes of the *Bivens* inquiry, and the Court finds that the analysis is the same for both, so it analyzes them together.

alleging federal prison officials acted with deliberate indifference to Plaintiff's medical care in violation of the Eighth Amendment." *Id.* at 8. Because his claims do not arise under a new context, Watkins concludes that his claims are entirely consistent with *Bivens*. *Id.* In addition, Watkins argues, again relying on *Carlson*, there are no special factors counselling hesitation in allowing his cause of action to proceed. *Id.* at 8-9.

Defendants reply that *Carlson* is not only distinguishable from this case but also, given the Supreme Court's modern approach to *Bivens* claims, carries little weight. Reply at 5-6. The Court agrees.

In *Carlson*, prison officials allegedly, knowing of the seriousness of an inmate's chronic asthma, kept the inmate in an inadequate medical facility against doctors' advice, failed to give him competent medical care for about eight hours after his first asthma attack, administered contra-indicated drugs, attempted to use an inoperative respirator, and delayed his transfer to an outside hospital. 446 U.S. at 16 n.1. The inmate allegedly died as a result of these acts and omissions. *Id.* The inmate's estate brought suit, alleging that the prison officials violated the decedent's Eighth Amendment rights by giving inadequate medical care. *Id.* at 16. The Supreme Court recognized a *Bivens* cause of action under the circumstances of that case. *Id.* at 25. Applying the two-step test discussed above, the Court first found that the case did not involve any "special factors counselling hesitation in the absence of affirmative action by Congress," concluding that federal prison officials "do not enjoy such independent status in our constitutional scheme as to suggest that judicially created remedies against them might be inappropriate." *Id.* at 19. Sec-

ond, the Court rejected the notion that Congress's intention was to limit the plaintiff to an FTCA claim. *Id.* at 19-23. The Supreme Court saw FTCA claims as "parallel, complementary causes of action," with *Bivens* claims serving separate and distinct purposes from the FTCA. *Id.* at 20-23.

Defendants argue, and the Court agrees, that there are several differences between this case and *Carlson*, making this a new context. First, Watkins invokes Fourteenth and Eighth Amendment violations, whereas *Carlson* only involved the Eighth Amendment. Memo. Dismiss at 12. But even as to Watkins's Eighth Amendment claims, "the same constitutional amendment does not necessarily mean the same context, [as] 'a claim may arise in a new context even if it is based on the same constitutional provision as a claim in a case in which a damages remedy was previously recognized.'" *Sargeant*, 2023 WL 8224194, at *4 (quoting *Hernandez v. Mesa*, 140 S. Ct. 735, 743 (2020)). Second, Watkins, unlike *Carlson*, alleges an ongoing failure to provide medical care, whereas in *Carlson*, the inmate died because he was not provided medial care during an asthmatic episode. Memo. Dismiss at 12-13; Reply at 6. Third, Watkins brings his suit on his own behalf, whereas *Carlson* was a survivorship action brought by the inmate's estate after the allegedly inadequate treatment led to the inmate's death. Memo. Dismiss at 12. Lastly, Watkins brings claims against Dr. Mohan in part based on his supervisory role as the MCC's clinical director, so his liability arises from the acts and omissions of those working under him, whereas *Carlson* involved only direct liability claims. *Id.* Because this case presents a new factual context that is meaningfully different from *Carlson*, the Court must consider the special factors

that counsel hesitation before extending the *Bivens* cause of action to this case. *Egbert*, 596 U.S. at 492.

Here, the Court agrees with Defendants that there are alternative remedies available to Watkins. Specifically, the BOP's ARP, which Watkins availed himself of in this case by submitting a request for administrative remedy and appealing it through all appropriate channels before filing suit. The Supreme Court addressed the existence of the BOP's ARP as a preclusion to *Bivens* claims in *Corr. Servs. Corp. v. Malesko*, 534 U.S. 61 (2001). In *Malesko*, the Court declined to extend a *Bivens* claim to a federal prison inmate who suffered a heart attack while climbing the stairs of a halfway home, on account of his heart condition that limited his ability to engage in physical activity. 534 U.S. at 64, 74. The Court dismissed the prisoner's *Bivens* claim, concluding that there were "alternative remedies . . . at least as great, and in many respects greater, than anything that could be had under *Bivens*." *Id.* at 72. The prisoner had available parallel tort remedies against the private halfway house and had full access to remedial mechanisms established by the BOP, including the BOP's ARP. *Id.* at 72-74.

The Court in *Egbert* read the decision in *Malesko* to preclude a *Bivens* claim where a federal prisoner could file a grievance through an "Administrative Remedy Program." *Egbert*, 596 U.S. at 497. Watkins does not provide any counterargument to this assertion. *See* Resp. at 8-9. Instead, Watkins claims that his action is consistent with *Abbasi* and *Egbert*'s two-step analysis, focusing solely on the assertion that a FTCA claim does not defeat a *Bivens* claim—as *Carlson* saw the two as

"parallel, complementary causes of action." *Id.* (quoting *Carlson*, 446 U.S. at 19-20).

"So long as Congress or the Executive has created a remedial process that it finds sufficient to secure an adequate level of deterrence, the courts cannot second-guess that calibration by superimposing a *Bivens* remedy." *Egbert*, 596 U.S. at 498. This is precisely what occurred here. Although it may be clear to Watkins that the BOP's ARP is a woefully inadequate form of remedy compared to a *Bivens* action, the Court is not in a position to impose its own conclusions on the adequacy of available alternative remedies. That determination is best left for Congress or the Executive, and the existence of the BOP's ARP alone provides enough "reason to pause before applying *Bivens* in a new context." *Hernandez*, 140 S. Ct. at 743. Furthermore, courts—including those within the Seventh Circuit—have been consistent in holding that the BOP's ARP is an adequate alternative remedy. *See Silva v. United States*, 45 F.4th 1134, 1141-42 (10th Cir. 2022) ("Plaintiff's *Bivens* claim is foreclosed by the availability of the BOP Administrative Remedy Program to address his complaint."); *Greene v. United States*; 2022 WL 13638916, at *4 (6th Cir. 2022) ("Congress has not created a cause of action for damages against federal corrections officers and officials, [and plaintiff] has an adequate alternate remedy under the BOP grievance system, and implying a cause of action in this context would risk interfering with prison administration.") (cleaned up); *Landis v. Shellhammer*, 2023 WL 6276521, at *5 (N.D. Ill. Sept. 26, 2023) (denying a claim for Eighth Amendment excessive force under *Bivens* where a prisoner could bring a claim under BOP's ARP); *Ajaj v. Fozzard*, 2023 WL 2989654,

at *5-6 (S.D. Ill. Apr. 18, 2023) (finding in the wake of *Egbert* that the BOP's ARP forecloses a *Bivens* claim).

Not only that, but Watkins has another means of redress available in the form of the FTCA, which also precludes his *Bivens* action.[11] *See DeBenedetto v. Salas*, 2023 WL 6388127, at *7 (N.D. Ill. Sept. 29, 2023) (collecting cases and finding that the FTCA is a form of alternative relief for a *Bivens* claim); *McNeil v. Duda*, 2023 WL 2587884, at *3-4 (N.D. Ill. Mar. 21, 2023) (finding the existence of statutory grievance procedures, along with FTCA availability, to be alternative remedies precluding a *Bivens* claim); *Gonzalez-Loza v. Cnty. of Kankakee*, 2021 WL 5823512, at *4 (N.D. Ill. Dec. 7, 2021) (FTCA is alternative form of relief for *Bivens* purposes). Although, as Watkins points out, the *Carlson* decision spent considerable time focusing on the reasons why a FTCA claim was inadequate compared to a *Bivens* action, and allowed both claims to proceed, *Carlson*, 446 U.S. at 20-23, that decision came before the more than 40 years of intervening case law that has closely scrutinized the availability of other forms of relief, even if they are seen as imperfect. *C.f. Egbert*, 596 U.S. at 501 ("[A] plaintiff cannot justify a *Bivens* exten-

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[11] Defendants do not dispute that Watkins exhausted his administrative remedies as required under the FTCA. *See* SAC ¶¶ 34-40; *see generally* 28 U.S.C. § 2675(a) ("An action shall not be instituted upon a claim against the United States for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail.").

sion based on parallel circumstances with *Bivens*, *Passman*, or *Carlson* unless he also satisfies the analytic framework prescribed by the last four decades of intervening case law.") (cleaned up); *see also McNeil*, 2023 WL 2587884, at *4 (rejecting plaintiff's argument that *Carlson*'s holding that the FTCA and *Bivens* provide parallel causes of action supported plaintiff's *Bivens* claim, in light of *Abbasi*'s "holding that the existence of an alternative remedial precludes the extending a *Bivens* claim into a new context").

Under the current *Bivens* doctrine and its "special factors" inquiry, "a court cannot extend *Bivens* to a new context if 'there is *any* rational reason (even one) to think that *Congress* is better suited to weigh the costs and benefits of allowing a damages action to proceed.' Few (if any) new claims will survive this test." *Snowden v. Henning*, 72 F.4th 237, 239 (7th Cir. 2023) (quoting *Egbert*, 596 U.S. at 496) (emphasis in original). Simply put, a *Bivens* extension cannot be based on "parallel circumstances" with *Carlson* unless the "analytic framework prescribed by the last four decades of intervening case law" are satisfied. *See Egbert*, 596 U.S. at 501 (cleaned up).

All in all, because Watkins's claims arise in a new context, and Congress has established alternative remedies that Watkins may pursue to redress any alleged harm, the Court will not extend *Bivens* into this new context and his *Bivens* claims must fail.

**Conclusion**

For the foregoing reasons, the Court must grant the motion to dismiss [27] in all respects. Watkins's claims are dismissed with prejudice. *See Blake v. Bradley*, 2022 WL 865843, at *6 (N.D. Ill. Mar. 23, 2022) (dismiss-

ing *Bivens* claim with prejudice); *Watkins v. United States*, 2016 WL 1435704, at *4 (N.D. Ill. Apr. 12, 2016), *aff'd*, 854 F.3d 947 (7th Cir. 2017) (dismissing FTCA claim brought beyond the statute of limitations with prejudice). Civil case terminated.

Dated: December 8, 2023

/s/ FRANKLIN U. VALDERRAMA
United States District Judge
FRANKLIN U. VALDERRAMA

**APPENDIX C**

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS 60604

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No. 24-1151

JORDAN WATKINS, PLAINTIFF-APPELLANT

*v.*

BRIJ MOHAN, ET AL., DEFENDANTS-APPELLEES

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Filed: Nov. 3, 2025

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Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division
No. 1:21-cv-02045—Franklin U. Valderrama, *Judge*

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**ORDER**

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KENNETH F. RIPPLE, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

On consideration of Defendants' petition for rehearing and rehearing en banc, filed October 16, 2025, no judge in active service has requested a vote on the petition for rehearing en banc, and all judges on the original panel have voted to deny the petition for panel rehearing.

Accordingly, the petition for rehearing and rehearing en banc filed by Defendants is **DENIED**.