

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

**For the Seventh Circuit
Chicago, Illinois 60604**

Submitted June 12, 2025*

Decided June 13, 2025

Before

DIANE S. SYKES, *Chief Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 24-3156

JESSE SKYBERG,
Plaintiff-Appellant,

v.

STEVE JAMES,
Defendant-Appellee.

Appeal from the United States District
Court for the Western District of
Wisconsin.

No. 22-cv-591-jdp

James D. Peterson,
Chief Judge.

ORDER

Jesse Skyberg, a federal prisoner, sued a counselor at the Federal Correctional Institution in Oxford, Wisconsin, for ignoring a doctor's order to quarantine Skyberg during the COVID-19 pandemic. Skyberg alleged that this conduct violated his rights under the Eighth Amendment. *See Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). The district judge granted the defendant's motion to

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

dismiss because Skyberg's claim presented a new *Bivens* context and special factors weighed against extending the remedy. We affirm.

We accept the allegations in the amended complaint as true, viewing them in the light most favorable to Skyberg. *See Lax v. Mayorkas*, 20 F.4th 1178, 1181 (7th Cir. 2021). Skyberg has asthma. Steve James, a prison counselor at FCI Oxford, assigned Skyberg to work as an orderly, and Skyberg's job duties included cleaning the common area of a housing unit.

In June 2020, after the start of the COVID-19 pandemic, Skyberg reported to James that a physician had ordered him to quarantine because his asthma exposed him to an increased risk of complications if he contracted the virus. Skyberg asked James to move him to a single cell. James did not, and Skyberg continued to work as an orderly. In October 2020, Skyberg's cellmate tested positive for COVID-19, and Skyberg contracted the virus two days later. As a result of his infection, Skyberg developed long-term complications, including chest pains, fatigue, shortness of breath, and headaches.

In April 2021, Skyberg filed an informal resolution request through the prison's Administrative Remedy Program. He sought compassionate release because he had health problems, including asthma, that placed him at an increased risk of complications if he contracted new strains of COVID-19. The warden denied the request, and Skyberg appealed, adding allegations about James's conduct in June 2020. The warden again denied relief. Skyberg appealed to the Bureau of Prisons' Regional Director, and finally, to the General Counsel, but both affirmed the warden's denial.

Skyberg then filed this lawsuit in October 2022, alleging that James and other prison staff violated his rights under the Eighth Amendment when they ignored the doctor's order to quarantine him. The district judge screened the complaint, *see* 28 U.S.C. § 1915A, and allowed Skyberg to proceed on a claim against only James.

James filed a motion to dismiss the complaint, which the district judge granted. The judge concluded that relief under *Bivens* was unavailable because Skyberg's claim presented a new context and special factors counseled against authorizing a *Bivens* remedy. The judge first explained that while an implied damages remedy under *Bivens* is available for an Eighth Amendment claim involving inadequate medical care, *Carlson v. Green*, 446 U.S. 14 (1980), Skyberg's claim presented two meaningful differences. First, the defendants in *Carlson*, unlike James, were responsible for or involved in providing medical care. Second, the judge observed that Skyberg's claim involved the conditions of his confinement, a type of claim not recognized by *Bivens* and its related cases. The

judge further explained that special factors weighed against implying a remedy. Specifically, the judge pointed to the existence of the Administrative Remedy Program, which allows a federal prisoner to file a complaint about any aspect of his confinement.

Skyberg moved for reconsideration, asserting that his claim did not present a new context because there is no difference between an Eighth Amendment claim against medical staff and non-medical staff, and he did not attempt to bring a conditions-of-confinement claim. The judge denied the motion.

Skyberg appeals, arguing that the district judge incorrectly concluded that his claim presented a new context and that special factors weighed against implying a remedy. We review the dismissal of the complaint de novo. *See Lax*, 20 F.4th at 1181.

The Supreme Court has recognized an implied cause of action against federal officers in their individual capacities for constitutional violations. *Bivens*, 403 U.S. at 396. The *Bivens* remedy is available in only three contexts. *See Ziglar v. Abbasi*, 582 U.S. 120, 140 (2017). As relevant here, in *Carlson*, the Supreme Court implied a *Bivens* remedy for an Eighth Amendment claim of inadequate medical care in prison. 446 U.S. at 24–25. Extending *Bivens* to a new context is “disfavored.” *Abbasi*, 582 U.S. at 135 (citation omitted). Thus, we will not authorize a *Bivens* remedy when a claim is “different in a meaningful way from previous *Bivens* cases” and “special factors” counsel against authorizing the remedy. *Id.* at 139–40. The Supreme Court has identified some examples of meaningful differences, including different officer ranks, the generality or specificity of the official action, and the presence of other factors that previous *Bivens* cases did not consider. *See id.*

First, we agree with the district judge that Skyberg’s claim differs meaningfully from the claim in *Carlson*. In *Carlson*, the defendants—a chief medical officer and a nurse—were alleged to have provided constitutionally inadequate medical care when they did not respond to a prisoner’s asthma attack, administered the wrong medication, and delayed a hospital transfer. *See* 446 U.S. at 16 n.1. In contrast, James was a non-medical prison counselor, and his decision not to quarantine Skyberg affected the conditions of Skyberg’s confinement, not the adequacy of his medical care. Skyberg’s allegations center on James’s decisions to decline a single-cell assignment and mandate Skyberg’s continued work cleaning common areas. Unlike in *Carlson*, Skyberg does not raise any concerns about how staff treated his COVID-19 infection and resulting complications. These differences convince us that Skyberg’s claim arises in a new context. *See, e.g., Sargeant v. Barfield*, 87 F.4th 358, 366 (7th Cir. 2023) (*Bivens* claim arose

in new context because it involved a housing assignment, which differed from medical context in *Carlson*); *Bulger v. Hurwitz*, 62 F.4th 127, 138 (4th Cir. 2023) (same).

Second, the district judge correctly concluded that the existence of the Bureau of Prisons' administrative review process weighs against implying a new cause of action. If Congress crafts an alternative remedial structure that is adequate to deter misconduct, that is "reason enough" not to authorize the *Bivens* remedy. See *Egbert v. Boule*, 596 U.S. 482, 493 (2022). In federal prisons, a prisoner may seek "formal review" of issues relating to "any aspect" of confinement through the Administrative Remedy Program. 28 C.F.R. § 542.10(a). This process allowed Skyberg to seek redress for his concerns related to his health, housing, and work assignments, see *Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 74 (2001), and precludes the extension of *Bivens* to this context.

Skyberg insists that the Administrative Remedy Program is inadequate because James prevented him from accessing grievance forms, which left Skyberg unable to seek administrative review. But we consider only whether there is a reason why Congress is better positioned to assess the need for a remedy, not whether that remedy is functionally available. See *Sargeant*, 87 F.4th at 368. In any event, the Administrative Remedy Program was available to Skyberg—he filed an informal resolution request for compassionate release and appealed using every review mechanism available.

AFFIRMED