No. 22-693

IN THE
Supreme Court of the United States

MICHAEL JOHNSON,

Petitioner,

v.

SUSAN PRENTICE, ET. AL.

Respondents.

On Petition for a Writ of Certiorari to the U.S. Court of Appeals for the Seventh Circuit

REPLY BRIEF IN SUPPORT OF CERTIORARI

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INTRODUCTION

Michael Johnson, a seriously mentally ill prisoner consigned to solitary confinement, was deprived of exercise for three years while his body and mind withered. That extraordinary denial of a basic human need was not compelled by exigency. It was an after-the-fact punitive measure.

Breaking decisively from this Court and the circuit courts, a divided panel of the Seventh Circuit sanctioned the exercise deprivation by applying a criminal-sentencing proportionality framework rather than the deliberate-indifference standard. A majority of Seventh Circuit judges recognized the panel's fundamental error. Fully half of the Seventh Circuit called for this Court's intervention.

Respondents' opposition to plenary review or summary reversal relies upon contrived law and facts in equal measure—and, in the alternative, an assurance that the Seventh Circuit may *someday* correct its error. But because the opinion "sends the message" loud and clear that prisoners are "now fair game for torture, or starvation, or medical neglect," Pet.App.74a (Wood, J., dissenting), there is no luxury of time. This Court should grant the petition.

I. The Majority Rejected This Court's Longstanding Jurisprudence.

For decades, this Court has judged prison conditions against the deliberate-indifference standard. Under that test, a corrections officer may not "know[] that inmates face a substantial risk of serious harm" yet "disregard[] that risk by failing to take reasonable measures to abate it." *Farmer v. Brennan*, 511 U.S. 825, 847 (1994). Faithful to that

precedent, circuit courts uniformly hold that exercise must be offered regularly to prisoners in solitary confinement unless exercise poses an insurmountable security risk. Pet.10-16.

The panel majority jettisoned this framework for one cribbed from criminal sentencing cases.[1] In the Seventh Circuit, it is now the law that prison officials may withhold all exercise "as a sanction" for "misconduct violations"—and "stack" such punishments infinitely. Pet.App.14a. No matter the cumulative duration, the harm caused, or the lack of exigency, exercise deprivations now comport with the Eighth Amendment so long as they are not "meted out for 'some utterly trivial infraction.'" Pet.App.14a.

No other circuit employs this rule, or reaches this dangerous result. Pet.10-16. And for good reason: As six circuit judges explained in three reasoned opinions, the panel decimated this Court's prison conditions precedents. Pet.App.18a-36a, 62a-64a, 65a-74a.

It did so in a two-step move. First, the majority appropriated *Pearson v. Ramos*, 237 F.3d 881 (7th Cir. 2001) (Posner, J.), where a divided panel layered a sentencing proportionality framework atop the deliberate-indifference standard, *id.* at 885, creating an awkward pastiche that conflated the standard used to judge "sentences to confinement by a court from criminal charges" with that used to regulate

[1] The majority applied the deliberate-indifference standard to Johnson's *other* conditions claim—not pressed here—concerning his decrepit cell. On the exercise claim, as the panel majority makes explicit, Pet.App.14a, and Respondents note, the court "unambiguously grounded its decision," BIO1, elsewhere.

"conditions of confinement." *Id.* at 888-89 (Ripple, J., concurring); Pet.App.14a. Next, the majority stripped away all but *Pearson*'s criminal sentencing metrics. Gone were *Pearson*'s considerations of the prisoner's risk of harm, prison officials' ability to alleviate it, or security concerns that might require the restriction.[2] Instead, the panel considered only whether each individual punishment lasted 90 days or less and could be traced to some not "utterly trivial" misconduct. Pet.App.14a. That mechanical exercise complete, the panel deemed Johnson's three-year deprivation constitutional.[3] *Id.*

Compared to the opinion below, the *Pearson* departure from this Court's precedents seems modest. Despite borrowing from the criminal law, the *Pearson* majority reviewed the security justification for the deprivation before concluding that "allow[ing the

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[2] The panel appeared to concede that most of Johnson's misconduct could not implicate security. Pet.App.14a (characterizing Johnson's misconduct as "*sometimes* highly dangerous" (emphasis added)). Johnson's tickets for spitting and throwing bodily waste—highlighted by the majority, *id.*, described as "assault" and "attempted" assault by Respondents, and characterized as Johnson's gravest offenses, BIO3, 13, 26—accounted for only eleven of the thirty-seven months that Johnson was denied exercise. Pet.App.34a (Rovner, J., dissenting). Johnson was denied the bulk of exercise for misconduct bearing no conceivable relationship to security exigencies. *Id.*

[3] Respondents' contention that "multiple appellate and district courts . . . have followed *Pearson*'s reasoning when reviewing Eighth Amendment yard-exercise claims," BIO17, is erroneous. Five of the six cases Respondents cite do not follow *Pearson*'s reasoning at all. And though Respondents cite one decision that endorses *Pearson*—*Grant v. Bowers*, No. 1:22-CV-330, 2023 WL 2392729, *5-6 (E.D. Va. Mar. 6, 2023)—a single trial court order is not exactly widespread adoption.

plaintiff] to exercise in the yard would have given him additional opportunities to attack prison staff and set fires." 237 F.3d at 885. The *Pearson* majority examined whether the plaintiff had been injured by the deprivation. *Id.* at 886. And the *Pearson* majority considered whether the defendants disregarded "any risk to the plaintiff's physical or psychological well-being." *Id.* at 887. If *Pearson* took a detour from this Court's precedents, the majority below got lost altogether.

Respondents nonetheless contend that the Seventh Circuit's jurisprudential isolation is illusory. BIO11-18. To start, Respondents insist that the circuits uniformly require only a "penological interest[]"—*any* interest—to justify exercise deprivation. BIO11-16. That's wrong. Prisons have many penological interests. *E.g.*, *Neely-Bey Tarik-El v. Conley*, 912 F.3d 989, 1003 (7th Cir. 2019) (describing "financial stability," "rehabilitation," "health and safety," "treating male and female inmates equally," and "protection of constitutional rights" as among prisons' wide-ranging "penological interests"). But only one such interest—security—can justify exercise deprivation. Every other circuit to consider such deprivations so holds, Pet.10-16, and Respondents do not cite any cases to the contrary. Exercise is one of life's necessities, not a privilege to be snatched away on a whim.[4] Pet.App.18a-19a, 65a.

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[4] The rule is the same where other basic human needs are concerned. *E.g., Foster v. Runnels*, 554 F.3d 807, 812-14 (9th Cir. 2009) (notwithstanding repeated misconduct, food could not be withheld where misconduct did not interfere with staff safety during feeding); *Chavarria v. Stacks*, 102 F. App'x 433, 436 (5th

Next, Respondents describe the panel majority's "anti-stacking rule" as "consistent with decisions from other circuits." BIO23. But the cases they cite for that proposition, all of which arise in the *criminal sentencing* context, only emphasize the majority's solitude. Those contexts are not interchangeable. Slicing and dicing prolonged deprivations of essential human needs into discrete sentences would remove any limit on the cumulative harm prison officials may inflict.[5]

That can't be right; the Eighth Amendment *is* concerned with cumulative harm. Respondents correctly recite *Wilson*'s instruction "that conditions may be aggregated . . . when together they uniformly affect a single need, such as exercise," BIO27; *see Wilson v. Seiter*, 501 U.S. 294, 304 (1991), but disregard its meaning. The Seventh Circuit completely bucked *Wilson*, and instead—as Respondents put it—"held that . . . discrete restrictions should be considered separately . . . when evaluating them for Eighth Amendment compliance." BIO22; Pet.App.14a. That "seems to say that the

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Cir. 2004) (permissible to keep lights on, even though doing so interfered with basic need of sleep, because lighting furthered "security reasons" by "prevent[ing] guards being assaulted by an inmate in a dark cell"); *Maxwell v. Mason*, 668 F.2d 361, 363 (8th Cir. 1981) (deprivation of clothing and bedding unconstitutional where the deprivation bore "no relationship whatever to any security measure").

[5] Respondents fault Petitioner for "not challeng[ing]" *Pearson*'s "anti-stacking rule." BIO31. But Petitioner consistently challenged the holding that the Eighth Amendment is not violated by the prolonged deprivation of exercise dribbled out in increments of punishment. *E.g.*, Pet.3-4, 7-10, 16, 25. That *is* a challenge to the so-called "anti-stacking rule."

Eighth Amendment is not concerned with the sum total of the deprivation so long as each component is not problematic when measured in isolation," a proposition that is "hard to square" with *Wilson*. Pet.App.62a (Scudder, J, concurring).

It is also hard to square with common sense. If prison officials can "stack" infinite deprivations of essential human needs as punishment, they can withhold any essential need for lifetimes, so long as they dole out punishments in 90-day increments. Pet.App.71a (Wood, J., dissenting). But conditions that "might be tolerable for a few days" become "intolerably cruel for weeks or months." *Hutto v. Finley*, 437 U.S. 678, 687 (1978). Thus, the Eighth Amendment does not consider individual deprivations of essential needs "in a vacuum." *Id.* at 685-86. Instead, it considers them as the prisoner experienced them: "in combination." *Wilson*, 501 U.S. at 304.

II. The Decision Below Is Wrong.

Unable to defend the panel's opinion, Respondents rewrite it—first attempting to shoehorn the majority's proportionality analysis into the deliberate-indifference standard, and then performing a deliberate-indifference analysis on an imagined record.

A. Respondents Invent A Deliberate-Indifference Test.

Under the decision below, the Constitution doles out "the minimal civilized measure of life's necessities," *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981), in proportion to good behavior. That's not the law. Respondents attempt to squeeze this proportionality test into the deliberate-indifference

standard's objective prong, arguing: "[T]he appellate court correctly held that the yard restrictions were justified, which satisfied the objective element of the deliberate-indifference test." BIO26. But the objective prong doesn't ask whether a deprivation was "justified"; it asks whether the deprivation imposed a "substantial risk of serious harm." *Farmer*, 511 U.S. at 834. And it assesses the deprivation in full, accounting for the various exercise restrictions' "mutually enforcing effect" "in combination," *Wilson*, 501 U.S. at 304, not—as a sentence disproportionality challenge would—in isolation, comparing each punishment to each crime.

Respondents also rejigger the standard's subjective component, claiming that it forbids "knowingly impos[ing] an unjustified yard restriction." BIO26. Incorrect again. Respondents—and the Seventh Circuit—believe that *any* "penological interest," BIO14, can "justify" a yard restriction. But the subjective component forbids the knowing failure "to take reasonable measures to abate" a "substantial risk of serious harm." *Farmer*, 511 U.S. at 847. And, as every circuit but the Seventh holds, only a compelling security concern can make the "fail[ure] to . . . abate" the grave risk of exercise deprivation "reasonable." *Id.*; Pet.10-16.

B. Respondents Apply The Actual Deliberate-Indifference Test To An Imaginary Record.

After failing to recast the decision as applying the deliberate-indifference framework, Respondents apply the *actual* deliberate-indifference standard—but not to Johnson's evidence.

On the objective prong, Respondents claim that "the record did not establish that petitioner suffered any adverse health consequences due to the loss of yard access," and that Johnson merely speculates that "'it is reasonable to assume' that he suffered 'serious harm.'" BIO27-28. Respondents badly misrepresent the record and petition.

The record demonstrates that the "terrible and predictable" price of Johnson's uninterrupted isolation was a mind that "played tricks on him," regular placement on suicide watch, "hallucinations," self-mutilation, the urge to "smear feces in his cell and on himself," and "physical deterioration." Pet.7; Pet.App.20a (Rovner, J., dissenting). In sum, "Johnson *has already* suffered 'serious harm' of both a psychological and a physical nature." Pet.18 (emphasis added).

Respondents ignore the summary judgment posture to concoct other "holes" in the record. For example, Respondents claim the record does not establish "the extent of petitioner's out-of-cell access." BIO21. Not so. The record shows that, for years, Johnson was entitled to one hour per month of exercise, App.7, 576-78, and even that hour was frequently denied, App.8-9, 29-30, 136-39, 537. Respondents also claim that "the evidence about his ability to exercise in his cell was unclear." BIO21. Wrong again. Johnson demonstrated that he could not exercise in his cell because it was "a very small, confined space," and all of his property had to be stored on the floor. App.471, 556.

On the subjective prong, Respondents "kn[ew] of," *Farmer*, 511 U.S. at 837, the harms Johnson suffered. Johnson complained persistently to Respondents,

explaining that "due to me not being allowed to have outdoor exercise I have been & continuously am being injured physically & psychologically with stress, anxiety, depression, headaches & muscle cramps amongst other things like overwhelming fatigue due to lack of fresh air." App.30, 38-39, 137, 545-51. Respondents witnessed Johnson's deterioration—they moved him repeatedly to suicide watch, observed him smear feces on himself, and more.[6] *See, e.g.*, App.193. And Respondents' suggestion that Johnson often claimed to be complaint free, BIO5, is contradicted by the very records they cite. *E.g.*, ECF.78-2 at 1 (personnel attempted to visit Johnson in the "crisis cell" but his "window was obscured by feces"); App.424-25 (Johnson's affect is "inappropriate" and noting his placement on suicide watch); ECF.78-10 at 5 (Johnson is "on crisis watch for threatening self-harm").

Despite that knowledge, Respondents "disregard[ed]," *Farmer*, 511 U.S. at 837, Johnson's suffering. As Johnson testified, the individual Respondents could have "helped get [him] out to the yard more." App.550. Instead, they "chose the one unavailable option—doing nothing." *J.K.J. v. Polk County*, 960 F.3d 367, 383 (7th Cir. 2020) (en banc).

Notwithstanding this evidence, Respondents contend that they were not deliberately indifferent because prison medical professionals never connected Johnson's medical issues to his exercise deprivation. BIO24-25, 28-29. Not so. Prison mental health staff

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[6] Department of Corrections regulations and personnel also warned of the dangers of forced idleness. Pet.19-20.

reported years before Respondents lifted the exercise restriction that "yard restriction" left Johnson with "no outlet" to blunt the effects of his mental illness. Pet.19; App.295.[7] Nearly a *year and a half* later, the reports were similar, describing Johnson as experiencing "panic attacks," "depress[ion]" and "suicid[al]" ideations over "not getting yard." App.305. Even then, prison officials waited months to lift the restrictions. *See* ECF.78-10 at 8-10 (noting referral for transfer to specialized treatment facility); App.52 (indicating specialized treatment transfer).

Respondents' argument also lacks support in the law. With one exception, Respondents only cite cases explaining that prison officials may defer to medical professionals concerning *medical care*, not conditions of confinement. BIO29; s*ee McRaven v. Sanders*, 577 F.3d 974, 981 (8th Cir. 2009) (considering proper treatment for overdose); *Est. of Beauford v. Mesa Cnty.*, 35 F.4th 1248, 1265 (10th Cir. 2022) (same, for seizures). The one exception comes in *Giles v. Godinez*, where the Seventh Circuit concluded that prison officials were not deliberately indifferent to the risks of solitary confinement when medical professionals "continually reported that it was appropriate," until the medical professionals "determined that [plaintiff's] mental condition was being exacerbated

[7] Respondents attempt to deflect from Johnson's suffering and their awareness of it by protesting that this severely mentally ill *pro se* prisoner failed to attach every relevant document to his summary judgment briefing. BIO20n.2; BIO28n.4. The district court was not so unbending. Because Johnson "provide[d] specific dates that the Court" could cross-reference with the record, he had done "all that was required." Pet.App.39a. That exercise of discretion was proper. Fed. R. Civ. P. 56(c)(3); *Arroyo v. Volvo Grp. N. Am., LLC*, 805 F.3d 278, 285 (7th Cir. 2015).

by his cell assignment," at which point prison officials "moved [him] the next day." 914 F.3d 1040, 1052 (7th Cir. 2019).

In marked contrast to the prison officials in *Giles*, Respondents waited nearly two years after prison mental health staff warned against continued exercise deprivations. Pet.19; App.295. And then after hearing the same from other medical professionals, they waited months. App.52. That is the very definition of deliberate indifference.

III. This Is The Ideal Vehicle To Decide An Exceptionally Important Issue.

Respondents' brief illustrates both the importance of this petition and its suitability for review.

To start, Respondents quibble that the deliberate-indifference inquiry is a factual one. True, but irrelevant; the panel threw away the facts when it refused to apply the deliberate-indifference framework. As a result, this Court is faced with a "sharply presented" legal question: Are exercise restrictions judged against the deliberate-indifference standard, such that prolonged deprivations must be justified by security exigencies, or against a proportionality standard imported from criminal law? *See* Pet.App.70a (Wood, J., dissenting).

Echoing the majority, Respondents next describe this case as a disguised challenge to the "constitutionality of solitary confinement." BIO3, 31. That's wrong, and it emphasizes the panel majority's refusal to heed *Wilson*'s instruction that conditions with a "mutually enforcing effect" "produc[ing] the deprivation of a single, identifiable human need such as . . . exercise" must be analyzed "in combination."

501 U.S. at 304. As six Seventh Circuit judges recognized, Johnson's description of his solitary confinement provides the context *Wilson* demands: Yard restrictions plus solitary confinement equaled a prolonged deprivation of exercise. Pet.App.18a (Rovner, J., dissenting); Pet.App.64a (Scudder, J., concurring); Pet.App.68a-69a (Wood, J., dissenting).

Respondents' tortured argument that the case is of "narrow" applicability also misses the mark. BIO11. Johnson described the majority's opinion as "*sui generis*," Pet.16, not because, as Respondents suggest, it will impact only Johnson, BIO31, but rather because the opinion decisively splits from precedent. Far from being a case of narrow import, the panel's "sweeping holding" threatens every prisoner incarcerated within the Seventh Circuit. Pet.App.71a (Wood, J., dissenting). The breadth and consequence of the decision make it "a suitable candidate for Supreme Court attention." *Id.* at 65a; *see* Pet.App.62a (Scudder, J., concurring) (explaining that the holding "cries out" for further review).

Finally, Respondents' assurance that the Seventh Circuit will fix its flawed precedent without this Court's intervention, BIO10, 19, 25, is cold comfort. *Pearson*'s initial misstep was recognized on the day it was published. 237 F.3d at 888-89 (Ripple, J., concurring). More than two decades later, the Seventh Circuit has only doubled down on its mistake. *See* Pet.App.71a (Wood, J., dissenting). Neither Johnson nor the thousands of other people incarcerated within Illinois, Wisconsin, or Indiana can wait another two decades for the Seventh Circuit to correct course.

CONCLUSION

This Court should grant plenary review to answer the question presented or summarily reverse the decision below.

Respectfully submitted,

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JULY 2023