NOT FOR PUBLICATION

In the United States Court of Appeals
For the Eleventh Circuit

No. 25-11974
Non-Argument Calendar

ROBERT J. TLUSTY,

Plaintiff-Appellant,

versus

ALEXANDER,
Health Services Lieutenant Commander,
GARDNER,
Physician Assistant,
PITTMAN,
Assistant Health Services Administrator,
S. DEPAUL,
Nurse,
J. SMITH,
Correctional Officer et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Florida
D.C. Docket No. 5:24-cv-00167-MCR-MJF

Before WILLIAM PRYOR, Chief Judge, and JORDAN and KIDD, Circuit Judges.

PER CURIAM:

Robert Tlusty, a former federal prisoner represented by counsel on appeal, appeals the dismissal of Tlusty's *pro se* complaint against several prison officials, *see Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), for failure to state a claim for relief. 28 U.S.C. § 1915A. We affirm.

I. BACKGROUND

Tlusty filed a *pro se* complaint against nine named federal prison officials, as well as "John and Jane Doe Defendants." The complaint alleged that seven officials violated Tlusty's federal constitutional rights by failing to provide medical treatment for four days for chemical burns to Tlusty's hands caused by shaving products and that the remaining officials illegally seized Tlusty's grievance forms. Tlusty's complaint included no allegations about the John and Jane Doe defendants.

A magistrate judge issued a report recommending that the district court dismiss Tlusty's complaint for failure to state a claim for relief. The report acknowledged that the Supreme Court had, in *Carslon v. Green*, 446 U.S. 14 (1980), recognized a *Bivens* action for

deliberate indifference under the Eighth Amendment, but concluded that Tlusty's claim presented a new context because the type and severity of Tlusty's injuries differed from those in *Carlson* and Tlusty had an alternative remedy available under the prison grievance system. The report also concluded that Tlusty's illegal seizure claim presented a new *Bivens* context because the complaint alleged a Fourth Amendment violation based on a search in a prison, not a private residence. The report concluded that special factors counseled against extending *Bivens* to these claims. The report also concluded that Tlusty's amended complaint failed to state a claim against the John and Jane Doe defendants because it included no facts about them. The district court adopted the report over Tlusty's objections and dismissed the complaint.

II. STANDARD OF REVIEW

We review *de novo* the dismissal of a prisoner's complaint for failure to state a claim for relief. *Leal v. Ga. Dep't of Corr.*, 254 F.3d 1276, 1278-79 (11th Cir. 2001).

III. DISCUSSION

Under section 1915A, a district court shall review, as soon as practicable, a prisoner's civil complaint against prison officials, and it shall dismiss the complaint if it "is frivolous, malicious, or fails to state a claim upon which relief may be granted." 28 U.S.C. § 1915A(a), (b)(1). To survive dismissal, a prisoner's complaint must allege enough plausible facts, accepted as true, to state a claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

In *Bivens*, the Supreme Court recognized an implied right of action for damages against federal officials for violations of the Fourth Amendment. *See Johnson v. Terry*, 119 F.4th 840, 847 (11th Cir. 2024). In *Carlson*, the Supreme Court held that, under *Bivens*, the estate of a deceased federal prisoner could sue prison officials for deliberate indifference, in violation of the Eighth Amendment, for failing to treat the prisoner's asthma, which caused his death. *Carlson*, 446 U.S. at 16-19 & n.1. When the Supreme Court decided *Carlson*, for a *Bivens* action, a court had to determine whether "there were alternative remedies which Congress explicitly declared to be a substitute for recovery directly under the Constitution and viewed as equally effective." *See Johnson*, 119 F.4th at 858 (quotation marks omitted and alterations adopted). After *Carlson*, the Supreme Court adopted a higher standard: "whether *any* alternative remedy exists that Congress or the Executive believed to be sufficient." *See id.* The Supreme Court has since then repeatedly declined to extend *Bivens* to any new context. *See id.* at 847-48.

To determine whether a claim is cognizable under *Bivens*, a court must first evaluate whether the complaint differs from the three contexts where the Supreme Court has permitted an implied right of action. *Egbert v. Boule*, 596 U.S. 482, 492 (2022). We consider whether the cases have *any* relevant differences, not whether they are only similar. *Johnson*, 119 F.4th at 859. If the claim presents a new context, the court must determine whether any special factors suggest that courts are at least arguably less equipped than Congress to weigh the costs and benefits of allowing a damages action.

Egbert, 596 U.S. at 492. "If there is even a single reason to pause before applying *Bivens* in a new context, a court may not recognize a *Bivens* remedy." *Id.* (citation and internal quotation marks omitted).

Johnson controls this appeal. In *Johnson*, a federal prisoner alleged that officials were deliberately indifferent to his serious medical needs when they inadequately treated injuries to his jaw, hand, and foot. *Johnson*, 119 F.4th at 843-46. We concluded that, although *Carlson* recognized a *Bivens* action against prison officials for deliberate indifference, Johnson's claims presented a new context because the severity, type, and treatment of his injuries were different from those in *Carlson*, which involved fatal injuries. *Id.* at 858-59. We held that special factors weighed against extending *Bivens* to this new context because the prisoner had an available alternative remedy under the prison grievance system. *Id.* at 859-60.

The district court did not err. Tlusty's claims do not fall within any of the contexts for an implied right of action against federal officials. Tlusty's injuries meaningfully differ from the injuries in *Carlson*. *See Bivens*, 403 U.S. at 394-97; *Carlson*, 446 U.S. at 16; *Johnson*, 119 F.4th at 858-59. And Tlusty has an available alternative remedy. *See Johnson*, 119 F.4th at 860; *see also Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 74 (2001) (holding that a prisoner's administrative remedy is an appropriate alternative to a *Bivens* claim).

IV. CONCLUSION

We **AFFIRM** the dismissal of Tlusty's complaint for failure to state a claim for relief.