

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Derek Thomas v. Jacqueline Carmichael, et al.

No. 23-2552 (7th Cir. Jan. 23, 2026) · No. No. 23-2552 · Decided January 23, 2026

SUMMARY

The Seventh Circuit affirmed summary judgment for federal prison officials in Derek Thomas’s Eighth Amendment action arising from alleged failure to protect him from a cellmate and deliberate indifference to his medical needs. The court held that the failure-to-protect claim was not cognizable under Bivens under binding circuit precedent. It further held that Thomas forfeited his opposition to qualified immunity by failing to raise it in the district court and that the circumstances did not warrant plain-error review.

CASE DETAILS

COURT	United States Court of Appeals for the Seventh Circuit
WRITING FOR THE COURT	Kolar, Circuit Judge; Ripple, Circuit Judge; St. Eve, Circuit Judge
JURISDICTION	United States Court of Appeals for the Seventh Circuit
DECIDED	January 23, 2026
DOCKET	No. 23-2552
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the grant of summary judgment to federal prison officials in a Bivens action alleging Eighth Amendment failure to protect and deliberate indifference to serious medical needs.
STANDARD OF REVIEW	Summary judgment is reviewed de novo, with facts and reasonable inferences viewed in the light most favorable to the nonmovant. The court generally does not consider arguments raised for the first time on appeal and may review a forfeited civil argument for plain error only in exceptional circumstances affecting substantial rights where failure to review would cause a miscarriage of justice.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Derek Thomas v. Jacqueline Carmichael, Erin Conner, Tracy Joslyn, Jamie Baker, Matthew Worthington, Corey Pointer, Karl Norris

TOPICS

prisoners rights

qualified immunity

summary judgment

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether Thomas's Eighth Amendment failure-to-protect claim presents a new Bivens context for which the federal courts may not imply a damages remedy.
2. Whether Thomas could oppose defendants' qualified-immunity defense for the first time on appeal after failing to address qualified immunity in the district court.
3. Whether plain-error review was warranted based on the breakdown of Thomas's relationship with recruited counsel and the magistrate judge's comments concerning counsel's summary-judgment response.

HOLDINGS

1. Thomas's failure-to-protect claim cannot proceed under Bivens because it presents a new Bivens context and separation-of-powers concerns and special factors, including the Prison Litigation Reform Act and the prison grievance system, counsel against creating a new damages remedy.
2. Thomas forfeited his opposition to defendants' qualified-immunity defense by failing to address it in response to the motion for summary judgment, and the court would not consider the forfeited argument for the first time on appeal.

KEY QUOTATIONS

“At bottom, both 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.”” (9)

“Thus, like the plaintiff’s claim in Sargeant, Thomas’s failure-to-protect claim “cannot go forward” under present Supreme Court precedent “because it presents separation-of-powers concerns and special factors not accounted for by any of the Supreme Court’s three Bivens precedents.”” (12)

“Because Thomas failed to meet his burden to defeat qualified immunity, we affirm summary judgment on Thomas’s deliberate-indifference claim.” (17)

FACTUAL BACKGROUND

Thomas, a federal prisoner housed at FCC Terre Haute, alleged that his cellmate repeatedly assaulted him after learning that Thomas was a sex offender, causing serious physical and psychological injuries. Thomas claimed that prison officials failed to protect him despite repeated warnings and that medical and psychological personnel delayed or failed to provide treatment after the assaults, including alleged sexual assault, broken teeth, bruising, and post-traumatic stress. He sued prison officials under Bivens for Eighth Amendment violations.

PROCEDURAL HISTORY

Thomas filed a pro se amended complaint in the Southern District of Indiana. The district court allowed him to proceed on failure-to-protect and deliberate-indifference claims, recruited counsel, and later granted defendants summary judgment. The court held that the failure-to-protect claim presented a new Bivens context for which no damages remedy was available and that Thomas failed to defeat qualified immunity on his deliberate-indifference claim because he did not address the defense in his summary-judgment response. The Seventh Circuit affirmed.

DISPOSITION

affirmed

CASES CITED

- Taylor v. Schwarzhuber, 132 F.4th 480 (7th Cir. 2025)
- Est. of Miller by Chassie v. Marberry, 847 F.3d 425 (7th Cir. 2017)
- Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971)
- Davis v. Passman, 442 U.S. 228 (1979)
- Carlson v. Green, 446 U.S. 14 (1980)
- Egbert v. Boule, 596 U.S. 482 (2022)
- Goldey v. Fields, 606 U.S. 942 (2025) (per curiam)
- Ziglar v. Abbasi, 582 U.S. 120 (2017)
- Farmer v. Brennan, 511 U.S. 825 (1994)
- Sargeant v. Barfield, 87 F.4th 358 (7th Cir. 2023)
- Tousis v. Billiot, 84 F.4th 692 (7th Cir. 2023)
- Taylor v. City of Milford, 10 F.4th 800 (7th Cir. 2021)
- Smith v. Finkley, 10 F.4th 725 (7th Cir. 2021)
- Mabes v. Thompson, 136 F.4th 697 (7th Cir. 2025)
- Henry v. Hulett, 969 F.3d 769 (7th Cir. 2020) (en banc)
- Seats v. Nurse, 152 F.4th 874 (7th Cir. 2025)
- Appvion, Inc. Retirement Savings & Employee Stock Ownership Plan v. Buth, 99 F.4th 928 (7th Cir. 2024)
- Hacker v. Dart, 62 F.4th 1073 (7th Cir. 2023)
- Bourgeois v. Watson, 977 F.3d 620 (7th Cir. 2020)
- CNH Industrial America LLC v. Jones Lang LaSalle Americas, Inc., 882 F.3d 692 (7th Cir. 2018)
- Bronson v. Ann & Robert H. Lurie Children's Hospital of Chicago, 69 F.4th 437 (7th Cir. 2023)
- Turner v. Rogers, 564 U.S. 431 (2011)
- Siddique v. Laliberte, 972 F.3d 898 (7th Cir. 2020)
- Green v. Newport, 868 F.3d 629 (7th Cir. 2017)
- Anderson v. Creighton, 483 U.S. 635 (1987)
- Boyers v. Texaco Refining & Marketing, Inc., 848 F.2d 809 (7th Cir. 1988)

- Singleton v. Wulff, 428 U.S. 106 (1976)
- Brooks v. Richardson, 131 F.4th 613 (7th Cir. 2025)
- Watkins v. Mohan, 144 F.4th 926 (7th Cir. 2025)
- Petties v. Carter, 836 F.3d 722 (7th Cir. 2016) (en banc)
- Estelle v. Gamble, 429 U.S. 97 (1976)
- Arnett v. Webster, 658 F.3d 742 (7th Cir. 2011)
- Riley v. Waterman, 126 F.4th 1287 (7th Cir. 2025)
- Berry v. Peterman, 604 F.3d 435 (7th Cir. 2010)
- Greeno v. Daley, 414 F.3d 645 (7th Cir. 2005)
- Mitchell v. Kallas, 895 F.3d 492 (7th Cir. 2018)