No. 25-760

IN THE

Supreme Court of the United States

HAMDI A. MOHAMUD,

Petitioner,

v.

HEATHER WEYKER, IN HER INDIVIDUAL CAPACITY AS A ST. PAUL POLICE OFFICER,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF OF THE CATO INSTITUTE AS AMICUS CURIAE SUPPORTING PETITIONER

SYDNEY E. DONOVAN
WILMER CUTLER PICKERING HALE AND DORR LLP
1225 17th Street, Suite 2600
Denver, CO 80202

MARLEY J. PETERS
ANDREW NELL
WILMER CUTLER PICKERING HALE AND DORR LLP
2100 Pennsylvania Ave. NW
Washington, DC 20037

FELICIA H. ELLSWORTH
Counsel of Record
MICHAELA P. SEWALL
JEFFREY M. SOLLER
WILMER CUTLER PICKERING HALE AND DORR LLP
60 State Street
Boston, MA 02109
(617) 526-6000
felicia.ellsworth@wilmerhale.com

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INTEREST OF AMICUS CURIAE[1]

The Cato Institute is a nonpartisan public-policy research foundation founded in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Project on Criminal Justice, founded in 1999, focuses on the scope of substantive criminal liability, the proper role of law enforcement in communities and society, the protection of constitutional safeguards for criminal suspects and defendants, citizen participation in the criminal justice system, and accountability for law enforcement.

Cato submits this brief to urge the Court to confirm that victims of government wrongdoing have ways to hold officers accountable for violations of their constitutional rights. The proliferation of joint state-federal task forces risks a constitutional catch-22: cross-deputized state officers may evade liability in either a state or federal capacity for indisputably unconstitutional conduct. Under a now familiar two-step approach, state officers use the guise of task-force designations to alchemize state into federal action and then rely on the unavailability of federal remedies to shield their actions from judicial review altogether. Cato agrees with Petitioner that she has stated a viable claim under 42 U.S.C. § 1983. Should the Court disagree, we also explain why Petitioner should have a remedy under *Bivens* v. *Six Unknown Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

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[1] No counsel for a party authored this brief, and no entity or person, other than amicus curiae, its members, and counsel, made a monetary contribution to fund this brief. Counsel of record for the parties received notice of amicus's intent to file this brief at least 10 days prior to its due date.

INTRODUCTION

This case presents an egregious manifestation of unchecked and unconstitutional power in the hands of a rogue law-enforcement officer. A local St. Paul, Minnesota police officer, Heather Weyker, claimed to have uncovered a vast interstate sex trafficking conspiracy, which led to the indictment of thirty individuals. But no such conspiracy existed. The entire scheme was based on "lies, manipulate[d] witnesses, and falsifie[d] evidence." *Farah* v. *Weyker*, 926 F.3d 492, 496 (8th Cir. 2019). One of those witnesses, Muna Abdulkadir, assaulted two girls, including the petitioner, Hamdi Mohamud, at knifepoint in an altercation unrelated to Weyker's investigation. When Weyker caught wind of the assault, she falsely informed officers on the scene that Abdulkadir's victims were attempting to intimidate a federal witness to deter her cooperation. Weyker then prepared a criminal complaint against the two girls in which she "once again 'fabricated facts,' knowingly relayed false information, and withheld exculpatory facts." *Ahmed* v. *Weyker*, 984 F.3d 564, 566 (8th Cir. 2020). Based on Weyker's false testimony, Mohamud, a 16-year-old girl, languished in prison for over two years for a crime she did not commit. The government eventually abandoned its case.

Following her release, Mohamud sued Weyker for redress. But a divided panel of the Eighth Circuit held that Weyker's cross-deputized status meant she could not be sued under 42 U.S.C. § 1983 or under *Bivens* v. *Six Unknown Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). As a result, Mohamud was stripped of over two years of her childhood without recompense, while Weyker remains employed by the same police department—and was even promoted in the intervening time after the Justice Department footed the burden of

her civil defense. *See* Dewan, *If the Police Lie, Should They Be Held Liable? Often the Answer Is No*, N.Y. Times (Sept. 12, 2021); C.A. Appellee Br. 38 (Sept. 13, 2024) (showing DOJ's representation of Weyker).

The Eighth Circuit's holding flies in the face of constitutional first principles. A central grievance of colonial America was England's attempt to shield its officials from judicial accountability. Under what became known as the Intolerable Acts, England stripped Bostonians of their right to have local juries hear cases of abuse committed by royal officers. The loss of a local judicial forum was an animating grievance of American independence. *See The Declaration of Independence* paras. 12, 16, 19 (U.S. 1776). Yet not even the British were so bold as to declare that *no* court could hear claims against their rights-violating officers, as the Eighth Circuit held below.

That holding conflicts with the Constitution's original public meaning and this Court's *Bivens* precedents. It exacerbates an entrenched 5-2 circuit split on the availability of *Bivens* for claims of false arrest based on fabricated evidence. And it presents a question of exceptional importance warranting this Court's review: whether any judicial forum exists to remedy Fourth Amendment violations committed by government officials. Should the decision below stand, any state officer can enjoy blanket immunity through the mere incantation of federal authority. The Court should grant certiorari and reverse.

SUMMARY OF THE ARGUMENT

The decision below cannot be squared with the Constitution's original public meaning or this Court's precedents. It also deepens an entrenched, and growing,

circuit split of importance to the public and the broader *corpus juris*.

First, the decision below is irreconcilable with the Constitution's original meaning. In a line of precedent stretching back to *Marbury* and continuing through *Bivens*, this Court has recognized that citizens must be able to enforce their "constitutional rights … through the courts." *Davis* v. *Passman*, 442 U.S. 228, 241-242 (1979) (citing *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 163 (1803)). Beginning at common law and continuing well into the twentieth century, citizens enforced their constitutional rights through damages suits against rights-violating officers. *See Tanzin* v. *Tanvir*, 592 U.S. 43, 49 (2020) (collecting cases). That unbroken practice was not simply a matter of prevailing public policy. The Fourth Amendment's text, history, and tradition show that these suits were an essential feature of Founding-era constitutional law. *Bivens* suits are the lineal descendant of this longstanding constitutional practice.

Contrary to that practice, the Eighth Circuit abdicated its constitutional role, citing deference to Congress as a justification. *See Ahmed* v. *Weyker*, 984 F.3d 564, 565, 570-571 (8th Cir. 2020). But that flips the separation of powers on its head. It is emphatically the duty of "judicial tribunals" to safeguard "rights which have been invaded by the officers of the government." *United States* v. *Lee*, 106 U.S. 196, 219 (1882). At the Founding, courts imposed liability against any lawbreaking federal officer, even those who mistakenly and in good faith exceeded the powers of their office. *See, e.g.*, *Little* v. *Barreme*, 6 U.S. (2 Cranch) 170, 179 (1804); *Murray* v. *Schooneer Charming Betsey*, 6 U.S. (2 Cranch) 64, 124 (1804). Yet the Eighth Circuit's decision, if allowed to stand, would suggest that it is not the province of the

judiciary to remedy even the most naked transgression of a clearly established constitutional right.

Second, the decision below contravenes this Court's precedents. Although the Court has narrowed *Bivens* in recent years, it has made clear that *Bivens* is a "necessity" and of "continued force … in the search-and-seizure context." *Ziglar* v. *Abbasi*, 582 U.S. 120, 134 (2017). That is because *Bivens* maintains a line of federal officer accountability tracing back to the Founding. The Eighth Circuit, however, held that *Bivens* is inapplicable unless a case precisely "mirrors" every jot and tittle of the facts alleged in the original case, misinterpreting decades of this Court's precedents designed to address officer misconduct. *Ahmed*, 984 F.3d at 568. That is not how vertical *stare decisis* works. Lower courts must "follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions." *Agostini* v. *Felton*, 521 U.S. 203, 237 (1997).

Finally, the Eighth Circuit's unduly cramped reading of *Bivens* is indicative of broader disarray in the lower courts warranting this Court's review. The circuits are split on the availability of *Bivens* for claims of false arrest based on fabricated evidence and at what level of generality to analyze whether a case presents a new *Bivens* context. Resolving that split is of exceptional importance. Citizens and officers alike face an untenable situation where the same wrong generates liability—or not—based on the accident of the circuit in which the harm happens to occur. The proliferation of joint state-federal task forces only exacerbates the need for a uniform national rule, as more and more state officers can claim the mantle of federal actors.

That uniform rule should support a cause of action against rights-violating officers. When the government

flouts "the Fourth Amendment … remedies should be available in federal court." *Noem* v. *Perdomo*, 606 U.S. ___, No. 25A169, slip op. at 9 (Sept. 8, 2025) (Kavanaugh, J., concurring). And in cases such as this, where it is "damages or nothing," *Bivens* v. *Six Unknown Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 409-410 (1971) (Harlan, J., concurring), the case for the Constitution's original remedies could not be clearer.

ARGUMENT

Since the Founding, the United States has preserved its constitutional system of limited government and individual liberty through a critical check: a robust system authorizing civil liability for federal officers. Because this Court held that sovereign immunity precludes suit against the government absent its consent, *see Cohens* v. *Virginia*, 19 U.S. (6 Wheat.) 264, 411-412 (1821), courts have historically kept the government within its lawful bounds by allowing individuals to sue executive officers for damages individually, *see* Amar, *Of Sovereignty and Federalism*, 96 Yale L.J. 1425, 1506-1507 (1987). Those officer suits were not contingent on a congressional permission slip. *Cf. Ahmed*, 984 F.3d 565. Instead, the Founders understood the judicial power to entail a corresponding judicial duty to enforce the Constitution. *See* Wood, *The Creation of the American Republic 1776–1787*, at 453-462 (1969); *see also Marbury*, 5 U.S. at 176-177.

Congress's enactment of 42 U.S.C. § 1983 to allow suits against state officers who violate federal rights did not diminish courts' ability to remedy claims against federal officials violating those same rights. *See, e.g.*, *Bates* v. *Clark*, 95 U.S. 204, 205, 209 (1877); *Philadelphia Co.* v. *Stimson*, 223 U.S. 605, 619-620 (1912); *Yearsley* v. *W.A. Ross Constr. Co.*, 309 U.S. 18, 21 (1940). Over time,

the underlying cause of action shifted from the common law to the cause of action this Court recognized in *Bivens*, but the constitutional protections were supposed to remain unchanged.

The decision below marks a full break with *Bivens* and the law of the Founding. The Eighth Circuit read *Bivens* so narrowly as to effectively foreclose citizens' ability to vindicate their rights against federal officials. It then compounded that error by misapplying § 1983 to kneecap citizens' rights against state officials. As the facts of this case make plain, the government's increasing practice of cross-deputizing state officers means the decision's blast radius is boundless. According to the Eighth Circuit, there is no remedy for someone like Mohamud, a teenager wrongfully arrested and then imprisoned for two years of her youth. This Court should confirm that the Constitution is more than hortatory language when government officials are involved.

I. THE DECISION BELOW IS WRONG

A. The Decision Conflicts With The Constitution's Original Public Meaning

The Constitution's original public meaning—demonstrated in its text, history, and tradition—requires a judicial forum to remedy violations of constitutional rights. Fourth Amendment violations were the quintessential Founding-era example of courts vindicating rights through officer civil suits. As explained *infra* I.B., *Bivens* is the offspring of that practice and a central means of sustaining the Constitution's original design.

1. ***Text.*** The Constitution's text confirms a constitutional guarantee of money damages against rights-violating officers. The Fourth Amendment provides that "[t]he right of the people to be secure in their persons,

houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const. amend. IV. The "very text" of the Fourth Amendment "implicitly recognizes" that it "codified a *pre-existing* right." *District of Columbia* v. *Heller*, 554 U.S. 570, 592 (2008) (discussing the Second Amendment's similar language). Interpreting the right therefore requires a look to pre-constitutional history, which "elucidates how contemporaries understood the text." *United States* v. *Rahimi*, 602 U.S. 680, 738-739 (2024) (Barrett, J., concurring). That history makes clear that suing federal officers for money damages lies at the heart of the Fourth Amendment.

At common law, the Crown could not be sued in its own courts, so subjects would sue crown officers to safeguard their liberties, on the theory that the officer violating the subject's rights had "deceived" the King. *See* 3 Blackstone, *Commentaries on the Laws of England* 255 (1768). Based on this legal fiction, courts treated the official not as an agent of the sovereign but as a private tortfeasor who was personally liable for his conduct. Damages judgments against malfeasant officials were a central backstop of English liberty, as they made "publick officers more careful" and ensured that Englishmen had "a means to vindicate and maintain their rights." *Ashby* v. *White*, 92 Eng. Rep. 126, 135-137 (K.B. 1703).

Nowhere was this more apparent than in the law of search and seizure. In one of the most famous events in Anglo-American legal history, crown officers relied on an unlawful general warrant to search the homes, papers, and effects of John Wilkes—a member of the parliamentary opposition—and his associates. The victims brought a series of successful tort suits against the officers, who were ordered to pay damages, including punitive damages. *See, e.g.*, *Huckle* v. *Money*, 95 Eng. Rep.

768 (C.P. 1763); *Entick* v. *Carrington*, 19 How. Tr. 1029 (C.P. 1765); *Wilkes* v. *Wood*, 19 How. Tr. 1153 (C.P. 1763). As this Court recognized, the Wilkes suits exemplified "the true and ultimate expression of constitutional law," *Boyd* v. *United States*, 116 U.S. 616, 626-627 (1886), and were a formative aspect of the ratifying public's understanding of the Fourth Amendment's text, *see* Amar, *The Words That Made Us: America's Constitutional Conservation, 1760–1840*, at 70-71 (2021).

2. ***History***. The Constitution's ratification history confirms that it guarantees a right to sue lawbreaking officers. The topic of officer accountability was much discussed during the state ratifying conventions. Antifederalists warned that "essential rights," such as the "right to be secure from all unreasonable searches and seizures," were excluded from the Constitution. Letter from the Federal Farmer to the Republican No. 16 (Jan. 20, 1788), *reprinted in* 2 *The Complete Anti-Federalist* 196, 199-203 (Herbert J. Storing ed., 1981). They noted that "English juries … give ruinous damages whenever an officer" violated a fundamental right but warned that American judges might protect their fellow federal officers. Essay by a Maryland Farmer No. 1 (Feb. 15, 1788), *reprinted in* 5 *The Complete Anti-Federalist* 4, 13-14 (Herbert J. Storing ed., 1981).

Leading Federalists responded with repeated assurances that rights-violating officers could be sued for damages. In the Virginia Convention, Edmund Randolph rebuffed fears of lawless federal officers by noting that any citizen subject to the "grievous and oppressive" general warrant could go to the "judiciar[y], and obtain relief." 3 *Elliot's Debates on the Federal Constitution* 468 (1836). John Marshall similarly explained that if federal officers should commit an unlawful trespass, then "[t]he injured man" could turn to a court "for redress,

and get it." *Id.* at 554. In the North Carolina Convention, Richard Spaight declared it "very certain and clear that, if any man was injured by an officer of the United States, he could get redress by a suit at law." 4 *Elliot's Debates on the Federal Constitution* 36-37 (1836). James Iredell repeated Spaight's assurance that "any officer may be tried by a court … for common law offenses." *Id.* at 37. Archibald McClaine rose to express his disbelief that federal officers would "oppress the people[,]" but echoed his colleagues in explaining that the victims of any such oppression "would have redress in the ordinary courts of common law." *Id.* at 47. When James Madison later introduced a draft of the Bill of Rights on the floor of the First Congress, he explained that it was to empower courts to become "the guardians of those rights." 1 Annals of Cong. 439, 457 (1789).

3. ***Tradition.*** Early practice immediately following ratification confirms what text and history make plain: money damages are an essential remedy when federal officials violate individual rights. Unlike the Eighth Circuit, Founding-era courts did not believe that "the decision lies with Congress" to "make the call about whether a federal remedy is available" against a "rogue law-enforcement officer." *Ahmed*, 984 F.3d at 565. The Constitution already settled that question. Courts, of their own accord, could and repeatedly did impose damages judgments against federal officials in the absence of an affirmative authorization by Congress. Indeed, this Court frequently sustained damages judgments against federal officials.[2]

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[2] *See, e.g.*, *Wise* v. *Withers*, 7 U.S. (3 Cranch) 331, 332, 337 (1806) (damages against collector of militia fines); *Sands* v. *Knox*, 7 U.S. (3 Cranch) 499, 499-500, 503 (1806) (damages against customs collector for seizing a vessel and its cargo); *Otis* v. *Bacon*, 11 U.S. (7

The First Congress, in turn, legislated against the backdrop of a presupposition of officer suits. Although Congress never enacted a cause of action against federal officials, it codified limited defenses for officers who were sued, *see* Collection of Duties Act, § 27, 1 Stat. 29, 43-44 (1789), and apportioned civil liability between superiors and their subordinates, s*ee* Judiciary Act of 1789, §§ 27-28, 1 Stat. 73, 87-88; Collection of Duties Act, § 8, 1 Stat. 145, 155 (1790). That is because Congress understood that damages claims would be available of their own force. The government quickly came to rely on civil suits by private citizens to "force [officers] to obey the law" because "administrative hierarchy exist[ed] nowhere" in the nascent Republic. 1 Tocqueville, *Democracy in America* 121-122, 132-134 (Eduardo Nolla ed., 1835). Indeed, suits against federal officers were so rampant that during the War of 1812, the Treasury Secretary warned Congress that customs officials were not enforcing the embargo against England because of "the terror which the officers now feel, of being exposed to suits for damages, under the authority of … the courts of law." 13 Annals of Cong. 757-758 (1814). Yet even as the British torched Washington, neither Congress nor the courts considered exempting federal officialdom

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Cranch) 589, 595 (1813) (damages against deputy customs collector); *The Apollon*, 22 U.S. (9 Wheat.) 362, 367 (1824) (damages against customs collector for seizure of a foreign vessel); *Tracy* v. *Swartwout*, 35 U.S. (10 Pet.) 80, 94 (1836) (damages against collector who acted in "good faith; and under instructions from the treasury department"); *Mitchell* v. *Harmony*, 54 U.S. (13 How.) 115, 128-130 (1852) (damages against military officer for seizing goods for trade in Mexico amidst the Mexican-American War); *Buck* v. *Colbath*, 70 U.S. (3 Wall.) 334, 347 (1866) (damages against federal marshal); *Bates*, 95 U.S. at 205, 209 (damages against military officers who followed federal order to seize whiskey, which exceeded statutory authority).

from civil liability. Instead, Congress allowed officers to remove their cases to federal court and supplemented their income commensurate with the increased risk of personal liability they faced. *See* Act of Feb. 4, 1815, §§ 7-8, 3 Stat. 195, 197-199.

In the early Republic, state and federal courts imposed civil liability on public officers "with unprecedented vigor." Engdahl, *Immunity and Accountability for Positive Governmental Wrongs*, 44 U. Colo. L. Rev. 1, 14 (1972). Even in the most sympathetic of cases, this Court explained that the judicial duty confined courts to a single question: "whether the laws have been violated?" *The Apollon*, 22 U.S. (9 Wheat.) 362, 367 (1824). If so, then "justice demands[] that the injured party should receive a suitable redress," regardless of the economic, diplomatic, or other policy implications. *Id.* Thus, when a military officer relied in good faith on a presidential order he believed to be lawful—but which exceeded the President's authority—this Court, speaking through Chief Justice Marshall, upheld the damages judgment. *See Barreme*, 6 U.S. at 179. As Justice Story underscored, "not … even … the president of the United States" could prevent redress for the victim of unlawful government conduct. *United States* v. *Bevans*, 24 F. Cas. 1138, 1139 (C.C.D. Mass. 1816) (No. 14,589). Or as Congress explained in summarizing the Founding-era law, even officers acting under "public instructions" were not "legally excus[ed] … from the claim for damages and costs." H.R. Rep. No. 8-46 (1805), *reprinted in* 1 *American State Papers: Naval Affairs* 138 (Washington, Gales & Seaton 1834).

These decisions were not outliers. In the nearly two centuries following Independence, there was an unbroken tradition of awarding "money damages 'payable by the officer.'" *Tanzin*, 592 U.S. at 49. In an echo of their

English forebears, U.S. courts grounded their practice in the twin aims of "preventing and redressing wrongful" conduct by federal officials. *Cushing* v. *Laird*, 107 U.S. 69, 76 (1883); *see also The Estrella*, 17 U.S. (4 Wheat.) 298, 308 (1819) (reasoning that public officials will "be checked in a lawless career" by the liability they face in "the courts of their own nation"); *Ashby*, 92 Eng. Rep. at 135-137 (same).

The courts were not simply following tradition for tradition's sake. At the Founding, it was widely understood that damages actions against rights-violating federal officers were a constitutional backdrop from which no branch was free to depart. *See* Sachs, *Constitutional Backdrops*, 80 Geo. Wash. L. Rev. 1813, 1816-1818 (2012); 2 Story, *Commentaries on the Constitution of the United States* §§ 1676-1677, at pp.508-509 (3d ed. 1858). To deny citizens a judicial forum when federal officials trample constitutional rights, these authorities held, would be to "supersede the great guards of those rights intended to be secured by the Constitution." *Carey* v. *Curtis*, 44 U.S. (3 How.) 236, 252-253 (1845) (Story, J., dissenting).

That is precisely what occurred here. Weyker "deliberately misle[d] another officer into arresting an innocent individual to protect a sham investigation." *Farah* v. *Weyker*, 926 F.3d 492, 503 (2019). Even the Eighth Circuit acknowledged that the alleged facts plausibly support "a constitutional violation" of a "right … [that] was clearly established." *Id.* Yet in contravention of the Constitution's original public meaning, it concluded that no court could award suitable redress. The text, pre-ratification history, early practice, and longstanding tradition all speak with one voice: individuals are entitled to a judicial forum in which they can sue federal officers who violate their constitutional rights. The decision

below is irreconcilable with that unambiguous constitutional command.

B. Denying *Bivens* Relief Here Moves The Law Further From The Constitution's Original Meaning

Bivens is the lineal descendant of the Founders' law. Historically, damages suits against federal officers were brought using common law writs. *See* Amar, 96 Yale L.J. at 1506-1507. In *Bivens*, this Court expanded the menu of available remedies to include a federal cause of action and Congress, in reliance on that decision, preempted common law claims against federal officials in the Westfall Act, with a statutory carve-out for *Bivens*. *See* 28 U.S.C. § 2679(b)(1)-(2). In effect, the constitutional vehicle was transplanted from the ancient writs system to *Bivens*, but nothing in the underlying claim—or the officer's liability—changed from Founding-era practices.

"Since it was decided, *Bivens* has had no shortage of detractors." *Egbert* v. *Boule*, 596 U.S. 482, 501 (2022). This Court has declined to extend *Bivens*' holding to "other alleged constitutional violations." *Id.* at 486. But the decision also has a clear-cut Founding-era pedigree. "[T]he common law has … long provid[ed] that officers generally enjoy the same legal privileges"—and liabilities—"as private citizens." *Case* v. *Montana*, 607 U.S. __, No. 24-624, slip op. at 3 (Jan. 14, 2026) (Gorsuch, J., concurring) (citing the Wilkes cases). As private citizens, officers were routinely sued for money damages to enforce the Fourth Amendment. *See id.* (noting that "the Fourth Amendment is … 'the affirmance of a great constitutional doctrine of the common law'") (quoting 3 Story, *Commentaries on the Constitution of the United States* § 1895, at p.748 (1833)). That is why this Court has maintained that *Bivens* is applicable within a

heartland search-and-seizure case, like this one. *See Abbasi*, 582 U.S. at 134.

To resolve this case, the Court need only apply its existing precedents. To the extent that more recent decisions could be read to have so narrowed *Bivens* as to preclude relief in this case, that reading would be in conflict the Constitution's original public meaning. Finally, although the Court has attributed some separation-of-powers concerns to *Bivens*' reasoning, the modern precedent is a "necessity" to maintain the proper balance between the three branches. *Abbasi*, 582 U.S. at 134.

1. This case fits comfortably within this Court's *Bivens* precedents. *Bivens* and its progeny hold that an action lies against federal officials for core Fourth Amendment violations. As Judge Kelley noted below, Mohamud's "claim falls squarely within the cause of action recognized by *Bivens* itself." *Ahmed*, 984 F.3d at 572 (Kelly, J., dissenting). One of Webster Bivens' "core contentions was that the officers did not have probable cause when they arrested him," and Mohamud also alleged "that Officer Weyker caused [her] to be arrested without probable cause." *Id.* If *Bivens* has any remaining force, it is in a case such as this.

Although the Court has held that the *expansion* of *Bivens* is a "'disfavored' judicial activity," *Abbasi*, 582 U.S. at 135, it has been equally emphatic that lower courts may not take it upon themselves to *contradict* "a precedent of this Court [that] has direct application in a case," *Agostini*, 521 U.S. at 237. And when squarely confronted with the opportunity to overrule *Bivens*, this Court has thrice declined the invitation. *See Abbasi*, 582 U.S. at 134; *Hernandez* v. *Mesa*, 589 U.S. 93, 113-114 (2020); *Egbert*, 596 U.S. at 502. Instead, it has reiterated that in the "search-and-seizure context," *Bivens* has

"continued force" to "vindicate the Constitution." *Abbasi*, 582 U.S. at 134. This case is not an extension of *Bivens* but an application of it in its core search-and-seizure context.

2. This Court's most recent *Bivens* precedent, *Egbert*, is not to the contrary, and should not be read to supersede the Constitution's unambiguous meaning. *Cf. Gamble* v. *United States*, 587 U.S. 678, 718-720 (2019) (Thomas, J., concurring); *Loper Bright Enters.* v. *Raimondo*, 603 U.S. 369, 423 (2024) (Gorsuch, J., concurring). "Our law is still the Founders' law, as it's been lawfully changed." Sachs, *Originalism as a Theory of Legal Change*, 38 Harv. J. L. & Pub. Pol'y 817, 838 (2015). The Founders' law required that individuals such as Mohamud have access to a judicial forum to vindicate their constitutional rights. And there has been no lawful change to the constitutional design since then—nor could there be outside Article V. *See* U.S. Const. art. V.

To be sure, at the Founding, officer suits were brought under the general common law, not under the Constitution itself. But (1) this Court's evisceration of the general law in *Erie Railroad Company* v. *Tompkins*, 304 U.S. 64 (1938), (2) Congress's preclusion of state tort claims against federal officials in the Westfall Act, *see* 28 U.S.C. § 2679(b)(1), and (3) this Court's creation and retrenchment of the exclusionary rule, *see* Kagan, *The Development and Erosion of the American Exclusionary Rule: A Study in Judicial Method*, Oxford Univ. (1983), have rendered *Bivens* the only viable pathway to relief.[3] At worst, *Bivens* might be thought of as

[3] Indeed, Congress preempted state common law in express reliance on the availability of *Bivens*. The Westfall Act exempts from preemption claims against federal officials "brought for a violation of the Constitution," 28 U.S.C. § 2679(b)(2)(A), language this Court

a second-best alternative that pulls doctrine towards the gravitational orbit of the Constitution's original meaning. *See* Baude, K*avanaugh on Halfway Originalism*, Reason Foundation: The Volokh Conspiracy Blog (Oct. 20, 2022); Ramsey, *Don't Fear* Bivens, The Originalism Blog (Nov. 12, 2019).

3. Neglect of the Constitution's original public meaning has caused *Bivens* to be cast as a separation-of-powers problem rather than as a separation-of-powers solution. This Court has moved away from its prior approach to implied causes of action as encroaching on the legislative power, *see Alexander* v. *Sandoval*, 532 U.S. 275, 286 (2001), and because *Bivens* relied on an implied cause of action, *see Bivens*, 403 U.S. at 396, this Court viewed the doctrine as raising a similar "separation-of-powers …. question" of "who should decide … Congress or the courts?" *Abbasi*, 582 U.S. at 135.

But that framing is premised on a fundamental misunderstanding. Weighing the relative policy merits of money damages *is* a legislative judgment—it is simply not a judgment that courts need ever make under *Bivens*, as it is a decision ratified within the Constitution itself. The "'judicial Power'" "is fundamentally the power to decide cases in accordance with law." Lawson, *The Constitutional Case Against Precedent*, 17 Harv. J. L. & Pub. Pol'y 23, 26 (1994). In *Bivens* actions, courts need only ask "whether the laws have been violated" by the federal officer. *The Apollon*, 22 U.S. at 367. If so, then the court must award "suitable redress," *i.e.*, "damages." *Id.* at 366, 373-374. The collateral costs and benefits of those judgments, as Justice Story explained, are "properly matters of state" "belong[ing] … to another

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recognized as an "explicit exception for *Bivens*," *Hui* v. *Castaneda*, 559 U.S. 799, 807 (2010).

department of the government." *Id.* at 366-367. In other words, courts have not just an ability but a duty to award damages when federal officers violate constitutional rights. *See* Pfander & Hunt, *Public Wrongs and Private Bills: Indemnification and Government Accountability in the Early Republic*, 85 N.Y.U. L. Rev. 1862, 1868-1870 (2010) (noting that Founding-era courts "addressed the issue of legality and left Congress in charge of calibrating the incentives of government officials").

Indeed, it is precisely because of the separation-of-powers that courts have an obligation to impose liability when federal officials transgress constitutional lines. A central reason for creating independent courts was to adjudicate "rights in controversy between [the citizens] and the government" and to "give remedy when the citizen has been deprived of his [rights] … without lawful authority." *Lee*, 106 U.S. at 220-221. And far from courts needing a congressional permission slip to authorize such suits, it is Congress who lacks the constitutional authority to deny courts the ability to hear claims against "officers [acting] under color of law, but without legal authority, and thus to deny [citizens] all remedy for an admitted wrong." *Carey*, 44 U.S. at 253 (Story, J., dissenting). For if citizens are stripped of access to "the medium of courts," then the Constitution's "reservations of particular rights … amount to nothing." The Federalist No. 78, at 466 (Hamilton) (Clinton Rossiter ed., 1961); *see also Marbury*, 5 U.S. at 163 (warning that "the United States" cannot be "a government of laws, and not of men …. if the laws furnish no remedy for the violation of a vested legal right"). This case is an ideal vehicle to move doctrine back towards first principles by clarifying that *Bivens* claims remain viable to vindicate the Fourth Amendment.

II. THE DECISION BELOW IS OF EXCEPTIONAL IMPORTANCE AND WARRANTS THIS COURT'S REVIEW

A. The Decision Perpetuates An Entrenched Circuit Split

This case raises a clear circuit split over whether a plaintiff can maintain a cause of action for a claim of false arrest based on fabricated evidence. The Eighth Circuit, joined by the Third, Fourth, Fifth, and Ninth Circuits, erroneously holds that the answer is no. *See Xi* v. *Haugen*, 68 F.4th 824, 834 (3d Cir. 2023); *Annapareddy* v. *Pascale*, 996 F.3d 120, 136 (4th Cir. 2021); *Cantú* v. *Moody*, 933 F.3d 414, 423 (5th Cir. 2019); *Ahmed*, 984 F.3d at 568-570; *Sheikh* v. *DHS*, 106 F.4th 918, 925 (9th Cir. 2024). The Second Circuit, joined by the Sixth, has correctly noted that such claims are not an expansion of *Bivens* but a straightforward application of binding precedent. *See Sigalovskaya* v. *Braden*, 149 F.4th 226, 237 (2d Cir. 2025) (Perez, J., concurring); *id.* at 238 (Lynch, J., dissenting); *Jacobs* v. *Alam*, 915 F.3d 1028, 1033 (6th Cir. 2019).

This circuit split is indicative of a broader methodological divide in the courts of appeal. The lower courts are fractured on the correct level of generality for assessing whether the circumstances of a given case make it a new context and thus an expansion of *Bivens*. Some circuits, including the Eighth, have disregarded this Court's admonition that only "meaningful" differences make the context new. *Abbasi*, 582 U.S. at 139. For example, the Fifth Circuit has concluded that *Bivens* only remains for claims involving "manacling the plaintiff" "in his home" "in front of his family" and "strip searching him in violation of the Fourth Amendment," with "[v]irtually everything else … a 'new context.'" *Oliva* v. *Nivar*, 973 F.3d 438, 442 (5th Cir. 2020). The Sixth has

held that "[t]he context is new if it differs in virtually any way from the *Bivens* trilogy." *Elhady* v. *Unidentified CBP Agents*, 18 F.4th 880, 883 (6th Cir. 2021). The Eighth asks whether "the facts and legal issues" "exactly mirror[]" *Bivens*. *Farah*, 926 F.3d at 498. And the Tenth has gone so far as to declare *Bivens* "all but dead." *Rowland* v. *Matevousian*, 121 F.4th 1237, 1241-1242 (10th Cir. 2024).

Other circuits take a more holistic approach to the new context inquiry. The First Circuit applies a "functional approach" that asks whether the "facts or legal issues" require "a reweighing" of "the policy balance" struck in *Bivens*. *Arias* v. *Herzon*, 150 F.4th 27, 35 (1st Cir. 2025). The Fourth looks to whether the "the same [constitutional] principles" are at issue. *Hicks* v. *Ferreyra*, 64 F.4th 156, 167 (4th Cir. 2023). The Seventh emphasizes that because "a difference must be 'meaningful' … some degree of variation will not preclude a *Bivens* remedy." *Snowden* v. *Henning*, 72 F.4th 237, 243-244 (7th Cir. 2023).

These abstract debates on the level of generality amount to enormous on-the-ground differences for constitutional doctrine, officer accountability, and individual liberty. Yet one circuit has been so fractured over *Bivens* that it has been repeatedly unable to produce any majority opinion. *See Sigalovskaya*, 149 F.4th at 233 (Lee, J., concurring); *id.* at 237 (Perez, J., concurring); *id.* at 238 (Lynch, J., dissenting); *Edwards* v. *Gizzi*, 107 F.4th 81, 84-85 (2d Cir. 2024) (Park, J., concurring); *id.* at 87 (Robinson, J., concurring); *id.* at 89 (Parker, J., dissenting). The lower courts need guidance from this Court to bring cohesion to the national caselaw. Given the overwhelming originalist evidence that damages remedies were meant to vindicate Fourth Amendment rights against violations by federal officers, the Court

should reaffirm what its precedents already teach: *Bivens* has "continued force" in the "search-and-seizure context." *Abbasi*, 582 U.S. at 134.

B. Joint State–Federal Task Forces Present Unique Federalism Concerns Warranting This Court's Input

The proliferation of joint state-federal task forces only heightens the need for doctrinal clarification. The states and federal government routinely partner to work towards shared objectives. This cooperative federalism undergirds numerous federal statutory schemes and programs. *See, e.g.*, *New York* v. *United States*, 505 U.S. 144, 167-168 (1992). The latest iteration of cooperative federalism exists in joint state-federal task forces, under which state officers are cross-deputized as federal officers to enforce federal law. By some estimates, more than one thousand state-federal task forces operate in all fifty states. Wimer, *If a Federal-State Task Force Violates Your Rights, Can Anyone Be Held Accountable?*, Forbes (Nov. 5, 2020).

This budding form of state-federal cooperation would harbor serious dangers if the Eighth Circuit's decision below was allowed to stand. With the power to cross-deputize, the government could circumvent Congress's enactment of Section 1983 by imbuing state officers with the aura of federal power and, thus, federal immunity. *See, e.g.*, Pet. 25-26 (citing cases where state officers paid from state coffers enforcing state law faced no civil accountability because of their service on a joint task force).

Absent reversal, the decision below threatens to eviscerate cooperative federalism and individual liberty. States will be put to the perilous choice of partnership with the federal government or protection of their

citizenry. Individuals will be deprived of any judicial forum to redress patent violations of their constitutional rights. And our Constitution will be left bereft of force as its rights go unacknowledged and unenforced by unaccountable officers.

CONCLUSION

The Court should grant certiorari and reverse.

Respectfully submitted.

SYDNEY E. DONOVAN
WILMER CUTLER PICKERING
HALE AND DORR LLP
1225 17th Street, Suite 2600
Denver, CO 80202

MARLEY J. PETERS
ANDREW NELL
WILMER CUTLER PICKERING
HALE AND DORR LLP
2100 Pennsylvania Ave. NW
Washington, DC 20037

FELICIA H. ELLSWORTH
Counsel of Record
MICHAELA P. SEWALL
JEFFREY M. SOLLER
WILMER CUTLER PICKERING
HALE AND DORR LLP
60 State Street
Boston, MA 02109
(617) 526-6000
felicia.ellsworth@wilmerhale.com

JANUARY 2026