No. 23-324

In The Supreme Court of the United States

OFFICER GERALD L. FERREYRA,
IN HIS INDIVIDUAL CAPACITY;
OFFICER BRIAN A. PHILLIPS,
IN HIS INDIVIDUAL CAPACITY,

Petitioners,

v.

NATHANIEL HICKS,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

BRIEF OF THE NATIONAL FRATERNAL ORDER OF POLICE AND FRATERNAL ORDER OF POLICE UNITED STATES PARK POLICE LABOR COMMITTEE AS *AMICUS CURIAE* SUPPORTING PETITIONERS

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STATEMENTS OF INTEREST OF *AMICUS CURIAE*[1]

To justify its extension of *Bivens*, the Fourth Circuit cast a wide net. It described the facts and circumstances of U.S. Park Police Officers Ferreyra and Phillips' encounter with Nathaniel Hicks along a Maryland highway as a "replay" of *Bivens* and broadly pronounced the officers' actions as "routine law enforcement measures." *Hicks v. Ferreyra, et al.*, 64 F.4th 156, 162 (4th Cir. 2023). But the realities of law enforcement officers conducting welfare checks and traffic stops—like what occurred in this case—could not be further from "routine." The court of appeals failed to appreciate the dangers that make this matter a very new *Bivens* context.

Law enforcement officers face an array of unique and exceedingly dangerous considerations when conducting welfare checks and traffic stops like Officers Ferreyra and Phillips, and different from in-home searches and seizure. Traffic stops often involve an uncertain number of unknown individuals. There may be deadly weapons hidden throughout the vehicle including in the glove compartment or under the seat. And officers frequently conduct traffic stops without

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[1] In accordance with Rule 37.6, the Office of General Counsel to the National Fraternal Order of Police authored this Brief in its entirety. There are no other entities which made monetary contributions to the preparation or submission of this Brief. Additionally, in accordance with Rule 37.2, the counsel of record received notice on October 9, 2023, of the NFOP's, as *amicus curiae*, notice of its intent to file its *Amicus* Brief.

backup. Accordingly, these *amici* are particularly concerned with the Fourth Circuit's dismissive rhetoric toward the risks borne by officers carrying out their duties and responsibilities enforcing our nation's traffic laws.

Additionally, if the decision below is left to stand, suddenly tens of thousands of federal law enforcement officers who conduct welfare checks and traffic stops within the Fourth Circuit's jurisdiction, including members of the National Fraternal Order of Police ("NFOP") and the Fraternal Order of Police United States Park Police Labor Committee ("FOPUSPP") will be exposed to lawsuits and precisely the ruinous *personal* liability that occurred in this case. Officers Ferreyra and Phillips were assessed $730,000 in personal damages for an extended welfare check and subsequent traffic stop.

To be sure, officers suffer considerable harm because of a *Bivens* lawsuit. While the case is pending, the burdens of litigation distract them from their duties protecting and serving the public. Both before and after any judgment, officers face uncertainties in obtaining mortgage loans and other forms of credit because of potential or actual personal liability.

The NFOP represents approximately 374,000 members in more than 2,100 lodges across the United States. A portion of its members are federal law enforcement officers that perform duties such as welfare checks and traffic stops every single day. The NFOP is the voice of those who dedicate their lives to protecting

and serving our communities, representing law enforcement personnel at every level of crime prevention and public safety nationwide. The NFOP offers its service as *amicus curiae* when important police and public safety interests are at stake, as in this case.

The Fraternal Order of Police United States Park Police Labor Committee ("FOPUSPP") is an NFOP-affiliated federal sector labor union that represents law enforcement officers in a bargaining unit principally located in three metropolitan areas: Washington, D.C., New York City, and San Francisco, California. The FOPUSPP represents U.S. Park Police Officers. The NFOP and FOPUSPP have a significant interest in this case given that the decision, if it stands, would threaten potential massive individual liability for every federal law enforcement officer conducting a welfare check or traffic stop.

This *amicus* brief will not belabor Petitioners' thorough summary of the two circuit splits highlighted by the Fourth Circuit's decision. However, those divisions are real, and this case is an excellent vehicle to provide necessary clarity across the country. Instead, NFOP and FOPUSPP's substantial interest in this matter stems from the very practical effect on how their officers perform their duties moving forward, given the latest potential for *Bivens* suits. These federal officers, many of whom are members of the NFOP and FOPUSPP, need clear guidance from this Court.

Lastly, the NFOP and FOPUSPP would be remiss not to emphasize the extent of the court of appeals'

decision. To put it bluntly, the Fourth Circuit's decision in this case directly impedes the safety and security of the following non-exhaustive list of national security facilities and military installations located within the Fourth Circuit:

Pentagon	**United States Naval Academy**	**MCRS Parris Island (Marines)**
National Security Agency	**Naval Station Norfolk**	**Camp Dawson, WVA**
Central Intelligence Agency	**U.S. Fleet Forces Command (Navy)**	**NSA Sugar Grove (Communications)**
Fort George Meade	**Naval Surface Warfare Center**	**Goddard Flight Center (NASA)**
Camp David	**Patuxent River Naval Air Station**	**NASA Command Hanover, MD**
U.S. Cyber Command	**NAS Oceana (Navy)**	**Fort Belvoir (Army)**
Central Security Service (D.O.D.)	**Marine Corps Air Station Beaufort, SC**	**Aberdeen Proving Grounds**
Defense Information Systems Agency	**D.O.D. Joint Base Charleston**	**Fort Liberty**
Marine Corps Base Quantico	**Andrews Air Force Base**	**Mount Weather Emergency Operations Center and Government Command Facility**

SUMMARY OF ARGUMENT

This Court has repeatedly emphasized that expanding individual-capacity damages actions under *Bivens* to any "new context" or "new category of defendants" is "a disfavored judicial activity." *Egbert v. Boule*, 142 S. Ct. 1793, 1803 (2022) (quotation marks omitted); *Hernandez v. Mesa*, 140 S. Ct. 735, 742-43 (2020); *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1857 (2017). The Court has "made clear that, in all but the most unusual circumstances, prescribing a cause of action is a job for Congress, not the courts." *Egbert*, 142 S. Ct. at 1800.

The court of appeals' extension of *Bivens* to Respondent's claim runs afoul of this Court's clear guidance. This Court has implied a *Bivens* remedy for asserted Fourth and Fifth Amendment violations in only two cases—one involving narcotics agents entering and searching a private residence, and the other involving a Congressperson engaging in alleged employment discrimination. Those circumstances bear no resemblance to Officers Ferreyra and Phillips' response to discovering an individual sleeping in a parked car along a highway, where the Secretary of the Department of Homeland Security would soon be traveling, and with a gun holstered on the front seat.

In addition to disregarding this Court's direction, the lower court's decision would have severe and detrimental consequences on tens of thousands of federal officers conducting welfare checks and traffic stops in the Fourth Circuit's jurisdiction. The court of appeals' most concerning error for these *amici* is a failure to

appreciate the differences and dangers of police work involving traffic stops versus in-home searches. Instead, the lower court simply lumped together all duties and responsibilities of "line" law enforcement officers as "routine police work" and declared this case to be a "replay" of *Bivens*. *Hicks*, 64 F.4th at 167.

To be clear, no police work is routine. And traffic stops are one of the most common, yet dangerous tasks asked of police officers. The dangers associated with Officers Ferreyra and Phillips' encounter with Nathaniel Hicks made this a very new setting. The cascade of litigation, chilling effect on all federal officers who conduct welfare checks or traffic stops, and palpable national security concerns for the U.S. Park Police as a result of this expansion of *Bivens* must counsel hesitation, and ultimately a reversal of the Fourth Circuit's determination.

ARGUMENT

I. The Fourth Circuit erred in extending *Bivens* to the novel context presented here.

The court of appeals erred in expanding the cause of action from *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), to the new context presented by Respondent's claims. This Court has explained that when a plaintiff asserts a *Bivens* claim, a court must apply a "two-step inquiry" to determine whether the claim can proceed. *Hernandez*, 140 S. Ct. at 745. The court first asks whether the

claim "arises in a 'new context' or involves a 'new category of defendants' " different from those in *Bivens* and its progeny. *Ibid*. (quoting *Correctional Servs. Corp. v. Malesko*, 534 U.S. 61, 68 (2001)). If the context is not new, the claim can go forward. But if the context is new, the court then considers "whether there are any 'special factors that counsel hesitation' about granting the extension." *Ibid*. (quoting *Zigler v. Abbasi*, 137 S. Ct. 1843, 1880 (2017)) (brackets omitted). "If there is even a single 'reason to pause before applying *Bivens* in a new context,' a court may not recognize a *Bivens* remedy." *Egbert*, 142 S. Ct. at 1799.

To determine whether a claim "arises in a new context," it is important to understand the current "contexts" that already exist. Starting with *Bivens* in 1971, this Court permitted claims for damages under the Fourth Amendment for an alleged violation of the prohibition against unreasonable search and seizures by federal agents who allegedly manacled a plaintiff and threatened his family in a home while arresting him for narcotics violations. 403 U.S. at 397. Eight years later, in 1979, the Court permitted claims for damages pursuant to a Fifth Amendment sex-discrimination claim. *Davis v. Passman*, 442 U.S. 228 (1979). And one year after that, in 1980, this Court permitted claims for damages against a federal prison officer for inadequate care of a federal prisoner under the Eighth Amendment. *Carlson v. Green*, 446 U.S. 14 (1980). In the forty years following those three decisions, however, this Court has not recognized a new context worthy of a new *Bivens* claim. *See Egbert*, 142 S. Ct. at

1799. While *Bivens* and its progeny have not been overruled and claims for damages arising under the Constitution remain available in some circumstances, the Court has recognized that creating implied causes of action under *Bivens* is "a disfavored judicial activity." *Id.* at 1803 (quoting *Abbasi*, 582 U.S. at 135).

The court of appeals erred when it found that the seizures at issue in the present case do not present a new *Bivens* context. The facts of this case are vastly different from *Bivens*, *Davis*, and *Carlson*. Indeed, this Court has never extended *Bivens* to a Fourth Amendment claim stemming from a welfare check and traffic stop. Thus, this case presents a new *Bivens* context and implicates tens of thousands of federal officers conducting routine traffic stops in the Fourth Circuit's jurisdiction.

A. This is a new *Bivens* context because U.S. Park Police enforce a different mandate compared to the narcotics officers in *Bivens*.

The Fourth Circuit failed to draw a distinction between the national security mandate of the U.S. Park Police and the narcotics officers in *Bivens*. *Hicks*, 64 F.4th at 162 ("Both cases involved allegations of unjustified, warrantless seizures in violation of the Fourth Amendment committed by federal 'line' officers conducting routine police work."). In *Bivens*, agents of the then-Federal Bureau of Narcotics arrested the plaintiff *in his apartment* for alleged narcotics violations. 403

U.S. at 389. At the time of *Bivens*, the primary role of the Federal Bureau of Narcotics was to investigate and prepare for prosecution all major violators of controlled substances laws. In this matter, U.S. Park Police Officers Ferreyra and Phillips conducted a "welfare check" on a passenger car parked near the National Security Agency where the Respondent Nathaniel Hicks appeared to be asleep with a handgun in a holstered case laying on his front passenger seat. *Hicks*, 64 F.4th at 162, 168 n.3. The National Security Agency sits near the Baltimore-Washington Parkway (MD-295), which is maintained by the National Park Service, the supervisory agency of the U.S. Park Police. The U.S. Park Police maintains jurisdiction over the Baltimore-Washington Parkway and enforces the Code of Federal Regulations. *See* National Park Service, United States Park Police, https://www.nps.gov/bawa/planyourvisit/usparkpolice.htm (last visited Oct. 17, 2023).

For background, the U.S. Park Police is one of the oldest uniformed federal law enforcement agencies in the United States, created by President George Washington in 1791. *See* U.S. Department of the Interior, United States Park Police, https://www.doi.gov/oles/united-states-park-police (last visited Oct. 17, 2023). Prior to August 5, 1882, the U.S. Park Police was originally known as the United States Watchmen. D.C. Code § 5-201. Presently, the U.S. Park Police falls under 54 U.S.C. § 102701(a)(1). The U.S. Park Police is a full-service law enforcement agency with responsibilities and jurisdiction in the Washington, D.C. Metropolitan Area, San Francisco, and New York City areas and

certain other government lands over suspected offenses against the United States. *See* U.S. Department of the Interior, Policing Capital Sites, https://www.doi.gov/ocl/Policing-Capital-Sites (last visited Oct. 17, 2023). U.S. Park Police officers have jurisdictional authority in the surrounding metropolitan areas of the three cities they primarily operate in, possessing both state and federal law enforcement authority. *Id.* The USPP maintains a Marine Unit, an Aviation Unit, Special Weapons and Tactics Team (SWAT), a Canine Unit, a Motorcycle Unit, a Traffic Safety Unit, a Horse Mounted Unit, a Criminal Investigations Branch and a Special Events Unit. *See generally* National Park Service, "Specialized Units," https://www.nps.gov/subjects/uspp/specialized-units.htm (last visited Oct. 17, 2023).

In addition to performing regular crime prevention, investigation, and apprehension functions of a traditional police force, the U.S. Park Police performs numerous national security functions, such as Presidential and dignitary protection duties. *Id.* For instance, the U.S. Park Police SWAT team provides escort services for the President and Vice President and protection to the President while at Camp David. The U.S. Park Police Motorcycle Unit is also involved in escort services for the President and Vice President. *See* U.S. Department of the Interior, Policing Capital Sites, https://www.doi.gov/ocl/Policing-Capital-Sites (last visited Oct. 17, 2023). The U.S. Park Police *further patrols the parkways surrounding sensitive national security areas, including Fort Meade, the National*

Security Agency, the National Aeronautical and Space Administration and the Central Intelligence Agency. *Id.* The U.S. Park Police is equally responsible for anti-terrorism patrols. *Id.*

The U.S. Park Police maintains an Intelligence/ Counter-Intelligence Branch responsible for "collecting, analyzing, and disseminating all forms of domestic and foreign information and intelligence that may impact the mission of the United States Park Police." National Park Service, "Icon Protection/Counter-terrorism," https://www.nps.gov/subjects/uspp/intelligence.htm (last visited Oct. 17, 2023). Additionally, the U.S. Park Police is responsible for anti-terrorism patrols and sworn members have been deployed to the Joint Terrorism Task Force. *See* U.S. Department of the Interior, Policing Capital Sites, https://www.doi.gov/ocl/Policing-Capital-Sites (last visited Oct. 17, 2023). U.S. Park Police officers are called to respond to incidents occurring at the National Security Agency headquarters. *See* Gunshots Hit Building at National Security Agency Campus at Fort Meade, Washington Post (March 3, 2015), https://www.washingtonpost.com/local/gunshots-hit-building-at-national-security-agency-campus-in-fort-meade/2015/03/03/e6a4b11e-c1f7-11e4-9ec2-b418f57a4a99_story.html ("Park Police responded to the report of gunshots to see if anyone was shooting from the Baltimore-Washington Parkway, which runs close to the NSA headquarters."). In this matter, the underlying welfare check and traffic stop of Respondent occurred near one of the U.S. Park Police patrol areas

near the National Security Agency. *Hicks*, 64 F.4th at 169 n.3.

One mission of the U.S. Park Police, as explained below, is to conduct patrols in areas related to national security, including jurisdictional grounds that are next to the National Security Agency. Furthermore, the Respondent in this case was an agent of the U.S. Secret Service on a national security assignment involving a motorcade for the Secretary of the Department of Homeland Security. *Hicks*, 64 F.4th at 162. In sum, the duties of the narcotics agents in *Bivens* and the U.S. Park Police in this matter stand in stark contrast.

It is worth noting that the D.C. Circuit Court in *Buchanan* appreciated these telling differences. For example, the court in *Buchanan* noted, U.S. Park Police officers need not be responding to an ongoing or imminent threat to national security to invoke national security as a special factor for consideration under *Bivens*. *Buchanan v. Barr*, 71 F.4th 1003, 1009 (D.C. Cir. 2023). The *Buchanan* court specifically found that U.S. Park Police officers' actions in that case implicated national security concerns. *Id.* at 1009. Surely the D.C. Circuit Court's analysis is informative.

B. This is a new *Bivens* context because welfare checks and traffic stops involve vastly different considerations for law enforcement officers versus in-home searches/seizures.

This case is not a "replay" of *Bivens* as the court of appeals would have us believe. *Hicks*, 64 F.4th at 167.

There is a critical distinction that might not be readily apparent to a layperson, or even a judge, but is pivotal for a law enforcement officer—the location of the seizure.

In *Bivens*, the plaintiff alleged that he had been subjected to an illegal and humiliating search by agents of the Federal Bureau of Narcotics. That warrantless search took place inside Mr. Bivens' home. He was handcuffed in front of his wife and children and arrested on narcotics charges. Here, the seizure took place in a car along a highway. There are both legal and factual distinctions that make this matter a very new context and anything but "routine" police work.

Legally, there is a constitutional difference between houses and cars under the Fourth Amendment. Petitioners adeptly identified the different expectations of privacy between a home and an automobile. Pet. at 20. Moreover, searches and seizures inside a home without a warrant are presumptively unreasonable. *Payton v. New York*, 445 U.S. 573 (1980). However, there are some exceptions. A warrantless search in a home may be lawful: if an officer is given consent to search (*Davis v. United States*, 328 U.S. 582 (1946)); if the search is incident to a lawful arrest (*United States v. Robinson*, 414 U.S. 218 (1973)); if there is probable cause to search and exigent circumstances (*Payton v. New York*, 445 U.S. 573 (1980)); and if the items are in plain view (*Maryland v. Macon*, 472 U.S. 463 (1985)). In addition, when an officer observes unusual conduct which leads them reasonably to conclude that criminal activity may be afoot, the officer may briefly stop

the suspicious person and make reasonable inquiries aimed at confirming or dispelling the officer's suspicions. *Terry v. Ohio*, 392 U.S. 1 (1968). In an automobile setting, an officer may conduct a traffic stop if they have *reasonable suspicion* that a traffic violation has occurred or that criminal activity is afoot. *Berekmer v. McCarty*, 468 U.S. 420 (1984); *United States v. Arvizu*, 534 U.S. 266 (2002) (emphasis added).

Factually, although enforcing traffic laws is one of the most common tasks a police officer performs, it is also one of—if not the most—dangerous. *See Arizona v. Johnson*, 555 U.S. 323, 330 (2009) (noting traffic stops are "especially fraught with danger to police officers"). Indeed, there are distinct factors that make traffic stops especially hazardous for officers that are not present in the home.

For example, during traffic stops, officers are dealing with unknown individuals in an unpredictable environment. They have limited information about the occupants of the vehicle and their intentions. In contrast, when responding to a home for an arrest, officers often have more context about the situation and the people involved. Furthermore, vehicles can quickly become deadly weapons. Drivers can accelerate suddenly, attempt to ram the officer, or use the vehicle to flee, forcing the officer into a potentially dangerous pursuit. In a home setting, while escape is possible, it is often more contained, and suspects do not have the advantage of simply stepping on the gas pedal. Moreover, inside a vehicle, there are numerous places a suspect can hide weapons, from glove compartments to

underneath seats. An officer must be cautious of both the driver and potential passengers. In a home, while weapons can still be present, the dynamics of an indoor environment can sometimes provide more control over suspects and their movement.

Lastly, traffic stops occur in isolation when backup is not immediately available. Officers rarely enter a home without backup. *See*, *e.g.*, Dean Scoville, The Hazards of Traffic Stops, POLICE MAG. (Oct. 19, 2010), https://www.policemag.com/340410/the-hazards-of-traffic-stops; *see also* Anatomy of a Traffic Stop, CITY OF PORTLAND OREGON, https://www.portlandoregon.gov/police/article/ 258015 (last visited June 19, 2019) ("[O]fficers usually have little idea if [they] are stopping a Dad on his way to work or someone who just robbed a bank, willing to do whatever it takes to escape."); Tyler Emery, Police Officers Say No "Routine Stop" is Ever Routine, WHAS11 (Dec. 27, 2018, 7:09 PM), https://www.whas11.com/article/news/local/police-officers-say-no-routinetraffic-stop-is-ever-routine/417-ebebf708-273b-4129-bdbea096068474d2 ("[Officers] have to worry about where the vehicle is stopped, how much traffic is there, is it an interstate, is it an isolated area where backup [is] not close.").

In sum, there is a vast difference between the context in *Bivens* and the context in which Officers Ferreyra and Phillips found themselves in. The court of appeals' most critical error was deeming all the distinctions outlined above immaterial merely because both cases involved "the warrantless-search-and-seizure context of routine criminal law enforcement."

Hicks, 64 F.4th at 166. It failed to consider the perspective of law enforcement officers. There is no "routine" criminal law enforcement in any context, but certainly not when the circumstances involve a traffic stop.

* * *

Even assuming *arguendo* that *Bivens* and this case *do* involve similar allegations of an unlawful seizure under the Fourth Amendment, superficial similarities are insufficient to create a new cause of action. Specifically, under this Court's precedent, "almost parallel circumstances" or a similar "mechanism of injury," *Abbasi*, 582 U.S. at 139, are not enough to support the judicial creation of a cause of action. *Egbert*, 142 S. Ct. at 1805 (internal citations omitted).

II. Congress is the appropriate body to decide whether to provide a damages remedy in the new *Bivens* context at issue here and multiple special factors counsel hesitation.

Once it has been determined that this is a new *Bivens* context, as is the case here, the second step of the inquiry asks whether, absent any "affirmative action by Congress," there are any "special factors counselling hesitation" against extending *Bivens* to that context. *Abbasi*, 582 U.S. at 136 (quoting *Carlson*, 446 U.S. at 18). In asking whether special factors counsel hesitation, the court gives important weight to "'separation-of-powers principles'" and "consider[s] the risk of interfering with the authority of the other branches."

Hernandez, 140 S. Ct. at 743 (quoting *Abbasi*, 137 S. Ct. at 1857). As this Court has previously cautioned, "a *Bivens* remedy is a subject of judgment: the federal courts must make the kind of remedial determination that is appropriate for a common-law tribunal, paying particular heed, however, to any special factors counselling hesitation before authorizing a new kind of federal litigation." *Wilkie v. Robbins*, 551 U.S. 537, 550 (2007). Indeed, a court should not inquire whether *Bivens* relief is appropriate considering the balance of circumstances in the "particular case." *United States v. Stanley*, 483 U.S. 669, 683 (1987). Rather, it should ask "[m]ore broadly" whether there is any reason to think that "judicial intrusion" into a given field might be "harmful" or "inappropriate." *Id.* at 681.

A. Multiple special factors counsel against extending *Bivens* to welfare checks and traffic stops.

Several special factors direct against extending the *Bivens* remedy to Respondent's Fourth Amendment claim stemming from a traffic stop by the U.S. Park Police. Though "even a single sound reason to defer to Congress is enough to require a court to refrain from creating such a remedy," we offer four below. *See Egbert*, 142 S. Ct. at 1803 (alteration omitted) (quoting *Nestle USA, Inc. v. Doe*, 141 S. Ct. 1931, 1937 (2021)).

First, there are substantial societal costs associated with the court of appeals' decision. Extending

Bivens to alleged Fourth Amendment violations in traffic stop contexts would pose an acute "risk that fear of personal monetary liability and harassing litigation will unduly inhibit officials in the discharge of their duties." *Anderson v. Creighton*, 483 U.S. 635, 638 (1987). Officers suffer real harm while a *Bivens* lawsuit is pending. Both before and after any judgment, officers may be unable to obtain mortgage loans and other forms of credit because of the potential or actual personal liability. Moreover, the burdens of litigation must not be overlooked. Officers and departments will be required to take time away from public safety duties to participate in protracted and expensive discovery, depositions, and potential trial. In light of these costs, "Congress is in a better position to decide whether the public interest would be served" by imposing a damages action. *Egbert*, 142 S. Ct. at 1799 (citing *Bush v. Lucas*, 462 U.S. 367, 389 (1983)).

Second, permitting suit against U.S. Park Police officers presents national security concerns that foreclose *Bivens* relief. Imposing damages liability on individual agents executing essential national security functions, such as providing motorcades for the President and Vice President and protection for the President while at Camp David, could impede the performance of their duties in circumstances where the stakes are often high. *See Hernandez*, 140 S. Ct. at 745, 747; *see also Abbasi*, 137 S. Ct. at 1861 ("The risk of personal damages liability is more likely to cause an official to second-guess difficult but necessary decisions concerning national-security policy.");

Chappell v. Wallace, 462 U.S. 296, 304 (1983) (refusing a *Bivens* remedy in light of "the need for unhesitating and decisive action"). To be sure, the facts in this matter directly implicate national security. Hicks was admittedly standing by to join a motorcade to protect the Secretary of the Department of Homeland Security. If the prospect of personal suits for damages prompted the U.S. Park Police to hesitate in their duties, including by disfavoring traffic stops on highways carrying important government officials, then the U.S. Park Police's national security mission could be compromised.

Third, recognizing a *Bivens* action here will have broad implication for how government agencies, like the U.S. Park Police, operate moving forward. As stated, the U.S. Park Police perform traditional crime prevention, investigation, and apprehension functions of a state or local police force. These officers have a broad scope of police powers. If welfare checks and traffic stops are suddenly recognized as a potential *Bivens* context, the U.S. Park Police will be forced to revisit how they operate at almost every level. The result will be officers acting with hesitation, second-guessing, and uncertainty in the performance of their public safety duties. This is unacceptable especially in the context of a traffic stop. As stated, enforcing traffic laws is one of the most dangerous tasks we ask of our nation's law enforcement officers. It requires an officer's complete focus, attention, and unburdened judgment. And as this Court recognized, "a court likely cannot predict the 'systemwide' consequences of recognizing a cause of

action under *Bivens*" and "[t]hat uncertainty alone is a special factor that forecloses relief." *Egbert*, 142 S. Ct. at 1803-04 (internal citations omitted).

Lastly, it is not desirable to allow a *Bivens* claim in the context of this encounter along a Maryland highway. Indeed, there is a "reasonable fear that a general *Bivens* cure would be worse than the disease." *Wilkie*, 551 U.S. at 560. It is foreseeable that permitting a damages claim in this case will lead to a flood of litigation involving federal officers making traffic stops. The federal law enforcement officers challenged with patrolling the highways will naturally face regular encounters in the execution of their duties that will make them particularly vulnerable to personal lawsuits for money damages. Now every prolonged traffic stop by a federal officer in the Fourth Circuit's jurisdiction is suddenly a potential cause of action against individual government officers for constitutional violations. In fact, the court of appeals' expansion of *Bivens* could lead to claims and personal civil liability against *any* line-level officer, from *any* agency, for *any* type of warrantless search or seizure. Such a result is surely undesirable and supports reversal of the court of appeals' determination.

CONCLUSION

For the reasons set forth above and those introduced in the Petitioners' petition for certiorari, this

Court should accept this matter for review and the judgment of the court of appeals should be reversed.

Respectfully submitted,

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