No. 23-976

IN THE

Supreme Court of the United States

JEREMY HENNING,

Petitioner,

v.

DONALD V. SNOWDEN,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF *AMICUS CURIAE* FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION (FLEOA) IN SUPPORT OF PETITIONER

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INTERESTS OF THE *AMICUS CURIAE*

Amicus Federal Law Enforcement Officers Association (FLEOA)[1] is the largest nonpartisan and nonprofit professional association exclusively representing law enforcement officers. *About Us*, Federal Law Enforcement Officers Association, https://www.fleoa.org/about-us (last visited April 3, 2024). Founded in 1977, FLEOA has served its members for over 40 years. It currently represents more than 32,000 federal law enforcement officers—including Petitioner Jeremy Henning—across 65 different federal agencies. *Id*. Those agencies include U.S. Supreme Court Police, U.S. Secret Service, U.S. Marshals Service, Department of Justice, Transportation Security Administration, Federal Bureau of Investigation, Drug Enforcement Agency, Customs and Border Protection, Defense Criminal Investigative Service, and Bureau of Alcohol, Tobacco, Firearms & Explosives. *Id*. FLEOA's membership encompasses all types of law enforcement officers, from uniformed officers to military police. *Id*. Because of this, FLEOA members regularly face high risk and high stakes operations to protect and serve the public.

FLEOA has a strong presence in the legislative sphere, too. FLEOA is often called upon to testify in congressional hearings on issues important to law enforcement and public safety. *Id*. FLEOA has played a key role in the passage of legislation important to its members' interests, including legislation related to disability claims, retirement benefits, public safety

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[1] Pursuant to this Court's Rule 37.6, counsel for *amicus* certifies that this brief was not authored in whole or in part by counsel for any party and that no person or entity other than the *amicus* or their counsel has made a monetary contribution to the preparation or submission of this brief. The parties received timely notice of this brief in accordance with Rule 37.2.

measures, and whistleblower protection. FLEOA is thus uniquely attuned to the issues affecting federal law enforcement and considerations relevant to Congress when it considers legislation on matters of law enforcement and public safety.

Because Mr. Henning is a FLEOA member, this case is of particular importance to FLEOA. Beyond Mr. Henning, this case also has wide-ranging implications for all federal law enforcement officers who have frequent contact with the public. FLEOA is concerned about the potential expansion of personal liability into a new context without congressional action, and the potential adverse consequences it poses to officers who routinely risk their lives and interact with the public. Expansion of *Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), or even allowing the current circuit split to persist, could have unintended adverse impacts on morale, recruitment, and most importantly public safety. Allowing expansion in some, but not all, jurisdictions would only exacerbate the adverse consequences. There may come a point when federal law enforcement officers weigh the costs and benefits of serving the public and determine it is not worth the personal financial risk.

FLEOA submits this brief because the 7th Circuit's opinion below is plainly wrong under this Court's *Bivens* decisions. It misapplies the "new context" analysis and ignores at least two meaningful differences: the difference between searches and seizures with or without warrant, and the difference between searches and seizures in a private home versus a public setting. Any further expansion of damages claims is a legislative endeavor, not for the courts. We therefore support Mr. Henning's petition for writ of certiorari to review

whether searches and seizures in public spaces, pursuant to a warrant, present a new *Bivens* context.

SUMMARY OF THE ARGUMENT

Recognizing claims against federal officials for monetary damages has far-reaching implications. For federal law enforcement officers, the threat of personal liability can cause hesitation in critical moments, decrease morale and recruitment, and leave our communities under-protected. These risks are heightened when different standards are applied across differing geographical jurisdictions.

This Court plainly stated two years ago, "[a]t bottom, creating a cause of action is a legislative endeavor." *Egbert v. Boule,* 596 U.S. 482, 491 (2022). To adhere to separation of constitutional powers, courts presented with a *Bivens* claim must engage in the "new context" analysis. If a *Bivens* claim is meaningfully different from the only three recognized by this Court, the context is "new." New *Bivens* contexts nearly always "represent situations in which a court is not undoubtedly better positioned than Congress to create a damages action." *Id.* at 492.

As an organization that regularly educates Congress on issues critical to federal law enforcement, and whose members routinely interact with the public, FLEOA sees many meaningful distinctions between the facts alleged here and *Bivens*. The decision below erred in equating an alleged violation of the Fourth Amendment during an arrest pursuant to a warrant in a hotel lobby with the warrantless search and seizure in a private home in *Bivens*. For the new context presented in this case, Congress is better suited to create a damages remedy. By recognizing a new cause of action, the courts below wrongly infringed on

Congress's authority and deepened a circuit split. Review is warranted.

ARGUMENT

In *Bivens*, this Court "broke new ground by holding that a person claiming to be the victim of an unlawful arrest and search could bring a Fourth Amendment claim for damages against the responsible agents even though no federal statute authorized such a claim." *Hernandez v. Mesa*, 589 U.S. 93, 99 (2020). But in recent years, this Court has come "to appreciate more fully the tension between this practice and the Constitution's separation of legislative and judicial power," moving away from the "*ancien regime*" that judicially created implied causes of action. *Id*.

When evaluating whether to extend *Bivens* liability, "the most important question is who should decide whether to provide for a damages remedy, Congress or the courts?" *Id*. at 114. (quotations omitted). As this Court correctly noted, the "answer most often will be Congress." *Id*. If "there is any rational reason (even one) to think that Congress is better suited to weigh the costs and benefits of allowing a damages action to proceed," a *Bivens* claim must fail. *Egbert*, 596 U.S. at 496 (internal quotations omitted). Accordingly, this Court has warned that expanding *Bivens* is "disfavored judicial activity." *Ziglar v. Abbasi*, 582 U.S. 120, 121 (2017).

Analysis of a *Bivens* claim begins with the inquiry of whether the case "presents a new *Bivens* context," *i.e.* "whether it is meaningfully different from the three cases in which the Court has implied a damages action." *Egbert*, 596 U.S. at 492. (quotations omitted). Because differences that are "perhaps small, at least in practical terms" are meaningful, "the new-context inquiry is easily satisfied." *Ziglar*, 582 U.S. at 149. A

case can present a new context even if it is based on the same constitutional amendment as one of the three recognized *Bivens* claims. *Hernandez*, 589 U.S. at 103. Given this low bar, an alleged Fourth Amendment violation in a hotel lobby while executing a court-approved warrant is meaningfully different than the warrantless search and seizure in a private home in *Bivens*.

I. FOURTH AMENDMENT RIGHTS VARY IN THE HOME AND IN PUBLIC.

Since this country's inception, a person's home has been afforded unique protection against government intrusion. One's home is a "castle and fortress, as well as his defen[s]e against injury and violence, as for his repose." *Lange v. California*, 141 S. Ct. 2011, 2022 (2021) (quoting *Semayne's Case*, 5 Co. Rep. 91a, 91b, 77 Eng. Rep. 194, 195 (K. B. 1604)). Enforcing this principle, this Court has strictly limited the actions a law enforcement officer may take in a home. This protection against government intrusion does not equally extend outside the home. *See, e.g. Florida v. White*, 526 U.S. 599 (1999) ("[O]ur Fourth Amendment jurisprudence has consistently accorded law enforcement officials greater latitude in exercising their duties in public places.")

In addition to individual rights, the setting of an arrest—whether in public or in a private home—influences an officer's conduct, too. A private residence can be canvassed in advance, secured from the perimeter, and swept to control and identify all occupants. On the other hand, a public setting is unpredictable and more dangerous. It is nearly impossible to secure a public area, like a hotel lobby. Public settings are exposed to potential intervention by unidentified bystanders. There is a heightened flight risk and

greater potential for harm to innocent onlookers. Flexibility is paramount to combat these extra challenges and added dangers. Officers' split-second decisions under such demanding and dangerous circumstances cannot be second-guessed in the same manner as more controlled actions to enter the privacy of one's home. Federal law enforcement officers, and FLEOA's membership, know this.[2] This Court too should recognize this meaningful difference.

A. Additional Legal Protections in Private Homes

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. The unique treatment of an individual's home as a place free from government intrusion predates the Constitution. It is rooted in English common law. *Payton v. New York*, 445 U.S. 573, 596 n. 45 (1980) ("We have long recognized the relevance of the common law's special regard for the home to the development of Fourth Amendment jurisprudence"). English common law displayed "a sensitivity to privacy interests that could not have been lost on the Framers." *Id.* The "zealous and frequent repetition of the adage that a 'man's house is his castle,' made it abundantly clear that both in England and in the Colonies 'the freedom of one's house' was one of the most vital elements of English liberty." *Id*. at 596-97. This Court declared "it is beyond dispute that the

[2] To prepare this brief, FLEOA distributed a survey to its members to gather information to support this brief. Survey respondents were asked about the practical differences between making an arrest in public and private, and making an arrest pursuant to or without a warrant.

home is entitled to special protection as the center of the private lives of our people." *Georgia v. Randolph*, 547 U.S. 103, 115 (2006) (citations omitted).

An individual's home provides more than privacy. It is the resident's "defen[s]e against injury and violence." *Lange*, 141 S. Ct. at 2022 (quoting *Semayne's Case*, 5 Co. Rep. 91a, 91b, 77 Eng. Rep. 194, 195 (K. B. 1604)). Americans have "lived our whole national history with an understanding of the 'ancient adage that a man's house is his castle [to the point that t]he poorest man may in his cottage bid defiance to all the forces of the Crown.'" *Randolph*, 547 U.S. at 115 (quoting *Miller v. United States*, 357 U.S. 301, 309 (1958)). "It may be frail; its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; but the King of England cannot enter—all his force dares not cross the threshold of the ruined tenement!" *Lange*, 141 S. Ct. at 2022.

Freedom from government intrusion lies at the heart of the Fourth Amendment's protections. The Fourth Amendment, and this Court's precedent, sharply circumscribes law enforcement conduct in the home. "The Fourth Amendment, and the personal rights which it secures, have a long history. At the very core stands the right of a man to retreat to his own home and there be free from unreasonable government intrusion." *Silverman v. United States*, 365 U.S. 505, 511 (1961). Recognizing the home as a place of special solicitude is necessary because "'physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.'" *New York v. Harris*, 495 U.S. 114, 118 (1990) (quoting *United States v. Watson*, 423 U.S. 411 (1976)). There lies a "firm line at the entrance to the house," such that absent exigent circumstances, a federal law enforcement officer may not cross that

line without a warrant. *Payton*, 445 U.S. at 590; *United States v. Karo*, 468 U.S. 705, 714-15 (1984). "The police may act without waiting" for a warrant and enter a private home only in cases of "emergency"—"such as imminent harm to others, a threat to the officer himself, destruction of evidence, or escape from the home." *Lange*, 141 S. Ct. at 2021.

Law enforcement officers are well versed in Fourth Amendment protections for individuals and limitations on government. FLEOA's members attest to the extensive training federal officers receive to protect Fourth Amendment rights and prevent improper government intrusion. One survey respondent explained, "I have been trained to treat a subject's dwelling with the utmost concern for their constitutional rights." Another said: "We are trained and treat a dwelling as sacrosanct, and only with proper authorization from a court is entering a subject's dwelling to make an arrest acceptable." FLEOA knows how DEA agents (like Petitioner Henning) are subject to scenario-based training exercises to practice executing searches and seizures in the home. During this training, legal subject matter experts coach officers how to perform their duties in a lawful, constitutional manner. Fourth Amendment rights are ever-present in the mind of a law enforcement officer executing a search or seizure in a private home. As they should be. Officers do not want to risk their lives to collect evidence only to have such evidence suppressed as the result of their own conduct. *Davis v. United States*, 564 U.S. 229, 236-37 (2011).

B. Differences Between Law Enforcement Activity in Public and Private

Public settings present a myriad of unique challenges to law enforcement officers that are not present in a private home. Courts acknowledge "the fact that police

officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation" in determining whether an officer's use of force is reasonable. *Graham v. Connor*, 490 U.S. 386, 396-97 (1989). This Court recognized a law enforcement officer's greater discretion to use force in public places, holding "that a 'police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death.'" *Plumhoff v. Richard,* 572 U.S. 765, 776 (2014) (quoting *Scott v. Harris*, 550 U.S. 372, 386 (2007)). In addition to the differing constitutional obligations, law enforcement officers executing searches and seizures in public settings also face more unpredictable environments that impact their split-second, use of force decisions. These unique challenges are paramount to FLEOA's members. Over 70% of FLEOA survey respondents identified differences between making arrests in public versus private settings. From this data, common themes emerged.

1. Limited Preparation and Lack of Control

Preparation is key to a safe and lawful arrest. Preparation differs depending on the location of the arrest. One FLEOA survey respondent stated that the "considerations that go into planning the execution of an arrest within a private dwelling are worlds apart from making an arrest in an area accessible to the public." FLEOA members explained that public arrests "almost always involve meticulous planning for unseen contingencies," and require "additional planning to address multiple egress points, the safety

of many bystanders and agent safety in an often open and uncontrolled area."

A public setting does not permit officers to use the same techniques to prepare for an arrest or control the scene. In a public setting, officers cannot identify or investigate every potential bystander, whereas officers can surveil a private home and surmise who may be present. Once identified, officers can search their criminal history. When making "an arrest in a home the agent usually has run criminal checks on the people likely to be in the home. The agent knows about registered weapons in the home and enters the home with some knowledge of the occupants," one FLEOA survey respondent reported. For public arrests, however, "[t]he agent cannot do criminal checks on people who will be in the location of the arrest. The agent has no idea how many additional people will be present at the arrest and has less control over the additional people. The agent would have no idea if any of the extra people in the public space are armed or even if they too are law enforcement." Another respondent explained: "Arrests in public places often involve finding people unexpectedly. These often are also much more unpredictable and due to their nature involve more risk to law enforcement." With so many unknowns, officers can only guess who may be present at a public scene, whether they are dangerous, and how a scenario will play out.

With more unknowns comes more danger. "Public places tend to [be] more unpredictable due to the ever changing nature of the environment," said one survey respondent. Another described a public setting as having "a significantly higher number of unknown variables, which leads to increased risk of something going wrong." Several respondents echoed this sentiment of the unpredictable nature and inability to control

public settings. "In public places, law enforcement has less control of the premises, and are therefore subject to more unpredictable environments."

This unpredictability and lack of control can factor into an officer's decision about the amount of force to use. As one FLEOA member put it: "In such [public] settings, the 'open' nature of the location presents more opportunity for the suspect to flee, and significantly less opportunity for law enforcement to have a proper perimeter, as is done around a private house." Because of a greater flight risk, "[s]ecuring the suspect quickly becomes much more important in a public setting," according to one FLEOA member. "It all boils down to," another survey respondent said, that there "is less ability to contain the entire situation and more chaos can ensue due to the vast number of possibly 'what if' scenarios that can happen" during a public arrest.

In planning public arrests, officers are reportedly "less likely to be able to utilize all available law enforcement assets and overt presence, because [they] likely need to maintain a covert presence until the last possible moment." For instance, a FLEOA respondent explained that "[p]ublic places don't afford the ability to use armored vehicles by and large and don't allow us to dictate the location, which is a safety advantage to officers." As a result, public arrests pose greater safety risks.

2. Heightened Risks to the Officer and the Public

Arrests in public include greater risks of danger to both the officers and the public. Innocent bystanders will inevitably be present during a public arrest. The safety of these bystanders is a key consideration for law enforcement. FLEOA survey respondents said, because

"[a]rrests in public areas are inherently dangerous due to the potential risk of harm to innocent bystanders" officers must "devote more attention to ensuring the safety of bystanders."

To ensure the safety of innocent bystanders, application of force can be necessary.[3] FLEOA survey respondents report that "the approach to gain control and compliance is far more aggressive" in public. "[W]hen affecting essential open air takedowns, agents must gain compliance quickly. So assisting the subject to the ground is a common tactic." Another FLEOA member explained that "swift and timely arrests are needed to prevent harm to the arrested, officers and public." Such force necessarily "prevents flight of the subject as well."[4] Swift application of force "allows for the arrest to be affected in a safe and secure manner." This type of force is justified and necessary in public settings to protect the officers and any innocent bystanders.

While bystanders to a public arrest require protection, their involvement also poses a potential threat. FLEOA members have encountered bystanders "trying to prevent [them] from doing [their] job," and "interfere[ing] with

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[3] Indeed, Department of Justice policy permits use of deadly force "only when necessary," including when "an individual poses an imminent danger of death or serious physical injury" to bystanders. *Policy on Use of Force*, U.S. Dep't of Justice, https://www.justice.gov/jm/1-16000-department-justice-policy-use-force (last visited April 3, 2024).

[4] According to a 2017 policy paper derived from law enforcement organizations nationwide, use of deadly force is justified to prevent the escape of a fleeing suspect believed to have committed a dangerous felony and who poses an imminent risk of serious body injury to others if not apprehended. *See National Consensus Policy and Discussion Paper on Use of Force*, Int'l Assoc. of Chiefs of Police (Oct. 2017), https://www.theiacp.org/sites/default/files/2018-08/National_Consensus_Policy_On_Use_Of_Force.pdf.

lawful arrests." One FLEOA respondent explained that certain criminals use bystanders to their advantage and "cause a 'scene' in order to elicit sympathy from bystanders" which can "increase the danger to LEOs, critically diminish the time available for any negotiations and at times, can lead to more assertive and definite actions from the LEOs to safely conduct the arrest." Bystander involvement is more likely from "bystanders that may perceive the level of force excessive."

As the FLEOA members describe, effectuating arrests in public is markedly different than arrests in a private home. The planning, techniques, decisions to use force, and dangers presented all differ. These considerations do not equally apply to law enforcement activity inside the home. It logically follows that claims for monetary damages for Fourth Amendment violations in a public hotel lobby are meaningfully different than *Bivens*. In this new context, Congress, not the courts, is better suited to create a cause of action.

II. SEARCHES AND SEIZURES WITH A WARRANT ARE MEANINGFULLY DIFFERENT THAN WITHOUT A WARRANT.

Like comparing searches and seizures in public to the privacy of the home, conducting a warrantless arrest and effectuating an arrest pursuant to a warrant are also meaningfully different. The existence of a warrant impacts an officer's ability to plan their course of action. But the most glaring difference is that officers executing a judicially issued warrant are carrying out a judicial mandate. *See Utah v. Strieff*, 579 U.S. 232 (2016). Because of a warrant's mandatory nature, "the officer has a sworn duty to carry out its provisions." *Id*. at 240 (citing *United States v. Leon*, 468 U.S. 897 (1984)). A search or seizure effectuating a warrant is essential to the proper functioning of the

Judicial Branch. A judge or magistrate who issues the warrant necessarily relies on federal law enforcement agents in the Executive Branch to enforce a court's orders. Creating a new cause of action against federal officers effectuating a warrant implicates a wide array of policy considerations, and even the proper functioning of the judicial system. Congress is undoubtedly better suited to consider such policy considerations when creating a cause of action.

FLEOA's members confirm that conducting a search or seizure is markedly different with a warrant versus without a warrant. A warrant may only be approved after "an independent judgment that probable cause exists for the warrant." *Whiteley v. Warden, Wyo. State Penitentiary,* 401 U.S. 560, 565 (1971). Law enforcement officers are generally more comfortable effectuating a search and seizure pursuant to a warrant because a judge already determined probable cause exists. FLEOA survey respondents reported that "a warrant arrest is based on probable cause reviewed and approved by a judge, based on specific charges that should generally indicate the possible dangers officers would face" and "arrest pursuant to a warrant carries the weight of a court order to execute the arrest." Another explained, it "comes down to the probable cause and signature of a judge prior to making an arrest. This ensures that you are acting in good faith due to the fact that an impartial judge has reviewed and signed off on the [probable cause] for the warrant." Rather than relying on their own judgment, an arrest under warrant "has established probable cause that has already been vetted and validated by the judge."

On the other hand, a warrantless search and seizure requires an officer to independently assess and determine probable cause. This determination is "based

upon training and experience to know when the elements of probable cause are met," as one FLEOA respondent explained. Exercising this discretion carries certain risks. A FLEOA survey respondent explained: "Warrantless arrests make law enforcement inherently more personally liable since the arrest is their discretion rather than court ordered." Another respondent opined that a "warrantless arrest [] would be under more scrutiny by the courts." Because of these meaningful differences, a cause of action for alleged excessive force while executing a warrant presents a new *Bivens* context.

III. UNCERTAINTY OF OFFICER PERSONAL LIABILITY JEOPARDIZES PUBLIC SAFETY.

The "burden and demand" of *Bivens* litigation against federal law enforcement officials "might well prevent them—or, to be more precise, future officials like them—from devoting the time and effort required for the proper discharge of their duties." *Ziglar,* 582 U.S. at 141 (2017); *see Egbert*, 596 U.S. at 498 (acknowledging that "risk that fear of personal monetary liability and harassing litigation will unduly inhibit officials in the discharge of their duties"). In the face of personal liability, law enforcement officers may "hesitate to exercise their discretion in a way 'injuriously affect[ing] the claims of particular individuals,' even when the public interest required bold and unhesitating action." *Nixon v. Fitzgerald*, 457 U.S. 731, 744-45 (1982) (citations omitted). The mere threat of *Bivens* litigation may cause "the deterrence of able citizens from acceptance of" federal law enforcement positions. *Harlow v. Fitzgerald*, 457 U.S. 800, 814 (1982). The absence of uniform standards across all federal jurisdictions exacerbates these risks.

The circuit courts of appeal are split on whether an arrest outside a private home[5] or an arrest pursuant to a warrant[6] present a new *Bivens* context. Federal law enforcement officers feel the effects. Numerous FLEOA survey respondents worry that the inconsistent standards across federal jurisdictions pose a threat to their personal safety. As one survey respondent explained, "second-guessing an action which was learned, trained and judicially backed in one jurisdiction but not supported in another, in the midst of a rapidly evolving and potentially life-threatening situation, could have dire consequences on the safety of the arresting officers, the subject, and any bystanders." Other respondents echoed this concern: "These difference[s] would require different planning and subject LEOs to second guess any actions taken at the time of arrest exposing them to undue risk of harm or death by not addressing possible threats promptly;" and "The hesitation makes it more dangerous for officers and the public." Law enforcement officers nationwide agree.[7]

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[5] In the First, Fifth, Eighth and Ninth Circuits, claims arising from searches and seizures outside a private home present a new context. *Quinones-Pimentel v. Cannon*, 85 F.4th 63 (1st Cir. 2023); *Olivia v. Nivar*, 973 F.3d 438 (5th Cir. 2020); *Ahmed v. Weyker*, 984 F.3d 564 (8th Cir. 2020); *Mejia v. Miller*, 61 F.4th 663 (9th Cir. 2023). In contrast, the Fourth, Seventh and Tenth Circuits reject this argument. *Hicks v. Ferreyra*, 64 F.4th 156 (4th Cir. 2023); *Snowden v. Henning*, 72 F.4th 237 (7th Cir. 2023); *Logsdon v. U.S. Marshal Serv.*, 91 F.4th 1352 (10th Cir. 2024).

[6] Only the Seventh and Tenth Circuits have held that an action taken pursuant to a valid warrant is not relevant to the new context inquiry. *Snowden,* 72 F.4th at 247; *Logsdon*, 91 F.4th at 1357.

[7] *See Use of Force Position Paper*, Int'l Assoc. of Chiefs of Police (2019), https://www.theiacp.org/sites/default/files/2019-05/Use%20of%20Force%20Task%20Force%20Recommendations_Final%20

Fear of a lawsuit may distract law enforcement officers' from their important mission. Such trepidation is heightened when the same set of facts in one jurisdiction could produce different consequences in another jurisdiction. Many federal law enforcement officers work in multiple jurisdictions. For instance, several federal law enforcement agencies have field offices in St. Louis, Missouri. *See, e.g. St. Louis Division*, Drug Enforcement Administration, https://www.dea.gov/divisions/st-louis (last visited April 3, 2024). Officers assigned to the DEA's St. Louis field office routinely conduct law enforcement activity in Missouri and just across the Mississippi River in Illinois. *Id.* The court below held that in Illinois a "[h]otel or home, warrant or no warrant" are not meaningful differences to present a new *Bivens* context. *Snowden*, 72 F.4th at 247 (2023). However, if the same events and suit occurred in Missouri, it is a new *Bivens* context if the officer "did not enter a home." *Ahmed*, 984 F.3d at 568. This is illogical. It is also unreasonable to expect federal law enforcement officers to keep track of such distinctions when working on different sides of a river in the same metropolitan area.

This circuit split could cause officers to hesitate or second-guess, and in turn endanger both officer and public safety nationwide. Some FLEOA survey respondents admit they are reluctant to work in certain jurisdictions and may avoid those assignments and details. Federal law enforcement decisions and actions should not be influenced by geographic jurisdiction.

Draft.pdf (liability related to an officer's use of force "jeopardizes officer safety, and therefore community safety, as it will cause second-guessing, hesitation, and potential confusion in situations of danger where not only the officer's life is in jeopardy but also those of bystanders").

Allowing this to continue could lead to differing levels of federal policing across states. The public deserves better. FLEOA asks this Court to grant certiorari to resolve this circuit split and provide clarity to federal law enforcement officers so they give their undivided attention to their ultimate goal – to protect and serve.

CONCLUSION

For these reasons, this Court should grant the petition and reverse the decision below.

Respectfully submitted,

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