No. 24-362

IN THE
Supreme Court of the United States

CURTRINA MARTIN, *ET AL.*,
Petitioners,
v.
UNITED STATES OF AMERICA, *ET AL.*,
Respondents.

On Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

Brief *Amicus Curiae* of America's Future, Gun Owners of America, Inc., Gun Owners Foundation, Gun Owners of California, Virginia Citizens Defense League, Virginia Citizens Defense Foundation, and Conservative Legal Defense and Education Fund in Support of Petitioners

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INTEREST OF THE *AMICI CURIAE*[1]

Amici America's Future, Gun Owners of America, Inc., Gun Owners Foundation, Gun Owners of California, Virginia Citizens Defense League, Virginia Citizens Defense Foundation, and Conservative Legal Defense and Education Fund are nonprofit organizations, exempt from federal income tax under either section 501(c)(3) or 501(c)(4) of the Internal Revenue Code. These entities, *inter alia*, participate in the public policy process, including conducting research, and informing and educating the public on the proper construction of state and federal constitutions, as well as statutes related to the rights of citizens, and questions related to human and civil rights secured by law.

STATEMENT OF THE CASE

In 2015, an FBI SWAT team, seeking to execute a search warrant against gang member Joseph Riley, raided the wrong house. *See Martin v. United States,* 631 F. Supp. 3d 1281, 1286-88 (N.D. Ga. 2022) ("*Martin I*"). Two adults were caught up in the errant raid, Curtrina Martin and Hilliard Toi Cliatt III, along with Martin's minor child. *Id.* at 1286. Flash bang grenades were deployed during the forced entry, and Cliatt was handcuffed before the agents realized they had raided the wrong house. *Id.* at 1288. The three victims sued the United States and FBI Special Agent

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[1] It is hereby certified that no counsel for a party authored this brief in whole or in part; and that no person other than these *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

Guerra, who had been responsible for identifying the house to be raided. *Id.* at 1286.

The Circuit Court identified the several claims brought by Petitioners, along with their disposition, by the district court as follows:

1. A *Bivens* claim against "Guerra and the six unidentified FBI agents who participated in the raid" for violation of their Fourth Amendment rights. *See Martin v. United States*, 2024 U.S. App. LEXIS 9619 at *9 (11th Cir. 2024) ("*Martin III*"). The district court **granted** summary judgment to the government.

2. State law claims "for negligence, negligent/*intentional* infliction of emotional distress, trespass and *interference with private property*, false arrest/false imprisonment, and assault and battery against the United States under the FTCA." *Id.* (emphasis added to claims the disposition of which was not addressed by the Circuit Court). The district court **granted** summary judgment to the government on state law claims for negligence, negligent infliction of emotional distress, and trespass.

3. State law claims for "false imprisonment and assault and battery." *Id.* at *9-10. The district court initially **denied** summary judgment to the government on these claims.

The government raised a "qualified immunity" defense. The district court "'conduct[ed] a two-step inquiry to decide whether qualified immunity should be granted: (1) taken in the light most favorable to the

party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right[?]; and (2) if a constitutional right would have been violated under the plaintiff's version of the facts, ... [was] the right ... clearly established[?]'" *Martin I* at 1291. The district court found that the agent had made a mistake but had not acted "unreasonably," and sustained the qualified immunity defense. *Id.* at 1294-95.

The district court then considered Plaintiffs' claims under the Federal Tort Claims Act ("FTCA"). Under the FTCA, the government "waive[s] immunity for claims related to an injury caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant" under the law of the state where the injury occurred. *Id.* at 1295. However, FTCA's waiver of immunity does not apply to discretionary actions taken by federal agents under the "discretionary function" exception. The court ruled that a function is discretionary if "'the controlling statute or regulation mandates that a government agent perform his or her function in a specific manner'.... If it 'specifically prescribes a course of action for an employee to follow, there is no judgment or choice involved'" and it is not a discretionary function. *Id.* The district court found that the determination as to what actions to take to confirm the identity of the targeted home were left to the agent's discretion, and therefore FTCA immunity was not generally waived. *Id.* at 1296-97.

However, the FTCA does carve out six specific torts which, when committed by law enforcement officers, operate to waive immunity. These include assault, battery, false imprisonment, and false arrest, all of which Plaintiffs alleged. *Id.* at 1297. For those torts, the government is liable under the same terms that would subject a private individual to liability under state law. Accordingly, the court considered Plaintiffs' state law claims. *Id.* at 1297. The court denied summary judgment to the government on the false imprisonment and assault and battery claims. *Id.* at 1299-1300.

Soon thereafter, the Eleventh Circuit decided the case of *Kordash v. United States*, 51 F.4th 1289 (11th Cir. 2022), and the United States moved for reconsideration of *Martin I.* On reconsideration, the district court concluded that pursuant to *Kordash*, the Supremacy Clause would operate to defeat state law-based tort claims if "(i) [the agent's] actions had some nexus with furthering federal policy; and (ii) his actions can reasonably be characterized as complying with the full range of federal law." *Martin v. United States*, 2022 U.S. Dist. LEXIS 235597 at *5 (N.D. Ga. 2022) ("*Martin II*") (internal quotation marks omitted). The district court then determined that "[b]ecause Guerra was acting within the scope of his discretionary duty, and his actions did not violate the Fourth Amendment ... the Supremacy Clause bars Plaintiffs' state law claims brought pursuant to the FTCA." *Id.* at *7. Thus, the district court granted summary judgment for the United States on the remaining state law-based FTCA claims of false imprisonment and assault.

On appeal, the Eleventh Circuit, also citing to *Kordash*, upheld the district court's grant of summary judgment. The court ruled that the agents' actions "'ha[d] some nexus with furthering federal policy and can reasonably be characterized as complying with the full range of [the Fourth Amendment].'" *Martin III* at *17. Therefore, the discretionary function exception and the Supremacy Clause barred the suit. *Id.* at *18-19.

SUMMARY OF ARGUMENT

The law-enforcement provision of the FTCA enacted by Congress is fully consistent with Chief Justice Marshall's conviction that a "civil society" is predicated on the principle that each individual has a claim to "the protection of the laws whenever he receives an injury." When those inflicting the injury are federal law enforcement officers invading constitutionally protected rights, it is particularly critical that victims may exercise their "legal remedy by suit or action at law." The Circuit Court's invocation of the Supremacy Clause to negate the law-enforcement liability provision fashioned by Congress cannot be supported. The judiciary has no authority to second guess Congress on its waiver of sovereign immunity in the FTCA. By ruling based on the Supremacy Clause, the Circuit Court was able to avoid addressing whether the FBI's actions were discretionary or not. If they had, the lower court would have been compelled to preserve the right of the Petitioners to seek redress.

The Circuit Court made a series of errors in handling the case, not all of which are currently before the Court, but which can only be explained to reflect a desire to preserve the public fisc or possibly to protect federal law enforcement's use of aggressive tactics. The injury here arose from an egregious violation of the rights of Petitioners by FBI agents. The claim that these agents were pursuing some federal policy does not immunize their actions from liability because their actions were unlawful. The Circuit Court acted as if the scope of the Fourth Amendment was determined by the atextual "reasonable expectation of privacy test," wholly oblivious to the fact that this Court has moved on in *Jones v. United States* in 2012 and *Florida v. Jardines* in 2013 to recognize that the Fourth Amendment's principal concern was the protection of property rights which were badly abused by the invasion of Petitioners' home and injury of the Petitioners' bodies.

While qualified immunity is not currently before the Court, that deeply-flawed doctrine informed the actions of the lower courts. The discretionary acts issue may not currently be before the Court, but the lower court's statement that when there is no policy there can be no violation perversely encourages the FBI to have no policies to protect Americans from such raids. The Circuit Court has strayed as far as it could from the common law practice that unlawful acts of trespass by sheriffs, which are much less offensive than those of the FBI, would have resulted in personal liability. The Circuit Court has wholly ignored the fact that, under the Fourth Amendment, a man's home still is his castle. The Circuit Court decision has gone far

to emasculate the Fourth Amendment's protection of Americans from abuses by the FBI. This decision should not be allowed to stand.

ARGUMENT

I. THE LAW-ENFORCEMENT PROVISION PROTECTS PETITIONERS' RIGHT TO SUE.

The Petitioners' Brief ("Pet. Br.") provides a thorough and convincing argument that 28 U.S.C. § 2680(h), the law-enforcement provision, exempts certain intentional torts identified in the FTCA from the discretionary-function exemption of § 2680(a). Pet. Br. at 8. Petitioners painstakingly work through the section's text and context, the legislative history, and the particular incident that led to the enactment of § 2680(h) to establish that Petitioners' claim is not barred.

A. When Rights Are Invaded by Government, Remedies Should be Provided.

Chief Justice Marshall's opinion in *Marbury v. Madison*, 5 U.S. 137 (1803), identified a basic principle that our legal system should provide a legal remedy for the invasion of a right. Applied here, victims of abusive conduct by the executive branch should be entitled to a remedy under the FTCA.

> The very essence of civil liberty certainly consists in the **right** of every individual to claim the **protection of the laws**, whenever

> he receives an **injury**. One of the first **duties of government** is to afford that protection.... Blackstone states ... "that where there is a legal right, **there is also a legal remedy by suit or action at law whenever that right is invaded**." [*Id*. at 162-63 (emphasis added).]

The fact that injuries caused by government generally do not go without redress is what makes the United States "a government of laws, and not of men." *Id*. Policemen must not act lawlessly, and Congress must not legislate lawlessly.

B. The Discretionary Function Exception.

The greater part of the *Marbury* opinion deals with the distinction between discretion and obligation. The distinction between discretion and obligation is at the heart of the discretionary-function exception in § 2680(a). The Eleventh Circuit was able to interpret the statute and yet avoid resolving that issue because it found the law-enforcement provision (§ 2680(h)) to except certain acts of law enforcement officers from § 2680(a). But this basic distinction, left unaddressed under the court's statutory analysis, reappears in its treatment of the law-enforcement provision under the Supremacy Clause. Although the Circuit Court rendered a decision favorable to the FBI agents based on the Supremacy Clause, it did not resolve the underlying issue of distinguishing matters of discretion and obligation.

The FTCA was enacted shortly after the conclusion of World War II, and recognizes the importance of

holding government agents accountable for their actions. The law-enforcement provision of the FTCA brings us closer to the purpose of providing a remedy for every legal wrong.

The Fourth Amendment places a prohibition on unreasonable searches and seizures and the FTCA is designed to provide a remedy. The relationship of §§ 2680(a) and 2680(h) should be interpreted in accordance with the maxim articulated by Marshall that every wrong requires a remedy.

II. THE ELEVENTH CIRCUIT ERRONEOUSLY ATTEMPTS TO IMPOSE SOVEREIGN IMMUNITY ON PETITIONERS' CLAIM.

A. The Eleventh Circuit's Attempt to Impose Sovereign Immunity through the Supremacy Clause Is Unavailing.

The Eleventh Circuit was able to avoid determining whether a law enforcement officer's intentional torts fall within the discretionary-function exception of § 2680(a) because § 2680(h) expressly provides for the law enforcement proviso exception. In effect, the court decided that, for purposes of the Article VI Supremacy Clause, either that those actions fall within the executive branch's discretion or that they are immune from civil action, whether discretionary or not, and therefore Congress has no power to waive that immunity.

In *Marbury*, Chief Justice Marshall articulated a standard for determining when an executive branch

officer's conduct is to be directed solely by discretion and when it is to be directed by obligation of law. When directed by discretion, the courts have no power of review over that action. Only when Congress places an obligation on the executive, may a court exercise its judicial power to review the lawfulness of that action.

Marshall posed two criteria for determining that a matter is governed by obligation. The first is "where a specific duty is assigned by law." *Marbury* at 166. The second is that "individual rights depend upon the performance of that duty." *Id*. The FTCA meets both of those criteria. It defines specific duties for those engaged in federal law enforcement activities by incorporating state laws regarding tort liability for certain intentional torts by law enforcement officers. Additionally, it provides a remedy for individuals harmed by those actions.

B. The Eleventh Circuit Failed to Recognize Congress has the Power to Make the Government Liable for Wrongs.

The Supremacy Clause expressly recognizes the power of Congress in the execution of its enumerated powers to preempt state laws that are properly enacted pursuit to their police powers. The Court ruled in *Willson v. Black Bird Creek Marsh Co.*, 27 U.S. 245 (1829), that Congress, not the courts, has the power to preempt lawful state laws that place a burden on interstate commerce. It is for Congress to decide if a burden incidentally imposed on interstate commerce outweighs a state's benefits of promoting health, safety, welfare, and morals.

The Court changed its approach to the preemption doctrine after *Cooley v. Board of Wardens*, 53 U.S. 299 (1851), so that by 1945 it wrote in *Southern Pacific Co. v. Arizona*, 325 U.S. 761 (1945), that "in general Congress has left it to the courts to formulate the [rules] interpreting the commerce clause" including "the relative weights of the state and national interests." *Id*. at 769-70.

The Eleventh Circuit has taken this a step further and ruled that it is for the courts to weigh the relative costs and benefits of state and national interest and exclude Congress from making the calculation that it made under the FTCA. Congress decided that the benefits of imposing state tort laws on federal law enforcement agents is greater than the benefit to federal law enforcement of waiving immunity. The Circuit Court cut Congress out of making the cost-benefit calculation which is inherently prudential or political in nature.

In the present case, the Circuit Court has essentially told Congress that it does not have the power to tell the President that the interests of the states (in compensating people pursuant to its police powers) outweighs the interest of the federal government in exercising its powers.

III. DETERMINING LIABILITY FOR VIOLATIONS OF THE FOURTH AMENDMENT REQUIRES RE-EXAMINATION OF THE AMENDMENT'S PROPER SCOPE.

A. The Courts Below Evaluated Government Liability under Precedents at Variance with the Constitution.

The district court initially granted in part and denied in part the government's motion for summary judgment. On cross motions for reconsideration of the district court's ruling, the district court dismissed the remaining FTCA tort claims based on the Circuit Court's decision in *Kordash v. United States*, 51 F.4th 1289 (11th Cir. 2022). *Martin II* at *4-8. In *Kordash*, the Circuit Court ruled that "**lawful federal actions** are not subject to state-law tort liability under the Supremacy Clause...." *Id.* at 1291 (emphasis added). *Kordash* explained that the Supremacy Clause supersedes state law here, because "**state-law liability** 'stands as an **obstacle** to the accomplishment and execution of the full purposes and **objectives of Congress**....'" *Id.* at 1293 (emphasis added).

Apparently, both the district court and the Circuit Court assumed that the FBI raid was a "lawful federal action," and that any accountability of federal officers would be an obstacle to the pursuit of the constitutional "objectives of Congress." As the Circuit Court put it, citing *Kordash*, there was "'**some nexus** with furthering federal policy and **can reasonably be**

characterized as complying with the full range of federal law.'" *Martin III* at *17 (emphasis added). There could not be a lower bar than that. Even assuming that was the correct test, the Circuit Court opinion provides no indication why the federal government had the jurisdiction to pursue a "violent gang member." *Id*. at *2. Seemingly, that would be a matter for state law enforcement, even under the ever-growing federal criminal code.[2] And even assuming the FBI was acting pursuant to a constitutional federal criminal law, that does not mean that holding persons accountable for gross abuses of federal power, such as occurred here, was a "**lawful**" federal action. Thus, these *amici* suggest that in this Court's evaluating the scope of the **discretionary function exception**, the protection that the Framers and ratifiers of the Fourth Amendment understood that it would provide should be, and must be, considered.

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[2] The identification of specific constitutionally enumerated powers gives not the slightest hint that any significant federal criminal code was anticipated by the Framers. For example, Article I, Section 8, clause 5 vests in Congress the power "[t]o coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures." And the very next clause — Article I, Section 8, clause 6 — vests Congress with the power "to provide for the punishment of counterfeiting the Securities and current Coin of the United States." By explicitly vesting Congress with the power to criminalize counterfeiting, the Framers demonstrate that one should not imply that the "necessary and proper" clause (Art. I, Sec. 8, cl. 18) vested a general police power in Congress to use the criminal law as a "necessary and proper" means to carry out its enumerated powers.

B. With *Jones* and *Jardines*, this Court Refocused the Fourth Amendment's Protection to Property First.

In its analysis of qualified immunity, the Circuit Court demonstrated that it had no appreciation for this Court's decisions determining that the Fourth Amendment was written, first and foremost, to protect the **property** interests of Americans. The Circuit Court exclusively focused on the "unreasonable expectation of **privacy**" test.

> The Fourth Amendment, as applied to the states through the Fourteenth Amendment, protects individuals from **unreasonable** searches of their property. *Gennusa v. Canova*, 748 F.3d 1103, 1109-10 (11th Cir. 2014). "[A] Fourth Amendment search occurs 'when the government violates a **subjective expectation of privacy** that society recognizes as **reasonable**.'" *Id*. at 1110 (quoting *Kyllo v. United States*, 533 U.S. 27, 33 (2001)). [*Martin III* at *12 (emphasis added).]

Similarly, the Circuit Court cited *Ohio v. Robinette*, 519 U.S. 33, 39 (1996), for the proposition that the "'touchstone of the Fourth Amendment is reasonableness.'" *Id*. While, at the time of *Robinette* and *Kyllo*, this Court's focus was on expectations of privacy, a sea change occurred in Fourth Amendment law in 2012 with this Court's decision in *United States*

v. Jones, 565 U.S. 400 (2012),[3] followed and reinforced by *Florida v. Jardines*, 569 U.S. 1 (2013).

It appears that this revolution in Fourth Amendment law has not yet worked its way into the law of qualified immunity or the FTCA, which continues to focus exclusively on the reasonableness of searches, completely disregarding the underlying trespass action which was actionable at common law. To be sure, the law of qualified immunity is a judicial construct under which courts have taken on themselves the duty to elevate the public fisc over the constitutional rights of the People.

C. At Common Law, Officers Could Be Sued for Trespass.

Before addressing *Jones* and *Jardines*, it is useful to pause to take an originalist view of the Fourth Amendment. In recent years, both Justices Scalia and Thomas have stated that the Fourth Amendment's use of the term "unreasonable searches and seizures" was not employed to provide an empty vessel into which judges could pour their own sense of "reasonableness." Rather, that terminology was designed to invoke the English common law to give objective meaning that the Circuit Court was obligated to apply.

The offense here was to the home of Petitioners. In 1998, Justice Scalia reminded us: "[t]he people's

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[3] *See* Brief Amicus Curiae of Gun Owners of America, *et al.*, *United States v. Jones*, No. 10-1259 (Oct. 3, 2011).

protection against unreasonable search and seizure in their 'houses' was drawn from the English common-law maxim, '**A man's home is *his* castle**.'" He explained that this proposition extended "[a]s far back as *Semayne's Case* of 1604, the leading English case for that proposition." *Minnesota v. Carter*, 525 U.S. 83, 94 (1998) (Scalia, J., concurring) (bold added). Three years later, Justice Scalia declared the touchstone of Fourth Amendment law to be *Entick v. Carrington*, 95 Eng. Rep. 807 (C. P. 1765), as "the true and ultimate expression of constitutional law with regard to search and seizure...." *United States v. Jones* at 405 (quotation marks omitted). In that case:

> Lord Camden expressed in plain terms **the significance of property rights** in search-and-seizure analysis: "[O]ur law holds **the property of every man so sacred**, that no man can set his foot upon his neighbour's close without his leave; if he does he is a **trespasser**, though he does no damage at all; if he will tread upon his neighbour's ground, he must justify it by law." [*Id.*]

As Professor Laura Donohue notes:

> Charles Pratt, chief justice of the Common Pleas [who] presided over the trial ... observed that "[t]he great end, for which men entered into society, was to secure their property." The common law rejected the proposition that the Crown could enter its subjects' domiciles at

> will: "[E]very invasion of private property, be it ever so minute, is a trespass."[4]

Further, Pratt asserted, "Every man in his home was entitled to live free from the gaze of the Crown." *Id.* at 1198.

To the extent that the violation here was against the person of the Petitioners, John Locke noted that "every Man has a *Property* in his own *Person*. This no Body has any Right to but himself." J. Locke, Two Treatises of Government, II, § 27 (Cambridge Univ.: 2002). Indeed, according to Locke, one's person is "*the Great Foundation of Property*," for by an individual's "being master of himself and *Proprietor of his own Person*," an individual human being accumulates property by his "labour," and thus, title to it. *Id.* at §§ 44 and 51.

English common law supported the proposition that a sheriff could be liable for trespass for a false arrest. At common law, "a search or arrest was presumed an unlawful trespass unless 'justified.'"[5] Indeed, "'[u]nlawful' (unjustified) arrest for searches exposed the officer to lawful resistance by bystanders or the target of his intrusion.… Furthermore, the victim of an unlawful arrest or search could sue the offending officer for trespass damages." *Davies* at 625.

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[4] L. Donohue, "The Original Fourth Amendment," 83 U. CHI. L. REV. 1181, 1197-98 (2016) (footnotes omitted).

[5] T. Davies, "Recovering the Original Fourth Amendment," 98 MICH. L. REV. 547, 624 (1999-2000) (hereinafter "Davies").

"The common law recognized no broad doctrine of official immunity." *Id.* at 625. One English case on point was *Carratt v. Morley*, 1841, 1 Q.B. 19, 28, 113 Eng. Reprint, 1036, 1040, where the commissioners who wrongly signed a warrant and an officer who arrested the plaintiff were both liable in trespass for false imprisonment.[6]

As Professor Thomas Davies notes, this principle continued into post-Founding, early American law. He notes that:

> [u]se of force necessary to prevent an officer from making an unlawful arrest was not a crime unless the officer was killed or seriously injured. *See, e.g., Commonwealth v. Kennard,* 25 Mass. 133, 134, 135-36 (1829); *Commonwealth v. Crotty*, 92 Mass. 403 (1865) (reversing a conviction for assaulting and battering a deputy sheriff … who had attempted to arrest pursuant to an unparticularized illegal "John Doe" warrant because the officer was a "trespasser" who stood "on the same footing" as a person doing the same act who was not an officer). Forcible resistance to constables was not uncommon.[7]

Indeed, as Justice Scalia noted in his *Minnesota v. Carter* concurrence, "the people's protection against

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[6] Cited in J. McBaine, Introduction to Civil Procedure at 31 (West Publishing: 1950).

[7] Davies at 625.

government intrusion into 'their' houses is established by the leading American case of *Oystead v. Shed*, 13 Mass. 520 (1816), which held it a trespass for the sheriff to break into a dwelling to capture a boarder who lived there." *Id.* at 96.

"Reasonableness" can only be determined by what was believed to be "reasonable" at the time of adoption of the Fourth Amendment, and any proper review must be tied to the denial of rights in property, not some subjective and ever-shifting notion of "privacy."

D. The Qualified Immunity Doctrine Is Based on a Flawed Assumption about the Common Law.

In *Pierson v. Ray*, 386 U.S. 547 (1967), the Court explained the logic it followed to conclude that qualified immunity existed at common law. First, the Court stated that "[f]ew doctrines were more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiction." *Id.* at 553-54. Second, the Court stated that "[t]he legislative record gives no clear indication that Congress meant to abolish wholesale all common-law immunities" when it enacted § 1983. *Id.* at 554. Then "the Court extended qualified immunity to officials who conducted themselves in good faith, without making any effort to determine whether any officials enjoyed such immunity at common law." Evan Bernick, "It's Time to Limit Qualified Immunity," GEORGETOWN LAW (Sept. 17, 2018).

Indeed, the comprehensive history uncovered by William J. Cuddihy in The Fourth Amendment: Origins and Original Meaning 602-1791 (Oxford Univ. Press: 2009) demonstrates that those who perpetrated unlawful searches and seizures were not immunized for their wrongful actions, but instead were held responsible. He explained:

> For centuries before the American Revolution, Englishmen had contested searches and seizures by characterizing them in court as instances of trespass or false imprisonment. [*Id*. at 593.]

Additionally, Cuddihy explained that, after *Entick v. Carrington*, 19 Howell's State Trials (1765), and *The Wilkes Cases*, 19 Howell's State Trials (1763-68), the rule that applied was the exact reverse of the doctrine of qualified immunity:

> Until those cases, searches and seizures constituted wrongs only when a statute or precedent so declared and, even then, only the instigators of those wrongs were culpable. After the Wilkes Cases, searches and seizures were wrongs unless a statute or precedent declared otherwise, and agents as well as instigators were culpable. [Cuddihy at 594 (emphasis added).]

No aspect of the qualified immunity doctrine should be relied upon in view of its flawed historical foundation

E. The Exclusive Focus on the Reasonableness of the FBI's Actions Ignores the Harm Visited on Petitioners.

The courts below found that the actions of the FBI agents that led to inflicting considerable harm to Petitioners were reasonable, even if mistaken. From the perspective of the family that was the subject of this armed break-in, the events that occurred in the middle of the night seem anything but "reasonable," but the courts never considered the matter from their perspective.

- "[A] team of **six unidentified FBI agents** — led by special agent, Lawrence Guerra" conducted the **raid**. "The FBI assigned Guerra to lead a Special Weapons and Tactics ("SWAT") team." Additional Atlanta P.D. Officers were present. *Martin III* at *2 (emphasis added).
- This was not an early morning raid, but a **middle of the night** raid, "[a]round 3:30 a.m. on the day of the warrant execution." *Id.* at *6 (emphasis added).
- "The SWAT team — dressed in **full tactical gear** and armed with **rifles** and **handguns** — quickly exited the vehicles and reported to their assigned locations surrounding Appellants' house." *Id.* at *7 (emphasis added).
- This appeared to be a **no-knock raid**. An agent either kicked in the door, used a ram, or used some sort of explosive charge before entry, which was accompanied by a **flashbang**

grenade. "[A]n agent **breached** the front door. Another agent deployed a flashbang at the entrance of the home. The SWAT team entered the house." *Id*. (emphasis added).

- "Cliatt — afraid that their home was being burglarized — ran towards the bedroom closet where he **kept a shotgun** for protection. As Cliatt ran towards the bedroom closet, Martin bolted towards the door to get her then **seven-year-old son**. However, Cliatt pulled Martin towards their bedroom closet, and **the two hid** in there." *Id.* (emphasis added).
- "Cliatt, acting to protect his partner, grabbed Martin and pulled her into a walk-in closet. Meanwhile, seven-year-old G.W. hid under his covers, as **his mother screamed**, 'I need to go get my son…'" Brief for Petitioners at 12 (emphasis added).
- "And Martin — **half naked** — fell to the floor in front of a room full of hostile strangers. As **Martin pleaded with one of the agents to let her see her son**, the SWAT team pointed guns at her and Cliatt." *Id.*
- "A SWAT team member … **dragged** Cliatt out of the closet and onto the bedroom floor with guns **pointed at him**, and **handcuffed** him.… [A]nother SWAT team member **pointed a gun in her face** while yelling at her to keep her hands up." *Martin III* at *7–8 (emphasis added).
- Once the agents realized what had happened, they **left without an explanation**. "Upon realizing that they were at the wrong house, … an agent lifted Cliatt off the ground and

uncuffed him; Guerra told Cliatt that he would come back later and explain what happened; and the agents left the house." *Id.* at *8.

- Agent Guerra "threw the GPS away before Petitioners could examine it in discovery." Brief for Petitioners at 13.

Two further points deserve mention. First, the courts below concluded that no established FBI policies were breached because there was no policy — with the matter committed to the agent's discretion. The existence of FBI policies to ensure the right home is raided would be highly useful to protect all Americans. However, under this Court's jurisprudence, the absence of protective policies allows abusive behavior to evade financial liability. Thus, this Court incentivizes the FBI to continue a system which fails to protect Americans from harm.

Additionally, if the FBI agents or the government were held financially responsible for their actions, it would lead to a reassessment of such middle of the night raids. Such raids seem designed to instil fear, and to risk the safety of the home's occupants as well as the FBI agents, as discussed in Section II.F, *infra.* Is terrorizing people the best way for the FBI to act? Are there not other approaches that could be taken? Allowing the government to escape liability allows the government to continue abusive and dangerous middle of the night raids. Such raids do not occur at the homes of judges, but if they did, the matter would take on an entirely different light. These are the techniques of a police state, not a constitutional republic.

F. Middle of the Night Raids of the Sort the FBI Conducts Have Led to Disasters for Homeowners and Police as Well.

There are numerous illustrations of law enforcement raids occurring at the wrong home.

- In 2019, the Chicago Police Department launched a raid on the wrong address, **handcuffing a naked woman** who was preparing to go to bed, without giving her a chance to dress for several minutes. *See* "Chicago police officer fired over raid at the wrong home where a Black woman was handcuffed naked," *NBC News* (June 16, 2023).
- In 2019, in Lancaster, Texas, a SWAT Team smashed the windows of, **flashbanged**, and held at gunpoint an innocent family when they meant to perform a no-knock raid on the family's next door neighbor. *See* Emma Camp, "Texas SWAT Team Held Innocent Family at Gunpoint After Raiding the Wrong Home," *Reason* (Mar. 21, 2024).
- In 2021, the Raleigh, North Carolina Police Department launched a SWAT raid into the home of Amir and Mirian Ibrihim Abboud, after mistaking them for neighbors, also of Arab ethnicity. *See* Charlotte Kramon and Jefrey Billman, "Raleigh Cops Tell Judge that Allowing the Public to See Footage of a Botched Raid Would be 'Dangerous,'" *INDY Week* (Mar. 27, 2024).

- On March 29, 2021, in Bloomfield, New Jersey, police went to an incorrect address and made entry into a family's duplex apartment, apparently believing there was an active murder-suicide occurring. The family was held at gunpoint while the police searched the residence. *See* Nicholas Katzban, "Bloomfield family sues claiming police raided their home due to address mix-up," *Northjersey.com* (Apr. 24, 2023).
- In January 2022, Denver, Colorado police, apparently based on an iPhone's "findmy" app ping (which the police asserted was a lead for a stolen truck), made an elderly woman leave her home in a bathrobe at gunpoint, then detained her while they ransacked her home. *See* Holly Yan, Melissa Alonso, and Andy Rose, "Denver police raided the wrong house after officers relied on a phone tracking app. Now a grandmother will get $3.76 million," *CNN* (Mar. 8, 2024).
- On June 6, 2023, Denver, Colorado police also conducted a **no-knock raid** into the apartment of a mother and her two daughters, holding them at gunpoint for about two hours. The actual intended target was the apartment across the hall. *See* Michael Roberts, "Denver Police Accused of Cover-Up After SWAT Raided Wrong Address," *Westword* (Feb. 25, 2025).
- In January 2024, police officers in Elyria, Ohio are accused of raiding the wrong house, after an officer on the homeowner's ring doorbell camera can apparently be heard remarking

that the address was incorrect. The police subsequently raided the home and their deployment of **flashbang grenades** sent a toddler to the hospital with burn injuries. *See* Marlene Lenthang, "'It's the wrong house': Audio of Ohio police raid that left a baby injured raises new questions," *NBC News* (Jan. 16, 2024).

- On December 23, 2024, Kentucky police officers **shot and killed** Mr. Doug Harless when they made a midnight raid on his home at 511 Vanzant Road, mistaking it for the intended address of 489 Vanzant Road, some 250 feet away. *See* Emily Swanson, "Kentucky police fatally shoot man while serving warrant at wrong home," *The Guardian* (Dec. 29, 2024).

When such abuses are committed by federal law enforcement during the violation of Fourth Amendment rights, it is the obligation of government to provide a remedy.

CONCLUSION

For the foregoing reasons, the lower court's decision should be reversed.

Respectfully submitted,

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