No. 24-362

IN THE

Supreme Court of the United States

CURTRINA MARTIN, INDIVIDUALLY AND AS PARENT AND NEXT FRIEND OF G. W., A MINOR, 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 FOR THE NORTH CENTRAL PENNSYLVANIA TRIAL LAWYERS ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS CURIAE*[1]

The North Central Pennsylvania Trial Lawyers Association ("NCPTLA") is a group of trial lawyers who seek to inform, educate, and advocate on behalf of lawyers to make trial practice professionally satisfying, productive, and just. Members of the NCPTLA often represent clients in civil litigation cases, including those which may result from misconduct by law enforcement officers. Protecting access to remedy under the FTCA falls squarely within the NCPTLA's mission of protecting the rights of innocent individuals.

[1] Pursuant to Sup. Ct. R. 37.6, *amicus curiae* affirm that no counsel for a party has written this brief in whole or in part, and that no person or entity, other than *amicus curiae*, its members, or its counsel, has made a monetary contribution to the preparation or submission of this brief.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Through the Federal Tort Claims Act ("FTCA"), Congress chose to waive the federal government's sovereign immunity to provide a remedy to "innocent individuals" who have been harmed when law enforcement gets it wrong.[2] Among the purposes of the FTCA is "to avoid injustice to those having meritorious claims hitherto barred by sovereign immunity."[3] Upholding the Eleventh Circuit's reasoning barring the waiver of sovereign immunity under the FTCA by finding the Supremacy Clause prohibits FTCA claims as to negligent or wrongful acts with a nexus to federal policy and the discretionary-function exception prohibits claims for torts arising out of wrongdoing committed by federal law enforcement officers falling under the law enforcement proviso is contrary to this goal and will adversely impact innocent individuals.

ARGUMENT

I. Mistakes of identity made by law enforcement can lead to wrongful arrest, detention, incarceration, and deportation of innocent individuals

To explain the impact of upholding the Eleventh Circuit's reasoning barring the waiver of

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[2] S. Rep. No. 93-588, p. 3 (1973) ("[I]nnocent individuals who are subjected to raids [like that in *Bivens*] will have a cause of action against the individual Federal agents *and* the Federal Government [under the FTCA.]"), *quoted in Carlson v. Green*, 446 U.S. 14, 20 (1980).

[3] *United States v. Muniz*, 374 U.S. 150, 154 (1963).

sovereign immunity, this brief highlights a particular circumstance innocent individuals confront in dealing with law enforcement: mistaken identity. While some references to mistaken identity cases contained in this brief relate to state law enforcement, the possibility of similar mistakes being made by federal law enforcement exists.

Law enforcement officers are people who make mistakes. Often, these mistakes relate to the identity of suspects and result in the arrest, detention, incarceration, or even deportation, of innocent individuals.

Wrongful arrests, detentions, incarcerations, and deportations have hit record highs in the United States in recent years. The Marshall Project noted that there were "a record 238 exonerations in 2022" alone[4] and the Georgia Innocence Project believes four to six percent of incarcerated people in the United States are innocent.[5] As many as 70 U.S. citizens are believed to have been deported from 2017 to 2021.[6] As

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[4] Jamiles Lartey, *In 2022, Exonerations Hit a Record High in the U.S.*, THE MARSHALL PROJECT: CLOSING ARGUMENT (May 20, 2023), https://www.themarshallproject.org/2023/05/20/wrongful-conviction-exoneration-2022-record-kim-foxx.

[5] *Beneath the Statistic: The Structural and Systemic Causes of Our Wrongful Conviction Problem*, GA. INNOCENCE PROJECT, https://www.georgiainnocenceproject.org/general/beneath-the-statistics-the-structural-and-systemic-causes-of-our-wrongful-conviction-problem/ (last visited Mar. 12, 2025).

[6] Melissa Cruz, *ICE May Have Deported as Many as 70 US Citizens In the Last Five Years*, IMMIGRATION IMPACT (July 30, 2021), https://immigrationimpact.com/2021/07/30/ice-deport-us-citizens/.

discussed below, many of these cases involve law enforcement mistakenly identifying the claimant as a suspect in a case. Limiting access to remedy under the FTCA and narrowing Congress's waiver of sovereign immunity would impose additional barriers to innocent individuals whom law enforcement has mistakenly identified.

A. Law enforcement has mistakenly identified innocent individuals as suspects for crimes based on general information

The most quintessential example of mistaken identity relates to the name—someone who shares your name allegedly does something illegal and there is a warrant out for their arrest. In many cases, these mistakes may be reasonable, particularly when law enforcement officers are put on the spot to decide in the field.[7] However, where courts have routinely permitted claims against law enforcement officers, it is where law enforcement reasonably could have and should have done more to investigate before arresting.[8]

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[7] *See, e.g.*, *Rodriguez v. Farrell*, 280 F.3d 1341 (11th Cir. 2002) (holding misidentification based on claimant sharing name, sex, age, and race with suspect was reasonable because other inconsistent identifiers could be changed cosmetically); *King v. Miami-Dade County*, 725 F. Supp. 3d 1324 (S.D. Fla. 2024) (holding that mistake was more reasonable because it was based on "on-the-spot" decision in the field rather than a prolonged investigation).

[8] *See, e.g.*, *Tillman v. Coley*, 886 F.2d 317 (11th Cir. 1989) (affirming denial of summary judgment against law

The 2016 case of *Williams v. United States* is an example of law enforcement falsely arresting someone under mistaken identity based on sharing the same name as someone.[9] Holly Ann Williams was arrested as a passenger during a traffic stop by law enforcement officers for an outstanding warrant.[10] The officers checked her ID for corroborating information.[11] How was law enforcement to know they had the wrong woman? Well, the Holly Ann Williams they arrested was Black, and the Holly Ann Williams the warrant was issued against was white.[12]

Meanwhile, in Arizona, 66-year-old Penny McCarthy was mistakenly identified as a 70-year-old wanted fugitive, Carole Anne Rozak.[13] She was confronted by six armed U.S. Marshalls in her front yard, arrested, and transported to a federal prison.[14] The mistaken identification was based on U.S. Marshalls' use of "open-source documents" suggesting

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enforcement officers who held doubts about key identifiers and had three months to investigate those doubts); *Simone v. United States*, No. 09-CV-3904 (TCP) (AKT), 2010 WL 11632765 (E.D.N.Y. June 17, 2010) (noting that investigations required to prevent mistake are "not onerous undertakings").

[9] *See generally Williams v. United States*, No. PX 15-3685, 2016 WL 6780218 (D. Md. Nov. 16, 2016).

[10] *Id.* at *1.

[11] *Id.*

[12] *Id.*

[13] Jennifer Kovaleski, *DOJ launches investigations after ABC15 report into wild case of mistaken identity*, ABC15 Az. (updated Dec. 30, 2024, 7:47 PM), https://www.abc15.com/news/local-news/investigations/doj-launches-investigations-after-abc15-report-into-wild-case-of-mistaken-identity.

[14] *Id.*

Ms. McCarthy was Carole Anne Rozak.[15] Those open-source documents? Ms. McCarthy's Facebook photo.[16] Ms. McCarthy spent the night in federal prison.[17]

B. Law enforcement has mistakenly identified U.S. citizens, refugees, and asylum seekers as undocumented immigrants not permitted to remain in the United States

Mistakes by law enforcement as to an individual's right to remain in the United States are far too common. Refugees and asylum seekers who have a legal right to remain in this country may be subject to heightened scrutiny by law enforcement and wrongfully arrested, detained, incarcerated, or deported solely on a law enforcement officer's perception of their nation of origin. While it seems impossible that a U.S. citizen may be mistaken for an undocumented immigrant, as many as 70 U.S. citizens are believed to have been deported between 2017 and 2021.[18]

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[15] *Id.*

[16] Jennifer Kovaleski, *Arizona woman claims wild case of mistaken identity put her in federal prison*, ABC15 AZ. (updated Apr. 8, 2024, 10:00 PM), https://www.abc15.com/news/local-news/investigations/arizona-woman-claims-wild-case-of-mistaken-identity-put-her-in-federal-prison.

[17] Alex Oliveira, *House panel demands probe into US Marshals' arrest of grandma mistaken for fugitive: 'Carelessness and excessive force'*, HOUSE JUDICIARY: IN THE NEWS (Nov. 19, 2024), https://judiciary.house.gov/media/in-the-news/house-panel-demands-probe-us-marshals-arrest-grandma-mistaken-fugitive.

[18] Cruz, *supra* note 6.

In addition to impacting law enforcement's decision to arrest the individual believed to be undocumented in the first place, mistakes as to immigration and citizenship status can impact what sentences an individual may receive in court and whether the misidentified individual is able to even remain in the United States.

In 2019, Luis Hernandez was arrested and, while in custody, misidentified as an undocumented immigrant.[19] An ICE Detainer was issued against him.[20] With respect to the underlying arrest, the prosecutor initially recommended three days of community service.[21] However, because of the ICE Detainer, the judge found Mr. Hernandez was not eligible for a sentence of community service.[22] Instead, Mr. Hernandez remained in custody for four days before the mistake was remedied.[23]

Again in 2019, Jose Daniel Guerra-Castañeda was wrongfully deported. A Salvadoran national who came to the United States seeking asylum based on "his credible fear of torture by Salvadoran authorities if he were to be deported," Mr. Guerra-Castañeda was subject to two federal orders allowing him to remain

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[19] *See generally Hernandez v. United States*, 939 F.3d 191 (2d Cir. 2019).
[20] *Id.* at 197. Luis Hernandez was misidentified as Luis Enrique Hernandez-Martinez. *Id.*
[21] *Id.*
[22] *Id.*
[23] *Id.*

in the country while his case was pending.[24] ICE deported him anyway and his concerns which drove him to seek asylum in the first place were realized—he was tortured in a Salvadoran prison for 297 days.[25]

U.S. Border Patrol has also stopped individuals they believe to be undocumented when sweeping greyhound buses—even if those buses are domestic. In 2019, Mohanad Elshieky, a refugee from Libya and professional comedian, was ordered off a bus by Border Patrol.[26] Despite producing documentation proving his lawful presence in the United States, Mr. Elshieky was detained by Border Patrol, who unfoundedly alleged his documents were fake.[27]

Finally, in 2008, Mark Lyttle became one of the many U.S. citizens wrongfully deported. Mr. Lyttle, who lived with mental disabilities, was detained by ICE and deported to Mexico—he had never been to Mexico, shared no Mexican heritage, and spoke no

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[24] *Guerra-Catañeda v. United States*, 656 F. Supp. 3d 356, 360 (D. Mass. 2023).
[25] *Id.; Jose Daniel Guerra-Catañeda v. The United States*, ACLU N.H., https://www.aclu-nh.org/en/cases/jose-daniel-guerra-castaneda-v-united-states (last visited Mar. 7, 2025).
[26] *Complaint Filed Against Border Patrol Officers for Unlawful Detention on Greyhound Bus in Spokane, Washington*, ACLU WASH. (Feb. 14, 2020), https://www.aclu-wa.org/news/complaint-filed-against-border-patrol-officers-unlawful-detention-greyhound-bus-spokane-0.
[27] *U.S. Border Patrol Agrees to Two $35,000 Settlements in Racial Profiling, Unlawful Detention Cases*, ACLU WASH. (Apr. 29, 2021), https://aclu-wa.org/news/us-border-patrol-agrees-two-35000-settlements-racial-profiling-unlawful-detention-cases.

Spanish.[28] He was forced to spend four months living on the streets, in shelters, and in prisons in Central America, before he was sent to Honduras, where Honduran officials sent him to Guatemala.[29] Ultimately, in Guatemala, he was able to find the U.S. Embassy, receive a passport, and make his way home to the United States.[30]

C. Increased use of and reliance on artificial intelligence facial recognition technology poses a mounting threat of mistaken identity by law enforcement

The growing use of artificial intelligence facial recognition technology ("FRT") by law enforcement agencies is also likely to result in increased cases of mistaken identification. The Government Accountability Office has conducted multiple surveys on law enforcement agencies' use of FRT, finding that over a dozen use it to aid criminal investigations, including to "generate leads in criminal investigations, such as identifying a person of interest."[31] Federal agencies such as the Federal

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[28] *Id.*

[29] *Id.*

[30] Esha Bhandari, *Yes, the U.S. Wrongfully Deports Its Own Citizens*, ACLU (Apr. 25, 2013), https://www.aclu.org/news/immigrants-rights/yes-us-wrongfully-deports-its-own-citizens.

[31] *Facial Recognition Technology: Current and Planned Uses by Federal Agencies*, U.S. GOV'T ACCOUNTABILITY OFF. (Aug. 24, 2021), https://www.gao.gov/products/gao-21-526; *Facial Recognition Technology: Federal Agencies' Use and Related Privacy Protections*, U.S. GOV'T ACCOUNTABILITY OFF. (June 29,

Bureau of Investigations,[32] Immigration and Customs Enforcement,[33] and the Department of Homeland Security[34] are among those that use FRT. Dozens of states also allow local law enforcement to utilize FRT.[35]

In spite of its advances, FRT often creates false positive identifications, many times based on biases in programming. FRT is frequently improperly trained to identify non-white individuals. Studies show "an

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2022), https://www.gao.gov/products/gao-22-106100; *Facial Recognition Technology: Federal Law Enforcement Agencies Should Have Better Awareness of Systems Used By Employees*, U.S. GOV'T ACCOUNTABILITY OFF. (July 13, 2021), https://www.gao.gov/products/gao-21-105309.

[32] Kimberly J. Del Greco, Deputy Assistant Director, Criminal Justice Information Services Division, Federal Bureau of Investigation, Statement Before the House Oversight and Reform Committee, Facial Recognition Technology: Ensuring Transparency in Government Use (June 4, 2019), https://www.fbi.gov/news/testimony/facial-recognition-technology-ensuring-transparency-in-government-use.

[33] *EPIC v. ICE (Facial Recognition Services)*, EPIC: FOIA CASES, https://epic.org/documents/epic-v-ice-facial-recognition-services (last visited Mar. 13. 2025).

[34] *Facial Recognition Services: Federal Law Enforcement Agencies Should Take Actions to Implement Training, and Policies for Civil Liberties*, U.S. GOVT. ACCOUNTABILITY OFF. (Sept. 12, 2023), https://www.gao.gov/products/gao-23-105607 (noting several agencies under the Department of Homeland Security and the Department of Justice utilize facial recognition).

[35] Jake Laperruque, *Status of State Laws on Facial Recognition Surveillance: Continued Progress and Smart Innovations*, TECH POLICY (Jan. 6, 2025), https://www.techpolicy.press/status-of-state-laws-on-facial-recognition-surveillance-continued-progress-and-smart-innovations/ (detailing state law restrictions on use of FRT by law enforcement).

unacceptable error rate, with damaging effects" among FRT's ability to properly identify faces of color.[36] In fact, when analyzing Black women's faces, FRT has demonstrated a thirty-five percent error rate, and "[n]umerous studies reveal FRT performance inconsistencies in identifying non-[w]hite males and persons with darker complexions."[37] There are currently seven publicly known wrongful arrests in as many years resulting from law enforcement reliance on FRT and six of the arrestees are Black:[38]

In 2019, Nijeer Parks spent ten days in jail after FRT mistakenly identified him as a suspect who had shoplifted candy and attempted to strike a law enforcement officer with a car—he was 30 miles away at the time of the incident.[39]

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[36] Nada Hassanin, *Law professor explores racial bias implications in facial recognition technology*, UNIV. OF CALGARY (Aug. 23, 2023), https://ucalgary.ca/news/law-professor-explores-racial-bias-implications-facial-recognition-technology.

[37] Thaddeus L. Johnson et al., *Facial recognition systems in policing and racial disparities in arrests*, 39 GOV'T INFO. Q. at 2 (2022), https://www.sciencedirect.com/science/article/abs/pii/S0740624X22000892?via%3Dihub.

[38] Nathan Freed Wessler, *Police Say a Simple Warning Will Prevent Face Recognition Wrongful Arrests. That's Just Not True*, ACLU: FLA. (Apr. 30, 2024, 2:45 PM), https://www.aclufl.org/en/news/police-say-simple-warning-will-prevent-face-recognition-wrongful-arrests-thats-just-not-true.

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In 2019, Michael Oliver was arrested and jailed for three days following a mistaken identification by FRT, which wrongfully identified him as a person who had stolen a cell phone.[40]

In 2020, Robert Williams was detained for 30 hours after FRT mistakenly identified him as a shoplifter.[41]

In 2022, Alonzo Sawyer was arrested and jailed for nine days when FRT mistakenly identified him as a suspect for an assault and theft.[42]

In 2023, Porcha Woodruff was arrested and held for 11 hours after being mistakenly identified by FRT as a robber and carjacker—she was eight months pregnant at the time of her arrest.[43]

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[40] *See* Natalie O'Neill, *Faulty Facial Recognition Led to His Arrest—Now He's Suing*, VICE (Sept. 4, 2020, 9:39 AM), https://www.vice.com/en/article/faulty-facial-recognition-led-to-his-arrestnow-hes-suing/; *see also* Exhibit A to Notice of Removal of Civil Action, *Oliver v. Bussa*, No. 2:20-cv-12711-LJM-DRG, ECF No. 1 (Oct. 6, 2020) (Complaint filed by Michael Oliver).

[41] *Williams v. City of Detroit*, ACLU: COURT CASES (updated Jan. 29, 2024), https://www.aclu.org/cases/williams-v-city-of-detroit-face-recognition-false-arrest.

[42] *Alonzo Sawyer facial recognition wrongful arrest, jailing*, AIAAIC, https://www.aiaaic.org/aiaaic-repository/ai-algorithmic-and-automation-incidents/alonzo-sawyer-facial-recognition-mistaken-arrest.

[43] Kashmir Hill, *Eight Months Pregnant and Arrested After False Facial Recognition Match*, N.Y. TIMES (Aug. 6, 2023), https://www.nytimes.com/2023/08/06/business/facial-recognition-false-arrest.html.

In 2023, Randal Quaran Reid was arrested and detained for six days after FRT identified him as a suspect wanted for credit card fraud in a Louisiana parish—he had never even been to Louisiana.[44]

Despite warnings instilled in many of these FRT programs informing users that the identification made by FRT should *not* be considered a positive identification, many law enforcement officers do not engage in sufficient efforts to further investigate the often-mistaken identifications made by FRT.[45] In fact, subsequent investigative steps "often exacerbate and compound the unreliability of face recognition searches."[46]

When these types of mistaken identifications are made specifically by federal law enforcement officers and cause harm to innocent individuals, the remedies for the harms often lie in the FTCA—the exact reason Congress waived sovereign immunity and created a federal cause of action in the first place. To bar that waiver would be to ignore the FTCA's plain language and goals and obstruct the avenue to remedy Congress intentionally created for innocent individuals.

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[44] Sudhin Thanawala, *Facial recognition technology jailed a man for days. His lawsuit joins others from Black plaintiffs*, AP NEWS (updated Sept. 25, 2023, 12:04 AM), https://apnews.com/article/mistaken-arrests-facial-recognition-technology-lawsuits-b613161c56472459df683f54320d08a7.

[45] Wessler, *supra* note 38 (discussing cases where law enforcement treated identifications from FRT as positive identifications with "[n]o additional confirmatory investigation").

[46] *Id.*

CONCLUSION

Upholding the Eleventh Circuit's reasoning barring the waiver of sovereign immunity under the FTCA will adversely impact innocent individuals, including individuals who have been subjected to mistaken identity by law enforcement. *Amicus*, therefore, respectfully requests that the Court reverse the judgment of the court of appeals.

Respectfully submitted.

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