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

AMICUS CURIAE BRIEF OF THE NEW CIVIL LIBERTIES ALLIANCE IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS CURIAE*[1]

The New Civil Liberties Alliance ("NCLA") is a nonpartisan, nonprofit civil rights organization and public-interest law firm devoted to defending constitutional freedoms from the administrative state's depredations. Professor Philip Hamburger founded NCLA to challenge multiple constitutional defects in the modern administrative state through original litigation, *amicus curiae* briefs, and other advocacy.

The "civil liberties" of the organization's name include rights at least as old as the U.S. Constitution itself, such as the right to a jury trial, to due process of law, and to have laws made by the nation's elected legislators through constitutionally prescribed channels (*i.e.*, the right to self-government). These selfsame civil rights are also very contemporary—and in dire need of renewed vindication—precisely because Congress, executive branch officials, administrative agencies, and even some courts have neglected them for so long.

NCLA aims to defend civil liberties—primarily by asserting constitutional constraints against the modern administrative state. Although Americans still enjoy the shell of their Republic, a very different sort of government has developed within it—a type that the Constitution was designed to prevent. This unconstitutional state within the Constitution's United States is the focus of NCLA's concern.

NCLA is deeply disturbed by the vanishing pathway to recovery for American citizens who are harmed—sometimes egregiously so—by federal law enforcement officers. It is a "general and indisputable rule" that where

[1] No party's counsel authored any portion of this brief, and no party, party counsel, or person other than *amicus curiae* made a monetary contribution intended to fund this brief's preparation or submission. *See* S. Ct. R. 37.6.

there is a legal right, there is also a legal remedy "whenever that right is invaded." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803). Yet this fundamental principle has been steadily eroded as judge-made immunity doctrines have expanded—leaving victims of even egregious federal misconduct without meaningful redress and, in this case, contravening the will of Congress.

In *Egbert v. Boule*, this Court effectively closed the door on future *Bivens* claims, concluding that "no *Bivens* action may lie" if there is any rational reason to think that Congress (rather than the courts) should be the one to decide whether to provide for a damages remedy—"as it will be in most every case." 596 U.S. 482, 492 (2022). As a result, the Federal Tort Claims Act (FTCA) now often stands as the only meaningful path to recovery for individuals harmed by federal law enforcement officers. Yet the decision below—through an expansive application of the FTCA's discretionary-function exception and an unprecedented distortion of the Supremacy Clause—threatens to erase even that crucial remaining remedy.

The Eleventh Circuit's ruling not only contravenes Congress's express waiver of sovereign immunity under the FTCA's law-enforcement proviso, but it also creates an untenable gap in accountability, shielding federal officers from liability for even the most egregious misconduct, while barring relief to their victims.

As a staunch defender of Americans' rights, self-government, the separation of powers, and the rule of law, NCLA has an interest in the outcome of this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Eleventh Circuit's decision below defies congressional design and nullifies the law-enforcement proviso's intended effect on the very

types of tort claims for which it was enacted. As the Eleventh Circuit, among other circuits, has whittled away the FTCA's waiver of immunity through faulty judge-made doctrine, victims of federal law enforcement abuses are increasingly deprived of their last meaningful hope for redress, which the FTCA provides.

The decision below inappropriately expands the FTCA's "discretionary-function" exception, 28 U.S.C. § 2680(a), rendering the law-enforcement proviso a dead letter. It also distorts the Supremacy Clause, transforming a constitutional safeguard meant to uphold valid Acts of Congress as the "supreme Law of the Land" into a tool for nullifying federal statutes whenever they are perceived as impeding the execution of other federal laws or functions.

This case exemplifies why the FTCA's law-enforcement proviso is so critical. Federal law enforcement officers wield immense power over the lives of citizens. When that power is exercised responsibly, it helps uphold the rule of law and ensure public safety. But when that power is abused or recklessly misapplied, the consequences can be severe—as in this case, where an FBI SWAT team raided the wrong house, terrorizing an innocent family who was awakened before dawn by the "loud cannon-type bang" of flash grenades and the sound of intruders invading their home. Petitioner Hilliard Cliatt was then shackled on the floor of his own home and aggressively interrogated, while Petitioner Curtrina Martin was held at gunpoint, forced to crouch half-naked in the closet, terrified that something awful had happened to her seven-year-old son, who was elsewhere in the house. And why did all of this happen? Because the FBI agent leading the raid failed to take the most basic precaution—checking the clearly marked house number—before

ordering a full-scale tactical assault on a residential home. As a result of this lapse (among other oversights), the FBI SWAT team raided the wrong house number on the wrong street.

Congress expressly waived sovereign immunity for intentional torts such as assault, battery, false imprisonment, and wrongful raids arising from federal law enforcement misconduct under the FTCA's law-enforcement proviso, 28 U.S.C. § 2680(h), to ensure that victims would have a viable legal remedy. Yet the Eleventh Circuit's ruling reimposes immunity where Congress explicitly removed it. If allowed to stand, the ruling below will render wrong-house raids, excessive force, and other egregious abuses committed by federal law enforcement officers all but unchallengeable in court, further diminishing accountability for federal officers at a time when other avenues of redress—such as *Bivens* claims—have already been all but eliminated.

Indeed, in *Egbert v. Boule*, this Court concluded that "no *Bivens* action may lie" if there is any rational reason to think that Congress, rather than the courts, should decide whether to provide for a damages remedy—"as it will be in most every case." 596 U.S. at 492. With *Bivens* relief now largely unavailable and qualified immunity shielding officers from liability absent a near-identical prior case, the FTCA will often stand as the only realistic path to recovery for victims of federal law enforcement misconduct. Yet the Eleventh Circuit's ruling threatens to close even that last remaining door.

The Eleventh Circuit's decision is gravely flawed for two reasons: (1) it impermissibly expands the FTCA's discretionary-function exception, such that the exception swallows the later-enacted law-enforcement proviso, rendering Congress's will a dead letter; and (2) it

nonsensically inverts the Supremacy Clause, using it to nullify claims under the FTCA—a *federal statute*—and eliminate a cause of action expressly provided for by Congress. While the Eleventh Circuit stands alone in its distorted application of the Supremacy Clause, its expansive reading of the discretionary-function exception reflects a disturbing trend among other circuits, which have similarly whittled away at congressional design, effectively negating the law-enforcement proviso by stretching the discretionary-function exception far beyond its proper scope.

If this Court permits the Eleventh Circuit's ruling to stand, it will severely weaken the FTCA's role in ensuring redress for victims of federal law enforcement misconduct. It would also send a dangerous message that the courts will not hold the federal government accountable when its law enforcement agents unlawfully raid homes—detaining, assaulting, and terrorizing innocent individuals—so long as a federal agent's misdeeds bear "some nexus" to federal policy and do not violate "clearly established" law. This result defies the will of Congress, misconstrues the relevant law, and leaves all Americans vulnerable to rights violations with no avenue for redress.

RELEVANT FACTUAL BACKGROUND

This case arises from an FBI wrong-house raid, during which an innocent family was terrorized at gunpoint and subjected to extreme psychological and physical distress—all because the FBI agent in charge of the operation (FBI Special Agent Lawrence Guerra) failed to take some of the most basic and commonsense precautionary measures before executing a raid on a residential home: namely, check the house number before breaking down the door.

In the pre-dawn hours of October 18, 2017, FBI Agent Guerra led a SWAT team to 3756 Denville Trace, a well-kept family home in a quiet residential neighborhood where Petitioners and Petitioner Martin's seven-year-old son were fast asleep. Pet. Cert. at 8; Pet. App. 35a.

Failing to confirm the address posted on the mailbox in front of the house and, instead, using a black Chevrolet Camaro in the driveway as a landmark, Agent Guerra incorrectly believed that he had arrived at 3741 Landau Lane—the home of gang member Joseph Riley and the address for which Guerra had a search warrant. At the time, Guerra was aware that the address of the target house was posted on the mailbox. He was also aware that neither Riley nor any of his associates were known to drive a black Camaro. Pet. Cert. at 8-9.

Prior to the raid, the FBI prepared an operation order and accompanying addendum (collectively, the "operation order"), which, among other things, provided instructions on how to execute the warrant; a description and photograph of the target house (3741 Landau Lane); an overhead image of the neighborhood with a pin denoting 3741 Landau Lane; and step-by-step directions to the property with a corresponding map. Pet. App. 35a-36a.

Agent Guerra testified that, at approximately 3:30 a.m. on the morning of the raid, he conducted a drive-by of the target home to determine whether there were any unexpected conditions. According to Guerra, he used his personal GPS device to navigate to a house that he believed to be 3741 Landau Lane, where he observed a black Camaro parked in the driveway. The house was not the target location, but instead the Petitioners' home at 3756 Denville Trace, and Petitioner Hilliard Cliatt was the owner of the

black Camaro. The house number of Petitioners' home was affixed to the mailbox. Pet. App. 37a-38a.

When Agent Guerra returned later that morning with the full SWAT team, rather than verifying the street name or house number (which was clearly listed in the warrant, operation order, and mailbox in front of Petitioners' home), Guerra relied on the black Camaro (Petitioner's car) parked in the driveway of Petitioners' home as confirmation that the SWAT team was at the correct address. Pet. App. 38a.

At around 5 a.m. that morning, Petitioners Hilliard Cliatt and Curtrina Martin were awakened by the "loud cannon-type bang" of flash grenades and the sound of what they believed to be intruders invading their home, as the SWAT agents rammed in the front door of their home. Pet. App. 76a; J.A. 5.

Martin's first instinct was to run to her son's room to shield him from the intruders, but Cliatt, acting to protect his partner, grabbed Martin and pulled her into a walk-in closet where he kept his shotgun. Meanwhile, seven-year-old G.W. hid under his covers, as his mother screamed that she needed to get to her seven-year-old son, who was elsewhere in the house. Pet. App. 8a, 76a–77a, 88a; J.A. 5–6, 22–23.

Masked FBI agents shoved open the door to the closet where Cliatt and Martin had barricaded themselves, dragging Cliatt out, shackling him on the bedroom floor and aggressively interrogating him until the officers realized that they were at the wrong house. Pet. App. 8a, 79a.

Meanwhile, Petitioner Curtrina Martin was forced at gunpoint to remain crouched half-naked in the bedroom closet, desperately requesting to know whether her seven-year-old son was alright. Pet. App. 89a. The only response that she received was a masked FBI agent's gun in her face and the

instructions to keep her hands up, forcing her to remain in that position while wearing only a small t-shirt and no undergarments. Pet. App. 89a.

While the agents aggressively questioned Cliatt, as he lay handcuffed on the floor, he eventually told them his address, 3756 Denville Trace, and "all the noise just ended." Pet. App. 8a, 79a. Cliatt heard one of the FBI agents instruct an officer to "go check the address." Within approximately one minute, the agent returned and, having discovered that the SWAT team had invaded the wrong home, the agents picked Cliatt up off the floor, unshackled him, and left to conduct the raid at the correct address. Pet. App. 9a, 79a-80a.

Later, Guerra returned to Petitioners' home, apologized, gave Cliatt a business card with a number to call, and informed him that Guerra's supervisors would take care of the damage done to the house, including the front door hanging off its hinges. Pet. App. 80a-81a.

Cliatt later called the number on the business card and asked whether the FBI would pay for the damage done. Cliatt was informed, "No, we don't do that." Pet. App. 82a.

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Congress has not provided a private cause of action for damages against federal officers who violate the constitutional rights of American citizens. This Court recognized an implied cause of action to seek damages in *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics* for certain Fourth Amendment violations (*i.e.*, a warrantless house raid, the use of excessive force, and terrorizing an innocent family) committed by federal law enforcement officials, 403 U.S. 388 (1971). In recent years, however, the Court has all but extinguished the availability of *Bivens* relief. Indeed, in *Egbert v. Boule*,

this Court effectively closed the door on future *Bivens* claims, concluding that "no *Bivens* action may lie" if there is any rational reason to think that Congress (rather than the courts) should be the one to decide whether to provide for a damages remedy—"as it will be in most every case." 596 U.S. at 492.

Even if a *Bivens* claim were theoretically available, in most cases, modern qualified immunity jurisprudence remains an insurmountable obstacle, barring liability against government actors unless a plaintiff can identify a prior case with facts nearly identical to *Bivens* which would allow the court to conclude that the unconstitutionality of an officer's conduct was "clearly established" at the time of the alleged rights violation.[2]

Against this backdrop, the FTCA frequently stands as the only viable path to recovery for victims of federal law enforcement negligence and intentional misconduct, resulting in property damage and other harm. *See* 28 U.S.C. § 1346(b)(1); 28 U.S.C. § 2680(h).

Congress enacted the FTCA in 1946 "to remove the sovereign immunity of the United States from suits in tort and, with certain specific exceptions, to render the Government liable in tort as a private individual would be under like circumstances." *Richards v. United States*, 369 U.S. 1, 6 (1962); §§ 28 U.S.C. 1346(b)(1), 2680; *Feres*

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[2] Petitioners also asserted a *Bivens* claim against Agent Guerra, but the Eleventh Circuit granted him qualified immunity on the basis that "the law at the time did not clearly establish that Guerra's preparatory steps before the warrant execution would violate the Fourth Amendment." Pet. App. 15a. In assessing qualified immunity, the lower courts never evaluated the lawfulness of the wrong-house raid, itself, nor of Petitioners' related intentional tort claims of assault, battery, and false imprisonment. Rather, the district court held, and the Eleventh Circuit affirmed, only that the law was not "clearly established" as to Agent Guerra's "preparatory steps before the warrant execution." *Id.*

v. United States, 340 U.S. 135, 139-140 (1950) (noting Congress's design to remedy "wrongs which would have been actionable if inflicted by an individual or a corporation but [were] remediless solely because their perpetrator was an officer or employee of the Government").

The FTCA provides a cause of action for damages for tort claims arising from the "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 in accordance with the law of the place where the act or omission occurred." 28 U.S.C. § 1346(b)(1).

Recognizing the barriers to relief for federal misconduct and following two widely publicized wrong-house raids in Collinsville, Illinois (during which innocent families were terrorized at gunpoint by federal agents who wrongfully raided their homes), Congress amended the FTCA in 1974. The amendment added a law-enforcement proviso to the statute, 28 U.S.C. § 2680(h), which waived sovereign immunity for certain intentional torts when committed by federal investigative or law enforcement officers. The object of the proviso is to ensure that "innocent individuals who are subjected to raids [of the type conducted in Collinsville and *Bivens*] will have a cause of action against * * * the Federal Government." *Carlson v. Green*, 446 U.S. 14, 20 (1980) (quoting 1974 U.S.C.C.A.N. 2789, 2791 (1973)).[3]

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[3] In addition to the limited availability of relief under *Bivens* for constitutional violations, until Congress amended the FTCA in 1974 to include the law-enforcement proviso, the FTCA excluded from its waiver of sovereign immunity several intentional torts, including assault, battery, false imprisonment, false arrest, malicious prosecution, and abuse of process—all six of which are covered under the law-enforcement proviso, which re-waived

Specifically, the proviso withdraws sovereign immunity from damages claims "with regard to acts or omissions of investigative or law enforcement officers of the United States Government" for "any claim arising … out of assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution." 28 U.S.C. § 2680(h).

This Court had recognized an implied cause of action against federal law enforcement officers for Fourth Amendment violations in *Bivens* just a few years prior to the 1974 amendment. Nevertheless, recognizing that Fourth Amendment excessive-force claims and intentional tort claims arising from the acts of law enforcement officers often arise from the same conduct, the Senate Committee on Government Operations (from which the law-enforcement proviso originated) concluded that "Federal agents are usually judgment proof," characterizing *Bivens* as a "rather hollow remedy." *See* 1974 U.S.C.C.A.N. at 2790. Thus, recognizing the absence of any "effective legal remedy against the Federal Government for the actual physical damage, [much] less the pain, suffering and humiliation" to which victims of wrong-house raids had been subjected, Congress created a cause of action for the express purpose of ensuring that victims could seek damages "for the same type of conduct that is alleged to have occurred in *Bivens*," including assault, battery, and false imprisonment. *Id.* at 2791; 28 U.S.C. § 2680(h).

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sovereign immunity "to create a cause of action against the United States for intentional torts committed by federal law enforcement officers." *Carlson*, 446 U.S. at 19–20.

ARGUMENT

I. POST-*EGBERT*, THE FTCA OFFERS THE ONLY VIABLE PATH TO RECOVER DAMAGES FOR VICTIMS HARMED BY FEDERAL LAW ENFORCEMENT OFFICERS

This Court has long recognized that "every right, when withheld, must have a remedy, and every injury its proper redress." *Marbury v. Madison*, 5 U.S. (1 Cranch) at 163. However, under today's prevailing immunity framework, victims of federal law enforcement misconduct face a gauntlet of obstacles to obtaining any meaningful form of redress—and are often left with no remedy at all.

As discussed above, *Bivens*' progeny have effectively foreclosed the ability of individuals to recover damages for violations of their constitutional rights. *See Egbert v. Boule*, 596 U.S. at 492 (concluding that "no *Bivens* action may lie" if there is any rational reason to think that Congress, rather than the courts, should decide whether to provide for a damages remedy—"as it will be in most every case."); *see also Ziglar v. Abbasi*, 582 U.S. 120, 135 (2017) (recognizing a cause of action under *Bivens* is "a 'disfavored' judicial activity").

Even if, in theory, a plaintiff were to convince a court to recognize a *Bivens* remedy (*i.e.*, by proving there is not a single "reason to think that Congress might be better equipped to create a damages remedy," *Egbert*, 596 U.S. at 492) and to allow the claim to proceed, current qualified immunity jurisprudence imposes an additional high hurdle to overcome. Qualified immunity insulates federal officials from liability for even the most obvious or egregious violations of Americans' constitutional rights, so long as an official can show that his or her constitutional misconduct did not violate "clearly established law," which has been interpreted so narrowly as to border on the absurd.

Notably, the modern qualified immunity doctrine emerged not through Congressional enactment, but via this Court's decree.[4] *Harlow v. Fitzgerald*, 457 U.S. 800 (1982). In practice, this judicially-crafted doctrine amounts to a get-out-of-jail-free card for most government officials—even those whom a judge has determined unambiguously violated a plaintiff's constitutional rights. They are shielded from legal accountability so long as they can point to even the slightest ambiguity in the law to argue that it was not "clearly established" at the time of the constitutional violation. Importantly, the ambiguity does not have to lend itself to more than one *reasonable* interpretation: to the contrary, *any* interpretation—however ludicrous—will do. Courts across the country have increasingly approached the "clearly established law" standard as a rigid, highly exacting test, which requires that plaintiffs rely on precedent containing nearly identical facts to show that an official had "fair notice" that his conduct was unconstitutional at the time of the rights violation. *See, e.g.*, *Latits v. Phillips*, 878 F.3d 541 (6th Cir. 2017) (granting police officers qualified immunity despite finding of Fourth Amendment violation where officers rammed driver off road, shot driver three times despite driver posing no threat, and later made false statements about the incident—because the law was not "clearly established.").

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[4] Over 150 years ago, Congress passed § 1983 of the Civil Rights Act of 1871 "to deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails." *Wyatt v. Cole*, 504 U.S. 158, 161 (1992). Nowhere in its text does the statute refer to immunity. To the contrary, the language "is absolute and unqualified," with "[n]o mention … made of any privileges, immunities, or defenses that may be asserted." *Owen v. City of Independence*, 445 U.S. 622, 635 (1980).

As a result, victims of federal misconduct—faced with the narrowing prospects of *Bivens* relief and the near-impossible hurdle imposed by modern qualified immunity doctrine—will often find no clear pathway to recover damages.[5] The authority to execute search and arrest warrants, detain suspects, and use force (including lethal force) to enforce the law is undoubtedly necessary to preserving safety and order. However, when federal officers abuse this immense power, or wield it excessively, the consequences for Americans can be especially severe. Innocent people have had their homes wrongfully raided and destroyed, been terrorized at gunpoint, subjected to physical assault, unlawfully detained, and, in some instances, killed. *E.g.*, *Smith v. Arrowood*, No. 6:21-CV-6318, 2023 WL 6065027 (W.D.N.Y. Sept. 18, 2023) (no liability for officers who forcibly entered unarmed plaintiff's home without a warrant, without uniforms, and without announcing that they were officers, shot plaintiff multiple times at point-blank range, causing broken bones, collapsed lung, nerve damage, and other serious injuries). Yet

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[5] The increasingly commonplace practice of task force cross-deputization throughout the country further complicates matters for plaintiffs seeking damages against law enforcement officers. While serving on joint federal-state task forces, cross-deputized law enforcement officers frequently operate under the authority of both federal and state law but, in many cases, cannot be held liable under either. Many courts have adopted a categorical presumption that when an officer is cross-deputized on a federal task force, he or she acts "exclusively under color of federal law," not under color of state law. *See, e.g.*, *Mohamud v. Weyker*, No. 17-2069 (8th Cir. 2024) (pending). This means that even when an officer violates an individual's rights while exercising state police powers in his own community, the victim cannot sue under § 1983 (which only covers acts committed under color of state law). At the same time, following *Egbert*, any attempt to sue such an officer under *Bivens* for the very same misconduct will almost certainly be barred. *See Egbert*, 596 U.S. 482.

even in the face of the most egregious constitutional misconduct, it is exceedingly difficult to hold federal officers accountable, and victims subjected to unlawful searches, seizures, and excessive force have little recourse for the harm that they suffer at the hands of negligent (or even rogue) federal actors.

Notwithstanding Congress's explicit judgment, as reflected in the plain language and context of the FTCA's law-enforcement proviso, that individuals harmed by federal law enforcement officers for specified torts may seek redress in court, *see supra*, Statement of Relevant Facts, the Eleventh Circuit's ruling guts the proviso and reimports sovereign immunity where Congress had expressly barred it.

The facts of this case exemplify why Congress chose to waive the sovereign immunity of the United States under such circumstances: an innocent family was awakened before dawn by the "loud cannon-type bang" of flash grenades and the sound of intruders invading their home; Petitioners were terrorized, held at gunpoint, interrogated, and shackled by members of an FBI SWAT team, which, they later discovered, had raided the wrong house because the agent in charge of the operation (Agent Guerra) declined to check the clearly marked house number on the mailbox in front of Petitioners' home (among other oversights). Pet. App. 7a-8a, 76a, 80a.

Yet the Eleventh Circuit—when faced with FTCA claims alleging a wrong-house raid along the lines of those that prompted Congress to enact the law-enforcement proviso in the first place—nevertheless determined that Petitioners did not have access to any remedy for the egregious wrongs that they had suffered because that harm was the result of a federal official's "discretionary" act. This interpretation impermissibly expands the FTCA's so-called discretionary-function

exception, one of the statute's several categories of exemptions.

The discretionary-function exception reinstates sovereign immunity for claims based on the "exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government[.]" 28 U.S.C. § 2680(a). This Court has made clear in its decades of precedent that the discretionary-function exception applies only to claims for acts "grounded in regulatory policy," *United States v. Gaubert*, 499 U.S. 315, 323, 325 & n.7 (1991) (discretionary-function exception protected actions by banking regulators, adopted pursuant to statutory grant of authority under which agency authorized regulators to weigh appropriateness of agency's supervisory actions), or "grounded in social, economic, and political policy." *United States v. Varig Airlines*, 467 U.S. 797, 814 (1984) (discretionary-function exception protected acts of FAA employees in executing "spot-check" program adopted pursuant to discretion vested by Congress to prescribe inspection regime for airplanes). *Cf. Hatahley v. United States*, 351 U.S. 173, 181 (1956) (federal agents' seizure of horses was not protected under the discretionary-function exception, as their "acts were wrongful trespasses not involving discretion on the part of the agents"); *Indian Towing Co. v. United States*, 350 U.S. 61, 69 (1955) (Coast Guard's negligent operation of lighthouse was not protected under the discretionary-function exception).

Several circuits, including the Eleventh, have expanded the exception's definition of "discretionary" to encapsulate virtually all federal conduct, including garden-variety law enforcement blunders, negligence, and abuses. Indeed, according to the Eleventh Circuit, the only time that the discretionary-function does *not* apply is "when a federal employee acts contrary to a specific prescription in federal law—be it a statute,

regulation, or policy." *Shivers v. United States*, 1 F.4th 924, 931 (11th Cir. 2021) ("the discretionary function exception applies unless a source of federal law specifically prescribes a course of conduct") (internal quotations omitted).

As discussed in depth below, the Eleventh Circuit's ruling is gravely flawed for two reasons: (1) it impermissibly distorts and expands the FTCA's discretionary-function exception, such that the exception swallows the later-enacted law-enforcement proviso, rendering Congress's will a dead letter; and (2) it nonsensically inverts the Supremacy Clause, using it to nullify claims under the FTCA—a *federal statute*—and to eliminate a cause of action expressly provided for by Congress. *Martin v. United States*, No. 23-10062, 2024 WL 1716235 (11th Cir. Apr. 22, 2024).

Under the Eleventh Circuit's interpretation of the Supremacy Clause, if a federal official's tortious misconduct has "some nexus with furthering federal policy" and could "reasonably be characterized" as complying with the "relevant constitutional standard" (in this case, the Fourth Amendment), then FTCA claims (necessarily grounded in state tort law) would "impede or burden the execution of federal law," and thus be barred by the Supremacy Clause. *Id.* at *6. The Eleventh Circuit is the only circuit that has adopted this far-fetched bar on FTCA claims—and for good reason. To state the obvious (as Petitioners point out), the *Federal* Tort Claims Act is a federal law, which means that it *is* the "supreme Law of the Land," and thus does not—and cannot—conflict with the Supremacy Clause. Pet. Br. at 47.

If permitted to stand, the lower court's ruling would effectively bestow blanket immunity from FTCA liability on federal law enforcement officers for any actions made while "on the job," while leaving Americans without

redress for the very harms for which Congress enacted the statute to supply a remedy.

II. THE DISCRETIONARY-FUNCTION EXCEPTION DOES NOT BAR CLAIMS ARISING FROM THE LAW-ENFORCEMENT PROVISO

A. The Eleventh Circuit's Ruling Defies the FTCA's Plain Text and Purpose

On its face, the FTCA's law-enforcement proviso bars sovereign immunity for claims of assault, battery, and false imprisonment, among other intentional torts, arising from the action or inaction of federal law enforcement officers. § 2680(h). This specific, targeted waiver should prevail over the more general discretionary-function exception where the two conflict. *Nguyen v. United States*, 556 F.3d 1244, 1252–53 (11th Cir. 2009). The Eleventh Circuit itself initially agreed, holding in *Nguyen* that, "to the extent of any overlap and conflict" between the law-enforcement proviso (§ 2680(h)) and the discretionary-function exception (§ 2680(a)), "the proviso wins." *Id*. Congress's "later and more specific," *id.* at 1253, enactment—the 1974 proviso—intended to carve out these law enforcement torts from immunity, even if the tortious conduct involved some element of discretion. *Id*. at 1257 ("[I]f a claim is one of those listed in the [law-enforcement proviso], there is no need to determine if the acts giving rise to it involve a discretionary function; sovereign immunity is waived in any event.").

Reading the discretionary-function exception to override the law-enforcement proviso would nullify that carve-out and defy the canon of interpretation requiring that a subsequent specific provision govern the earlier, general one. Courts are not authorized to "rewrite, revise, modify, or amend statutory language in the guise of interpreting it, … especially when

doing so would defeat the clear purpose behind the provision." *See id.* at 1256 (citations omitted).

Moreover, Congress explicitly elected to waive the sovereign immunity of the United States for precisely the forms of misconduct at issue in this case. The 1974 proviso was a deliberate response to incidents of federal law enforcement abuse—specifically, abuse involving wrong-house raids of the homes of innocent individuals like Petitioners. And as the Fifth Circuit recognized, a broad reading of the discretionary-function exception to encapsulate law-enforcement activities would effectively render the proviso a nullity: "[I]f actions under the proviso must also clear the hurdle of the discretionary function exception … even *Bivens* and Collinsville would not pass muster and the law enforcement proviso would fail to create the effective legal remedy intended by Congress." *Sutton v. United States*, 819 F.2d 1289, 1296 (5th Cir. 1987).

In other words, line agents executing searches or arrests are not engaged in the kind of high-level policy analysis that § 2680(a) was designed to protect. *See Garcia v. United States*, 826 F.2d 806, 809 (9th Cir. 1987) ("While law enforcement involves exercise of a certain amount of discretion on the part of individual officers, such decisions do not involve the sort of generalized social, economic and political policy choices that Congress intended to exempt from tort liability."); *Pooler v. United States*, 787 F.2d 868, 871–72 (3d Cir. 1986), *abrogated on other grounds by Millbrook v. United States*, 569 U.S. 50 (2013) ("Reading the intentional tort proviso as limited to activities in the course of a search, a seizure or an arrest as a practical matter largely eliminates the likelihood of any overlap between section 2680(a) and section 2680(h)."). Extending the discretionary-function shield to garden-variety law

enforcement blunders or abuses would subvert Congress's unambiguous aim and deny justice in the very situations that the proviso addresses.

B. Agent Guerra's Conduct Was Not a Policy Decision—It Was a Grave Blunder Beyond the Scope of the Discretionary-Function Exception

Additionally, the discretionary-function exception, by its own terms, does not apply to the conduct at issue in this action. That exception protects governmental actions and decisions involving an element of "judgment or choice" (as opposed to being mandated by statute, regulation, or policy) that are "grounded in to social, economic, or political policy." *Berkovitz v. United States*, 486 U.S. 531, 536 (1988); *see also Gaubert*, 499 U.S. at 322–23. Through the discretionary-function exception, "Congress wished to prevent judicial 'second-guessing' of legislative and administrative decisions." *Varig Airlines*, 467 U.S. at 814. Agent Guerra's wrong-house raid squarely flunks both prongs:

No "judgement or choice" (Prong 1): Guerra's conduct at issue bears no relation to the charting of new policy or weighing strategic options. He was tasked with a ministerial operation: execute a warrant at a specific address, 3741 Landau Lane. The FBI's own operation order provided him with step-by-step driving directions, photographs of the target house, and the exact address of the residence to be searched (located in an accessible, residential neighborhood). He had no discretion to select the wrong house to raid. By straying to 3756 Denville Trace (bearing the wrong house number and located on the wrong street), Guerra violated the explicit terms of the court-approved warrant and the FBI operation order, which clearly prescribed the target

(including the house number on the mailbox out front and the way to get there).

It is axiomatic that a federal officer has no discretion to violate the law or ignore a clear statutory, regulatory, or policy directive. *Butz v. Economou*, 438 U.S. 478, 489 (1978) ("[A] federal official may not with impunity ignore the limitations which the controlling law has placed on his powers."). *See also Medina v. United States*, 259 F.3d 220, 225 (4th Cir. 2001) (noting that the starting point of analysis is the axiom that "[f]ederal officials do not possess discretion to violate constitutional rights or federal statutes"); *Red Lake Band of Chippewa Indians v. United States*, 800 F.2d 1187, 1196 (D.C. Cir. 1986) ("A government official has no discretion to violate the binding laws, regulations, or policies that define the extent of his official powers.").

Just as a postal driver has no discretion to take a detour that causes an accident, a federal agent has no lawful discretion to exercise in conducting an unauthorized raid on an innocent family's home. Indeed, "[i]t is, of course, a tautology that a federal official cannot have discretion to behave unconstitutionally." *Myers & Myers, Inc. v. USPS*, 527 F.2d 1252, 1261 (2d Cir. 1975). Agent Guerra's deviation from the clear dictates of the warrant, the operation order, and basic common sense does not constitute a "discretionary" choice or judgment worthy of sovereign immunity under the discretionary-function exception.

<u>No policy considerations</u> (Prong 2): Even assuming *arguendo* that there was some element of valid "discretionary" judgment in Guerra's determination of how to locate the target address, that choice was not grounded in any form of policy analysis. That officers must take basic precautions, such as verifying

the house number in the warrant before breaking down the door, and ensuring they are in the correct location *before* commencing a raid are so fundamental that it is somewhat alarming that this even must be said. For FBI agents tasked with coordinating high-risk SWAT operations and other tactical maneuvers, ensuring that a SWAT team is at the correct house pre-raid surely falls among the most basic of precautionary requirements, with zero bearing on the furtherance or balancing of policy objectives.

Indeed, the Second Circuit has rightly noted that when officers mistakenly detain the wrong person or raid the wrong house, such actions are "not the kind that involve weighing important policy choices," but rather individual oversights in carrying out duties. *Caban v. United States*, 671 F.2d 1230, 1233 (2d Cir. 1982) (actions of INS agents who wrongly detained an individual were "not the kind that involve weighing important policy choices."). Likewise, the D.C. Circuit has observed that applying the FTCA's intentional-tort waiver to line officers will seldom implicate policy-driven discretion. *Gray v. Bell*, 712 F.2d 490, 508 (D.C. Cir. 1983) (if the law-enforcement proviso is read to primarily include police officers and related law enforcement officials, "whose jobs do not typically include discretionary functions," then the proviso will rarely be barred by the discretionary-function exception).

Here, Agent Guerra's lapse—*i.e.*, failing to check an address, which Guerra knew to be clearly displayed on the mailbox out front—bears no resemblance to agencies' or officials' acts in furtherance of public or regulatory policy that the discretionary-function exception was designed to protect. Rather than furthering any agency policy, Guerra's mistake contravened FBI objectives and basic competence. No social or political policy is

advanced by wrongfully bursting into the private home of a sleeping family at 5 a.m. and terrorizing innocent citizens. Nor is any legitimate public policy furthered by protecting officers from suffering any consequences for exceedingly negligent actions. On the contrary, allowing for liability in these types of cases *furthers* important policies, such as incentivizing the federal government to adequately train its employees via internal mechanisms (such as withholding promotions or pay increases for violations) to motivate officers to exercise a basic level of care before breaking into a family's home and terrorizing them in the middle of the night.

Conducting a raid at the wrong location is not a discretionary policy decision, but an action borne from utter negligence and a failure to exercise the most elemental caution that should be expected of law enforcement officers. Agent Guerra had ample information available to him (*e.g.*, photos, maps, step-by-step navigation instructions, prior surveillance) and encountered no unforeseen obstacles or exigent circumstances that could possibly excuse his failure to take the most basic precautions before ramming down the door of a private residence—yet he still failed to check the house number outside and raided the incorrect home on the incorrect street. According to the Eleventh Circuit, Guerra's failure to check the address was excusable because it was "dark outside and difficult to ascertain the house numbers on the mailboxes." *Martin*, 2024 WL 1716235, at *5. But the idea that an FBI special agent—trained for high-risk raids and tactical operations (many of which, presumably, occur at night)—could not be expected to navigate darkness during a pre-dawn operation strains credulity. In an era in which even the simplest mobile phone now comes equipped with a flashlight, the notion that a special federal law enforcement

agent was powerless against the dark is as indefensible as it is absurd.

Holding the United States answerable for such an error does not second-guess a policy. It merely provides a path to recovery for innocent citizens harmed by a federal officer's blatant lapse in execution, which resulted in the terrorizing, assault, battery, and false imprisonment of an innocent family.

The discretionary-function exception does not license a law enforcement officer to claim "discretion" to violate explicit directives (including constitutional mandates) or citizens' rights. Indeed, an unlawful action is, by definition, an abuse of whatever discretion was entrusted. Nothing in the discretionary-function exception suggests that Congress intended to protect acts that exceed an officer's legal authority or that are borne out of sheer negligence and a failure to exercise the most minimal degree of caution that should be expected of law enforcement officers (especially when Congress simultaneously expanded liability for law enforcement abuses). In short, the discretionary-function exception must be read in harmony with the law-enforcement proviso. When a claim arises from intentional torts committed by federal officers, and the conduct is far removed from any policy-driven decisionmaking, as is the case here, § 2680(a) does not bar the courthouse door.

III. THE ELEVENTH CIRCUIT'S DISTORTION OF THE SUPREMACY CLAUSE IMPERMISSIBLY NULLIFIES CONGRESS'S WAIVER OF IMMUNITY

A. The FTCA—a Federal Statute—Does Not Conflict with the Supremacy Clause

The Eleventh Circuit has invoked the Supremacy Clause, Art. VI, cl. 2, to effectively create a new form

of immunity against FTCA claims, insulating federal law enforcement officials while depriving victims of a remedy. In its ruling below, the court reasoned that if Agent Guerra "acted within the scope of his discretionary authority" and his actions can be "reasonably … characterized as complying with the full range of federal law," then state tort law must give way. *Martin*, 2024 WL 1716235, at *6 (second quotation quoting *Kordash v. United States*, 51 F.4th 1289, 1293 (11th Cir. 2022)). Under such circumstances, the court held, the FTCA has no effect—supposedly because allowing liability would "impede" the governmental interest in a federal performance of an official duty or function. *Id*. This rationale is deeply flawed.

The Supremacy Clause ensures that when state law conflicts with a valid federal law, the federal law prevails. Here, the relevant federal law is the FTCA itself, which expressly authorizes "a plaintiff to bring certain state-law tort suits against the Federal Government." *Brownback v. King*, 592 U.S. 209, 210–211 (2021) (citing 28 U.S.C. § 2674). The FTCA—a *federal statute*—does not, and cannot, conflict with the Supremacy Clause.

Congress has adopted state tort standards as the basis for liability in FTCA cases. Accordingly, applying Georgia's negligence or battery law to Agent Guerra's actions is not an intrusion on federal supremacy but rather the very mechanism Congress chose to enable accountability. The Eleventh Circuit turned the Supremacy Clause on its head by using it to nullify a federal statute. It is not necessary for Congress to provide explicitly that state law applies—Congress did so in the FTCA, and the Supremacy Clause cannot be wielded to imply immunity where Congress explicitly waived it. As this Court has observed, the Supremacy Clause does not grant

federal officers license to "ignore the limitations which the controlling law has placed on [their] powers." *Butz*, 438 U.S. at 489. Yet the decision below misappropriates the Clause to immunize an officer's overreach beyond his lawful authority, in an utter inversion of supremacy principles.

To be sure, the concept of "Supremacy Clause immunity" exists in a narrow context: historically, it has served to protect federal officers from civil and criminal liability under state law for actions authorized by federal law and "necessary and proper" to carry out federal duties. *In re Neagle* serves as a prototypical example. 135 U.S. 1 (1890). There, the Court concluded that Supremacy Clause immunity shielded a U.S. Marshal from state murder charges when he acted under federal orders. But the test has always been whether the officer (1) was authorized by federal law, and (2) "did no more than what was necessary and proper" in discharging his or her duties. *Neagle*, 135 U.S. at 75. If an officer violates the Constitution or exceeds his authority, then Supremacy Clause immunity does not apply. *See Butz*, 438 U.S. at 489.

Here, Agent Guerra's raid of the wrong home was not authorized by his federal warrant—it was, in fact, an act executed in direct opposition to what federal law (the Fourth Amendment and the warrant) dictated. Thus, traditional Supremacy Clause immunity principles would not shield Agent Guerra from personal liability under state law in these circumstances.

In any event, the critical point is that Congress has displaced that judicially-crafted immunity by enacting a federal cause of action: the FTCA. Once Congress has chosen to permit suits against the United States for a federal officer's torts, the courts

may not reimpose immunity based on generalized federal interests. Such action violates basic separation-of-powers principles. The Eleventh Circuit stands alone in its application of the Supremacy Clause, and even the United States has abandoned defending that rule in this Court. Pet. Br. at 47. There is simply no constitutional basis for overriding Congress's waiver of immunity in the name of protecting garden-variety federal officer operations.

B. The Eleventh Circuit's Infusion of Qualified Immunity into the Assessment of FTCA Claims Is Inappropriate and Legally Unfounded

Equally troubling, the Eleventh Circuit has rendered the Supremacy Clause bar even broader by tying it to the qualified immunity analysis. It suggested that whenever an officer is acting within the scope of his "discretionary authority" (the threshold for qualified immunity) and is not clearly violating the Constitution (*i.e.*, would receive qualified immunity), then the Supremacy Clause forecloses FTCA liability. *Martin*, 2024 WL 1716235, at *7 (applying the prior qualified immunity analysis to Petitioners' FTCA claims). This approach improperly conflates a personal immunity defense with the FTCA's statutory scheme.

Qualified immunity's "clearly established law" test has no place in an FTCA suit, where the question is whether a private person would be liable under state law in analogous circumstances. The policy rationale for qualified immunity—protecting individual officers from unpredictability and personal financial exposure—does not apply when the United States is the defendant. Congress deliberately chose to provide for liability of the United States for its employees' torts precisely so that victims could

recover without having to overcome individual immunities. By erroneously importing qualified immunity into the FTCA, the Eleventh Circuit created a mutant hybrid defense with no foundation in the Act. Whether Agent Guerra's actions were "reasonable under the circumstances" for Fourth Amendment purposes is irrelevant to whether they were wrongful under Georgia tort law. Petitioners here allege traditional torts—*e.g.*, negligence in executing the warrant, false imprisonment, assault and battery in the forcible entry—and those should be adjudicated on their merits under state law standards. The exacting "clearly established" law standard of modern qualified immunity doctrine should play no role in barring a congressionally-authorized tort claim.

Accordingly, this Court should reject the Eleventh Circuit's attempt to collapse FTCA liability into the qualified immunity framework and reaffirm that the FTCA means what it says: the United States is liable "in the same manner and to the same extent as a private individual under like circumstances," 28 U.S.C. § 2674, without judicially crafted exceptions rooted in immunity doctrines foreign to the statute.

The combined effect of the decision below is staggering. Under the Eleventh Circuit's rule, whenever a federal officer is exercising some degree of discretion or choice in the course of doing his job, neither he *nor the United States* can be held liable for injuries that he may cause—no matter how severe or unjustified. This notion would close the courthouse doors on nearly all wrongdoing short of outright frolic and detour. Such a result cannot be reconciled with the FTCA's core purpose of providing remedies for victims. It would also send a dangerous message to federal officers and their employers that "palpably unreasonable conduct will go unpunished," removing

a vital deterrent to careless or unlawful behavior. The Supremacy Clause exists to uphold federal law, not to abolish remedies Congress has seen fit to provide. This Court should firmly reject the Eleventh Circuit's atextual enlargement of immunity.

IV. AGENT GUERRA'S CONDUCT DOES NOT WARRANT IMMUNITY UNDER ANY OF THE FTCA'S EXCEPTIONS

The facts of this case underscore why Congress provided an FTCA remedy—and how unjust it would be to deny it here. Petitioners were awakened in the pre-dawn darkness by a team of armed officers breaching their home without warning. Petitioner Mr. Cliatt was forced to the floor at gunpoint and handcuffed. Petitioner Ms. Martin, who had been asleep in minimal clothing, had an assault rifle pointed at her as she desperately sought assurance of her son's safety, which the officer refused to give her. The terror and humiliation they experienced are exactly what one would expect when a home is wrongly raided. These are not trivial or technical injuries. They are profound violations of personal security and dignity that cause lasting trauma, which have been actionable at law for centuries (as trespass, assault, false imprisonment, and negligence).

Agent Guerra's own admissions cement the unreasonableness of his actions. Despite having the correct address in hand and on his GPS, he did not verify the house number before ordering the raid. He fixated on a black Camaro in the driveway—a car with no link to the suspect—and assumed that he was at the right location. Not only did he fail to ensure that he was at the correct house number, he also led his team to an entirely different street (Denville Trace, not Landau Lane) without noticing. Tellingly, Guerra discarded his personal GPS device shortly

after the incident, conveniently preventing verification of his story in discovery. And although FBI guidelines gave him flexibility on how to navigate, they assumed that agents use basic "common sense"—something as fundamental as confirming an address does not require a written rule.

The district court and Eleventh Circuit, however, short-circuited the case on immunity grounds—first finding Agent Guerra entitled to qualified immunity on Petitioners' *Bivens* Fourth Amendment claim (concluding that the law was not "clearly established"), and subsequently transposing that outcome onto the FTCA claims via the Supremacy Clause and discretionary function rationales. In doing so, the lower courts misconstrued the facts and the law. The district court suggested that Guerra's pre-raid preparations (a cursory site drive-by and reliance on others' surveillance) constituted "significant precautionary measures." *Martin v. United States*, 631 F. Supp. 3d 1281, 1294 (N.D. Ga. 2022) (cleaned up). But that confuses form with substance. What matters is whether the precautions were reasonable and sufficient to avoid the harm. Here, they plainly were not, as evidenced by the traumatic result. The Eleventh Circuit's expansive view of immunity not only misreads the law, but it also perpetrates a profound unfairness in this case, shielding plainly wrongful conduct from accountability.

It bears repeating that Congress specifically enacted the law-enforcement proviso so that cases like this could be heard on the merits. When federal agents overstep their lawful bounds and commit assaults or unlawful intrusions in violation of innocent civilians' rights, the FTCA provides victims with a cause of action. That does not mean that plaintiffs will always succeed on their claims. Indeed, they must still adequately plead their claim and

overcome any traditional defenses available under state law. But it does mean they are entitled to their day in court.

This Court should make clear that the FTCA's law-enforcement proviso means what it says: victims of assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution committed by federal law enforcement officers may seek damages from the United States. No judge-made overlay of immunities may stand in the way of a duly enacted statute.

Agent Guerra's actions, resulting in a botched and unjustifiable raid on an innocent family's home, were neither protected discretionary decisions nor incident to any legitimate federal interest in a way that could trigger Supremacy Clause concerns. Rather, Guerra's actions constituted precisely the type of tortious conduct for which Congress expressly provided a remedy when it enacted the FTCA. Restoring Petitioners' ability to pursue that remedy will reaffirm the principle that federal law enforcement officers are not above the law, and that for those aggrieved by governmental misconduct, the courts remain open to right those wrongs. The Supreme Court should seize this opportunity to restore the will of Congress and ensure that the FTCA's promise of redress does not become a dead letter.

CONCLUSION

For the foregoing reasons, *amicus curiae* respectfully requests that the Court reverse the Eleventh Circuit and remand this action for further proceedings.

Respectfully submitted,

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