No. 24-809

In the Supreme Court of the United States

HOWARD GOLDEY, ASSOCIATE WARDEN, ET AL.,
PETITIONERS

v.

ANDREW FIELDS, III, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

SARAH M. HARRIS
Acting Solicitor General
Counsel of Record
YAAKOV M. ROTH
Acting Assistant Attorney General
CURTIS E. GANNON
Deputy Solicitor General
VIVEK SURI
Assistant to the Solicitor General
BARBARA L. HERWIG
MELISSA N. PATTERSON
JAYNIE LILLEY
Attorneys

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether the judicially inferred cause of action this Court recognized in *Bivens* v. *Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), should be extended to claims that prison officials violated the Eighth Amendment by using excessive force against inmates.

STATEMENT OF COMPLIANCE WITH SUPREME COURT RULE 37.2

The counsel of record for all parties received timely notice of the United States' intent to file this amicus curiae brief at least ten days before the due date.

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INTEREST OF THE UNITED STATES

This case presents the question whether a court may rely on *Bivens* v. *Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), to create a new cause of action for claims that prison officials violated the Eighth Amendment by using excessive force against inmates. The United States has a substantial interest in the resolution of that question. *Bivens* suits, which are brought against federal officials in their personal capacities, can chill and disrupt officials' performance of their duties, including in the prison-administration context. And the Department of Justice often represents the defendants in *Bivens* cases. The United States has participated as amicus curiae or as counsel to a party in many of this Court's *Bivens* cases, from *Bivens* itself to *Egbert* v. *Boule*, 596 U.S. 482 (2022). The government's decision to take the unusual step of filing an uninvited

certiorari-stage amicus brief reflects its views about the severity of the court of appeals' error and the gravity of the decision's potential consequences.

INTRODUCTION

This is the rare case that calls for summary reversal. In *Bivens* v. *Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), this Court created a damages action for private plaintiffs to sue certain federal officers over certain Fourth Amendment violations. For the last 45 years, however, the Court has consistently refused to extend *Bivens* to any new contexts. See *Egbert* v. *Boule*, 596 U.S. 482, 491 (2022). Creating new *Bivens* actions is a "disfavored judicial activity" now that the Court has recognized that the Constitution vests the power to create new causes of action in Congress. *Ibid.* (citation omitted). This Court has thus framed the test for extending *Bivens* to any new context at all as whether "there is a rational reason to think that" Congress, not the courts, "should decide whether to provide for a damages remedy," and has said the answer will be Congress "in most every case." *Ibid.*

Nonetheless, the decision below extended *Bivens* to a concededly new context: a claim that prison officials violated the Eighth Amendment by using excessive force against an inmate. Three other courts of appeals have issued published decisions refusing to extend *Bivens* to Eighth Amendment excessive-force claims. Another court has aptly described the decision below as "a far-afield outlier." *Johnson* v. *Terry*, 119 F.4th 840, 851 (11th Cir. 2024).

The decision below warrants not merely review, but summary reversal. The Fourth Circuit's decision flouts this Court's precedents, which required the Fourth Circuit to ask only whether there is "*any* rational reason

(even one) to think that *Congress* is better suited to 'weigh the costs and benefits of allowing a damages action to proceed.'" *Egbert*, 596 U.S. at 496 (citation omitted). Reasons abound here. Most importantly, courts lack the institutional competence to set policies relating to the administration of prisons. And the creation of a damages remedy could deter prison staff from properly carrying out their important and challenging duties by subjecting them to civil liability for "decisions necessarily made in haste, under pressure, and frequently without the luxury of a second chance." *Whitley* v. *Albers*, 475 U.S. 312, 320 (1986).

STATEMENT

Respondent Andrew Fields, an inmate in a federal prison, alleges that petitioners, officials at the prison, violated the Eighth Amendment by using excessive force against him. See Pet. App. 3a. Invoking *Bivens*, he sued petitioners (among others) for damages in the U.S. District Court for the Western District of Virginia. See Pet. App. 3a. Before any of the defendants had been served, the court dismissed the complaint, holding that respondent lacks a cause of action. See *id.* at 38a-55a. The court of appeals affirmed in part, reversed in part, and remanded, holding that respondent's *Bivens* claims may proceed.*

1. Because this case comes to this Court at the pleading stage, we describe the facts as alleged in the

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* Fields also named the Federal Bureau of Prisons as a defendant. See Pet. App. 40a. Although the Bureau is nominally a respondent in this Court, see Sup. Ct. R. 12.6, it has waived its response to the petition for a writ of certiorari because the district court dismissed the claims against it, see Pet. App. 55a, and those claims are not at issue here, see Pet. 12. This brief uses the term "respondent" to refer to the individual respondent, Fields.

complaint. See *Ashcroft* v. *Iqbal*, 556 U.S. 662, 677-680 (2009). Respondent alleges that he was placed in administrative segregation in a special housing unit after he violated prison rules. See Pet. App. 3a. A scuffle broke out en route to the unit, and respondent attempted to assault the officers escorting him. See *ibid.* The officers placed him in ambulatory restraints and took him to the unit in a wheelchair. See *id.* at 4a.

Prison officials periodically checked on respondent while he was held in the special housing unit. See Pet. App. 4a. Respondent alleges that, during those checks, prison staff would "physically abuse" him, "including by ramming his head into the concrete cell wall and hitting [him] with a fiberglass security shield." *Ibid.* He also alleges that he later attempted to file an administrative grievance, but that "prison staff denied him access to the necessary forms." *Ibid.*

2. Respondent sued petitioners in federal court, seeking damages from them on the ground that they had violated the Eighth Amendment by using excessive force against him. See Pet. App. 4a. In accordance with the Prison Litigation Reform Act of 1995 (PLRA), 28 U.S.C. 1915A, which requires early judicial screening of prisoner complaints, the court dismissed the complaint before petitioners were served. Pet. App. 38a-55a.

The district court determined, as relevant here, that respondent lacked a cause of action under *Bivens*. Pet. App. 45a-55a. The court explained that, in deciding whether to recognize a *Bivens* action, a court should ask whether the claim arises in a "new context" and, if so, whether "special factors counsel hesitation" in extending *Bivens* to that context. *Id.* at 48a (brackets and citation omitted). The court "ha[d] no difficulty in concluding that [respondent's] claims arise in a new con-

text, as th[is] Court has never ruled that a damages remedy exists for claims of excessive force by [prison] officers against an inmate." *Id.* at 49a. The court then identified multiple factors that counsel hesitation in extending *Bivens* to that context. See *id.* at 51a-53a. It noted, for example, that Congress has not "provide[d] a damages remedy" to prisoners, that "courts have long been committed to avoiding judicial intervention in the running of prisons," and that prisoners may resort to "alternative remedies." *Ibid.*

3. A divided panel of the Fourth Circuit affirmed in part, reversed in part, and remanded. Pet. App. 1a-38a. As relevant here, the court concluded that respondent's Eighth Amendment excessive-force claim may proceed. *Id.* at 5a-21a. The court accepted respondent's concession that "this case arises in a new context" for a *Bivens* claim, *id.* at 8a, but then concluded that special factors do not counsel hesitation in extending *Bivens* to that context, see *id.* at 9a-21a. The court dismissed concerns about judicial interference with prison administration, stating that "the impact on prison officials' discharge of their duties will be minimal." *Id.* at 16a. The court also discounted the availability of alternative administrative remedies, reasoning that respondent "lacked access to alternative remedies because prison officials deliberately thwarted his access to them." *Id.* at 17a (emphasis omitted). Finally, the court recognized that Congress's decision not to include a damages remedy in the PLRA "may counsel against extending *Bivens* in cases brought by inmates in federal prisons as a general matter." *Id.* at 19a. But it concluded that, because respondent has "alleged that no alternative remedy was in fact available," the PLRA "does not counsel against extending *Bivens* in this case." *Id.* at 19a-20a.

Judge Richardson dissented. Pet. App. 23a-37a. He identified three reasons not to extend *Bivens* to Eighth Amendment excessive-force claims: (1) "Congress has actively legislated in this area but has not enacted a statutory cause of action for money damages"; (2) "an alternative remedial scheme exists for aggrieved federal prisoners like [respondent]"; and (3) extending *Bivens* could have deleterious "systemic consequences" for prisons. *Id.* at 26a, 30a, 34a.

Petitioners sought rehearing, with the support of the United States as amicus curiae, but the court of appeals denied the petition. Pet. App. 56a-57a.

ARGUMENT

The court of appeals seriously erred in creating a new damages remedy under *Bivens* v. *Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), for Eighth Amendment excessive-force claims brought by federal prisoners. The decision below clearly contravenes this Court's recent *Bivens* precedents, conflicts with the published decisions of three other courts of appeals, and threatens significant harm to the government and its employees. This Court should summarily reverse.

A. This Court's Cases Foreclose Creating A New *Bivens* Action For Prisoners' Excessive-Force Claims

1. "Constitutional rights do not typically come with a built-in cause of action to allow for private enforcement in courts." *DeVillier* v. *Texas*, 601 U.S. 285, 291 (2024). "Instead, constitutional rights are generally invoked defensively in cases arising under other sources of law, or asserted offensively pursuant to an independent cause of action designed for that purpose." *Ibid.*

Such causes of action are ordinarily created through statutes enacted by Congress. See, *e.g.*, 42 U.S.C. 1983.

In *Bivens*, this Court created a cause of action against federal narcotics agents who had allegedly manacled the plaintiff, threatened his family, and searched his house without a warrant. See 403 U.S. at 397. Over the following decade, the Court created two additional causes of action for constitutional claims: one for a Fifth Amendment equal-protection claim brought by a former congressional staffer, see *Davis* v. *Passman*, 442 U.S. 228 (1979), and one for an Eighth Amendment inadequate-medical-care claim brought by a prisoner, see *Carlson* v. *Green*, 446 U.S. 14 (1980).

Since then, this Court has come to recognize that courts lack the power to fashion new causes of action. See *Egbert* v. *Boule*, 596 U.S. 482, 491 (2022); *Alexander* v. *Sandoval*, 532 U.S. 275, 286 (2001). "At bottom, creating a cause of action is a legislative endeavor." *Egbert*, 596 U.S. at 491. The Court has accordingly described the creation of a *Bivens* action as "a disfavored judicial activity" and an "extraordinary act that places great stress on the separation of powers." *Id.* at 491, 497 n.3 (citations omitted). In the 45 years since *Carlson*, this Court has consistently rejected every proposed *Bivens* action it has considered. See *id.* at 493-494, 498-499; *Hernández* v. *Mesa*, 589 U.S. 93, 113-114 (2020); *Ziglar* v. *Abbasi*, 582 U.S. 120, 140 (2017); *Minneci* v. *Pollard*, 565 U.S. 118, 126 (2012); *Wilkie* v. *Robbins*, 551 U.S. 537, 562 (2007); *Correctional Services Corp.* v. *Malesko*, 534 U.S. 61, 74 (2001); *FDIC* v. *Meyer*, 510 U.S. 471, 486 (1994); *Schweiker* v. *Chilicky*, 487 U.S. 412, 425 (1988); *United States* v. *Stanley*, 483 U.S. 669, 678 (1987); *Bush* v. *Lucas*, 462 U.S. 367, 390 (1983); *Chappell* v. *Wallace*, 462 U.S. 296, 304 (1983).

2. This Court has applied a two-step test for whether to allow a *Bivens* claim to proceed. See *Egbert*, 596 U.S. at 492. First, the Court asks whether the case presents "a new *Bivens* context"—*i.e.*, whether the case "meaningfully" differs from the three cases in which the Court has recognized a *Bivens* remedy, including because "there are 'potential special factors that previous *Bivens* cases did not consider.'" *Ibid.* (brackets and citation omitted). Second, if so, the Court asks whether "'special factors'" indicate that courts are "at least arguably less equipped than Congress" to weigh the costs and benefits of a damages remedy. *Ibid.* (citation omitted). "If there is even a single 'reason to pause before applying *Bivens* in a new context,' a court may not recognize a *Bivens* remedy." *Ibid.* (citation omitted). Thus, those "two steps * * * often resolve to a single question: whether there is any reason to think that Congress might be better equipped to create a damages remedy." *Ibid.*

Respondent "concedes that this case arises in a new context." Pet. App. 8a. The only question, then, is "whether there is *any* rational reason (even one) to think that *Congress* is better suited to 'weigh the costs and benefits of allowing a damages action to proceed.'" *Egbert*, 596 U.S. at 496 (citation omitted). And there are many good reasons to think that Congress is better equipped than the courts to decide whether to create a damages remedy for prisoners' excessive-force claims.

"[T]he operation of our correctional facilities is peculiarly the province of the Legislative and Executive Branches of our Government, not the Judicial." *Bell* v. *Wolfish*, 441 U.S. 520, 548 (1979). "Running a prison is an inordinately difficult undertaking that requires expertise, planning, and the commitment of resources." *Turner* v. *Safley*, 482 U.S. 78, 84-85 (1987).

Federal courts lack the legal authority and institutional competence to address those problems. Although courts "must take cognizance of the valid constitutional claims of prison inmates," they owe substantial "deference to the appropriate prison authorities." *Turner*, 482 U.S. at 84-85. The serious "separation of powers concerns" raised by the "'involvement of the federal courts in affairs of prison administration'" provide ample reason not to extend *Bivens* to excessive-force claims brought by prisoners. *Id.* at 85, 89 (citation omitted); cf. *Egbert*, 596 U.S. at 494 (declining to extend *Bivens* to "the border-security context" because "'foreign policy and national security are rarely proper subjects for judicial intervention'") (citation omitted); *Chappell*, 462 U.S. at 301 (declining to extend *Bivens* to military cases because "[j]udges are not given the task of running the Army") (citation omitted).

Fashioning a damages remedy for excessive-force claims brought by prisoners would also have an "impact on governmental operations systemwide." *Egbert*, 596 U.S. at 491 (citation omitted). "Prison life" contains "the ever-present potential for violent confrontation and conflagration." *Jones* v. *North Carolina Prisoners' Labor Union, Inc.*, 433 U.S. 119, 132 (1977). As a result, prison staff must often use force against prisoners in the course of their duties. See *Whitley* v. *Albers*, 475 U.S. 312, 320-322 (1986). Exposing prison officials to civil litigation and financial liability could lead them to hesitate when making urgent decisions about using force to ensure prison security and prisoner safety. At a minimum, a court cannot reliably "predict the 'systemwide' consequences" of making prison staff personally liable for using excessive force. *Egbert*, 596 U.S. at 493 (citation

omitted). "That uncertainty alone is a special factor that forecloses relief." *Ibid.*

Compounding those problems, prisoner suits pose a distinctive risk of abuse. Prisoner suits "account for an outsized share of filings" in federal court. *Woodford* v. *Ngo*, 548 U.S. 81, 94 n.4 (2006). This Court has noted that "[m]ost of these cases"—including those "claiming civil rights violations"—"have no merit." *Jones* v. *Bock*, 549 U.S. 199, 203 (2007). "Prisoners have ample time on their hands and have demonstrated a proclivity for frivolous suits to harass their accusers, the guards, and others who caused or manage their captivity." *Lewis* v. *Sullivan*, 279 F.3d 526, 528-529 (7th Cir. 2002). The demonstrated risk of "harassing litigation" provides yet another reason to pause before extending *Bivens* to this new context. *Egbert*, 596 U.S. at 499 (citation omitted).

The PLRA, too, weighs against extending *Bivens* to excessive-force claims brought by federal prisoners. In that statute, Congress "made comprehensive changes to the way prisoner abuse claims must be brought in federal court." *Abbasi*, 582 U.S. at 148. Although "Congress had specific occasion to consider the matter of prisoner abuse and to consider the proper way to remedy those wrongs," it did not "provide a standalone damages remedy." *Id.* at 148-149. That choice provides "sound reasons to think Congress might doubt the efficacy or necessity of a damages remedy" in prisoner-abuse cases. *Ibid.* (citation omitted).

Separately, "a court may not fashion a *Bivens* remedy if Congress already has provided, or has authorized the Executive to provide, 'an alternative remedial structure.'" *Egbert*, 596 U.S. at 493 (citation omitted). Here, Congress and the Executive have each provided alternative remedies for prisoners who claim to have been

abused by prison staff. In the Federal Tort Claims Act, 28 U.S.C. 2680(h), Congress has waived the United States' sovereign immunity from certain tort claims, including claims of assault or battery by law-enforcement officers. See, *e.g.*, *Millbrook* v. *United States*, 569 U.S. 50, 53-54 (2013) (assault-and-battery claims against federal correctional officers). This Court has previously cited the availability of similar tort remedies in refusing to extend *Bivens* to suits against employees of privately operated federal prisons. See *Minneci*, 565 U.S. at 126-131. And although the Court concluded in *Carlson* that "the *Bivens* remedy is more effective than the FTCA remedy," 446 U.S. at 20, the Court has since made clear that alternative procedures foreclose *Bivens* suits even if a court believes that they are "not as effective," *Egbert*, 596 U.S. at 498 (citation omitted).

Congress recently provided further remedies in the Federal Prison Oversight Act, Pub. L. No. 118-71, 138 Stat. 1492, which was signed into law on the same day that the court of appeals issued the decision below. Among other things, that statute directs the Inspector General of the Department of Justice to inspect federal prisons and to assess "[c]redible allegations of incidents involving the excessive use of force * * * against incarcerated people." § 2(a), 138 Stat. 1494 (to be codified at 5 U.S.C. 413(e)(2)(B)(xi)). The statute also establishes an Ombudsman responsible for receiving and investigating prisoner complaints, including those concerning "abuse." § 2(a), 138 Stat. 1496 (to be codified at 5 U.S.C. 413(e)(3)(A)(i)(I)). Those provisions will not take effect until the Inspector General receives certain appropriated funds, see § 2(b), 138 Stat. 1501, but they show that Congress has continued to address prison abuse through

administrative remedies rather than damages suits against officers in their individual capacities.

The Bureau has adopted its own Administrative Remedy Program, under which a prisoner who faces abuse may file a grievance. See 28 C.F.R. 542.10(a). The Court has previously identified the existence of that particular program as a reason not to extend *Bivens* to a new type of prisoner suits. See *Malesko*, 534 U.S. at 74. And the Court recently reiterated that the availability of a regulatory grievance procedure established by the United States Border Patrol had "independently foreclose[d] a *Bivens* action" against a Border Patrol agent. *Egbert*, 596 U.S. at 497.

3. The court of appeals' contrary reasoning directly conflicts with this Court's precedents.

The court of appeals sought to justify its extension of *Bivens* by limiting that extension to "the circumstances presented here"—a "rare case" in which "rogue" prison officers allegedly subjected a prisoner to "egregious physical abuse with no imaginable penological benefit," "in clear violation of prison policy," and in which other prison officials then allegedly "thwarted the inmate's access to alternative remedies." Pet. App. 12a-13a. But "a court should not inquire * * * whether *Bivens* relief is appropriate in light of the balance of circumstances in the particular case." *Egbert*, 596 U.S. at 496 (citation omitted). "A court inevitably will impair governmental interests, and thereby frustrate Congress' policymaking role, if it applies the special factors analysis at such a narrow level of generality." *Ibid.* (brackets, citation, and internal quotation marks omitted). "Rather, under the proper approach, a court must ask more broadly if there is any reason to think that judicial intrusion into a given field might be harmful or inappropriate." *Ibid.*

(brackets, citation, and internal quotation marks omitted). There are many such reasons here. See pp. 8-12, *supra*.

The court of appeals also stated that this case "resembles *Carlson*," in which this Court extended *Bivens* to a claim that prison staff had violated the Eighth Amendment through deliberate indifference to a prisoner's medical needs. Pet. App. 15a. But this Court has already determined that claims of abuse or excessive force meaningfully differ from claims of inadequate medical care. See *Abbasi*, 582 U.S. at 146-149. Prison staff who use force typically must "balanc[e] competing institutional concerns for the safety of prison staff or other inmates," and decisions about the use of force tend to be "in haste," "under pressure," and "without the luxury of a second chance." *Whitley*, 475 U.S. at 320. *Carlson* in any event "carries little weight because it predates [this Court's] current approach to implied causes of action." *Egbert*, 596 U.S. at 500. Accordingly, a plaintiff "cannot justify a *Bivens* extension based on 'parallel circumstances' with * * * *Carlson*." *Id.* at 501 (citation omitted).

The court of appeals declared that "the impact [of a *Bivens* remedy] on prison officials' discharge of their duties will be minimal." Pet. App. 16a. But "[t]he *Bivens* inquiry does not invite federal courts to independently assess the costs and benefits of implying a cause of action." *Egbert*, 596 U.S. at 496. Courts must instead ask whether there is a "rational reason" to think that "Congress is better suited" to balance those costs and benefits. *Ibid.* (emphasis omitted). The court of appeals identified no plausible basis to believe that the courts are better positioned than Congress to weigh the pros

and cons of a damages remedy against prison officials who allegedly use excessive force.

Finally, the court of appeals found it significant that, when respondent attempted to file an administrative grievance, prison staff allegedly "denied him access to the necessary forms." Pet. App. 4a. But this Court has explained that the potential inadequacy or unavailability of an alternative remedial scheme in a given case does not justify fashioning a *Bivens* remedy. Rather, if "Congress or the Executive has created a remedial process that it finds sufficient," "courts cannot second-guess that calibration by superimposing a *Bivens* remedy." *Egbert*, 596 U.S. at 498. *Bivens*, moreover, focuses on "deterring the unconstitutional acts of individual officers." *Ibid.* (citation omitted). The administrative-remedy process deters wrongdoing by prison officials as a general matter, even if the officials deny a prisoner access to that process in a particular case.

B. The Court Of Appeals' Decision Warrants Review And Summary Reversal

1. The court of appeals' decision warrants this Court's review because it creates a circuit conflict on a recurring and important question of federal law that carries significant consequences for federal officials' ability to discharge their duties. Three other courts of appeals—the Second, Ninth, and Tenth, Circuits—have refused in published opinions to extend *Bivens* to Eighth Amendment excessive-force claims. See *Edwards* v. *Gizzi*, 107 F.4th 81, 82 (2d Cir. 2024) (per curiam); *Chambers* v. *Herrera*, 78 F.4th 1100, 1107-1108 (9th Cir. 2023); *Silva* v. *United States*, 45 F.4th 1134, 1141 (10th Cir. 2022). Five more—the Third, Fifth, Sixth, Seventh, and Eleventh Circuits—have reached the same conclusion in unpublished opinions. See *Landis* v. *Moyer*, No. 22-2421,

2024 WL 937070, at *2-*3 (3d Cir. Mar. 5, 2024); *Alsop* v. *Federal Bureau of Prisons*, No. 22-1933, 2022 WL 16734497, at *3 (3d Cir. Nov. 7, 2022); *Watkins* v. *Carter*, No. 22-40477, 2023 WL 4312771, at *1 (5th Cir. July 3, 2023); *Anderson* v. *Fuson*, No. 23-5342, 2024 WL 1697766, at *2-*4 (6th Cir. Feb. 1, 2024), cert. denied, 145 S. Ct. 449 (2024); *Patton* v. *Blackburn*, No. 21-5995, 2023 WL 7183139, at *2-*3 (6th Cir. May 2, 2023); *Greene* v. *United States*, No. 21-5398, 2022 WL 13638916, at *3 (6th Cir. Sept. 13, 2022); *Ajaj* v. *Fozzard*, No. 23-2219, 2024 WL 4002912, at *2 (7th Cir. Aug. 30, 2024); *Farrington* v. *Diah*, No. 22-13281, 2023 WL 7220003, at *1-*2 (11th Cir. Nov. 2, 2023). The decision below has thus been described, correctly, as "a far-afield outlier." *Johnson* v. *Terry*, 119 F.4th 840, 851 (11th Cir. 2024).

And the question presented arises frequently. During the 12-month period ending March 31, 2024 (the most recent period for which statistics are available), prisoners filed more than 19,000 civil-rights suits in district courts, accounting for more than 5% of all civil cases. See Admin. Office of the U.S. Courts, *Federal Judicial Caseload Statistics* tbl. C-2 (Mar. 31, 2024). Many of those suits involve Eighth Amendment claims of excessive force under *Bivens*. As the citations in the preceding paragraph show, nine courts of appeals (the court below and the eight courts on the other side of the circuit conflict) have encountered such claims in just the past three years.

The question presented is important. "[T]he realities of running a penal institution are complex and difficult." *Jones*, 433 U.S. at 126. The court of appeals' extension of *Bivens* adds to those challenges by countermanding the political branches' policy judgments about the proper remedies for wrongdoing in prisons,

by confronting prison officials with the risk of civil liability when making decisions about how to maintain prison security, and by exposing those officials to the threat of harassing litigation. The court's decision also undermines the separation of powers by usurping a function, the creation of new causes of action, that the Constitution reserves to Congress.

2. The decision satisfies this Court's usual criteria for summary reversal: "the law is settled and stable, the facts are not in dispute, and the decision below is clearly in error." *Schweiker* v. *Hansen*, 450 U.S. 785, 791 (1981) (Marshall, J., dissenting). For the past 45 years, this Court has "consistently rejected invitations to extend *Bivens*." *Malesko*, 534 U.S. at 70. Further factual development would not affect the outcome; the availability of a *Bivens* remedy does not depend on the circumstances of the "particular case." *Egbert*, 596 U.S. at 496 (citation omitted). Nor can there be any serious doubt about the proper resolution of this case under this Court's precedents. Cf. *Calcutt* v. *FDIC*, 598 U.S. 623, 629 (2023) (summarily reversing decision that violated "[f]undamental principles of administrative law") (citation omitted).

If this Court does not summarily reverse the court of appeals' decision, it should grant plenary review on the first question presented by the petition for a writ of certiorari. As in *Egbert*, this Court "need not reconsider *Bivens* itself" to resolve this case, 596 U.S. at 502, and thus need not address the second question presented, Pet. I, 22-27. Rather, this Court could reiterate that no further extensions of *Bivens* are permitted, and consider whether to overrule *Bivens* altogether in the context of a Fourth Amendment case that more closely resembles *Bivens* itself.

CONCLUSION

This Court should grant the petition for a writ of certiorari and summarily reverse the judgment of the court of appeals.

Respectfully submitted.

SARAH M. HARRIS
Acting Solicitor General
YAAKOV M. ROTH
Acting Assistant Attorney General
CURTIS E. GANNON
Deputy Solicitor General
VIVEK SURI
Assistant to the Solicitor General
BARBARA L. HERWIG
MELISSA N. PATTERSON
JAYNIE LILLEY
Attorneys

MARCH 2025