No. _____

In The
Supreme Court of the United States

IFRAH YASSIN,

Petitioner,

v.

HEATHER WEYKER,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether state and local police officers are immune from suit under 42 U.S.C. 1983 whenever they are federally cross-deputized as members of joint state-federal task forces.

RELATED PROCEEDINGS

U.S. District Court for the District of Minnesota:

Yassin v. *Weyker*,
No. 16-CV-2580 (Sept. 30, 2020)

Mohamud v. *Weyker*,
Nos. 17-CV-2069, 17-CV-2070 (Sept. 18, 2018)

Yassin v. *Weyker*,
No. 16-CV-2580 (Aug. 9, 2017)

U.S. Court of Appeals for the Eighth Circuit:

Yassin v. *Weyker*,
No. 20-3299 (July 14, 2022)

Ahmed v. *Weyker*,
Nos. 18-3461, 18-3471 (Dec. 23, 2020)

Farah v. *Weyker*,
Nos. 17-3207, 17-3208, 17-3209, 17-3210, 17-3212, 17-3213 (June 12, 2019)

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PETITION FOR A WRIT OF CERTIORARI

While working as a member of a joint state-federal task force, St. Paul, Minnesota, police officer and respondent Heather Weyker fabricated a crime ring that resulted in life-ruining criminal charges against 33 people, including petitioner Ifrah Yassin. None were convicted.

Though multiple federal courts acknowledged that the crime ring was a fiction Weyker created through lies and manipulation,[1] she has walked away scot-free: Weyker has avoided criminal charges; kept her high-paying job as a St. Paul police officer;[2] and been shielded from all liability for her egregious unconstitutional acts.[3] The exclusive reason for Weyker's

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[1] See, *e.g.*, *United States* v. *Fahra*, 643 Fed. Appx. 480, 482 (6th Cir. 2016) ("[T]he district court caught Weyker lying to the grand jury and, later, lying during a detention hearing, and scolded her for it on the record. * * * Weyker also lied on an application to get [money for a witness] from the Tennessee victim's compensation fund[.]"); *United States* v. *Adan*, 913 F. Supp. 2d 555, 568 n.9 (M.D. Tenn. 2012) (noting the court's "serious concerns about the truthfulness of Weyker's testimony"); Pet. App. 14a (*Ahmed* v. *Weyker*, 984 F.3d 566 (8th Cir. 2020)) ("The plaintiffs are trying to hold a rogue law-enforcement officer responsible for landing them in jail through lies and manipulation.")

[2] Weyker is still employed by the City of St. Paul as a police sergeant for which she was compensated $119,905 in 2021. *Heather Weyker*, GovSalaries.com, https://perma.cc/9UQG-SQ4Q; see also Hassan Kanu, *Police Empowered to Lie about Investigations after Federal Appeals Court Ruling*, Reuters (July 20, 2022), https://perma.cc/C33L-2TQX (noting that an internal investigation into Weyker by the St. Paul Police Department is closed).

[3] Descriptions of Weyker's misdeeds span many cases, see Pet. App. 111a–113a (collecting 25 cases), which the lower courts

immunity is her cross-deputization as a Special U.S. Marshal for task force work.

This Court has made clear that color of state law and color of federal law are not mutually exclusive; officials with federal authority can act under color of state law. See *Lake Country Estates, Inc.* v. *Tahoe Reg'l Planning Agency*, 440 U.S. 391, 399–400 (1979). But the court below held to the contrary. Despite possessing and abusing power under color of both state and federal law, the Eighth Circuit held that Weyker is immune from liability under both. She cannot be sued under *Bivens* because her actions do not "exactly mirror[]" *Bivens* itself. Pet. App. 19a. And she cannot be sued under Section 1983 because her federal deputization for task force membership means she was acting exclusively under color of federal law. Pet. App. 9a–10a.

This second holding is the exclusive focus of Yassin's petition and an issue over which the circuits are split. Four circuits—the First, Second, Sixth, and Eighth below—apply a blanket rule that state-officer members of task forces act under the exclusive color of federal law. In these circuits, federally deputized state officers "carr[y] federal authority and act[] under color of that authority rather than under any state authority," regardless of their invocation of state

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cross-referenced. Because of that and because Yassin has not been permitted to engage in discovery, the facts most relevant to this petition come from three Eighth Circuit decisions by Judge Stras and three District of Minnesota decisions by Judge Ericksen that directly addressed the claims brought against Weyker by Yassin and her friends Hamdi Mohamud and Hawo Ahmed. Yassin includes these in her appendix.

credentials or reliance on state support. Pet. App. 10a (cleaned up and citation omitted). But two circuits—the Third and Seventh—look at the totality of the circumstances to assess whether a state-officer task force member acts under color of state law, federal law, or both.

This case underscores why the Court's guidance on this issue is needed. A single cross-deputized state officer had the power to ruin dozens of lives through a years-long campaign of unconstitutional abuses. See, *e.g.*, note 1, *supra*. But since *Bivens* is effectively off the table after this Court's decision in *Egbert* v. *Boule*, 142 S. Ct. 1793 (2022), she cannot be sued for constitutional violations committed under color of federal law. And because circuits like the Eighth Circuit below categorically treat the actions of state-officer task force members as exclusively under color of federal law, she cannot be sued under Section 1983 either.

This problem is only getting worse as the use of state-federal task forces continues to expand. Coupled with the blanket rule adopted below and the unavailability of *Bivens*, thousands of state officers acting under color of state law are immune from liability. Without this Court's intervention, these officers are exempt from the restrictions of the Bill of Rights and the intent of Congress as expressed through Section 1983. Countless Americans whose constitutional rights are violated by state officers will have no remedy in American courts—all because a simple two-page form

imbued these officers with federal authority in addition to their state authority.[4]

The Court should grant the petition.

OPINIONS BELOW

The opinion of the Eighth Circuit, Pet. App. 1a, is reported as *Yassin* v. *Weyker*, 39 F.4th 1086 (8th Cir. 2022). The opinion of the United States District Court for the District of Minnesota, Pet. App. 36a, is not reported but is available electronically as *Yassin* v. *Weyker*, No. 16-CV-2580, 2020 WL 6438892 (D. Minn. Sept. 30, 2020).

JURISDICTION

The Eighth Circuit entered its decision below on July 14, 2022. Justice Kavanaugh granted petitioner's application to extend the time to file her petition to December 9, 2022. Yassin timely files this petition and invokes this Court's jurisdiction under 28 U.S.C. 1254(1).

STATUTORY PROVISION INVOLVED

The Civil Rights Act of 1871, 42 U.S.C. 1983, provides:

> Every person who, under color of any statute, ordinance, regulation, custom,

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[4] Form USM-3A, *Application for Special Deputation/Sponsoring Federal Agency Information* (rev. July 2012) (requiring an applicant answer 21 basic questions, *e.g.*, name, employer, citizenship status, and identify a federal sponsor to receive federal deputization), https://perma.cc/2HDF-WCTB.

> or usage, of any State * * * , subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress[.]

STATEMENT

I. St. Paul police officer Heather Weyker fabricated a crime ring through lies and manipulation.

In 2008, St. Paul police officer Heather Weyker led her local department's investigation into an ostensible sex-trafficking ring. Pet. App. 63a. The investigation was loosely aligned with the work of an FBI task force and poised to advance both Weyker's career and the St. Paul Police Department's standing in the law-enforcement community.[5] But Weyker's investigation was a sham; there was no sex-trafficking ring. As the Sixth Circuit would observe after a "painstaking review of the record," Weyker and her witnesses spun a "likely * * * fictitious story." *United States* v. *Fahra*, 643 Fed. Appx. 480, 481–484 (6th Cir. 2016).[6]

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[5] *Osman* v. *Weyker*, 16-CV-908, 2017 WL 3425647, *2–3 (D. Minn. Aug. 9, 2017). The district court relied on its "fuller opinion" in *Osman* as background for its decisions in Yassin's case. Pet. App. 94a–95a.

[6] The Sixth Circuit also noted it was "curious that even though Officer Weyker (the lead agent), Jane Doe 2 (the principal victim-witness), and all but a few of the 30 defendants reside

The linchpin of Weyker's investigation was a witness named Muna Abdulkadir, whom Weyker met in 2009 and developed as a source for the St. Paul police department. Pet. App. 46a (*Yassin* v. *Weyker*, No. 16-CV-2580, 2020 WL 6438892 (D. Minn. Sept. 30, 2020)); *id.* at 97a (*Yassin* v. *Weyker*, No. 16-CV-2580, 2017 WL 3425689 (D. Minn. Aug. 9, 2017)). Working with Abdulkadir and others, Weyker later "exaggerated or fabricated important aspects of" the sex-trafficking story. *Fahra*, 643 Fed. Appx. at 482. For example, Weyker was caught "lying to the grand jury," lying "during a detention hearing," lying to receive compensation for one of her witnesses, and "endorsing the validity of [a] forged birth certificate." *Ibid.* See also Pet. App. 63a–64a (*Farah* v. *Weyker*, 926 F.3d 492 (8th Cir. 2019)) (listing other examples of Weyker's dishonesty).

Because Weyker's work ultimately grew into a "joint investigation" between St. Paul and the FBI, Weyker was cross-deputized as a Special Deputy U.S. Marshal in August 2010, giving her authority under both state and federal law. Pet. App. 65a; Pet. App. 129a (Special Deputation Appointment Form). Even so, the form specified that Weyker remained a full-time employee of the St. Paul Police Department. Pet. App. 129a.

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in Minnesota, and an overwhelming portion of the events at issue occurred in Minnesota, the federal prosecutor in Minnesota did not prosecute this case in Minnesota." *Fahra*, 643 Fed. Appx. at 482. Instead, Weyker had to "dupe[]" federal prosecutors in Tennessee into bringing the charges. *Osman*, 2017 WL 3425674 at *3.

Because of Weyker's investigation, more than thirty people were federally indicted. "[O]nly nine were ultimately tried, and each was acquitted." Pet. App. 14a (citing *United States* v. *Adan*, 913 F. Supp. 2d 555, 558–559 (M.D. Tenn. 2012); *Fahra*, 643 Fed. Appx. at 483–484).

II. Weyker used the color of her state authority to have Minneapolis police arrest Ifrah Yassin and her friends to cover for a witness.

In 2011, Petitioner Ifrah Yassin was unaware of Weyker's investigation. Pet. App. 2a–3a, 15a. Perhaps the most accidental of Weyker's victims, Yassin and her friends, Hamdi Mohamud and Hawo Ahmed, were only ensnared because they were attacked by Weyker's star witness, Abdulkadir.

On June 16, 2011, a verbal confrontation between Abdulkadir and Ahmed turned physical, and Abdulkadir attacked the girls with a knife. Pet. App. 3a, 37a–38a. Yassin called 911, and Minneapolis police arrived and interviewed the girls, while Abdulkadir hid from police in a friend's apartment nearby. *Id.* at 3a. Meanwhile, Abdulkadir made a call of her own—to Weyker, who Mirandized Abdulkadir using a St. Paul police form. *Id.* at 9a, 15a. Then, worried about the possibility of losing a witness, Weyker "sprang into action." *Id.* at 15a.

Using her St. Paul credentials, Weyker injected herself into the state-law investigation of Abdulkadir's attack and persuaded Minneapolis officers not to arrest Weyker's witness. Instead, Weyker framed

Yassin and her friends and had Minneapolis police arrest and charge them with state-law witness tampering. Weyker then documented her efforts in a St. Paul police report. Pet. App. 3a–4a, 9a–10a.

To accomplish her scheme, Weyker first contacted Minneapolis police dispatch and, through her self-identification as a local officer, was put in contact with Minneapolis Officer Anthijuan Beeks on the scene. Pet. App. 124a (Minneapolis police report, noting that Beeks was alerted to an urgent message reading, "OFFICER HEATHER WEYKER 710 out of St Paul would like Officers to call her ASAP"); *id.* at 39a. When Beeks called Weyker, she again identified herself as a St. Paul officer, *id.* at 39a, as well as a member of a federal task force, *id.* at 3a.

Weyker then lied to Beeks, telling him that she had "information and documentation" that Yassin and her friends "had been actively seeking out Abdulkadir" in an effort "to intimidate" her for cooperating in a federal investigation. Pet. App. 15a. But Weyker had no such information or documentation. *Ibid.*; Pet. App. 4a. Weyker just wanted to shield Abdulkadir from arrest to facilitate her continued participation in the investigation. *Id.* at 15a.

Weyker similarly contacted Beeks's supervisor, Minneapolis Police Sergeant Gary Manty. Again, Weyker held herself out as a St. Paul officer "on Special assignment with the FBI in Tennessee." Pet. App. 125a–126a (Minneapolis police report); *id.* at 4a. She repeated the fabricated information she provided Beeks. Based on Weyker's statements, Sergeant Manty found probable cause to arrest Yassin and her

friends for witness tampering under Minnesota law. *Ibid.*; Minn. Stat. § 609.498.

Weyker then documented her actions in a St. Paul police report. Pet. App. 130a–134a (SPPD Report); *id.* at 9a–10a. The next day, Weyker doubled down. She filed a criminal complaint in support of federal charges. Once again, Weyker fabricated facts, gave false information, and withheld exculpatory evidence—all with the intention that Yassin, Mohamud, and Ahmed would continue to be pursued for crimes Weyker knew the girls had not committed. *Id.* at 3a–4a. In her supporting affidavit, Weyker identified herself as an "FBI Task Force Officer / St Paul MN PD Officer." *Id.* at 4a. As the Eighth Circuit noted, Weyker's federal "affidavit was riddled with inaccuracies, just like her call to Officer Beeks the day before." *Ibid.*

As a result of Weyker's actions, Yassin, Mohamud, and Ahmed spent approximately two years in federal custody, where Ahmed gave birth in prison awaiting trial. Pet. App. 16a. The government eventually dismissed its case against Mohamud, and a jury acquitted Ahmed and Yassin. *Id.* at 4a, 16a.

Yassin—along with Ahmed, Mohamud, and many others caught up in her sham investigation—sued Weyker. Pet. App. 111a–113a.

III. When Yassin sued Weyker, the lower courts denied Weyker qualified immunity.

Because of Weyker's dual status as a state and federal officer, Yassin, Mohamud, and Ahmed brought Fourth Amendment claims against Weyker as a St.

Paul police officer under 42 U.S.C. 1983 and as a federal marshal under *Bivens*. Pet. App. 4a–5a. Mohamud's and Ahmed's cases were consolidated in the district court, see *id.* at 80a (*Mohamud* v. *Weyker*, Nos. 17-CV-2069, 17-CV-2070, 2018 WL 4469251 (D. Minn. Sept. 18, 2018)), and Yassin's case was ultimately consolidated in the circuit court with the cases of several plaintiffs who were charged in Weyker's crime-ring investigation, see Pet. App. 57a (*Farah* v. *Weyker*). District of Minnesota Judge Ericksen heard all the cases against Weyker.

Weyker sought dismissal of the claims in Yassin's, Mohamud's, and Ahmed's cases, asserting that she (1) was entitled to qualified immunity; (2) was not liable under *Bivens* because her actions were not identical to those in *Bivens*; and (3) was not liable under Section 1983 because she was acting under color of federal law when she framed the girls. See Pet. App. 42a.

The district court rejected Weyker's arguments, concluding that her actions violated clearly established law and that Yassin, Mohamud, and Ahmed had valid causes of action against Weyker. Pet. App. 91a–92a, 101a–105a. Because the court had concluded Weyker's actions fell within an established context for *Bivens*, the district court did not reach whether Yassin's claims should be brought under Section 1983 or *Bivens*. *Id.* at 101a n.5; see also *id.* at 92a (same in Mohamud's and Ahmed's cases). Weyker appealed the various cases against her.

In Yassin's consolidated appeal, the Eighth Circuit concluded in a decision by Judge Stras that Weyker

was not entitled to qualified immunity for Yassin's claims under the Fourth Amendment because "a reasonable officer would know that deliberately misleading another officer into arresting an innocent individual to protect a sham investigation is unlawful." Pet. App. 79a. But the Court did not address whether Yassin could sue Weyker under *Bivens* or Section 1983 because Weyker had not meaningfully addressed the issue on appeal. *Id.* at 78a. So the Eighth Circuit remanded that issue to the district court. *Id.* at 77a.

IV. Despite Weyker's dual authority under color of both state and federal law, the Eighth Circuit held that she could not be sued for abusing either.

While Yassin's case returned to the district court, Mohamud's and Ahmed's consolidated cases came before the Eighth Circuit on whether Weyker could be sued under *Bivens*. In another decision written by Judge Stras, the court held 2-1 that she could not be. Finding that Weyker's actions did not "exactly mirror[]" *Bivens* itself, the Eighth Circuit found that the claims against Weyker presented a new context for which special factors counseled hesitation against extending a constitutional remedy. Pet. App. 18a–27a.

The Eighth Circuit tried to soften the harsh result of its denial of a *Bivens* remedy against Weyker by pointing to Section 1983 as an alternative. "Just because a *Bivens* remedy is off the table does not mean that plaintiffs' cases are over. If the district court determines on remand that Weyker was acting under color of *state* law, their section 1983 claims may proceed." Pet. App. 27a. But as dissenting Judge Kelly

pointed out, Judge Ericksen had already held in Yassin's case that Weyker could not be sued under Section 1983 either. Pet. App. 35a n.7.

Indeed, three months earlier, Judge Ericksen had decided Yassin's case on the issue of Section 1983. Despite "Weyker's employment as a St. Paul police officer, her identification as a St. Paul police officer on her call with Beeks, her documentation of Yassin's arrest [in a St. Paul police report], and Weyker's relationship with Abdulkadir before Weyker's [federal cross-]deputization," the district court held that she could not be sued under Section 1983 and granted summary judgment to Weyker. Pet. App. 45a–46a. To reach that conclusion, the district court adopted a blanket rule that, because Weyker was federally deputized as a member of a task force, she was acting exclusively under color of federal law. *Id.* at 47a–48a (citations omitted). And although no discovery had been permitted in the case, the court also denied Yassin's request for limited discovery under Rule 56(d). *Id.* at 11a.

On appeal, the Eighth Circuit affirmed in a third decision by Judge Stras. Pet. App. 2a. Despite the court's earlier offer that Section 1983 provided a potential avenue for relief, *id.* at 27a, the court closed off that avenue in Yassin's case. Applying the same blanket-rule analysis as the district court, the Eighth Circuit held that Weyker could not be sued under Section 1983. *Id.* at 9a–10a.

The court found it irrelevant that "Weyker occasionally let her local practices creep into her federal activities." Pet. App. 9a. It did not matter, for

instance, that Weyker had repeatedly held herself out as a St. Paul officer, used a St. Paul form to advise Abdulkadir of her *Miranda* rights, or filed a St. Paul police report. According to the Eighth Circuit, those facts did not establish color of state law. *Id.* at 9a–10a. Nor did it matter that Weyker used Minneapolis officers to effect her unconstitutional acts. *Id.* at 10a n.3. As a deputized federal agent, Weyker "carried federal authority and acted under color of that authority rather than under any state authority" she had. *Id.* at 10a (quoting *King* v. *United States*, 917 F.3d 409, 433 (6th Cir. 2019), cert. denied on Section 1983 issue sub nom. *King* v. *Brownback*, 140 S. Ct. 2565 (2020) (mem.), and rev'd on other grounds sub nom. *Brownback* v. *King*, 141 S. Ct. 740 (2021)). All that matters, in other words, is that Weyker "purported to act in the performance of her federal duties, even if she overstepped her authority and misused power." Pet. App. 10a–11a (cleaned up); *id.* at 8a ("Color of law is rooted in authority.").

As a result, the Eighth Circuit held that Weyker—whose fictitious criminal investigation ruined the lives of dozens of people through egregious and judicially acknowledged constitutional violations—could not be held accountable for her abuses of federal or state authority.

REASONS FOR GRANTING THE PETITION

Across the United States, thousands of state and local officers like Weyker are federally deputized to work on joint state-federal task forces. These officers do not cede their state authority when cross-deputized. To the contrary, they are only eligible for task

force membership *because* of that authority. They remain employed by state agencies, continue to be paid from state budgets, and carry state-issued weapons and badges. By design, these duly authorized officers wield power under both state and federal law. Still, some lower courts have held that these state-officer task force members categorically act under the exclusive color of federal law. But the circuits are split over this issue.

In the First, Second, Sixth, and Eighth Circuits, "color of state law" and "color of federal law" are mutually exclusive concepts. These circuits then apply a blanket rule: "When state or local officers are federally deputized to work as task force officers in support of a federal mission, their actions are under color of federal law, not state law." Gov't C.A. Br. at 20 (citing the decisions addressed in Reasons I(B), *infra*). But other circuits, like the Third and Seventh, look at the totality of the circumstances to determine whether these officers act under color of state law, federal law, or both.

Because Weyker has been shielded from accountability for her actions under color of both state and federal law, Yassin's case provides a good vehicle for this Court to resolve the split. Moreover, her case neatly illustrates the newfound importance of this issue. The number of state officers being federally deputized has steadily grown to facilitate the nationwide expansion of task forces. Meanwhile, this Court has curtailed the availability of the court-created cause of action under *Bivens*, and the rule applied by the Eighth Circuit curtails the availability of the Congress-created cause of action under Section 1983. Without this Court's

intervention, state-officer task force members, who act with power under both state and federal law, will be accountable for abusing neither.

I. The circuits are split over whether state officers working on task forces can act under color of state law.

Section 1983 provides a cause of action for constitutional violations committed "under color of" state law. 42 U.S.C. 1983. This Court has interpreted that phrase broadly, looking to the totality of the circumstances to determine whether an individual acts under color of state law, federal law, or both. But the circuit courts are split on whether that test applies to one specific group: state-officer members of joint state-federal task forces.

Evaluating task force members, two circuits apply the traditional test outlined by this Court and consider the totality of the circumstances under which task force members act. But another four circuits, now including the Eighth below, apply a per se rule that state-officer task force members act exclusively under color of federal law. These circuits reach this conclusion by ignoring this Court's guidance that officials can wield both state and federal power, and they treat as irrelevant the obvious fact that state-officer task force members are federally deputized for that very reason.

A. This Court has made clear that an officer can act under color of both state and federal law.

Actions taken under color of state law include every "[m]isuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law[.]" *Monroe* v. *Pape*, 365 U.S. 167, 184 (1961) (quoting *United States* v. *Classic*, 313 U.S. 299, 325–326 (1941)). Accordingly, even persons jointly engaged with state officers can act under color of state law. *Adickes* v. *S.H. Kress & Co.*, 398 U.S. 144, 152 (1970) (citing *United States* v. *Price*, 383 U.S. 787, 794 (1966) (holding that a private person can act under color of state law)).

To determine whether a person acts under color of state law, this Court looks to the totality of the circumstances. *Burton* v. *Wilmington Parking Auth.*, 365 U.S. 715, 722 (1961). Two factors govern this analysis: (1) whether the deprivation is "caused by the exercise of some right or privilege created by the State * * * or by a person for whom the State is responsible" and (2) whether the party charged with the deprivation is "a person who may fairly be said to be a state actor." *Lugar* v. *Edmonson Oil Co.*, 457 U.S. 922, 937 (1982).[7] On the second factor, state actors include state officials, as well as those who act with them or "obtain[] significant aid from [them], or [individuals whose] conduct is otherwise chargeable to the State." *Ibid,* see also *Edmonson* v. *Leesville Concrete Co.*, 500

[7] While the two factors are not the same, "[t]hey collapse into each other when the claim of constitutional deprivation is directed against a party whose official character is such as to lend the weight of the State to his decisions." *Lugar*, 457 U.S. at 937.

U.S. 614, 620–622 (1991) (applying *Lugar* to hold that a private litigant using peremptory challenges to strike jurors acts under color of state law).

Relying in large part on the *Lugar* test, the circuit courts have held that both federal officers and private persons can act "under color of state law."[8] Although the Court has never squarely addressed this issue, it came close in *Lake Country Estates, Inc.* v. *Tahoe Regional Planning Agency*, 440 U.S. 391 (1979). There, Lake Tahoe property owners brought claims under Section 1983 and *Bivens* against officers of the Tahoe Regional Planning Agency—a body created through a congressionally approved compact between California and Nevada. *Id.* at 393–394. The officers argued that congressional approval precluded their acts from being under color of state law. See *id.* at 396. The Ninth Circuit agreed. It concluded that "the requirement of federal approval of [an] interstate Compact foreclosed the possibility that * * * officers could be found to be 'under color of state law' within the meaning of § 1983." *Id.* at 399.

This Court rejected that holding, explaining instead that "[e]ven if it were not well settled that § 1983 must be given a liberal construction, these

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[8] *E.g.*, *Big Cats of Serenity Springs, Inc.* v. *Rhodes*, 843 F.3d 853, 869–870 (10th Cir. 2016); *Hindes* v. *FDIC*, 137 F.3d 148, 158 (3d Cir. 1998); *Strickland* v. *Shalala*, 123 F.3d 863, 866 (6th Cir. 1997); *Cabrera* v. *Martin*, 973 F.2d 735, 742–744 (9th Cir. 1992); *Olson* v. *Norman*, 830 F.2d 811, 821 (8th Cir. 1987); *Knights of the Ku Klux Klan* v. *East Baton Rouge Par. Sch. Bd.*, 735 F.2d 895, 899–900 (5th Cir. 1984); *Hampton* v. *Hanrahan*, 600 F.2d 600, 623 (7th Cir. 1979), overruled in part on other grounds by 446 U.S. 754 (1980); *Kletschka* v. *Driver*, 411 F.2d 436, 448–449 (2d Cir. 1969).

facts adequately characterize the alleged actions of the respondents as 'under color of state law' within the meaning of that statute. * * * [A]nd there is no need to address the question whether there is an implied remedy [under *Bivens*]." *Lake Country*, 440 U.S. at 399–400 (footnote omitted). Thus, *Lake Country* makes clear that officials with federal authority can act under color of state law and shows that color of state law and color of federal law are not mutually exclusive. *Lake Country* further indicates that, to the extent it is unclear whether actions were taken under color of state or federal law, Section 1983 liability should prevail. *Ibid.* (declining to even consider whether officials acted under color of federal law after finding that they acted under color of state law).

But when it comes to state officers working on joint state-federal task forces, the circuits have largely ignored *Lake Country*'s guidance. Now, they are split on how to designate the actions of these duly-authorized state-federal actors. Although the role of state-officer task force members is intended to allow officers like Weyker to wield power under color of *both* state and federal law, several circuits, like the Eighth Circuit below, treat them exclusively as federal officers.

B. Four circuits apply a per se rule that state-officer task force members act exclusively under color of federal law.

With its opinion below, the Eighth Circuit joins the First, Second, and Sixth Circuits in applying a categorical rule that task force members act under color

of federal law,[9] regardless of the circumstances: "As a deputized federal agent, [a task force member] carrie[s] federal authority and act[s] under color of that authority rather than under any state authority[.]" Pet. App. 10a (quoting *King*, 917 F.3d at 433); see also Pet. App. 9a–10a (holding that all actions taken incident to a task force investigation are necessarily and exclusively federal, despite indicia of state authority).[10]

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[9] See Pet. App. 9a–10a; *DeMayo* v. *Nugent*, 517 F.3d 11, 14 n.5 (1st Cir. 2008); *Guerrero* v. *Scarazzini*, 274 Fed. Appx. 11, 12 n.1 (2d Cir. 2008) (summary order); *King*, 917 F.3d at 433; see also Gov't C.A. Br. at 20–22 (successfully arguing in the Eighth Circuit that the foregoing decisions support the proposition that "a federally deputized officer acts under color of federal law"). Accord *Estate of Rahim* v. *Doe*, 51 F.4th 402, 407 n.3 (1st Cir. 2022) (relying on the fact that the parties and district court treated cross-deputized task force members as having acted under color of federal law).

[10] Many district courts have also applied this categorical rule to task force members. See, *e.g.*, published decisions in *Estate of Rahim* v. *United States*, 506 F. Supp. 3d 104, 116 n.10 (D. Mass. 2020), rev'd on other grounds *Rahim*, 51 F.4th at 402; *West* v. *Mesa*, 128 F. Supp. 3d 1233, 1240 (D. Ariz. 2015), aff'd, 708 Fed. Appx. 288 (9th Cir. 2017); *Texas* v. *Kleinert*, 143 F. Supp. 3d 551, 562 (W.D. Tex. 2015), aff'd, 855 F.3d 305 (5th Cir. 2017); *Pike* v. *United States*, 868 F. Supp. 2d 667, 677–678 (M.D. Tenn. 2012); *Aikman* v. *County of Westchester*, 691 F. Supp. 2d 496, 498 (S.D.N.Y. 2010); *Tyson* v. *Willauer*, 289 F. Supp. 2d 190, 192 nn.1 & 3 (D. Conn. 2003); *Bordeaux* v. *Lynch*, 958 F. Supp. 77, 83–84 (N.D.N.Y. 1997); *Pou* v. *DEA*, 923 F. Supp. 573, 579 (S.D.N.Y. 1996), aff'd sub nom. *Pou* v. *Loszynski*, 107 F.3d 3 (2d Cir. 1997). See also, *e.g.*, unpublished decisions in Pet. App. 47a–48a (district court below quoting at length from *King*, *Guerrero*, and *DeMayo*); *Deavers* v. *Martin*, No. 2:21-CV-00423, 2022 WL 4348474 (S.D. W. Va. Sept. 19, 2022); *Ramirez* v. *City of Trenton*, No. 21-CV-10283, 2022 WL 1284737 (D.N.J. Apr. 29, 2022); *Askar* v. *Hennepin County*, No. 21-CV-1829, 2022 WL 1241921

These courts hold that if a state officer is a member of a task force, she acts exclusively under color of federal law. They do not consider the totality of the circumstances or independently evaluate facts establishing color of state law. Section 1983 liability is prohibited. A plaintiff may proceed against task force members, if at all, under *Bivens*. See *Pettiford* v. *Greensboro*, 556 F. Supp. 2d 512, 534–537 (M.D.N.C. 2008) (discussing alternative legal frameworks applied when state and federal officers act cooperatively).

For instance, in *King* v. *United States*, the Sixth Circuit held that a deputized state officer "carrie[s] federal authority and act[s] under color of that authority rather than under any state authority[.]" 917 F.3d at 433 (citing *Guerrero* v. *Scarazzini*, 274 Fed. Appx. 11, 12 n.1 (2d Cir. 2008) (summary order)).[11] In

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(D. Minn. Apr. 27, 2022); *Hari* v. *Smith*, No. 20-CV-1455, 2022 WL 1122940 (D. Minn. Jan. 31, 2022), report & recommendation adopted, 2022 WL 612100 (D. Minn. Mar. 2, 2022); *Martin* v. *Gray*, No. 20-CV-741, 2021 WL 3855566 (E.D. Wis. Aug. 27, 2021); *Robinson* v. *Sauls*, No. 1:18-CV-131-TCB, 2019 WL 12338303 (N.D. Ga. Sept. 16, 2019); *Boudette* v. *Sanders*, No. 18-CV-02420, 2019 WL 3935168 (D. Col. Aug. 19, 2019); *Polak* v. *City of Omaha*, No. 8:18-CV-358, 2019 WL 1331912 (D. Neb. Mar. 25, 2019).

[11] In *King*, the plaintiff filed a cross-petition for certiorari on a question similar to the question presented here: "Does a law enforcement officer's membership in a joint state-federal police task force managed, in part, by a federal agency preclude him or her from acting 'under color of state law' for purposes of Section 1983?" Pet. for Cert., *King* v. *Brownback*, No. 19-718 (S. Ct. Nov. 27, 2019). Although the Court granted the government certiorari on another issue, *Brownback* v. *King*, 140 S. Ct. 2563 (2020) (mem.), it denied King's cross-petition on the issue Yassin now petitions for this Court to consider here, *King*, 140 S. Ct. at 2565.

King, a Grand Rapids police detective cross deputized as a Special U.S. Marshal for work on a task force was spared liability under Section 1983 for brutally beating an innocent college student. Although the beating resulted from the Michigan detective's misidentification of the student as a man wanted under a Michigan warrant for a Michigan crime and for whom the detective was searching in Michigan, the Sixth Circuit concluded that the detective had not acted under color of state law. *King*, 917 F.3d at 416–418, 433. "Plaintiff's claims against [the detective] are *Bivens* claims and not § 1983 claims." *Id.* at 434; see also Pet. App. 10a (circuit court below citing *King* for the blanket rule); Pet. App. 47a (district court below, same).

In *DeMayo* v. *Nugent*, the First Circuit similarly concluded that Massachusetts State Police Troopers working as members of a DEA task force acted under color of federal law when they made a warrantless entry into a home during a controlled delivery of a suspicious package. 517 F.3d 11, 14 n.5 (1st Cir. 2008). Because the state troopers "were part of a DEA task force," they had not acted under color of state law.[12] *Ibid.*; see also Pet. App. 48a (district court below citing *DeMayo* for the blanket rule). The plaintiff's

[12] The First Circuit did not independently consider whether the officers acted under color of state or federal law. Instead, it accepted the agreement of the parties and district court on that point. *Id.* at 14 & n.5. Nevertheless, the court's approval of *Bivens* claims against the officers and its consideration of qualified immunity necessarily implies its agreement with the district court and parties because the availability of a claim under *Bivens* is an issue antecedent to qualified immunity. See *Hernandez* v. *Mesa*, 137 S. Ct. 2003, 2006–2007 (2017).

claims proceeded, therefore, under *Bivens*. *DeMayo*, 517 F.3d at 12–13.

In *Guerrero* v. *Scarazzini*, the Second Circuit concluded that two NYPD detectives working on an FBI task force acted under color of federal law when they arrested a man on the mistaken belief that he was a drug dealer. 274 Fed. Appx. 11, 12 (2d Cir. 2008) (summary order). Although the plaintiff brought his claims against the detectives under Section 1983, the court treated them as *Bivens* claims "because [the detectives] were federally deputized for their Task Force work." *Id.* at 12 n.1. As in *DeMayo*, the parties apparently agreed on that point, *ibid.*, but the result was the same: membership in a task force meant that the detectives were acting under the exclusive color of federal law, see also Pet. App. 47a (district court below citing *Guerrero* for the blanket rule); *Rahim*, 51 F.4th at 407 n.3 (treating the actions of a cross-deputized Boston detective as exclusively under color of federal law because "he was working as a member of a federal task force").

Citing *King*, *DeMayo*, and *Guerrero* for its argument that "federally deputized [state] officer[s] act[] under color of federal law," the government persuaded the Eighth Circuit below to adopt the same blanket rule. Gov't C.A. Br. at 20–21 (citing *King*, 917 F.3d at 433; *DeMayo*, 517 F.3d at 14 n.5; *Guerrero*, 274 Fed. Appx. at 12 n.1); see also *id.* at 28 n.7 (government insisting that the Eighth Circuit not even consider the facts because state-officer task force members deputized as "federal officials cannot be held to have acted under color of state law"). And after describing multiple examples of state-law authority Weyker used to

effect Yassin's unlawful arrest, Pet. App. 9a, the Eighth Circuit concluded that none "alter[ed] the federal character of what she did," *id.* at 10a. Because Weyker's role on the task force led to Yassin's arrest, she acted under the exclusive color of federal law and could not be sued under Section 1983. *Ibid.* (citing *King*, 917 F.3d at 433).

Even the fact that Minneapolis officers made the arrest on Weyker's behalf did not persuade the Eighth Circuit that Section 1983 liability is available. To the contrary, the court waved away clear indications of state color in that regard. Pet. App. 10a n.3. Reinforcing its view of state and federal authority as mutually exclusive, the court stated that "[f]ederal and state officers work together all the time without clouding their distinct sources of authority[.]" *Ibid.* But it did not address how Weyker's status as *both* a state and federal officer still provided her a *distinct* source of authority.

C. Two circuits consider the totality of the circumstances to decide whether state-officer task force members act under color of state law, federal law, or both.

The Third and Seventh Circuits take a different approach.[13] Consistent with this Court's reasoning in *Lake Country* and *Lugar*, those circuits and likely the Tenth[14] look beyond the label of an officer's authority

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[13] *Couden* v. *Duffy*, 446 F.3d 483 (3d Cir. 2006); *Askew* v. *Bloemker*, 548 F.2d 673 (7th Cir. 1976).

[14] Though it has not addressed this issue directly, the Tenth Circuit dismissed Section 1983 claims against a cross-deputized

and consider the circumstances of her acts to determine whether they were taken under color of state law, federal law, or both.[15]

The Third Circuit looks to the totality of the circumstances. In *Couden* v. *Duffy*, for instance, the court held that Delaware police officers working on a task force were acting under color of state, not federal, law because the fugitive they arrested was wanted by local police and the investigation was initiated locally. 446 F.3d 483, 489, 499 (3d Cir. 2006). Accordingly, the task force officers were subject to claims under Section 1983. *Id.* at 499. Accord *Johnson* v. *Orr*, 780 F.2d 386, 390 (3d Cir. 1986) ("There is no set formula for determining whether the employees of an agency with both state and federal characteristics act under color of state law. All of the circumstances must be

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task force member on the basis of qualified immunity, thereby tacitly accepting that task force members can act under color of state law, so long as they are not entitled to some other form of immunity. See *Lackey* v. *County of Bernalillo*, 166 F.3d 1221 (10th Cir. 1999) (table).

[15] Many district courts have also adopted the totality-of-the-circumstances approach. See, *e.g.*, *Pettiford*, 556 F. Supp. 2d at 534–535; *McLeod* v. *United States*, No. 1:20-CV-595, 2021 WL 5906373 (S.D. Ala. Dec. 14, 2021); *Thai* v. *County of Los Angeles*, No. 15-CV-583, 2021 WL 5042099 (S.D. Cal. Oct. 29, 2021); *Jackson* v. *Vartanian*, No. 20-CV-1148, 2021 WL 4523072 (E.D. Wis. Oct. 4, 2021); *Bates* v. *City of Atlanta*, No. 1:20-CV-4074, 2021 WL 5034837 (N.D. Ga. Aug. 26, 2021); *Economan* v. *Cockrell*, No. 1:20-CV-32, 2020 WL 6874134 (N.D. Ind. Nov. 23, 2020); *Adams* v. *Springmeyer*, No. 11-CV-790, 2012 WL 1865736 (W.D. Pa. May 22, 2012); cf. *Wilkinson* v. *Hallsten*, No. 5:06-CV-2, 2006 WL 2224293, at *8 n.7 (W.D.N.C. Aug. 2, 2006), aff'd, 225 Fed. Appx. 127 (4th Cir. 2007); see also *Macaluso* v. *Dane County*, 537 N.W.2d 148 (Wis. Ct. App. 1995) (table).

examined to consider whether the actions complained of were sufficiently linked to the state.").

In the Seventh Circuit, too, "the totality of the circumstances surrounding the alleged" actions governs the analysis of whether task force members act "pursuant to federal authority [or] under color of any state law." *Askew* v. *Bloemker*, 548 F.2d 673, 677 (7th Cir. 1976). In *Askew*, the court considered whether St. Louis, Missouri, police officers could be sued under Section 1983 for their raid of a home in Illinois as members of a drug task force. Although the court concluded that the officers were acting under color of federal law, it did not apply the blanket rule later adopted by its sister circuits. Considering the undisputed facts in the pleadings and those elicited through discovery, the court concluded that the officers were acting under color of federal authority. *Id.* at 677. Importantly, the court emphasized that the actions of the state officers were taken "pursuant solely to federal authority" because—unlike Weyker here—they had no authority under color of Missouri law to raid a home in Illinois. *Ibid*.

With half of the circuits weighing in, they are split on this issue.

II. This case provides a good vehicle for the Court to resolve the circuit split because the question is cleanly presented and dispositive.

This case is a particularly good vehicle to address the circuit split for two reasons. First, under the standards applied outside the task force context,

Weyker was acting under color of state law. And second, the Eighth Circuit's decision in *Ahmed* v. *Weyker*, Pet. App. 13a, confirms that *Bivens* claims are unavailable against Weyker, making the question of whether Weyker was acting under color of state law, federal law, or both, dispositive.

A. Weyker was acting under color of state law.

Applying the two-part test from *Lugar*, Weyker was acting under color of state law—even if she was also acting under color of federal law. 457 U.S. at 937. Based on the limited facts that have been deduced without any discovery, Weyker's deprivation of Yassin's rights was caused "by the exercise of some right or privilege created by the State * * * or by a person for whom the State is responsible." *Ibid.*

Weyker is a state official—a St. Paul police officer—and someone for whom the state is responsible. Moreover, Weyker repeatedly held herself out as a state official to frame Yassin. See, *e.g.*, *Tyson* v. *Sabine*, 42 F.4th 508, 521–523 (5th Cir. 2022) (relying on self-identification to establish color of state law). And Weyker's representations of state authority were not inconsequential: her expressed identity as a local officer allowed Weyker to gain nearly immediate access to the Minnesota criminal investigation and then persuade Minnesota officers to arrest Yassin and her friends. Presumably that is why Weyker chose to identify herself as a St. Paul officer.

Furthermore, Weyker's ability to serve on the task force was conditioned on her status as a St. Paul

officer. Pet. App. 129a (Special Deputations Form, noting Weyker's employment with the St. Paul Police Department). Indeed, Weyker was only eligible to be cross-deputized as a Special Deputy U.S. Marshal *because* she was a local law enforcement officer. See 28 C.F.R. 0.112 (listing the types of individuals eligible for deputization: Department of Justice employees; federal, state, or local law enforcement officers; and employees of private security companies providing courtroom security). If a private litigant's use of peremptory jury challenges constitutes color of state law, *Edmonson*, 500 U.S. at 620–622, so too does a St. Paul police officer persuading Minneapolis police to arrest someone under state law. Minn. Stat. § 609.498.

Moreover, it does not matter that Weyker was also exercising federal authority when she framed Yassin. Although circuit courts like the Eighth Circuit below apply a mutually exclusive approach when deciding between the color of state and federal law, that approach conflicts with the plain language of Section 1983. The statute creates liability for "every person" who violates rights "under color of" state law—not "under *exclusive* color of" state law or "under *primary* color of" state law. 42 U.S.C. 1983. It is, therefore, irrelevant that Weyker's actions under color of state law may have been simultaneously under color of federal law or that her state and federal authority was intertwined. See *Lake Country*, 440 U.S. at 399–400; see also, *e.g.*, *Johnson*, 780 F.2d at 392 n.11; *Nesmith* v. *Fulton*, 615 F.3d 196, 200–201 & n.7 (5th Cir. 1980). After all, Weyker was cross-deputized for the very purpose of granting her both state and federal power. Under Section 1983, the only question is whether Weyker acted under *any* color of state law when she

framed Yassin and her friends. As an "FBI Task Force Officer / St Paul MN PD Officer," Weyker did. Pet. App. 4a.

B. The Eighth Circuit has held that Weyker cannot be sued for her actions under color of federal law.

Unlike every other circuit decision treating task force members as exclusively federal officers, where task force members could still be pursued under *Bivens*, the Eighth Circuit's decision below holds that Weyker cannot be pursued at all. Compare, *e.g.*, Pet. App. 20a–27a (denying the availability of a *Bivens* remedy to a state-officer task force member), with *King*, 917 F.3d at 433–444 (allowing *Bivens* claims to proceed against a state-officer task force member). For that reason, this case is a particularly salient vehicle to address the question presented.

In other words, if liability for task force officers is available under *Bivens* or Section 1983, the issue presented in this petition is largely academic. That's why the district court was indifferent to whether Weyker acted under color of state or federal law before the Eighth Circuit closed off *Bivens*. Before that happened, it did not matter. As the district court explained, since "a Fourth Amendment claim * * * does not present a new context for a *Bivens* action; and because § 1983 and *Bivens* claims are analyzed similarly, the Court does not need to reach the question of whether Yassin's claim should be brought under § 1983 or *Bivens*." Pet. App. 101a n.5; see also *id.* at 92a (decision in Mohamud's and Ahmed's cases that "discerned no need to decide whether the proper

vehicle for [the plaintiff's] claims is a § 1983 or *Bivens* cause of action" (internal quotation marks and citations omitted)).

But now that Weyker cannot be sued under *Bivens*, Section 1983 is Yassin's only avenue for relief, and the question she presents to this Court is dispositive. If Weyker was acting under color of state law, she may be sued for her constitutional violations. But if Weyker was acting under the exclusive color of federal law, she is immune from liability.

III. The question presented is exceptionally important because this Court has rendered *Bivens* a dead letter, while the number of state-officer task force members continues to expand.

Yassin's case also illustrates the exceptional importance of the question presented. This Court has recently held that *Bivens* is unavailable outside of very narrow circumstances because Congress has not created a statutory cause of action providing liability for actions taken under color of *federal* law. But decisions like the Eighth Circuit's below mean that the growing number of state-officer task force members cannot be sued under the statutory cause of action Congress created through Section 1983 to provide liability for actions taken under color of *state* law. That result clashes with this Court's reasoning in *Egbert* and the language of Section 1983.

A. *Egbert* v. *Boule* all but prohibits claims for constitutional abuses committed under color of federal law because Congress has not created a statutory cause of action.

In *Egbert* v. *Boule*, this Court restricted the availability of claims for constitutional violations committed under color of federal law. *Egbert* reasoned that the court-created cause of action in *Bivens* was misplaced because "prescribing a cause of action is a job for Congress, not the courts[.]" 142 S. Ct. at 1800. Accordingly, courts should not imply a cause of action if "there is *any* rational reason (even one) to think that *Congress* is better suited to 'weigh the costs and benefits of allowing a damages action to proceed.'" *Id.* at 1805 (citation omitted). The Eighth Circuit held that Weyker cannot be sued for her actions under color of federal law for this very reason. Pet. App. 18a–27a. But its decision below will now allow state officers to circumvent the statutory cause of action Congress did create: Section 1983.

The use of joint task forces and the federal deputization of state and local officers to staff them has continued to grow. Considering *Egbert*'s removal of liability for federal officers and the circuit decisions treating state officer task force members as federal officers, state officers now have the incentive to exploit an enormous loophole in Section 1983 that thwarts the intent of Congress and allows task force members to violate the Constitution under color of state law without the consequence Congress statutorily prescribed. If a state officer wants to avoid liability, all

she needs to do is be deputized for membership in a task force.

Before *Egbert* the problem of dual authority was often theoretical because, in cases involving unreasonable searches and seizures, "§ 1983 and *Bivens* claims [we]re analyzed similarly." Pet. App. 101a n.5. That's why circuit decisions on both sides of the split were ambivalent about the issue—*e.g.*, relying on the agreement of the parties or hardly addressing the issue at all. See *DeMayo*, 517 F.3d at 14 & n.5 (relying on party characterizations); *Guerrero*, 274 Fed. Appx. at 12 n.1 (same); *Lackey* v. *County of Bernalillo*, 166 F.3d 1221 (10th Cir. 1999) (table) (not directly addressing the issue). Like the district court explained below, it did not matter. Pet. App. 101a n.5. *Bivens* was generally available for constitutional claims against federal officers for individual instances of law enforcement overreach in violation of the Fourth Amendment. See *Ziglar* v. *Abbasi*, 137 S. Ct. 1843, 1856–1857, 1862 (2017). That covered most instances of abuse by state-officer task force members. After *Egbert* that is no longer true. The issue is not only important but, as this case illustrates, dispositive on whether the Constitution limits any of the actions of state officers working on task forces.

B. The Eighth Circuit rule allows state officers to circumvent the statutory cause of action Congress created in Section 1983.

Now that *Egbert* has restricted the availability of constitutional claims for actions taken under color of federal law, the Eighth Circuit's categorical rule

deeming all actions of state-officer task force members under color of federal law is doubly concerning. Worse still, the categorical rule comes as the use of joint task forces has exploded over the past fifty years. So the number of state officers who can avoid liability under Section 1983 is enormous and will only continue to increase.

The first multi-jurisdictional task forces were assembled in the early 1970s to fight the war on drugs.[16] Today at least a thousand operate under the direction of various federal agencies.[17] That number is growing.[18] Task forces are charged with policing everything from narcotics to car thefts. The FBI, for example, advertises its involvement with task forces aimed at terrorism, gangs, organized crime, cyber-crimes, white collar crimes, "Indian Country" crimes, bank

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[16] Radley Balko, *State-Federal Task Forces Are Out of Control*, Wash. Post (Feb. 14, 2020), https://perma.cc/UNE4-HLU2.

[17] Simone Weichselbaum, *Why Some Police Departments Are Leaving Federal Task Forces*, Marshall Project (Oct. 31, 2019), https://perma.cc/ALR2-HLZG; see also *Task Forces*, U.S. Att'y Off. for the W. Dist. Pa., https://perma.cc/6S8Q-ZGWV (listing nine different task forces in Pittsburgh, Pennsylvania).

[18] In 1979, the FBI and NYPD formed the first state-federal terrorism task force. By 2001, there were 35, and by 2005, there were 103, comprised of more than 5,000 state and federal officers. See, *e.g.*, U.S. Dep't of Justice, *The Department of Justice's Terrorism Task Forces* 15 (June 2005), https://perma.cc/Q2XE-RW8E. "Today there are about 200[.]" *Joint Terrorism Task Forces*, FBI.gov, https://perma.cc/FJR9-FFJ5. As of 2013, terrorism task force members represented more than 600 state agencies and 50 federal agencies. Jerome P. Bjelopera, Cong. Rsch. Serv., R41780, *The Federal Bureau of Investigation and Terrorism Investigations* 13 (Apr. 24, 2013), https://perma.cc/MG62-M37R.

robberies, narcotics, kidnappings, motor vehicle thefts, and fugitives.[19]

Although state-federal composition and administration may vary significantly by task force, members are usually cross-authorized state and federal police officers. Like Weyker, state officers are typically deputized as Special U.S. Marshals to enforce federal law,[20] while federal officers often operate under state statutes to enforce state law.[21] This dual role allows task force members to select the state or federal laws that best suit their purposes.[22] The result is often a lack of accountability for constitutional violations.[23]

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[19] See, *e.g.*, *Violent Gang Task Forces*, FBI.gov, https://perma.cc/CWE8-F3AX (listing 171 gang task forces operating in 38 states, the District of Columbia, and Puerto Rico).

[20] See Weichselbaum, *supra* note 17 (noting that U.S. Marshals deputized one-third of the Pensacola Police Department's 161-officer force during the summer of 2019); Jonathan Levinson & Ryan Haas, *US Attorney says Portland Police Will Remain Federal Deputies, Against Mayor's Wishes*, Ore. Pub. Broad. (Sept. 30, 2020) (noting that "the U.S. Marshals Service federally deputized 22 sheriff's deputies and 56 members of the Portland Police Bureau's Rapid Response Team" during protests in Portland), https://perma.cc/UF5Z-6GRY.

[21] See, *e.g.*, Minn. Stat. § 626.8453(2) ("A qualified federal law enforcement officer assigned to a special purpose task force * * * shall possess the authority of the peace officers * * * ."); Mich. Comp. Laws § 764.15d; Cal. Penal Code § 830.8.

[22] See, *e.g.*, Michael Maharrey, *Local Cops Can Skirt State Limits on Surveillance by Joining Federal Task Forces*, Found. for Econ. Educ. (May 7, 2018), https://perma.cc/L95N-UG3F.

[23] See, *e.g.*, Kade Crockford, *Beyond Sanctuary: Local Strategies for Defending Civil Liberties*, Century Found. (Mar. 21, 2018), https://perma.cc/7U7P-SXBE.

This case highlights several problems created by the task force shell game and why it raises an important issue. While violations committed by officers under color of state law can be pursued through a statutory cause of action provided by Congress in Section 1983, violations committed by officers under color of federal law are largely unavailable after *Egbert*.

It is no wonder then that the government fights for task force members to avoid Section 1983 claims. If officers cannot avoid accountability through some form of immunity—*e.g.*, the "unholy trinity" of qualified immunity, municipal immunity, or prosecutorial immunity, see *Wearry* v. *Foster*, 33 F.4th 260, 278 (5th Cir. 2022) (Ho, J., dubitante)—they can now avoid accountability by claiming federal authority.

As the circuit courts increasingly hold that state officers act under the exclusive color of federal law when they are cross-deputized as members of task forces, the use of the two-page U.S. Marshal deputation form, see n.4, *supra*, will extinguish the liability Congress intended to create in Section 1983. It already has in the First, Second, Sixth, and Eighth Circuits.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

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