No. 24-809

IN THE

Supreme Court of the United States

HOWARD GOLDEY, *et al.*,

Petitioners,

v.

ANDREW FIELDS, III,

Respondent.

On Petition for a Writ of Certiorari to the U.S. Court of Appeals for the Fourth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Fourth Circuit erred in recognizing a narrow extension of *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), to the "rare" case in which "rogue" frontline prison officials committed "egregious physical abuse with no imaginable penological benefit" and then "intentionally withheld the administrative remedies that the executive branch has implemented to redress such violations." Pet. App. 12a.

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INTRODUCTION

In its decision below, the Fourth Circuit carefully applied this Court's *Bivens* precedents to recognize a narrow cause of action where egregious physical abuse serving no conceivable penological purpose is combined with a subsequent denial of all access to administrative remedies. The Fourth Circuit emphasized that its decision was limited to those circumstances, and district courts have heeded those instructions. As a result, no court has applied the Fourth Circuit's decision to authorize a cause of action in any circumstances beyond the rare facts presented here.

Rather than address the Fourth Circuit's actual holding, petitioners instead ask the Court to grant certiorari to determine "[w]hether an implied cause of action exists for Eighth Amendment excessive force claims," writ large. Pet. I. That mischaracterization of the holding below is reason alone to deny the petition: The first question presented by the petition is not presented by this case.

Petitioners' second question simply asks the Court to overrule *Bivens* altogether. *Id.* But *Bivens* has stood for more than half a century and this Court expressly declined to revisit it just a few years ago. It should do the same here.

The Fourth Circuit thoughtfully followed this Court's instructions on how to analyze *Bivens* claims in a concededly novel and limited set of circumstances. This case does not merit this Court's review, and it certainly does not meet the high threshold for summary reversal.

STATEMENT OF THE CASE

I. Factual Background

In 2021, Mr. Fields was incarcerated at the U.S. Penitentiary in Lee County, Virginia. Pet. App. 2a. On November 10, 2021, Mr. Fields went to lunch without bringing his movement pass, which was required when he left his housing unit. Pet. App. 3a. When he returned from lunch, the prison's lieutenant ordered Mr. Fields to be sent the special housing unit (SHU), which was known as "the hole" or "the trap," to "[g]et his head right." *Id.*; CA4 JA11.

On the way to the SHU, once Mr. Fields was out of sight of the prison lieutenant's office, Defendant Robbins "began punching" Mr. Fields "in the face with closed fists repeatedly" until he "dropped to the floor."[1] CA4 JA13. Robbins then "stomped" on Mr. Fields with

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[1] The Fourth Circuit incorrectly stated in its opinion that Mr. Fields "allegedly tried to assault the officers escorting him." Pet. App. 3a-4a (citing CA4 JA29). Mr. Fields did not allege that. He appended to his complaint an incident report prepared by prison officials that accused him of assault, but Mr. Fields explicitly refuted the prison officials' claim as "falsified." CA4 JA13; *see also id.* (alleging that, in fact, Mr. Fields "was walking[,] going to (S.H.U.)," when Officer Robbins began assaulting him). Mr. Fields appended the incident report not because it was truthful, but because it showed how the defendants attempted to cover up their misconduct by writing "a falsified incident report." *Id.* Accordingly, the prison officials' claim of assault must be rejected at this stage. *See Goines v. Valley Cmty. Servs. Bd.*, 822 F.3d 159, 168 (4th Cir. 2016) ("Treating the contents of [a document prepared by defendants] as true simply because it was attached to or relied upon in the complaint, even though the plaintiff relied on it for purposes other than truthfulness, would be contrary to the concept of notice pleading and would enable parties to hide behind untested, self-serving assertions." (internal citations omitted)).

"steel toe boots," and "kicked and punched" Mr. Fields "in the face repeatedly." *Id.* Several other officers joined in. *Id.* Mr. Fields was knocked partially unconscious. *Id.*

Mr. Fields regained consciousness as he was being brought to the SHU in a wheelchair. CA4 JA13. Once at the SHU, he was placed inside an observation cell, where he was secured with "ambulatory restraints and leg restraints around his ankles." CA4 JA14. Defendant Mullins and several other officers then repeatedly assaulted Mr. Fields. *Id.* They "pushed" him and "shoved [him] face first" into the wall. *Id.* They also slammed a security shield into his back and rammed his "face into the wall," knocking a tooth loose. CA4 JA15. As he was being "smashed up against the wall," several officers punched him in the face and kneed him in the groin. *Id.* One officer applied extreme pressure to Mr. Fields' leg as if he "was trying to break" Mr. Fields' ankle, while another kicked him in the leg with steel toe boots. CA4 JA16. Defendant Mullins declared, "I am going to kill you." *Id.*

Finally, before the officers left Mr. Fields' cell, an officer rammed the security shield into the back of Mr. Fields' head, again smashing Mr. Fields' face "into the wall at full impact." CA4 JA16.

Over the next 24 hours, Defendants returned several times to continue the abuse. Two hours later, Defendant Mullins and several other officers returned with a security shield and assembled in a formation. CA4 JA17. They then "partially ran towards" Mr. Fields and "rammed" the back of his head with the shield, slamming his head into the wall. *Id.* Two hours after that, they did it again. CA4 JA19. Defendant

Nicholous made additional threats about killing Mr. Fields. CA4 JA20. The officers returned at least three more times to assault or threaten Mr. Fields. CA4 JA20-23. At no point during these events did Mr. Fields "pose[] a physical threat to the officers." Pet. App. 4a.

Mr. Fields later attempted to file a grievance seeking administrative relief for Defendants' violence and threats. But his unit supervisors refused to provide Mr. Fields the necessary grievance forms. CA4 JA 26. Accordingly, he was "unable to pursue any alternative remedies." Pet. App. 4a. Having been refused access to the prison's administrative remedy program, Mr. Fields sought judicial relief.

II. Procedural History

In 2022, Mr. Fields filed suit *pro se* against Defendants Mullins, Nicholous, and other officers involved in the assaults. Before any Defendants were served or entered an appearance, however, the district court screened Mr. Fields' complaint on the merits under 28 U.S.C. § 1915A(a). *See* Pet. App. 39a. As to Mr. Fields' claim against the individual officers under the Eighth Amendment, the court held that there was no implied cause of action under *Bivens*. Pet. App. 54a.

Mr. Fields appealed the district court's order only as to the "individual officers who commit[ted] isolated acts of abuse" against Mr. Fields. CA4 Reply Br. 1. Mr. Fields expressly conceded that "a *Bivens* action may not be brought against the BOP." *Id.*

On July 25, 2024, the Fourth Circuit affirmed the district court's decision in part, and reversed in part. Citing Mr. Fields' concession, the court of appeals affirmed the district court "in so far as it dismissed the

claims against the BOP and supervisory officers" who were not "personally involved in the conduct alleged in the complaint." Pet. App. 13a, 22a. The court of appeals made clear that Mr. Fields cannot proceed against those defendants, and on remand, Mr. Fields "cannot join supervisory officers under Rule 20." Pet. App. 13a.

As to the "front-line officers only," the Fourth Circuit reversed the district court. *Id.* The court acknowledged "the limited availability of claims under *Bivens*" in light of this Court's more recent guidance. Pet. App. 2a, 7a. The Fourth Circuit recognized, however, that this Court specifically "chose not to dispense with *Bivens* altogether," instead maintaining its well-established two-step framework for evaluating when a *Bivens* claim may proceed, either because it arises in a recognized context, or because special factors do not counsel against an extension. Pet. App. 7a.

Applying that framework, the Fourth Circuit recognized that Mr. Fields' Eighth Amendment claim arose from the confluence of two sets of circumstances: (1) "rogue" frontline officers committed "egregious physical abuse with no imaginable penological benefit," *and* (2) prison officials "intentionally withheld the administrative remedies that the executive branch has implemented to redress such violations." Pet. App. 12a. The court noted that "[t]his must be a rare case," citing the government's concession that the type of abuse alleged "is rare," and that "no court (in this Circuit or otherwise) has ever before been presented with a case" that also involved the intentional complete denial of access to administrative remedies. Pet. App. 12a, 18a. The

court concluded that this claim arose in a new context, as Mr. Fields conceded. Pet. App. 8a.

Next, the court evaluated whether special factors counseled against extending *Bivens* to that new context. The Court recognized that special factors often counsel against extending *Bivens* in the prison context—namely, the BOP's Administrative Remedy Program, the Prison Litigation Reform Act, and the potential for systemwide consequences. Pet. App. 9a. The Court concluded, however, that these factors applied differently in the "rare" circumstances of this case. Pet. App. 12a. For example, the Court explained that the ARP normally counsels against a *Bivens* action because it reflects the Executive's preferred alternative remedy, even if the plaintiff disputes whether the ARP provides full or adequate relief. Pet. App. 17a. In this case, however, there was no dispute about Congress' chosen remedy: The problem was that individual "officers intentionally subverted the operation of the ARP," denying Mr. Fields the very remedy Congress had provided. *Id.* In such circumstances, the "technical existence" of the ARP does not counsel against a *Bivens* remedy. *Id*. Based on the unusual circumstances present in this case, the Fourth Circuit remanded the claim for further proceedings in the district court, where Defendants have now appeared.

Defendants sought rehearing and rehearing en banc. On October 22, 2024, the Court denied rehearing, with no judge requesting a vote on the petition for rehearing en banc. Pet. App. 57a.

REASONS FOR DENYING THE PETITION

I. The Fourth Circuit's Decision Is Correct.

The Fourth Circuit's decision is correct and does not conflict with any of this Court's decisions. *See* S. Ct. R. 10(c). As the Fourth Circuit recognized, in most cases, a *Bivens* cause of action will not be available outside of the specific contexts previously recognized by this Court. Pet. App. 7a. But this Court's precedents, from *Bivens* itself to the Court's most recent pronouncement in *Egbert v. Boule*, 596 U.S. 482 (2022), do not reject *Bivens* claims in other contexts out of hand; they instead require courts to consider whether an extension of *Bivens* is warranted, or whether "special factors" counsel against it. *Id.* at 492. The Fourth Circuit did so and concluded in these unusual circumstances that a modest extension—limited to the "rare" case in which "egregious physical abuse with no imaginable penological benefit" is combined with the intentional withholding of administrative remedies—was warranted. Pet. App. 12a. That narrow decision was correct.

A. The Fourth Circuit Did Not Approve A *Bivens* Action For All Excessive Force Claims.

Before addressing what the Fourth Circuit did do, it is important to clarify what the court did *not* do. The linchpin of the petition, as well as the United States *amicus* brief, is the claim that the Fourth Circuit recognized a *Bivens* action for all Eighth Amendment excessive force claims. *See* Pet. I (presenting the question for review in this case as: "Whether an implied cause of action exists for Eighth Amendment excessive force claims."); *id.* at 2-3, 10, 12-13, 27-28;

SG Amicus I, 1-2, 14-15. The Fourth Circuit did no such thing.

The holding below is clear: "where an inmate brings a claim against individual, front-line officers who personally subjected the plaintiff to excessive force in clear violation of prison policy, *and* where rogue officers subsequently thwarted the inmate's access to alternative remedies," a *Bivens* remedy exists. Pet. App. 12a. (emphasis added). This holding does not open the door to all prisoner excessive force claims, but *only* to the unusual subset of those claims against individual officers involving egregious physical abuse and the intentional thwarting of an inmate's access to alternatives remedies. Emphasizing this point, the court made clear the claim presented was "narrow and discrete," Pet. App. 15a, that its decision was based only on "the circumstances presented here," Pet. App. 13a, and that this was a "rare case," Pet. App. 12a; *see also* CA4 Oral Arg. at 28:40-43 (panel asking "why the case has to [encompass all Eighth Amendment *Bivens* claims]"); *id.* at 29:17-30:16 (panel asking whether the cause of action should be for "Eighth Amendment excessive force claims as a whole" or "a much narrower one . . . when more than six BOP officers were involved in not excessive force but *extreme* excessive force and they also denied access to the grievance procedures").

Other courts have properly understood the narrowness of the Fourth Circuit's decision. For example, in *Martin v. Hamilton*, No. 7:22-cv-00567, 2025 WL 495369, at *5 (W.D. Va. Feb. 13, 2025), a district court rejected an extension of *Bivens* while also "acknowledg[ing]" the Fourth Circuit's decision in

Fields. *Fields* extended *Bivens*, the court observed, only where a prisoner "lacked access to alternative remedies because prison officials *deliberately* thwarted his access to them." *Id.* (quoting *Fields*, 109 F.4th at 274 (emphasis in original)). Because there was "no such allegation in this case" the Court rejected the requested extension. *Id.*; *see also Vaughn v. Brown*, No. 7:22-cv-00178, 2025 WL 952392, at *4 (W.D. Va. Mar. 28, 2025) (declining to apply *Fields* to a prisoner excessive force claim because the plaintiff "has not alleged that officers intentionally stopped him from filing a grievance and exhausting his remedies"); *Kornegay v. Linter*, No. 5:24-CV-137, 2024 WL 5298779, at *6 (N.D.W. Va. Nov. 20, 2024) (rejecting application of *Fields* because "the plaintiff in this case did, in fact, utilize the ARP to file grievances concerning the facts related to this Complaint"), *report and recommendation adopted sub nom. Kornegay v. Lintner*, No. 5:24-CV-137, 2024 WL 5116847 (N.D.W. Va. Dec. 16, 2024).

Given the narrowness of the Fourth Circuit's holding, as well as other courts' understanding of that narrowness, petitioners' repeated claims that the Fourth Circuit's decision will have "far reaching" and even "catastrophic" consequences are simply false. Pet. at 3. Petitioners' arguments are aimed at an opinion that was never written and thus all miss the mark. The Fourth Circuit issued a narrow decision in a "rare case."

B. The Fourth Circuit Carefully Followed This Court's Prior *Bivens* Cases.

Solely as to the unusual circumstances in Mr. Fields' case, the Fourth Circuit properly asked whether "there are special factors indicating that the

Judiciary is at least arguably less equipped than Congress to weigh the costs and benefits of allowing a damages action to proceed." Pet. App. 7a (quoting *Egbert*, 596 U.S. at 492). Specifically, it addressed three special factors: the availability of alternative remedies, congressional action in this field, and the systemwide consequences of permitting an action in this context. The court acknowledged that, in the mine run of cases, these factors will counsel against a *Bivens* action. Pet. App. 9a-12a. But the court properly concluded that "these factors do not apply with equal force to Fields' case," given its unusual circumstances, "and thus they do not bar his claim." Pet. App. 12a.

1. Alternative Remedies.

As the Fourth Circuit noted, its "prior cases pointed to the BOP's Administrative Remedy Program (ARP)" as a "factor counseling against extending *Bivens*." Pet. App. 10a. This Court has made clear that courts may not "second-guess" the "calibration" of an administrative "remedial process" such as the ARP. *Egbert*, 596 U.S. at 498. Accordingly, plaintiffs cannot pursue a *Bivens* action simply because they question "the sufficiency" of Congress' chosen remedial scheme. *Bulger v. Hurwitz*, 62 F.4th 127, 141 (4th Cir. 2023) (rejecting the plaintiff's argument that the "short window of time" to use the ARP was inadequate); *see also Egbert*, 596 U.S. at 497-98 (rejecting the plaintiff's argument that the grievance process did not provide adequate opportunity for him to participate and pursue judicial review).

Whether the ARP is adequate or appropriately calibrated, however, is not the question here. Pet. App. 17a ("By contrast, here, the ARP is not the

problem."). Far from challenging the ARP, Mr. Fields sought to use it to pursue administrative relief, exactly as Congress intended. The problem "was the intentional improper conduct of the individual officers, which deprived Fields of access to the ARP." Pet. App. 17a. In light of those circumstances, the Fourth Circuit concluded that, having "subverted the operation of the ARP," prison officials could not rely on "its technical existence" to "bar Fields's *Bivens* claim." *Id*.

That unusual factual circumstance distinguishes this case from prior Fourth Circuit cases like *Bulger*. In an opinion written by Judge Thacker—who also joined the majority opinion in *Fields*—the court in *Bulger* held that the ARP counseled against recognizing a *Bivens* action because the plaintiff challenged "the inadequacy of the ARP itself," claiming it was "not broad enough in that case to provide the desired relief." Pet. App. 17a (quoting *Bulger*, 62 F.4th at 141). Here, in contrast, Mr. Fields does not dispute that "[t]he system put in place by the executive has the capacity to provide relief." *Id*. Rather, "when rogue officers thwart" a person's "access to alternative remedies, it is the officers' conduct that interferes with the balance struck by the existing remedial scheme." Pet. App. 18a.

This Court's precedent supports the distinction drawn by the Fourth Circuit. Each time this Court has considered alternative administrative remedial structures in the context of *Bivens*, the administrative remedies were actually available. *See Egbert*, 596 U.S. at 497-98 (noting that the plaintiff took "advantage of this grievance procedure, prompting a year-long internal investigation"); *Hernandez v. Mesa*, 589 U.S.

93, 97 (2020) (noting that the "Department of Justice conducted an investigation" into the cross-border shooting); *Wilkie v. Robbins*, 551 U.S. 537, 552 (2007) ("For each charge, in any event, Robbins had some procedure to defend and make good his position. He took advantage of some opportunities, and let others pass."). This Court has never held that the "technical existence" of an alternative remedy in the abstract constitutes a reason not to extend *Bivens* when, in reality, officials deny access to that remedy. To the contrary, in a different context, the Court has recognized that "when prison administrators thwart inmates from taking advantage of a grievance process," "such interference . . . renders the administrative process unavailable." *Ross v. Blake*, 578 U.S. 632, 644 (2016).

Petitioners, however, claim that the technical existence of the ARP "should be the end of the analysis." Pet. 18. They argue that courts cannot question whether "the political branches' preferred alternative remedy is less effective than an individual damages remedy." Pet. 19. They insist that the Fourth Circuit "misunderstood the relevant inquiry." Pet. 18-19.

To the contrary, the Fourth Circuit never questioned whether the ARP is "less effective" than a *Bivens* action; instead, it accepted that "[t]he system put in place by the executive has the capacity to provide relief to Fields." Pet. App. 17a. It also noted the government's attempt to dispute factually whether "Fields may have had access to and in fact did access some administrative remedies." Pet. App. 18a. The court decided only that, based on the allegations in the complaint, officials had rendered

the ARP entirely inoperable, such that it could not "provide any remedy" to Mr. Fields. Pet. App. 17a. Assuming the truth of those allegations at this stage, the Fourth Circuit properly concluded that the ARP does not counsel against a *Bivens* remedy; to the contrary, a *Bivens* remedy "secures the objectives of the wrongfully displaced remedial scheme." Pet. App. 18a.

2. Congressional Action.

Next, the Fourth Circuit considered whether congressional action suggests that Congress made an intentional choice not to create a remedial cause of action. In particular, the court noted that "the PLRA may counsel against extending *Bivens*" in many federal-prisoner cases. Pet. App. 19a. The Fourth Circuit has long "given great weight" to the PLRA and declined to recognize *Bivens* actions that would contradict the policies embodied in that law. Pet. App. 9a.

The Fourth Circuit recognized here, however, that the PLRA—enacted in 1996, years after the original *Bivens* trio of decisions—did not foreclose *Bivens* remedies entirely. Pet. App. 19a. That is significant because Congress enacted the PLRA against the backdrop of a widespread judicial assumption that *Bivens* actions would be available—including to federal prisoners, as recognized in *Carlson v. Green*, 446 U.S. 14 (1980); *see also Cleavinger v. Saxner*, 474 U.S. 193 (1985); *Farmer v. Brennan*, 511 U.S. 825 (1994).[2] And, as this Court has recognized, Congress

[2] The circuit courts at the time were in agreement on this, as well. *See Bulger v. United States Bureau of Prisons*, 65 F.3d 48 (5th Cir. 1995) (due process *Bivens* claim by prisoner); *Caraballo-*

expects its statutes to be read in conformity with this Court's precedents." *United States v. Wells*, 519 U.S. 482, 495 (1997).

Thus, when Congress passed the PLRA, *Bivens* claims brought by federal prisoners were common, and Congress created procedural requirements to "*reduce* prisoner litigation, not do away with it entirely." Pet. App. 21a (emphasis in original); *see also Jones v. Bock*, 549 U.S. 199, 204 (2007) (describing the PLRA as "a variety of reforms designed to filter out the bad claims and facilitate consideration of the good"). The PLRA served to control the flow of prisoner litigation, not eliminate it.

Importantly, the Fourth Circuit recognized that the combination of circumstances in this case precisely match the policies embodied in the PLRA. First, the text of the PLRA explicitly contemplates that prisoners will be able to bring lawsuits for physical injuries. *See* 42 U.S.C. § 1997e(e) ("No Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury or the commission of a sexual act."). This "physical injury requirement" perfectly describes the "egregious

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Sandoval v. Honsted, 35 F.3d 521 (11th Cir. 1994) (First Amendment and due process *Bivens* claims by prisoners); *Frazier v. Dubois*, 922 F.2d 560 (10th Cir. 1990) (First Amendment and due process *Bivens* claim by prisoner); *Cale v. Johnson*, 861 F.2d 943, 947 (6th Cir. 1988) (due process *Bivens* claim by prisoner), *abrogated on other grounds by Thaddeus–X v. Blatter*, 175 F.3d 378 (6th Cir. 1999) (en banc); *Wilkins v. May*, 872 F.2d 190, 195 (7th Cir. 1989) (due process *Bivens* claim by arrestee); *Lyons v. U.S. Marshalls*, 840 F.2d 202, 203 (3d Cir. 1988) (due process challenge to pretrial detainee's conditions of detention).

physical abuse with no imaginable penological benefit" at issue in this case. Pet. App. 12a.

On top of that, the PLRA also contemplates that prisoners will be able to bring lawsuits in federal court when prison officials intentionally deny them access to any alternative administrative remedy. *See* 42 U.S.C. § 1997e(a) ("No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."); *see Ross*, 578 U.S. at 644 ("[S]uch interference with an inmate's pursuit of relief renders the administrative process unavailable."). Again, this perfectly describes this case, in which officials "intentionally withheld the administrative remedies that the executive branch has implemented to redress such violations." Pet. App. 12a.

In response, petitioners argue that because the PLRA itself does not provide for a cause of action, courts should infer from Congress' "silence" that no such cause of action is permitted. Pet. 20. But as explained above, Congress did not need to create a cause of action through the PLRA, as one was already widely available at the time. Congress simply layered the PLRA on top of the existing legal landscape, adding rules and restrictions to existing causes of action like *Bivens*. As a result, in *Correctional Services Corp. v. Malesko*, 534 U.S. 61 (2001)—decided several years *after* the enactment of the PLRA—this Court continued to recognize that "[i]f a federal prisoner in a BOP facility alleges a constitutional deprivation, he may bring a *Bivens* claim against the offender individual officer." *Id.* at 71-72.

Finally, petitioners also invoke the Federal Prison Oversight Act ("FPOA"), Pet. 20, which was enacted on July 25, 2024—the very day the Fourth Circuit issued its opinion in this case. *See* Pub. L. No. 118-71, 138 Stat. 1492 (July 25, 2024).

As an initial matter, the FPOA can be ignored because it does not apply here. By its terms, the FPOA does not become effective until 90 days after "appropriations are made available to the Inspector General of the Department of Justice," which has not yet happened. *Id.* § 2(b), 138 Stat. 1501. As a result, the law simply is not relevant in this case.

But even in a future case where the FPOA is operative and the lower courts have the opportunity to consider it, petitioners overstate its impact. The law's primary effect is to enhance the Inspector General's existing authority to manage its agencies and "detect and deter fraud, waste, and abuse in Department programs and misconduct and misconduct by Department personnel"[3]—functions which the Inspector General has performed since 1989.[4] Enhancing that authority does not suggest an

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[3] *See History, Office of the Inspector General*, Dep't of Just. http://justice.gov/doj/office-inspector-general.

[4] For example, the FPOA specifies requirements for inspecting BOP facilities pursuant to the Inspector General's existing authority. *See* Pub. L. No. 118-71, § 2(a) (adding 5 U.S.C. § 413(e)). The Inspector General of the Department of Justice "shall conduct periodic inspections" that may be "announced or unannounced." *Id.* (adding §§ 413(e)(2)(A)(i), 413(e)(3)(A)(iii)). The Inspector General must issue reports on these inspections and the BOP must respond to those reports and include a corrective action plan. *Id.* (adding §§ 413(e)(2)(D), 413(e)(2)(F)(i)). Those reports and corrective action plans must be made public. *Id.* (adding § 413(e)(2)(F)(ii)). And the Inspector

intention to curtail *Bivens* actions. In fact, the Office of the Inspector General has comfortably existed alongside *Bivens* remedies for over thirty-five years.

Even the FPOA's establishment of an ombudsman, on which petitioners focus, merely adds to the authority of the Inspector General's office already contained in 5 U.S.C. § 413(d). The Ombudsman's only authority is to make recommendations, refer issues to other agencies, and monitor ongoing issues. Pub. L. No. 118-71, § 2(a) (adding 5 U.S.C. §§ 413(e)(3)(A), 413(e)(3)(D)). And, again, the Office of the Ombudsman has not yet been created, as no funds have been appropriated and the FPOA is not currently effective. Accordingly, it does not undermine the Fourth Circuit's careful decision.

3. Systemwide Consequences.

Finally, the Fourth Circuit considered whether extending *Bivens* to Mr. Fields' case would lead to "systemwide consequences." Pet. App. 11a. In its recent *Bivens* decisions, this Court has shown special concern for causes of action that threaten important policies, including in sensitive fields like national security or the border. *See Egbert*, 596 U.S. at 494 ("[W]e reaffirm that a *Bivens* cause of action may not lie where, as here, national security is at issue."); *Hernandez*, 589 U.S. at 113 ("Foreign policy and national security decisions are delicate, complex, and involve large elements of prophecy for which the Judiciary has neither aptitude, facilities, nor responsibility." (cleaned up)); *Ziglar v. Abbasi*, 582

General may take further action to monitor the BOP's compliance with corrective action plans. *Id.* (adding § 413(e)(2)(F)(iii)).

U.S. 120, 140, 149 (2017) (declining to authorize action challenging "high-level executive policy created in the wake of a major terrorist attack on American soil," but remanding the abuse claims against individual defendants). Neither national security, the border, nor any similar concerns are implicated here.

Following this Court's recent precedents, the Fourth Circuit's *Bivens* cases have additionally considered "organizational policies, administrative decisions, and economic concerns." Pet. App. 11a; *see Tate v. Harmon*, 54 F.4th 839, 841 (4th Cir. 2022) (rejecting claim implicating policies about "the temperature at which to keep cells, the level of cleanliness . . . the adequacy of toilet paper and toothbrushes, and the length and thickness of mattresses"); *Bulger*, 62 F.4th at 133 (rejecting claim requiring "[d]eterminations about the adequacy of a particular facility to meet the medical needs of an inmate"); *Mays v. Smith*, 70 F.4th 198, 206 (4th Cir. 2023) (rejecting claim implicating everyday "discipline, transfer, and employment").

This case threatens no such policies. Pet. App. 12a. The Fourth Circuit ensured its narrow decision would not affect the day-to-day work of federal prison officers in several ways. *Id.*

First, the court made clear that the cause of action concerns "only the individual conduct of rogue prison officers." Pet. App. 14a. Claims against "the BOP, the warden, and the other supervisory officials" have been dismissed. Pet. App. 12a.-13a. The court reiterated that Mr. Fields "cannot join supervisory officers under Rule 20" on remand. Pet. App. 13a; *see Ziglar*, 582 U.S. at 148 (rejecting claims that improperly challenged warden's "supervisory duties").

Second, the court tailored the cause of action to conduct "in clear violation of prison policy." Pet. App. 12a. BOP policy explicitly forbids the type of malicious assault that occurred in this case. *See* 28 C.F.R. § 552.20. Thus, Mr. Fields' claim is not a "vehicle for altering an entity's policy." *Ziglar*, 582 U.S. at 140. To the contrary, Mr. Fields' claim "constitutes an appropriate attempt to ensure *compliance* with the entity's policy." Pet. App. 15a (emphasis in original).

But that is not all. The Fourth Circuit's decision addresses only the unusual circumstance in which such "egregious physical abuse" is paired with the complete denial of access to the ARP. As the government conceded, that combination of circumstances is unprecedented; there is no case, in this Circuit or otherwise, where "the grievance process was withheld from the inmate" on top of this kind of extreme physical abuse. CA4 Oral Arg. at 30:53-31:51; *see* Pet. App. 18a ("As the government conceded at oral argument, no court (in this Circuit or otherwise) has ever before been presented with a case in which one of the allegations was that the grievance process was intentionally withheld from the inmate."). Accordingly, the narrow cause of action does not threaten systemwide consequences.

In response, petitioners contend that officers must "employ force and restrain prisoners" as they did in Mr. Fields' case "in the ordinary course of work." Pet. 21. The United States similarly argues that recognizing a cause of action here could lead front-line officers to "hesitate" when making the decision to use force "to ensure prison security and prisoner safety." SG Amicus 9. But this decision in no way limits an

officer's ability to "gain control of the inmate, to protect and ensure the safety of inmates, staff, and others, to prevent serious property damage and to ensure institution security and good order." 28 C.F.R. § 552.20. The BOP's policy proscribes gratuitous use of force—force unrelated to any imaginable penological purpose. *Id*. Thus, contrary to petitioners' contention, this decision does not address or affect "the ordinary course" of federal prison administration. Pet. 3. The circumstances at issue here—egregious uses of force for no conceivable penological purpose, combined with the denial of access to remedies—are simply not part of the ordinary course of prison administration.[5]

Petitioners also argue that allowing Mr. Fields' case to proceed would "open the door to a multitude" of excessive force cases. Pet. 11. To the contrary, as the government acknowledged below, the vicious and repeated physical abuse in this case was a "rare" instance of "extreme" misconduct. CA4 Oral Arg. at 27:30-35. In the panel's words, "[i]f the officers' conduct alleged here is a frequent occurrence in prisons across the country, it would be a telling indictment of the American carceral system." Pet. App. 12a. On top of that, the decision below does not apply where officials do not thwart all access to the ARP. Accordingly, fears of endless litigation are unfounded—again, in the nine months since *Fields* was issued, not once has it been applied to approve a

[5] Moreover, any uncertain cases at the boundaries are shielded by the defense of qualified immunity, which provides officers "breathing room" to make reasonable mistakes. *Ashcroft* v. *al-Kidd*, 563 U.S. 731, 743 (2011). This simply is not one of those cases.

cause of action.[6] The Fourth Circuit's narrow decision is correct.

II. The Fourth Circuit's Decision Does Not Implicate Any Circuit Split.

In addition to being correct, the Fourth Circuit's decision does not warrant review because it implicates no circuit split. *See* S. Ct. R. 10(a). Petitioners base their asserted circuit split on four court of appeals decisions that are easily distinguishable from this case.

Second Circuit. The Second Circuit's per curiam decision in *Edwards v. Gizzi*, 107 F.4th 81 (2d Cir. 2024), is fundamentally different. Unlike Mr. Fields, the plaintiff did not allege that the defendants subsequently "withheld the administrative remedies that the executive branch has implemented to redress such violations." Pet. App. 12a. The claim in *Edwards* thus would have failed in the Fourth Circuit, as well.

In addition, the decision in *Edwards* consists of three sentences that simply affirm, without explanation, the district court's holding that the plaintiff lacked a cause of action under *Bivens*. *Id.* at 82. Even apart from the lack of reasoning, the first of those sentences renders the decision irrelevant here: The plaintiff "sought damages from court-security officers and deputy U.S. marshals for using

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[6] The only case that even comes close is *Acuna v. Jastal*, No. 5:24-CT-03097, 2025 WL 1296215, at *3 (E.D.N.C. May 2, 2025), which cited *Fields* when it concluded, in a single sentence, that an Eighth Amendment excessive force claim was "not clearly frivolous" for purposes of initial PLRA screening. The court gave no view about whether, on the merits, a *Bivens* cause of action would be authorized.

excessive force while restraining him in a courtroom." *Id.* That claim presented a "doubly new *Bivens* context," *id.* at 85 (Park, J., concurring), that bears little resemblance to Mr. Fields' claim that prison guards subjected him to "egregious physical abuse with no imaginable penological benefit" and subsequently denied his access to remedies. Pet. 12a, 14a-15a.

Indeed, Judge Robinson expressly limited her *Edwards* concurrence to "this specific scenario" where the plaintiff asserted excessive force claims "based on how [court-security officers] responded to a public courtroom outburst." *Id.* at 88-89 (Robinson, J., concurring). And not a word of her opinion suggests even hypothetical agreement with petitioners' position here—as petitioners essentially conceded when they cited her concurrence solely for the proposition that this Court has never overruled *Bivens*. *See* Pet. 14.

Petitioners are left with only Judge Park's concurring opinion as even arguably supporting their position. But one brief paragraph in one judge's concurrence cannot create a circuit split.

In any event, Judge Park did not purport to address the circumstances of this case, either. He simply concluded that because the plaintiff alleged that the defendants "assaulted him in the course of their official duties," the FTCA provides an alternative remedy, foreclosing a cause of action under *Bivens*. *Id.* at 86 (Park, J., concurring). Judge Park's reasoning, moreover, is shaky at best given this Court's precedent finding it "'crystal clear' that Congress intended the FTCA and *Bivens* to serve as 'parallel' and 'complementary' sources of liability."

Malesko, 534 U.S. at 68 (citing *Carlson*, 446 U.S. at 19-20); *see also Egbert*, 596 U.S. at 524 n.7 (Sotomayor, J., concurring) (noting "[t]his Court does not endorse" the argument that the FTCA can serve as an alternative remedy for *Bivens* purposes).

Ninth Circuit. *Chambers v. Herrera*, 78 F.4th 1100 (9th Cir. 2023), also involved a plaintiff who "was aware of the [BOP's] grievance procedures *but chose not to use them*[.]" Pet. 16 (emphasis added); *see also Chambers*, 78 F.4th at 1108 ("[A]s [the plaintiff] concedes, he both was aware of the preexisting BOP prisoner grievance procedures and declined to use them."). The case does not present a circuit split for the same reason as *Edwards*—the Fourth Circuit does not permit a *Bivens* claim to proceed under those circumstances, either. *See* Pet. App. 10a, 16a-17a.

Tenth Circuit. *Silva v. United States*, 45 F.4th 1134 (10th Cir. 2022), has the same flaw. The plaintiff did not allege that the defendants thwarted his access to the ARP; his argument instead was that the ARP is not an alternative remedial scheme foreclosing *Bivens* relief because the ARP is regulatory in nature and not congressionally mandated. *See id.* at 1141. The Tenth Circuit rejected this argument, holding that the plaintiff's Eighth Amendment excessive force claim was "foreclosed by the *availability* of the BOP Administrative Remedy Program to address his complaint." *Silva*, 45 F.4th at 1142 (emphasis added). The Fourth Circuit agrees: an Eighth Amendment excessive force claim under *Bivens* is foreclosed if the plaintiff had access to the ARP. *See* Pet. App. 16a-17a; Mr. Fields' claim proceeded only because it was the "rare case" of egregiously excessive force where the

defendant prison guards intentionally "thwarted the inmate's access" to the ARP. Pet. App. 12a.

The Tenth Circuit recognized this distinction in *Rowland v. Matevousian*, 121 F.4th 1237 (10th Cir. 2024). The plaintiff in *Rowland* attempted to rely on the Fourth Circuit's decision below to support his argument that an alternative remedial program's existence is not enough on its own to counsel against a *Bivens* extension. The Tenth Circuit correctly rejected this argument, explaining that the Fourth Circuit held only that "the administrative remedial program was not enough because the prison officials withheld and deliberately thwarted the administrative remedies that the executive branch had implemented to redress such violations." *Id.* at 1244 n.3 (internal quotation marks omitted). Because the plaintiff in *Rowland* had "availed himself of the Administrative Remedy Program *twice*," the Fourth Circuit's decision below provided no help to him. *Id.*

Eleventh Circuit. Petitioners' final case is *Johnson v. Terry*, 119 F.4th 840 (11th Cir. 2024), which did not involve an Eighth Amendment excessive force claim at all. *See id.* at 852 (noting that the plaintiff abandoned his excessive force claim). Petitioners characterize *Johnson* as "launch[ing] a broadside at the Fourth Circuit's opinion," Pet. 16, but *Johnson*'s brief discussion of the decision below, *see* 119 F.4th at 850-51, is nothing more than dicta. The Eleventh Circuit simply criticized the Fourth Circuit's decision in a prefatory description of "*Bivens* Law Through the Years and Today," *id.* at 846, before proceeding to consider an entirely different question: whether the plaintiff's failure-to-protect and

deliberate indifference claims presented a new *Bivens* context, and if so, whether to extend *Bivens* to those specific claims, *id.* at 853-62.

Petitioners nonetheless assert that *Johnson* establishes a "methodological" split with the Fourth Circuit because the Eleventh Circuit rejected the plaintiff's argument that *Bivens* should extend to his failure-to-protect and deliberate indifference claims in light of his inability to access the ARP. *See* Pet. 16-17. Petitioners' attempt to create a split by conflating distinct *Bivens* contexts should be rejected. This Court has been clear that *Bivens* contexts must be defined and analyzed according to their own particular facts. *See, e.g.*, *Hernandez*, 589 U.S. at 103.

Here, the Fourth Circuit did not permit Mr. Fields' excessive force claim to proceed solely because the ARP was intentionally withheld from him. It also relied on the fact that Mr. Fields' claim involves "egregious physical abuse with no imaginable penological benefit" that violated prison policy. Pet. App. 12a, 13a-15a. The failure-to-protect and deliberate indifference claims in *Johnson*, by contrast, challenged medical care and housing decisions in ways that threatened systemwide prison policies. 119 F.4th at 844-46. Indeed, Johnson's failure-to-protect claim against the warden would be squarely foreclosed in the Fourth Circuit under *Bulger*. *See* 62 F.4th at 140-41; Pet. App. 13a-14a.

In sum, none of Petitioners' cited cases demonstrates a circuit split. In each case, the courts of appeals faithfully apply existing *Bivens* precedent to the factually unique cases that come before them. This Court's review is unwarranted.

III. The Decision Below Is Not Important.

In addition to not implicating a circuit split and being correct, the decision below does not present any important question worthy of the Court's review. *See* S. Ct. R. 10(c). The government previously conceded that the decision addresses a "rare case," Pet. App. 12a, and as explained above, *supra* pp. 7-9, petitioners argue otherwise only by misstating the Fourth Circuit's holding. Confirming the narrowness of the decision below, counsel has found no decision adjudicating a similar claim since the decision below was issued.

Meanwhile, a number of recent decisions have expressly distinguished *Fields* in the course of rejecting *Bivens* actions. For example, multiple lower courts have distinguished *Fields* in excessive force cases where the ARP was accessible. *See, e.g.*, *Martin*, 2025 WL 495369, at *5-6 (distinguishing *Fields* and rejecting *Bivens* remedy where prisoner did not allege prison officials intentionally thwarted his access to ARP); *Kornegay*, 2024 WL 5298779, at *5-7 (no *Bivens* remedy in new context where prisoner used ARP); *Jones v. Dir.*, No. 3:23-cv-249, 2024 WL 4206789, at *5-6 (E.D. Va. Sept. 16, 2024) (case presented new context and availability of ARP counseled against extending *Bivens*). These decisions are consistent with the government's acknowledgment at oral argument below that "if the court extended *Bivens*, it would be extending it to the narrow facts and circumstances of this case." CA4 Oral Arg. at 30:30-39. This Court's review is not warranted for a decision that has not been used to adjudicate any other claim since it was issued.

Petitioners also assert that the question of whether to recognize a *Bivens* action is "inherently important" because it "implicates separation-of-powers questions that go to the core of our constitutional framework." Pet. 27. This Court has rejected similar attempts to cast *Bivens* as automatically cert.-worthy before. *See* Pet. for Writ of Certiorari at 14, 31, *Henning v. Snowden*, No. 23-976 (Mar. 4, 2024) (urging review because "*Bivens* should be overruled altogether" and [t]he limits on *Bivens* reflect separation-of-powers principles that do not vary with the circuit in which a case arises"), *cert. denied*, 145 S. Ct. 137 (2024); Pet. for Writ of Certiorari at 2, *Ferreyra v. Hicks*, No. 23-324 (Sept. 22, 2023) (claiming the Fourth Circuit "casually" expanded *Bivens*), *cert. denied*, 144 S. Ct. 555 (2024). This case implicates no broader separation-of-powers concerns; and indeed, the Fourth Circuit carefully considered such concerns in line with the Court's precedent.

Finally, the United States wrongly claims that the decision below threatens "policies relating to the administration of prisons." SG Amicus 3. Tellingly, the government never even attempts to point to any legitimate policy the rogue officers' actions were—or could possibly be—in service of. To the contrary, as the Fourth Circuit recognized, the alleged misconduct was in "clear violation of prison policy." Pet. App. 12a. That decision does not merit review.

IV. Summary Reversal Is Not Warranted.

This Court should also reject the United States' request for summary reversal. SG Amicus 16. Summary reversal is an "extraordinary remedy." *Major League Baseball Players Ass'n v. Garvey,* 532

U.S. 504, 512-513 (2001) (Stevens, J., dissenting); *see Office of Personnel Mgmt. v. Richmond*, 496 U.S. 414, 422 (1990) ("Summary reversals of courts of appeals are unusual under any circumstances"). It requires this Court to decide a case without the benefit of full briefing and argument. *See Montana v. Hall*, 481 U.S. 400, 407 (1987) (Marshall, J., dissenting). And it departs from this Court's traditional role in resolving important questions of law and maintaining uniformity in the lower courts, rather than merely correcting alleged errors. *See* S. Shapiro, K. Geller, T. Bishop, E. Hartnett, & D. Himmelfarb, *Supreme Court Practice* § 5.12(c)(3) (10th ed. 2013) ("[E]rror correction . . . is outside the mainstream of the Court's functions.").

The standard for summary reversal is accordingly high. It is a "rare disposition, usually reserved by this Court for situations in which 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).

This case falls far short that high bar. As discussed above, the Fourth Circuit's decision is not clearly in error—to the contrary, it carefully applied this Court's instructions in novel factual circumstances. No court, including the Fourth Circuit, has construed the decision below to apply beyond these limited circumstances.

Notably, the United States fails to cite a single case where this Court summarily reversed a *Bivens* decision issued by a court of appeals. Instead, the United States cites just two case arising in vastly different contexts. In the first, *Calcutt v. Fed. Deposit Ins. Corp.*, 598 U.S. 623 (2023), the Sixth Circuit

determined that the Federal Deposit Insurance Corporation ("FDIC") made two legal errors in adjudicating the petitioner's case, but then affirmed the FDIC's sanctions on grounds other than those invoked by the agency. *Id.* at 624. Meanwhile, in *Schweiker*, the Second Circuit estopped the Social Security Administration from requiring a claimant's compliance with its own regulations. 450 U.S. at 788-90.

This case bears no resemblance to either case cited by the United States, and it does not come close to meeting the exceedingly high threshold for summary reversal. This Court should reject the United States' request.

* * *

At bottom, petitioners' disagreement is not with the decision below, but rather with *Bivens* itself. The petition explicitly requests that the Court grant the case to "reconsider *Bivens*" altogether. Pet. 13. Petitioners are far from the first defendants to request that extraordinary step. *See* Pet. for Writ of Certiorari at I, *Egbert*, No. 21-147 (July 30, 2021) (seeking review of question 3: "[w]hether this Court should reconsider *Bivens*"), *cert. granted in part*, 142 S. Ct. 457 (2021) (limiting review to questions 1 and 2); Pet. for Writ of Certiorari at 31, *Henning*, No. 23-976 (urging review because "*Bivens* should be overruled altogether"), *cert. denied* 145 S. Ct. 137 (2024). This Court has specifically declined to overturn *Bivens* in several recent cases. *See Ziglar*, 582 U.S. at 134 (noting that the opinion is "not intended to cast doubt on the continued force, or even the necessity, of *Bivens* in the search-and-seizure context," and citing "powerful reasons to retain it"); *Egbert*, 596 U.S. at

502 ("[T]o decide the case before us, we need not reconsider *Bivens* itself."). There is no reason to change course here.

CONCLUSION

For the foregoing reasons, the Court should deny the petition.

Respectfully submitted,

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