No. 25-1250

In the Supreme Court of the United States

KARINA SIGALOVSKAYA, PETITIONER

v.

ABIGAIL BRADEN, INDIVIDUALLY AND IN HER OFFICIAL CAPACITY AS A SPECIAL AGENT FOR THE DEPARTMENT OF HOMELAND SECURITY

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

BRIEF FOR THE RESPONDENT IN OPPOSITION

D. JOHN SAUER
Solicitor General
Counsel of Record
BRETT A. SHUMATE
Assistant Attorney General
MELISSA N. PATTERSON
JAYNIE LILLEY
Attorneys

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

QUESTION PRESENTED

Whether the civil damages remedy under *Bivens* v. *Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), is available for a claim that an officer violated the Fourth Amendment by allegedly fabricating evidence as a pretext for taking someone into custody.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-31a) is reported at 149 F.4th 226. The order of the district court (Pet. App. 32a-50a) is available at 2023 WL 6385761.

JURISDICTION

The judgment of the court of appeals was entered on August 27, 2025. The court of appeals denied rehearing (Pet. App. 51a-52a) on December 2, 2025. On February 20, 2026, Justice Sotomayor extended the time within which to file a petition for a writ of certiorari to and including May 1, 2026, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. On February 11, 2013—following an eight-month investigation into child-pornography possession—Department of Homeland Security (DHS) agents employed within the Child Exploitation Group of the Homeland Security Investigations unit arrived at petitioner's residence to execute an arrest warrant for petitioner's husband, Evidal Ifraimov. Pet. App 33a. According to petitioner's operative complaint, Special Agents Luann Walter, Megan Buckley, and Robert Mancene identified themselves as "police" and forced entry without petitioner's consent after she answered the door. *Ibid.*; see Am. Compl. ¶¶ 10-12. After petitioner informed the agents that Ifraimov was not home, the agents searched petitioner's apartment. Pet. App. 33a.

As relevant here, petitioner alleges that respondent, former DHS Special Agent Abigail Braden, showed petitioner "two redacted, non-pornographic photographs on a cell phone which depicted [petitioner's] young daughter." Pet. App. 34a. Petitioner responded that she recognized the girl as her daughter, that the photograph appeared to have been taken inside her apartment, and that she had not taken the photograph. *Ibid.* Petitioner further alleges that Agent Braden fabricated evidence against her by falsely attesting that petitioner confessed to taking a pornographic photograph of her daughter and to involving her young son in the photography and that the agents made other false statements. *Ibid.* Petitioner alleges that the agents forwarded the fabricated evidence to the United States Attorney's Office for the Eastern District of New York, resulting in petitioner's arrest on charges of sexual exploitation of children and activities relating to material involving the sexual exploitation of minors. *Ibid.*

Petitioner was denied bail and held in custody for three weeks. Pet. App. 35a. The charges against her were then dismissed on a motion by the government, and she was released. *Ibid.* She alleges that she continued to be separated from her children for another three months because of a petition filed by the New York State Administration for Children Services as a result of "the unlawful and perjurious conduct" of Agent Braden and that she was placed on the New York State Sex Offender Registry. *Ibid.* (quoting Am. Compl. ¶ 79).

Ifraimov pleaded guilty to sexual exploitation of a child; he was sentenced to 25 years in prison and a lifetime of supervised release. See 13-cr-137 D. Ct. Doc. 35, at 1-3 (E.D.N.Y. June 17, 2014).

2. Petitioner sued respondent, as well as Agents Walter, Buckley, and Mancene, in the United States District Court for the Eastern District of New York. Pet. App. 32a. Petitioner sought damages from the agents under *Bivens* v. *Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), claiming false arrest, malicious prosecution, abuse of process, and the denial of a fair trial. Pet. App. 4a.

The district court granted in part and denied in part the agents' motion for summary judgment. See D. Ct. Doc. 52 (Mar. 15, 2019). The court allowed the false-arrest and malicious-prosecution claims against respondent to proceed, as well as the false-arrest claim against Agent Mancene on the theory that he was potentially liable for failing to intervene. *Id.* at 9-16. The court otherwise granted the agents' motion and dismissed the remaining claims against Agents Buckley and Walter. *Id.* at 16-17.

Following this Court's decision in *Egbert* v. *Boule*, 596 U.S. 482 (2022), the district court granted judgment on the pleadings to respondent and Agent Mancene on petitioner's remaining claims. Pet. App. 32a-50a. The court first found that petitioner's malicious-prosecution and failure-to-intervene claims are "new contexts because *Bivens* did not involve" either claim. *Id.* at 42a-43a. And while petitioner's "false arrest claim has parallels to *Bivens*, it too presents a new context" for two reasons. *Id.* at 43a. First, "the claim involves a new category of defendants"—*i.e.*, DHS special agents. *Ibid.* Second, "the focus of [petitioner's] complaint is the fabrication of evidence that led to her arrest and prolonged detention, not an illegal entry into her home." *Ibid.* The court noted that the operative complaint "contains allegations concerning the [agents'] search of [petitioner's] home, but she does not bring a cause of action based on those facts." *Id.* at 43a n.4. The court also explained that other courts had "recognized that claims involving the fabrication of evidence present a new *Bivens* context." *Id.* at 43a-44a.

The district court identified multiple factors that preclude an extension of *Bivens* here. It concluded that applicable DHS regulations, which are the same as those at issue in *Egbert*, provide alternative remedies that foreclose petitioner's *Bivens* claims. Pet. App. 46a. The court pointed to other "remedial structures created by Congress"—including those available through Office of Inspector General processes, DHS's Office of Civil Rights and Civil Liberties, and DHS's Office of Professional Responsibility—as also foreclosing a *Bivens* remedy. *Id.* at 47a. The court further reasoned that, despite providing statutory mechanisms of recovery for other contexts, Congress's failure to "create[] a cause of action for an arrest and prosecution based upon false evidence when a conviction did not result" counsels against extending a *Bivens* remedy. *Id.* at 48a. Finally, the court emphasized its inability "to 'predict the systemwide consequences of recognizing a cause of action under *Bivens'* for a false arrest and malicious prosecution claim premised on fabrication of evidence by [Homeland Security Investigations] special agents," and it found that such uncertainty counsels against expanding *Bivens*. *Ibid.* (quoting *Egbert*, 596 U.S. at 493).

3. Petitioner appealed only the "dismissal of her false arrest and malicious prosecution claims." Pet. App. 4a. A divided panel of the Second Circuit issued a one-paragraph per curiam order affirming the judgment. *Ibid.* Each member of the panel wrote separately.

Judge Lee concurred in the judgment. Pet. App. 5a-24a. She noted that petitioner had "concede[d] that her malicious prosecution claim arises under a new *Bivens* context." *Id.* at 13a. As to the false-arrest claim, Judge Lee explained that petitioner's "complaint makes it clear that what precipitated her arrest, and what is at the crux of her false arrest claim, is the allegation that Special Agent Braden falsely claimed that [petitioner] had confessed to taking the purportedly pornographic pictures of her daughter, and then forwarded the fabricated evidence to the U.S. Attorney's Office." *Id.* at 18a. While petitioner's complaint includes "allegations of an unlawful search and seizure," those allegations have been "levied against the other special agents, but not Special Agent Braden." *Id.* at 17a. Thus, "unlike the plaintiff in *Bivens*, [petitioner's] false arrest claim centers on the allegation of fabricated evidence, rather than a warrantless search or seizure offending 'primarily rights of privacy.'" *Id.* at 18a (quoting *Bivens*, 403 U.S. at 390). Judge Lee also recognized that other "circuits have found that claims involving the fabrication of evidence present a new *Bivens* context." *Id.* at 19a; see *id.* at 19a-20a (collecting cases). And she determined that special factors counsel against extending *Bivens*, including that "*Congress* is better suited to weigh the costs and benefits of allowing a damages action to proceed." *Id.* at 24a (quoting *Egbert*, 596 U.S. at 496); see *id.* at 20a-24a.

Judge Pérez also concurred in the judgment. Pet. App. 25a-27a. In her view, petitioner's "false-arrest claim * * * likely presents no new *Bivens* context," but that question need not be considered because "an alternative remedial scheme 'alone' is a 'special factor' under the Supreme Court's *Bivens* jurisprudence that terminates the action." *Id.* at 25a (quoting *Egbert*, 596 U.S. at 493). And she reasoned that the remedial scheme at issue here is "the very same one that the Supreme Court found independently dispositive in *Egbert*." *Ibid.* (discussing 8 C.F.R. 287.10).

Judge Lynch concurred in the judgment affirming the dismissal of petitioner's malicious-prosecution claim, but he dissented on the grounds that petitioner's "false arrest claim does not present a new context." Pet. App. 28a; see *id.* at 28a-31a. He saw "no meaningful difference between [petitioner's] false arrest claim and the unreasonable search and seizure claim in *Bivens* because just like the plaintiff in *Bivens*, [petitioner] alleges that her arrest was effectuated 'without probable cause' in violation of the Fourth Amendment." *Id.* at 28a (citation omitted). In his view, it is "of no moment" that "the lack of probable cause in this case stemmed from [the agents'] alleged fabrication of evidence whereas the lack of probable cause in *Bivens* did not." *Ibid.*

4. The court of appeals denied petitioner's petition for rehearing en banc. Pet. App. 51a-52a.

ARGUMENT

Petitioner contends (Pet. 20-27) that the court of appeals should have recognized a cause of action under *Bivens* v. *Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), for her Fourth Amendment false-arrest claim against respondent based on the alleged fabrication of evidence.[1] The court correctly rejected petitioner's request to extend *Bivens*, and its decision does not conflict with any decision of this Court or of any post-*Egbert* decision of another court of appeals. This Court has declined to review similar questions. See *Mohamud* v. *Weyker*, 146 S. Ct. 1781 (2026) (No. 25-760); *Mohamud* v. *Weyker*, 142 S. Ct. 2833 (2022) (No. 21-187); *Cantú* v. *Moody*, 590 U.S. 992 (2020) (No. 19-1033). The same result is warranted here.

1. The court of appeals' decision is correct.

a. "Constitutional rights do not typically come with a built-in cause of action to allow for private enforcement in courts." *DeVillier* v. *Texas*, 601 U.S. 285, 291 (2024). "Instead, constitutional rights are generally invoked defensively in cases arising under other sources of law, or asserted offensively pursuant to an independent cause of action designed for that purpose." *Ibid.* Such rights of action are ordinarily created through statutes enacted by Congress. See, *e.g.*, 42 U.S.C. 1983.

In *Bivens*, this Court created a private right of action for damages against federal narcotics agents who allegedly violated the Fourth Amendment by arresting the

[1] The petition in this Court does not concern petitioner's malicious-prosecution claim, see Pet. 9 n.2, nor her claims against any other defendant besides Agent Braden, see Pet. ii.

plaintiff in his house without a warrant. See 403 U.S. at 397. The agents in that case allegedly "manacled [the plaintiff] in front of his wife and children," "threatened to arrest the entire family," "searched the apartment from stem to stern," and later "subjected [the plaintiff] to a visual strip search." *Id.* at 389. In two subsequent cases, this Court extended the *Bivens* remedy by creating rights of action for a former congressional staffer's Fifth Amendment equal-protection claim alleging discrimination based on sex, see *Davis* v. *Passman*, 442 U.S. 228, 230-231 (1979), and for a prisoner's Eighth Amendment claim alleging deliberate indifference by prison staff to a medical emergency, see *Carlson* v. *Green*, 446 U.S. 14, 18-23 (1980).

Since then, this Court has come to recognize that "judicially created causes of action offend the separation of powers in almost every circumstance." *Cisco Systems, Inc.* v. *Doe*, 146 S. Ct. 1882, 1891 (2026); see *Egbert* v. *Boule*, 596 U.S. 482, 491 (2022); *Alexander* v. *Sandoval*, 532 U.S. 275, 286 (2001). "At bottom, creating a cause of action is a legislative endeavor." *Egbert*, 596 U.S. at 491. The Court has accordingly described the creation of a *Bivens* action as "a disfavored judicial activity" and an "extraordinary act that places great stress on the separation of powers." *Id.* at 491, 497 n.3 (citations omitted). In the 46 years since *Carlson*, the Court has consistently rejected every proposed *Bivens* action that it has considered. See *Goldey* v. *Fields*, 606 U.S. 942, 944-945 (2025) (per curiam); *Egbert*, 596 U.S. at 493-494, 498-499; *Hernández* v. *Mesa*, 589 U.S. 93, 113-114 (2020); *Ziglar* v. *Abbasi*, 582 U.S. 120, 145-146 (2017); *Minneci* v. *Pollard*, 565 U.S. 118, 131 (2012); *Wilkie* v. *Robbins*, 551 U.S. 537, 562 (2007); *Correctional Services Corp.* v. *Malesko*, 534 U.S. 61, 74 (2001); *FDIC* v. *Meyer*, 510 U.S. 471, 486 (1994); *Schweiker* v. *Chilicky*, 487 U.S.

412, 425 (1988); *United States* v. *Stanley*, 483 U.S. 669, 678 (1987); *Bush* v. *Lucas*, 462 U.S. 367, 390 (1983); *Chappell* v. *Wallace*, 462 U.S. 296, 304 (1983).

This Court has applied a two-step test to decide whether to allow a *Bivens* claim to proceed. See *Egbert*, 596 U.S. at 492. The Court first asks whether the case presents "a new *Bivens* context"—*i.e.*, whether the case "meaningfully differ[s] from the three cases" in which the Court has recognized a *Bivens* remedy. *Ibid.* (brackets and citation omitted). "A case might differ in a meaningful way" on account of any of various kinds of alterations in its circumstances, such as "the rank of the officers involved; the constitutional right at issue; the generality or specificity of the official action; the extent of judicial guidance as to how an officer should respond to the problem or emergency to be confronted; the statutory or other legal mandate under which the officer was operating; the risk of disruptive intrusion by the Judiciary into the functioning of other branches"—or from the presence of other "special factors that previous *Bivens* cases did not consider." *Abbasi*, 582 U.S. at 139-140. In other words, "the new-context inquiry is easily satisfied." *Id.* at 149. A case presents a new context even if it differs from earlier *Bivens* cases in "small" ways, because "even a modest extension is still an extension." *Id.* at 147, 149.

If a case arises in a new *Bivens* context, the Court asks whether "'special factors'" indicate that courts are "at least arguably less equipped than Congress" to weigh the costs and benefits of a damages remedy. *Egbert*, 596 U.S. at 492 (citation omitted). "If there is even a single 'reason to pause before applying *Bivens* in a new context,' a court may not recognize a *Bivens* remedy." *Ibid.* (citation omitted).

b. Under that framework, the court of appeals correctly declined to recognize a *Bivens* cause of action in this case. At this stage, petitioner does not appear to dispute that, if her false-arrest claim arises in a new context, special factors would counsel against extending *Bivens*. Rather, petitioner contends that the court of appeals erred in holding that her false-arrest claim arises in a new context. See Pet. 20-27.

On that question, this case arises in a meaningfully different context from *Bivens* because petitioner's false-arrest claim is based on alleged fabrication of evidence, "not in any of the allegations surrounding an unlawful search and seizure in her home." Pet. App. 20a (Lee, J., concurring). As Judge Lee observed, petitioner's "complaint charges the other special agents—not the one [*i.e.*, respondent, Agent Braden] with whom [petitioner's] false arrest claim remains potentially viable—with unlawfully entering and searching her home, and separating her from her children." *Id.* at 18a; see *id.* at 17a-18a (discussing Am. Compl. ¶¶ 12-14). Rather, petitioner's "complaint makes it clear that * * * what is at the crux of her false arrest claim" is "the allegation that Special Agent Braden falsely claimed that [petitioner] had confessed to taking the purportedly pornographic pictures of her daughter, and then forwarded the fabricated evidence to the U.S. Attorney's Office." *Id.* at 18a (citing Am. Compl. ¶¶ 46-49, 52); see *id.* at 19a n.3 (observing that petitioner did not "meaningfully dispute" that she did not "'bring a cause of action based upon'" the search of her home) (citation omitted). In sum, though cast in Fourth Amendment terms, petitioner's only remaining claim against respondent looks nothing like the Fourth Amendment claim in *Bivens* itself, which involved a claim against federal agents "for handcuffing a man in his own home without a warrant." *Abbasi*, 582 U.S. at 140 (characterizing *Bivens*); see *Bivens*, 403 U.S. at 389.

That mismatch between petitioner's claim and *Bivens* means that petitioner's claim involves "a different part of police work" than was at issue in *Bivens*. *Farah* v. *Weyker*, 926 F.3d 492, 499 (8th Cir. 2019); see *Ahmed* v. *Weyker*, 984 F.3d 564, 568 (8th Cir. 2020), cert. denied, 142 S. Ct. 2833 (2022). Petitioner's allegations about fabrication of evidence concern "information-gathering and case-building activities," as distinct from "the apprehension, detention, and physical searches at issue in *Bivens*." *Farah*, 926 F.3d at 499; accord *Sheikh* v. *U.S. Dep't of Homeland Sec.*, 106 F.4th 918, 925 (9th Cir. 2024) (plaintiff's allegations that federal officers "'procured and submitted false evidence * * * to have her indicted on fabricated charges'" presented "distinctly different misconduct than that alleged in *Bivens*"); *Xi* v. *Haugen*, 68 F.4th 824, 834 (3rd Cir. 2023) (similar). That petitioner's claim involves different police activities than *Bivens* is underscored by the "legal mandate under which [respondent] was operating." *Abbasi*, 582 U.S. at 140. At the time of the alleged events, respondent was acting as a Special Agent within the Child Exploitation Group of DHS's Homeland Security Investigations unit—DHS's "principal investigative body," which "operates both nationally *and* internationally," Pet. App. 21a (Lee, J., concurring) (discussing special factors); see *id.* at 4a, 33a—not participating in the enforcement of federal drug laws, which was at issue in *Bivens*, 403 U.S. at 389.

The nature of petitioner's claim also means that it involves a different "mechanism of injury" than was at issue in *Bivens*. *Farah*, 926 F.3d at 499. The core of petitioner's allegations against respondent are that respondent "falsely claimed that [petitioner] had confessed to taking the purportedly pornographic pictures of her daughter," that the allegedly fabricated evidence was "forwarded * * * to the U.S. Attorney's Office," and that it resulted in her arrest and prolonged detention. Pet. App. 18a (Lee, J., concurring). That "indirect mechanism of injury bears little resemblance to the straightforward claims from *Bivens*," in which the plaintiff's injuries of "'humiliation, embarrassment, and mental suffering'" were more "directly caused by the officers' conduct." *Farah*, 926 F.3d at 499 (quoting *Bivens*, 403 U.S. at 389-390); see *Ahmed*, 984 F.3d at 569; *Sheikh*, 106 F.4th at 925.

Moreover, Fourth Amendment claims based on the fabrication of evidence pose a greater "risk of disruptive intrusion by the Judiciary into the functioning of other branches" than did the claims in *Bivens*. *Abbasi*, 582 U.S. at 140. In *Bivens*, the claims did not require a court to evaluate the veracity of evidence presented to a prosecutor or used in a judicial proceeding. That is not the case here, where "the crux of [petitioner's] false arrest claim" is the allegation that respondent fabricated evidence that was forwarded to the U.S. Attorney's Office and that such actions "resulted in [petitioner's] arrest." Pet. App. 18a (Lee, J., concurring). Petitioner was also "arraigned" before a magistrate judge and "denied bail," presumably due, at least in part, to the allegedly fabricated statements. See *id.* at 35a (district court opinion); see *id.* at 34a-35a.

Evaluating fabrication-of-evidence claims thus involves "[p]robing the causal chain" and "delving into the evidence before numerous decisionmakers," *Farah*, 926 F.3d at 499, while "[n]o comparable inquiry was in play in *Bivens*," *Ahmed*, 984 F.3d at 570. That risks "intruding on the investigatory and prosecutorial functions of the executive branch." *Annappareddy* v. *Pascale*, 996

F.3d 120, 136 (4th Cir. 2021). It also risks the imposition of personal liability for officers' communications to prosecutors and judicial officers, cf. *Egbert*, 596 U.S. at 499 (extending *Bivens* heightens the "risk that fear of personal monetary liability and harassing litigation will unduly inhibit officials in the discharge of their duties") (citation omitted)—a risk that is magnified because fabrication-of-evidence allegations are "easy to allege and hard to disprove," *ibid.* (quoting *Crawford-El* v. *Britton*, 523 U.S. 574, 584-585 (1998)). Such allegations inherently depend on he-said, she-said contentions about whether petitioner did in fact make certain incriminating statements, threatening "to set off broad-ranging discovery in which there is often no clear end to the relevant evidence." *Ibid.* (citation omitted).

c. Petitioner's arguments to the contrary are unpersuasive.

Petitioner asserts (Pet. 21-22) that *Bivens* involved the same variety of false-arrest claim because the officers in that case lacked probable cause for the arrest. But, as explained, claims involving fabrication of evidence necessarily involve different law-enforcement activities and different injuries from those in *Bivens*. See pp. 11-12, *supra*. And such differences have been met with varying judicial guidance, which "differs across various kinds of Fourth Amendment violations." *Cantú* v. *Moody*, 933 F.3d 414, 423 (5th Cir. 2019) (declining to conflate the Fourth Amendment violation in *Bivens* with a claim of falsifying evidence to "induce prosecutors to charge" the plaintiff), cert. denied, 590 U.S. 992 (2020). Those differences compel the conclusion that petitioner's claim involves a new *Bivens* context because, even if they were "small" differences, "the new-context inquiry is easily satisfied." *Abbasi*, 582 U.S. at 149.

Petitioner also contends (Pet. 21) that there are no "'meaningful' differences" between her claim and *Bivens* because both instances involve Fourth Amendment claims against "low-level law enforcement agents performing routine, domestic criminal investigations." But this Court has rejected such a sweeping reading of *Bivens*. Rather, "[a] claim may arise in a new context even if it is based on the same constitutional provision as a claim in a case in which a damages remedy was previously recognized." *Hernández*, 589 U.S. at 103. In *Hernández*, this Court held that a Fourth Amendment claim involving a cross-border shooting by a rank-and-file law-enforcement officer presented a new context. *Ibid.*; see *id.* at 96-97. In *Abbasi*, the Court did not treat the "'detention policy claims,'" including a Fourth Amendment claim that prison officials subjected pretrial detainees to "frequent strip searches," as sufficiently similar to the Fourth Amendment claim in *Bivens*. 582 U.S. at 138; see *id.* at 138-140. And in *Egbert*, the Fourth Amendment claim involved "similar allegations of excessive force" and arguably "'almost parallel circumstances' or a similar 'mechanism of injury'" to *Bivens*, but the court of appeals in that case "conceded" that the claim presented a new context, and this Court held that such "superficial similarities are not enough to support the judicial creation of a cause of action." 596 U.S. at 494-495 (citation omitted). Indeed, this Court has never found that any other Fourth Amendment claim arose in the same context as the claim in *Bivens*.

2. There is no conflict among the courts of appeals that would warrant this Court's review of this case.

a. Petitioner asserts (Pet. 11-14) that the courts of appeals are divided over what constitutes a meaningful difference in the new-context inquiry. When expressed at that high level of generality, it can be said that there are disagreements in the lower courts about what contexts are meaningfully different from *Bivens*. See, *e.g.*, Pet. at 12-15, *Herzon* v. *Arias*, No. 26-111 (filed July 23, 2026) (*Herzon* Pet.) (describing conflicts in the courts of appeals about whether *Bivens* encompasses excessive-force claims arising out of the execution of arrest warrants outside the home). But petitioner signally fails to identify any division among the courts of appeals on the actual issue in this case: whether *Bivens* extends to a Fourth Amendment claim grounded in the fabrication of evidence. Indeed, petitioner identifies no case in which a court of appeals, after *Abbasi* and *Egbert*, has recognized a *Bivens* remedy on facts comparable to those of this case.

To the contrary, as Judge Lee explained, other courts of appeals have, post-*Abbasi* and post-*Egbert*, repeatedly *declined* to permit a *Bivens* remedy for claims based on allegations that defendants fabricated evidence. See Pet. App. 19a (citing cases); *Quinones-Pimentel* v. *Cannon*, 85 F.4th 63, 71 (1st Cir. 2023) (Fourth Amendment claims alleging fabricated evidence), cert. denied, 145 S. Ct. 172 (2024); *Xi*, 68 F.4th at 834-835 (Fourth Amendment claims alleging false statements and material omissions); *Annappareddy*, 996 F.3d at 135 (Fourth Amendment claims alleging false evidence); *Cantú*, 933 F.3d at 421-424 (Fourth Amendment claim alleging fabricated evidence); *Ahmed*, 984 F.3d at 568-570 (Fourth Amendment false-arrest claim based on fabricated facts); *Farah*, 926 F.3d at 497-499 (Fourth Amendment claims based on false information provided to other actors); *Sheikh*, 106 F.4th at 925 (Fourth Amendment claim alleging fabrication of evidence).[2] The decision below is thus consistent with "the weight of consensus" among the courts of appeals. *Sheikh*, 106 F.4th at 925-926.

b. Petitioner also contends that the courts of appeals are divided over the question whether "an [a]lternative [r]emedy [i]ndependently [c]reates a [n]ew *Bivens* [c]ontext." Pet. 15; see Pet. i (presenting the question "[w]hether the availability of an alternative remedy independently forecloses a *Bivens* claim that does not otherwise meaningfully differ from *Bivens* itself"); Pet. 15-18. That contention fails for two reasons.

First, that question is not presented here. As explained, petitioner's Fourth Amendment claim *is* meaningfully different from the claims in *Bivens* itself for multiple reasons. See pp. 10-13, *supra*. The district court did not have occasion to address whether an administrative scheme alone would distinguish this case from *Bivens*. And when it did discuss alternative remedies, it did so only when considering whether special factors counsel hesitation, see Pet. App. 46a-48a, and only as one of multiple special factors, see *id.* at 46a-50a. Nor did the court of appeals address this point in its per

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[2] The court in *Greenpoint Tactical Income Fund LLC* v. *Pettigrew*, 38 F.4th 555 (7th Cir. 2022), suggested that "*Bivens* claims based on fabricated warrant affidavits and/or grand jury testimony" remained viable after *Abbasi*. *Id.* at 564. But the Seventh Circuit made clear that its decision in that case to affirm the district court was based "on different grounds" than the application of the two-step *Bivens* framework. *Id.* at 558. Because the court was affirming the district court's dismissal on grounds of absolute and qualified immunity, it expressly noted that it was not "wrestling to the ground the effects of *Abbasi*" on previous cases that had allowed *Bivens* claims based on the fabrication of evidence. *Id.* at 565; see *id.* at 558 (explaining affirmance on immunity grounds "[e]ven assuming that *Bivens* can reach the Fourth Amendment violations alleged here").

curiam opinion. See *id.* at 4a. Rather, whether alternative remedies could alone preclude relief was raised only in Judge Pérez's separate concurrence and only as a "'special factor'"; Judge Pérez believed that the court of appeals "need not consider" whether petitioner's false-arrest claim presents a "new *Bivens* context." *Id.* at 25a (Pérez, J., concurring) (citation omitted).

Second, even if the question were presented here, petitioner points to no court of appeals case holding that alternative remedies are independently sufficient to foreclose a Fourth Amendment *Bivens* claim as part of the new-context inquiry. Rather, petitioner's cited cases addressing Fourth Amendment claims (Pet. 15-17) indicate that the First Circuit has rejected such a position, see *Arias* v. *Herzon*, 150 F.4th 27, 40-47 (1st Cir. 2025), petition for cert. pending, No. 26-111 (filed July 23, 2026), and that the Fifth Circuit considered administrative remedies as one of several factors that placed a claim in a new context, see *Hernandez* v. *Causey*, 124 F.4th 325, 333-334 (5th Cir. 2024), cert. denied, 145 S. Ct. 1930 (2025).

Petitioner's cited cases otherwise concern whether the Bureau of Prisons' Administrative Remedy Program—a factor not considered in *Carlson* v. *Green*, 446 U.S. 14 (1980), in which the Court recognized a *Bivens* remedy for certain Eighth Amendment claims—creates a new context for a *Carlson* claim. See Pet. 15-18 (citing *Muniz* v. *United States*, 149 F.4th 256 (3d Cir. 2025); *Kalu* v. *Spaulding*, 113 F.4th 311 (3d Cir. 2024); *Schwartz* v. *D. Miller, P.A.*, 153 F.4th 918 (9th Cir. 2025); *Watanabe* v. *Derr*, 115 F.4th 1034 (9th Cir. 2025), cert. granted, No. 25-417 (June 22, 2026); *Johnson* v. *Terry*, 119 F.4th 840 (11th Cir. 2024), cert. denied, 146 S. Ct. 101 (2025)). This Court has granted certiorari on a related question in *Nielsen* v. *Watanabe*, No. 25-417 (oral argument scheduled for Nov. 9, 2026). But that question is not squarely presented here, including for the reason just explained—*i.e.*, that the courts below did not address whether an alternative remedial scheme places petitioner's claim in a new *Bivens* context. See pp. 16-17, *supra*. There is accordingly no need to hold this petition pending the Court's decision in *Nielsen*.[3]

3. Contrary to petitioner's assertion (Pet. 28), this case is a poor vehicle for addressing the questions presented. As an initial matter, there is no controlling rationale for the decision below. While the court of appeals correctly declined to extend *Bivens* to petitioner's false-arrest claim, the two judges who reached that conclusion did not agree on a governing rationale. See Pet. App. 5a-24a (Lee, J., concurring) (concluding both that petitioner's claim arises in a new context and that special factors counsel against extending *Bivens*); *id.* at 25a-27a (Pérez, J., concurring) (concluding only that special factors counsel against extending *Bivens*); see also *id.* at 28a-31a (Lynch, J., dissenting) (concluding that petitioner's claim does not arise in a new context and finding no need to address the special-factors anal-

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[3] That distinguishes this case from *Herzon* v. *Arias*, in which the pending petition for a writ of certiorari presents the question whether *Bivens* should be extended to a Fourth Amendment excessive-force claim arising out of the execution of an arrest warrant outside the home. There, the petition, filed by this Office on behalf of federal-officer defendants, has suggested that the Court might hold the case pending its decision *Nielsen*. See *Herzon* Pet. 15-16. But in *Herzon*, unlike here, there is a conflict in the courts of appeals about the precise question presented and the decision below directly addressed whether "the context in which [the plaintiff's] excessive force claims arise [is] 'meaningfully different'—and so new" because of "an administrative mechanism for lodging a complaint about misconduct by a federal law enforcement officer." *Arias*, 150 F.4th at 40.

ysis). Moreover, as explained, the second question in the petition is not actually presented by this case. See pp. 16-17, *supra*.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

D. JOHN SAUER
Solicitor General
BRETT A. SHUMATE
Assistant Attorney General
MELISSA N. PATTERSON
JAYNIE LILLEY
Attorneys

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