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,

Respondent.

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

REPLY BRIEF OF PETITIONER

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REPLY BRIEF OF PETITIONER

This case is *Bivens* redux: Sigalovskaya was arrested in her home, after an unauthorized entry, without a warrant and without probable cause. Respondent's strained attempt to identify a meaningful difference between this case and *Bivens* yields only red herrings. She notes that Sigalovskaya's claim focuses on the false arrest, not the warrantless entry and search. But that merely makes her claim a lesser-included of *Bivens* itself, which recognized separate remedies for a cluster of Fourth Amendment violations—it does not render her claim "new." Respondent fixates on the fabrication allegation; but that allegation merely explains why probable cause was absent—it does not make her false-arrest claim meaningfully different from the claim in *Bivens*. Respondent also seizes on the fact that she allegedly forwarded Sigalovskaya's fabricated confession to the AUSA. But the AUSA is not alleged to have ordered or even greenlit the arrest; and no one is alleged to have used the false confession to obtain a warrant. Thus, contrary to Respondent's assertion, Sigalovskaya's claim does not require the court "prob[e] [any] causal chain[s]" or "delv[e] into the evidence before numerous decisionmakers." Br. in Opp. 12. It requires the court to address a single question: whether Respondent had probable cause to seize Sigalovskaya without a warrant from her home. As two of the three judges below recognized, that is the precise legal inquiry and the exact mechanism of injury that was at issue in *Bivens* itself.

Respondent does not defend Judge Pérez's conclusion that the availability of an alternative remedy extinguishes old and new *Bivens* remedies alike. Instead, she asserts that the circuits are not split on this issue. That is manifestly incorrect—and the Government's own certiorari papers in other *Bivens* cases confirm as much.

None of Respondent's arguments change a simple truth: Sigalovskaya's claim could have proceeded in the First, Sixth, or Seventh Circuits, but not in the Third, Fifth, and Eleventh Circuits. And, given the absence of a controlling rationale below, there is simply no telling how a future litigant bringing an identical claim would fare in the Second Circuit if it landed before a different panel. Such variation and uncertainty is intolerable. This Court should grant certiorari. In the alternative, it should hold the petition pending resolution of *Nielsen* v. *Watanabe*, cert. granted, No. 25–417 (June 22, 2026).

I. The Decision Below Is Wrong

Both of the concurrences' rationales for affirming the dismissal of the *Bivens* claims are incorrect.

1. Respondent insists that this case arises in a new context because Sigalovskaya'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." Br. in Opp. 10 (quoting Pet. App. 20). Two of the three panel judges correctly rejected that reasoning. *Bivens* itself recognized remedies for three discrete constitutional injuries: warrantless search and seizure, excessive force, and false arrest. This Court has never suggested that a

plaintiff must allege all three to state a *Bivens* claim. Pet. 22.

Nor could such a requirement be squared with this Court's stated interest in minimizing "'disruptive intrusion by the Judiciary into the functioning of other branches.'" *Hernandez* v. *Mesa*, 589 U. S. 93, 103 (2020) (quoting *Ziglar* v. *Abbasi*, 582 U. S. 120, 140 (2017)). An action alleging all three disparate claims will, by necessity, entail far more judicial intrusion than an action alleging one. For example, a warrantless-home-search claim requires a court to determine whether an exception to the warrant requirement exists. That, in turn, may necessitate an inquiry into whether someone with actual or apparent authority consented to the entry and search, whether there was a qualifying exigency, and whether the search was incident to a valid arrest. *Illinois* v. *Rodriguez*, 497 U. S. 177, 184–86 (1990); *Brigham City* v. *Stuart*, 547 U. S. 398, 403–04 (2006). The exigent circumstances inquiry alone requires the court to examine a wide range of factors, including whether officers believe the subject was armed, whether there was "a clear showing of probable cause . . . to believe that the suspect committed the crime," whether officers had a "strong reason to believe that the suspect is in the premises being entered," the "likelihood that the suspect will escape if not swiftly apprehended," and "the peaceful circumstances of the entry." *United States* v. *MacDonald*, 916 F. 2d 766, 769–770 (2d Cir. 1990). Excessive-force claims likewise entail extensive judicial intrusions into the circumstances of the arrest. *Barnes* v. *Felix*, 605 U. S. 73, 80 (2025) (excessive-force claims require the court to "slosh [its] way through" a "factbound morass" and examine the "totality of the circumstances").

Sigalovskaya's standalone false-arrest claim, by contrast, requires only a single judicial inquiry: whether Respondent had probable cause at the time she effected the arrest.

Respondent's assertion that Sigalovskaya's claim involved a "different part of police work" than was at issue in *Bivens* and that the "mechanism of injury" differs likewise misses the mark. Br. in Opp. 11. Sigalovskaya does not allege that Respondent used fabricated evidence to secure a search warrant or indictment. *Compare Xi* v. *Haugen*, 68 F. 4th 824, 830 (3d Cir. 2023); *Sheikh* v. *United States Dep't of Homeland Sec.*, 106 F. 4th 918, 925 (9th Cir. 2024); *Farah* v. *Weyker*, 926 F. 3d 492, 499 (8th Cir. 2019); *Annappareddy* v. *Pascale*, 996 F. 3d 120, 135 (4th Cir. 2021). Instead, she alleges that Respondent fabricated a rationale, on the spot, to justify her decision to arrest Sigalovskaya from inside her home.[1] The fact that Respondent placed a courtesy call notifying the prosecutor that she was arresting Sigalovskaya is of no moment. The complaint does not allege that the prosecutor ordered the arrest or used the false information to obtain an arrest warrant. Thus, unlike the

[1] Respondent irrelevantly observes that Sigalovskaya was arraigned and denied bail "presumably due, at least in part to the allegedly fabricated statements." Br. in Opp. 12. Any false claims made before the magistrate would sound in abuse of process or malicious prosecution—neither of which Sigalovskaya pursues—not in false arrest. *Manuel* v. *City of Joliet*, 580 U. S. 357, 364–370 (2017); *Chiaverini* v. *City of Napoleon*, 602 U.S. 556, 558–561 (2024).

cases on which Judge Lee and Respondent rely, adjudicating the false-arrest claim here would not "require a court to evaluate the veracity of evidence presented to a prosecutor or used in a judicial proceeding." Br. in Opp. 12.

Respondent's discovery and judicial intrusion arguments are particularly unpersuasive. She claims that false-arrest claims based on fabricated evidence are "'easy to allege and hard to disprove.'" Br. in Opp. 13 (quoting *Egbert* v. *Boule*, 596 U.S. 482, 499 (2022); *Crawford-El* v. *Britton*, 523 U.S. 574, 584–585 (1998)). Nothing could be further from the truth. A defendant may defeat a fabrication-based false-arrest claim by showing either (1) that there was no fabrication *or* (2) that probable cause existed independent of the allegedly fabricated evidence. *Betts* v. *Shearman*, 751 F.3d 78, 82 (2d Cir. 2014) (noting that probable cause is an "absolute defense" to a false-arrest claim). *Egbert* and *Crawford-El* are not to the contrary. Those cases refused to extend *Bivens* to retaliation claims because such claims turn on "an official's *state of mind*[, which] is easy to allege and hard to disprove.'" *Egbert*, 596 U.S., at 499 (quoting *Crawford-El*, 523 U.S. at 584–585) (emphasis added). But the key element in a false-arrest claim—the absence of probable cause—is an objective inquiry: the "arresting officer's state of mind . . . is irrelevant." *Devenpeck* v. *Alford*, 543 U. S. 146, 153 (2004).

Respondent also asserts in passing that false-arrest claims like Sigalovskaya's threaten broad-ranging discovery because they "inherently depend on he-said, she-said contentions." Br. in Opp. 13. That makes little sense. False-arrest claims based on evidentiary fabrications are no more prone to devolve into he-said-she-said disputes than any of the other Fourth Amendment claims that concededly fall within *Bivens*'s ambit. Many fabrication-based false-arrest claims can readily be resolved based on third-party witness testimony, recordings, or documentary evidence. Conversely, many warrantless-search and excessive-force claims require courts to resolve conflicting claims by the plaintiff and the officer (*e. g.*, about whether the suspect consented to the search or whether his or her actions necessitated the use of force). This is, thus, not a remotely plausible basis for declaring that Sigalovskaya's claims are *meaningfully different* from the Fourth Amendment claims that this Court has already recognized.

Respondent's final contention—that the false-arrest claim involves different "judicial guidance" than that at issue in *Bivens*, Br. in Opp. 13—is also wrong. Indeed, Respondent does not even attempt to explain the differences in legal guidance governing the false-arrest claims brought here versus in *Bivens*—and for good reason: the guidance is identical. Both cases arise from a warrantless arrest inside the plaintiff's home following a nonconsensual, warrantless entry—conduct governed by settled Fourth Amendment principles. *See Payton* v. *New York*, 445 U. S. 573, 589–590 (1980). And the surviving false-arrest theory in both cases turns on the familiar objective inquiry whether the arresting officer had probable cause. *See Devenpeck*, 543 U. S., at 153. The fabrication allegation is merely a fact that goes toward explaining why probable cause was absent; it does not supply a different legal standard.[2]

2. Respondent does not defend Judge Pérez's conclusion that a grievance procedure can foreclose an otherwise-recognized *Bivens*. Instead, she dodges the issue altogether and rests on the contention that Sigalovskaya's claim created a new *Bivens* context. That argument fails for reasons already explained.

II. This Case Is an Ideal Vehicle to Address Multiple Circuit Splits

This case cleanly presents two questions that have divided the courts of appeals: (1) whether a factual variation from *Bivens* creates a new context even when it changes neither the governing legal inquiry nor the separation-of-powers calculus; and (2) whether the existence of an alternative remedy

[2] Respondent observes that HSI operates "'both nationally *and* internationally,'" Br. in Opp. 11 (quoting Pet. App. 21), but does not explain how that makes Sigalovskaya's *Bivens* claim new—especially given that the HSI officers here were indisputably engaged in a domestic law enforcement operation with no international dimension. In any event, this proves too much. The defendant agency in *Bivens*—the Federal Bureau of Narcotics—had extensive international operations, Matthew R. Pembleton, *Imagining a Global Sovereignty: U.S. Counternarcotic Operations in Istanbul During the Early Cold War and the Origins of the Foreign "War on Drugs*," 18 J. Cold War Stud. 28, 38–39, 45–46 (2016), as does its successor, the DEA. *See United States* v. *Verdugo-Urquidez*, 494 U.S. 259, 262–63 (1990). If the mere fact that the defendant's employing agency also engages in international work suffices to create a new *Bivens* context, then *Bivens* is effectively a dead letter.

independently forecloses a claim that does not arise in a new *Bivens* context.

1. Respondent's claimed consensus doesn't exist. Respondent incorrectly asserts that no court of appeals has recognized a *Bivens* remedy based on a "Fourth Amendment claim grounded in the fabrication of evidence." Br. in Opp. 15. The Sixth Circuit did exactly that in *Jacobs* v. *Alam*, holding that false-arrest and fabrication-of-evidence claims against a federal officer were "run-of-the-mill" Fourth Amendment claims that presented no new context. 915 F. 3d 1028, 1038 (6th Cir. 2019). The Seventh Circuit similarly concluded that a claim against an officer who falsified information to secure a search warrant would not create a new *Bivens* context. *Greenpoint Tactical Income Fund LLC* v. *Pettigrew*, 38 F. 4th 555 (7th Cir. 2022). The court reasoned that inquiring into the accuracy of the agent's representations in a warrant application would "not require a novel intrusion into law enforcement operations" because such inquiries are "common in criminal cases" where a defendant files a suppression motion based on material misrepresentations. *Id.*, at 564. That reasoning applies with equal force to a false-arrest claim based on fabricated evidence. Indeed, a court must evaluate the sufficiency of the evidence establishing probable cause any time an arrest is made without a warrant, *Gerstein* v. *Pugh*, 420 U. S. 103 (1975), and any time a defendant moves to suppress the fruits of an arrest. *Wong Sun* v. *United States*, 371 U. S. 471, 472 (1963).

Respondent ignores *Jacobs* and her attempt to minimize *Greenpoint* is unconvincing. Br. in Opp.16 n. 2.

While *Greenpoint* dismissed the *Bivens* claims on alternative grounds, it did so only *after* repudiating the district court's conclusion that the claim arose in a new context. Thus, the Seventh Circuit surveyed the post-*Abbasi* landscape, endorsed *Jacobs*'s reasoning, and concluded that *Abbasi* did not "overturn[] the line of cases recognizing Fourth Amendment *Bivens* claims based on fabricated warrant affidavits and/or grand jury testimony." *Id.*, at 564. In short, there is nothing approaching a "consensus" that fabrication allegations create a new *Bivens* context. Br. in Opp. 16.

2. Respondent's suggestion that there is no circuit split about whether an alternative remedy forecloses a Fourth Amendment *Bivens* claim blinks reality. Br. in Opp. 17. The Fifth and Tenth Circuits have expressly answered that question in the affirmative. *Logsdon* v. *U.S. Marshal Serv.*, 91 F. 4th 1352, 1359 (10th Cir. 2024) (identifying existence of an alternative remedial structure as an "independent ground for not recognizing a *Bivens* action" for excessive force during arrest); *Hernandez* v. *Causey*, 124 F. 4th 325, 333–334 (5th Cir. 2024). The First Circuit, meanwhile, has held that the existence of an alternative remedy will only defeat a Fourth Amendment claim that requires a *Bivens* extension. *Arias* v. *Herzon*, 150 F.4th 27, 40–47 (1st Cir. 2025); *see also id.*, at 51 & n.11, 54 (Lynch, J., dissenting) (summarizing the extensive circuit split on this issue).

Moreover, Respondent concedes that the circuits are hopelessly split regarding whether an alternative remedy extinguishes an otherwise-recognized Eighth Amendment *Bivens* claim. Indeed, the Government itself has requested that the Court take up this issue to remedy that circuit split. *See* Pet. for Cert., *Mohan* v. *Watkins*, No. 25–952 (Feb. 10, 2026). Respondent unconvincingly suggests that this split is confined to *Carlson* claims. But the function of an alternative remedy in the *Egbert* and *Abbasi*'s two-step framework is not claim-specific: the existence of such a remedy either voids otherwise-recognized *Bivens* claims or it doesn't. Indeed, the Government concedes as much in its now-pending petition seeking review of the First Circuit's decision in *Herzon* v. *Arias*. *See* Pet. for Cert. 15–16, *Herzon* v. *Arias*, No. 26–111 (July 23, 2026) (asking the Court, in the alternative, to hold the petition pending resolution of *Nielsen* v. *Watanabe* because the weight *Nielsen* accords alternative remedies in the Eighth Amendment context could "affect the court of appeals' new-context analysis" of a Fourth Amendment claim).

3. Respondent's contention that this case presents a poor vehicle because there is "no controlling rationale for the decision below" gets matters backwards. The absence of a controlling rationale is merely the latest manifestation of the profound disarray that has come to mark *Bivens* jurisprudence. It bespeaks the absence of clear standards for assessing *Bivens* claims, both within the Second Circuit and across the courts of appeals.

"The principal purpose of this Court's exercise of its certiorari jurisdiction is to clarify the law," *Caperton* v. *A. T. Massey Coal Co.*, 556 U. S. 868, 902 (2009) (Scalia, J., dissenting), and to prevent "the uniform law of the land" from turning "into a crazy quilt." *Kansas* v. *Marsh*, 548 U. S. 163, 185 (2006) (Scalia, J., concurring). *Bivens* has become just that. Sigalovskaya could have pursued her claim in the First, Sixth, and Seventh Circuits—but not in the Third, Fourth, Fifth, and Eleventh Circuits. And, given the panel's fractured opinion, there is no telling whether a future litigant could succeed in bringing the same claim in the Second Circuit. Such inter- and intracircuit confusion cries out for this Court's review. This case—which cleanly presents two questions that have confounded the courts of appeals—is an ideal vehicle to provide that much needed clarity.

III. Alternatively, This Court Should Hold the Petition Pending the Resolution of *Nielsen*

This Court recently granted certiorari in *Nielsen* v. *Watanabe* to consider the continued vitality of Eighth Amendment *Bivens* claims brought by prisoners. Although this case involves a Fourth Amendment *Bivens* claim, the resolution of *Nielsen* could affect whether the judgment below can stand. *Accord* Pet. for Cert. 15–16, *Herzon*, *supra* (No. 26–111).

In *Nielsen*, the Ninth Circuit concluded that the existence of an alternative remedy is relevant only "at the *second* step of the *Bivens* analysis." *See* Pet. App. 15, *Nielsen*, *supra* (No. 25–417). A decision by this Court affirming that holding would invalidate the reasoning in Judge Pérez's concurrence. And since both Judge Lynch and Judge Pérez concluded that Sigalovskaya's claim did not create a new *Bivens* context, any decision invalidating or calling Judge Pérez's concurrence into question would leave only one vote in favor of affirming the dismissal of Sigalovskaya's claim, thus requiring vacatur and remand. Accordingly, if this Court does not grant plenary review in this case, it should hold the petition for a writ of certiorari pending the resolution of *Nielsen*.

CONCLUSION

The Court should grant certiorari. Alternatively, the petition should be held pending the resolution of *Nielsen* v. *Watanabe*, cert. granted, No. 25–417 (June 22, 2026).

Respectfully submitted.

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