No. 25-760

IN THE

Supreme Court of the United States

HAMDI A. MOHAMUD,
Petitioner,
v.

HEATHER WEYKER, IN HER INDIVIDUAL CAPACITY AS A ST. PAUL POLICE OFFICER,
Respondent.

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

BRIEF *AMICUS CURIAE* OF THE NEW CIVIL LIBERTIES ALLIANCE IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE[1]

The New Civil Liberties Alliance (NCLA) is a nonpartisan, nonprofit civil rights organization and public-interest law firm devoted to defending constitutional freedoms from the administrative state's depredations. Professor Philip Hamburger founded NCLA to challenge multiple constitutional defects in the modern administrative state through original litigation, *amicus curiae* briefs, and other advocacy.

The "civil liberties" of the organization's name include rights at least as old as the U.S. Constitution itself, such as due process of law and the right to be tried in front of impartial judges who provide their independent judgments on the meaning of the law. Yet these selfsame civil rights are also very contemporary—and in dire need of renewed vindication—precisely because Congress, executive branch officials, administrative agencies, and even some courts have neglected them for so long.

NCLA aims to defend civil liberties—primarily by asserting constitutional constraints on the modern administrative state. Although Americans still enjoy the shell of their Republic, a very different sort of government has developed within it—a type that the Constitution was designed to prevent. This

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[1] No party's counsel authored any portion of this brief, and no party, party counsel, or person other than *amicus curiae* made a monetary contribution intended to fund this brief's preparation or submission. All parties received timely notice of intent to file this brief.

unconstitutional state within the Constitution's United States is the focus of NCLA's concern.

NCLA urges the Court to clarify and reaffirm that Congress's express remedy in 42 U.S.C. § 1983 remains available to victims of government wrongdoing when state or local law enforcement officers violate constitutional rights under color of state law—even if those officers have also been cross-deputized with limited federal power. NCLA is deeply disturbed by the increasingly commonplace practice of task force cross-deputization throughout the country, which poses significant risks to Americans' constitutional rights, as this case illustrates. Cross-deputized state and local officials—in most cases, police and other members of law enforcement—are deputized by the federal government to operate under the color of state and federal law. Such officers are imbued with limited federal authority to fulfill specific duties on joint federal-state task forces, while simultaneously maintaining the full authority of their state or local positions. Although they plainly operate under the authority of both state and federal law, in many cases, they cannot be held liable under either.

Following the Supreme Court's ruling in *Egbert v. Boule*, the availability of *Bivens* relief for claims against federal officials was virtually extinguished for most plaintiffs. 596 U.S. 482 (2022). As a result, 42 U.S.C. § 1983 often remains a plaintiff's only viable vehicle for recovering damages for constitutional violations committed by cross-deputized officers, whether operating under state law or a combination of state and federal law.

In an alarming trend, however, courts across the country—including the district and circuit courts in this case—have categorically rejected plaintiffs' § 1983 claims against cross-deputized officers, ruling that such officers act exclusively under the authority of federal law regardless of the specific facts presented. This practice turns a blind eye to the realities of the dual-pronged authority wielded by cross-deputized officers, and it substitutes court-created immunity for Congress's statutorily crafted remedy in § 1983. It thus renders cross-deputized state and local officers effectively immune per se from liability, depriving even the most egregiously harmed plaintiffs of any meaningful remedy or legal recourse. It also eliminates any deterrent effect that § 1983 has on officers who might be inclined to abuse their authority and flout the constitutional rights of Americans. This harmful approach serves no valid interest, and it is inconsistent with Congressional design and judicial precedent. As a staunch defender of Americans' constitutional rights, including the right to be governed by laws written by elected officials—rather than judicially crafted doctrines—NCLA has an interest in the outcome of this case.

SUMMARY OF ARGUMENT

For over 150 years, § 1983 of the Civil Rights Act of 1871 has served "to deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails." *Wyatt v. Cole*, 504 U.S. 158, 161 (1992) (citing *Carey v. Piphus*, 435 U.S. 247, 254–57 (1978)). This case—where Respondent framed Petitioner, causing

Petitioner to be incarcerated for over two years—illustrates the abuse of state power against which § 1983 protects. The case also exemplifies the dangers posed by the unconstitutional practice of granting blanket immunity to cross-deputized law enforcement officers like Respondent Officer Weyker.

Several courts have already found that Weyker abused her authority as a law enforcement officer to fabricate allegations against Ms. Mohamud and at least 30 other individuals to advance her own career. Despite her conduct, available information indicates that Respondent remains employed as a police officer and has suffered no material consequences for her actions.[2]

In addition to evading any professional consequences from her state employer, Respondent has also managed to avoid liability in court. This results from the circuit court's ruling that Respondent—a state police officer who has remained a state officer at all times relevant to this appeal—could not be held liable as a state actor under § 1983. Why? Because Respondent was also a cross-deputized member of a federal joint task force—temporarily imbued with limited federal authority—and therefore,

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[2] *Heather Weyker L*, GOVSALARIES, https://govsalaries.com/weyker-heather-l-202099900 (last visited Jan. 22, 2026); Hassan Kanu, *Police Empowered to Lie About Investigations After Federal Appeals Court Ruling*, REUTERS (July 20, 2022, 5:00 PM), https://www.reuters.com/legal/government/police-empowered-lie-about-investigations-after-federal-appeals-court-ruling-2022-07-20/.

according to the court, she could only act under color of *federal* law.

Cross-deputized officers possess limited federal authority to fulfill discrete duties on joint task forces, while simultaneously maintaining the full authority of their state or local positions. Although such officers operate under the authority of both state and federal law, in many cases, they cannot be held liable under either. This Court's ruling in *Egbert v. Boule* all but extinguished any remaining availability of *Bivens* claims against federal officials for most plaintiffs. 596 U.S. 482 (2022). As a result, § 1983 often remains a plaintiff's only viable vehicle for recovering damages for constitutional violations committed by cross-deputized officers.

In contrast to § 1983, an express statutory right of action empowering plaintiffs to seek damages against state officials, Congress has not authorized damages against federal officials for running afoul of individuals' constitutional rights. Rather, *Bivens* is a judicially crafted doctrine providing an implied cause of action for damages against federal actors.[3] With *Egbert*'s erosion of the doctrine's already shaky

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[3] Although damages actions against federal officers for constitutional violations are today referred to as "*Bivens* claims," the underlying cause of action is not simply a free-standing, judge-made remedy. Rather, *Bivens* is best understood as a "lineal descendant of [] longstanding constitutional practice," rooted in common law. Brief of *Amicus Curiae* Cato Institute in Support of Petitioner at 4.

footing, lower courts have grown increasingly hesitant to recognize causes of action for *Bivens* relief.

And with the virtual elimination of *Bivens* relief for most plaintiffs, the availability of § 1983 as a potential remedy is crucial for plaintiffs who have been wronged by cross-deputized law enforcement officers. When courts, including the circuit court in this case, effectively refuse to subject cross-deputized officers to § 1983 liability, they not only cut plaintiffs off from any meaningful form of relief, but also send a message to state and local officers that they may commit unconstitutional acts with impunity, so long as the acts are undertaken while the officers are members of a joint task force.

The circuit court is not alone in its tenuous, categorical approach to cross-deputization. Numerous courts nationwide have effectively treated the conferral of even limited federal authority on a state or local officer as dispositive of the § 1983 inquiry, presuming that cross-deputization alone renders all challenged conduct federal in nature. Under this approach, the presence and exercise of state authority—no matter how substantial—drops out of the analysis entirely. The result is a wholesale foreclosure of § 1983 relief for victims of constitutional violations by cross-deputized officers, based not on any fact-specific assessment of the officer's conduct or authority, but on a status-based presumption that an officer's cross-deputization defeats any indicia of state action.

This Court, however, has made clear that the lodestar for determining whether an officer acts under

color of state law is whether the officer's "conduct is … chargeable to the State." *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937 (1982) (there is state action where a violation is caused "by a person for whom the State is responsible" and "who may fairly be said to be a state actor"). Section 1983 is not limited to actions performed "under the *exclusive* color" of state law nor "under the *primary* color" of state law. Rather, as this Court has instructed, § 1983 "must be given a liberal construction" with the "largest latitude consistent with the words employed." *Lake Country Ests., Inc. v. Tahoe Reg'l Plan. Agency*, 440 U.S. 391, 399–400 & n.17 (1979). That is because § 1983 is a remedial statute, which Congress enacted "in aid of the preservation of human liberty and human rights." *Id.*

The categorical rule of absolute immunity embraced by many lower courts today defies voluminous Supreme Court precedent and turns § 1983 on its head. The courts that have adopted this presumption ignore fundamental § 1983 jurisprudence and subvert the statute's design—and, in doing so, deprive Americans of a remedy to protect their constitutional rights.

ARGUMENT

I. THE HISTORY AND PURPOSE OF 42 U.S.C. § 1983

Congress passed § 1983 as a part of the Civil Rights Act of 1871 "for the express purpose of 'enforc[ing] the Provisions of the Fourteenth Amendment.'" *Lugar*, 457 U.S. at 934 (alteration in original) (citing *Lynch v. Household Fin. Corp.*, 405

U.S. 538, 545 (1972)). Indeed, the history of the Act is "replete with statements indicating that Congress thought it was creating a remedy as broad as the protection that the Fourteenth Amendment affords the individual." *Id.* Although § 1983 was initially wielded primarily as a remedy against state officials who were "unable or unwilling" to enforce state law to protect Black citizens from the violence of the Ku Klux Klan, as reflected by Congress's expansive language in the provision, its purposes were much broader than that. *See Monroe v. Pape*, 365 U.S. 167, 176 (1961), *overruled in part*, *Monell v. Dep't of Soc. Servs. of New York*, 436 U.S. 658 (1978) (holding that Congress intended for municipalities and other government units to be included among those persons to whom § 1983 applies).

According to the Supreme Court, "[t]he central aim of the Civil Rights Act was to provide protection to those persons wronged by the misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law." *Owen v. City of Independence*, 445 U.S. 622, 650 (1980) (cleaned up); *see also Wyatt v. Cole*, 504 U.S. at 161 ("[t]he purpose of § 1983 is to deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails.") (citing *Carey*, 435 U.S. at 254–57).

Section 1983 provides a direct cause of action:

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

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

42 U.S.C. § 1983.

As anticipated by Congress, for over a century, § 1983 served as a critical tool for American citizens to combat and seek compensation for governmental abuse of constitutional rights. *See Monell*, 436 U.S. at 666–690 (holding that Congress intended for municipalities and other government units to be included among those persons to whom § 1983 applies); *see also Owen*, 445 U.S. at 651 (explaining that the purpose of § 1983 is to hold state officials accountable for violations of constitutional rights "whether they act in accordance with their authority or misuse it." (quoting *Monroe*, 365 U.S. at 172)).

The text of the statute does not limit its application to acts "under the *exclusive* color" of state law nor even "under the *primary* color" of state law. Nor has this Court *ever* read that restriction into the statute. This Court has instead instructed that § 1983 "must be given a liberal construction" and the "largest latitude consistent with the words employed." *Lake Country Ests.*, 440 U.S. at 399–400 & n.17. That is because § 1983 is a remedial statute, which Congress

enacted "in [the] aid of the preservation of human liberty and human rights." *Id*. Moreover, to read the "under color of any statute" language of § 1983 in such a way "as to impose a limit on those Fourteenth Amendment violations that may be redressed by the § 1983 cause of action would be wholly inconsistent" with the purpose of the Civil Rights Act of 1871. *Lugar*, 457 U.S. at 934.

Section 1983 also provides no carveout or insulation from liability for state or local officers who also happen to simultaneously assist federal joint task forces—also known as "cross-deputized" officers. Cross-deputization is a practice where state or local law enforcement officials are "deputized" with temporary authority to perform federal law enforcement functions. *See, e.g.*, 28 C.F.R. § 0.112 (authorizing Director of United States Marshals Service to deputize, *inter alia*, state and local law enforcement officers to "perform the functions of a Deputy U.S. Marshal" for a limited time period). Cross-deputized officers retain their state or local positions while serving on joint task forces to assist federal agencies with law enforcement investigations within a particular state. Special deputation regulations, including 28 C.F.R. § 0.112—under which Respondent Officer Weyker was cross-deputized—do not provide for immunity from lawsuits brought under § 1983. Weyker nevertheless contends, and apparently the lower courts agreed, that she is absolved from liability for her numerous[4]

[4] As the Eighth Circuit has already concluded, Defendant Officer Weyker is not entitled to qualified immunity, as "a reasonable officer would know that deliberately misleading another officer

unconstitutional acts executed under color of state law simply by virtue of being a cross-deputized officer at the time that she committed them, wielding both federal and state authority. In so arguing, Weyker ignores fundamental § 1983 jurisprudence, as described above, and subverts the statute's purpose. At a minimum, Respondent was not operating under *exclusive* federal authority when she relied on her state law enforcement position and authority to convince (under false pretenses) a fellow state law enforcement officer to arrest Mohamud for a state crime. It is, in fact, doubtful whether the enabling statute or Weyker's cross-deputization supports *any* federal authority for her actions. Indeed, as specified by Weyker's deputization form, her federal authority was limited to "seek[ing] and execut[ing] arrest and search warrants supporting a federal task force." Pet. App. 386a. Officer Weyker's actions in framing Mohamud and other adolescents for state-law crimes fell well beyond the limits of any reasonable conception of the federal authority granted to her.

II. POST-*EGBERT*, § 1983 IS A VITAL TOOL FOR HOLDING CROSS-DEPUTIZED LAW ENFORCEMENT OFFICERS ACCOUNTABLE

The dual federal-state authorities under which cross-deputized officers operate have rendered it difficult for plaintiffs and courts alike to determine whether a particular officer's actions were performed

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into arresting an innocent individual to protect a sham investigation is unlawful." *Farah v. Weyker*, 926 F.3d 492, 503 (8th Cir. 2019) (leaving lower court's denial of qualified immunity untouched).

under color of state law, federal law, or both. While some circuit courts have ruled that cross-deputized task force officers may be held liable under § 1983 for acts carried out under color of state law, others have adopted a categorical presumption that such officers act exclusively under color of federal law, without respect to the facts of the case (and in some circuits, the question remains undecided).[5] As a result, those whose constitutional rights have been violated by joint task force officers are forced to guess whether to bring damages claims under § 1983 (for violations committed under color of state law) or *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971) (for violations committed under color of federal law)—or both.

The answer of many lower courts appears to be none of the above. This leaves plaintiffs with no pathway to recovery, while empowering cross-deputized officers to abuse their authority. That is a result of this Court's recent ruling in *Egbert v. Boule*, which all but eliminated the availability of *Bivens* relief to plaintiffs whose constitutional rights were violated by federal law enforcement officers, and left § 1983 as a plaintiff's only remedy for relief against an

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[5] *Compare Couden v. Duffy*, 446 F.3d 483 (3d Cir. 2006); *Askew v. Bloemker*, 548 F.2d 673 (7th Cir. 1976), *with Jakuttis v. Town of Dracut*, 95 F.4th 22, 29–30 (1st Cir. 2024) (shielding officer from liability because conduct was "related to" task force duties); *King v. United States*, 917 F.3d 409, 433 (6th Cir. 2019), *rev'd on other grounds sub nom. Brownback v. King*, 592 U.S. 209 (2021); *Guerrero v. Scarazzini*, 274 F. App'x 11, 12 n.1 (2d Cir. 2008) (summary order) ("[B]ecause Scarazzini and McAllister were federally deputized for their Task Force work, this claim was properly brought … as a *Bivens* action").

officer committing unconstitutional acts under color of both state and federal law. Yet the lower courts' categorical presumption that cross-deputized officers operate exclusively under federal authority forecloses that route to recovery as well.

Although NCLA maintains that *Egbert* is inconsistent with the Constitution, this Court's rationale in that case was not antithetical to explicit congressional legislation, which cannot be said of the circuit court's approach below. Indeed, although Congress expressly authorized actions for damages against state officers for constitutional violations through § 1983, it has not done the same for suits against federal officials. *Bivens* and its progeny represent the few implied causes of action that this Court has recognized by which plaintiffs may seek damages for violations of their constitutional rights by federal officials. *See Ziglar v. Abbasi*, 582 U.S. 120, 140 (2017) (only three narrow contexts in which *Bivens* right of action recognized: "a claim against FBI agents for handcuffing a man in his own home without a warrant; a claim against a Congressman for firing his female secretary; and a claim against prison officials for failure to treat an inmate's asthma").

In *Egbert*, this Court disavowed its ruling in *Bivens* and all but eliminated the possibility of applying *Bivens* to any new context beyond the three specific sets of facts that it had already recognized. 596 U.S. at 492 ("If there is a rational reason to think that the answer is 'Congress'—as it will be in most every case—no *Bivens* action may lie.") (internal citation omitted).

Notably, while § 1983 has historically been "liberally and beneficially construed" and afforded "the largest latitude consistent with the words employed," even prior to *Egbert*, lower courts applied *Bivens* cautiously. *Lake Country Ests.*, 440 U.S. at 399–400 n.17; *see also Ziglar*, 582 U.S. at 135 (describing *Bivens* remedy as a "'disfavored' judicial activity"). That is because, in contrast to § 1983, an express statutory right of action authorizing damages against state officials, Congress has not authorized damages against federal officials for running afoul of individuals' constitutional rights. Rather, *Bivens* is a judicially crafted doctrine providing an implied cause of action for damages against federal actors. With *Egbert*'s erosion of the doctrine's already shaky footing, lower courts have grown increasingly hesitant to recognize causes of action for *Bivens* relief.

With the virtual elimination of *Bivens* relief for most plaintiffs, the availability of § 1983 as a potential remedy has become indispensable for individuals who have been wronged by cross-deputized law enforcement officers. Yet many courts have effectively closed that avenue, as well, refusing to subject cross-deputized officers to § 1983 liability. The resulting regime permits state and local officers to commit unconstitutional acts with impunity, so long as the acts are committed while the officers are members of a joint task force. Indeed, the practice of cross-deputization expands the federal government's

law enforcement power beyond its constitutional limits, with significant consequences.[6]

Consider these recent examples:

- *Example 1*: Plaintiff brought action against cross-deputized local police officer serving on joint federal task force, alleging cross-deputized officer and other task force members forcefully entered plaintiff's home with no probable cause. The state warrant turned out to have been issued for a different address, yet the officers rushed at plaintiff with weapons drawn, assaulted plaintiff while his hands were in the air, threw plaintiff to the ground, handcuffed him, and proceeded to search his home.

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[6] It is no wonder, then, that the federal government fights for joint task force officers to evade § 1983 liability so that it may expand the scope of federal power. Under our Constitution, the police power "unquestionably remains and ought to remain" in the states—not the federal government. *Mayor of New York v. Miln*, 36 U.S. (11 Pet.) 102, 128 (1837). Indeed, the federal government "has no such authority and can exercise only the powers granted to it." *Bond v. United States*, 572 U.S. 844, 854 (2014) (internal quotation marks and citation omitted). Thus, in the context of law enforcement, the federal government's reach is limited to criminal acts related to "the execution of a power of Congress" or to a matter "within the jurisdiction of the United States," such as terrorism or human trafficking. *Id*. However, without § 1983 to serve as a bulwark against the unconstitutional conduct of cross-deputized law enforcement officers, joint task forces offer the federal government an easy workaround to the constitutional strictures precluding federal police power.

Outcome: No liability. *Bivens* relief unavailable; § 1983 unavailable because the "source and implementation of authority for the task force" was the U.S. Marshals Service and, therefore, cross-deputized local officer "was not acting under color of state law," even though the warrant was issued by a state judge. *Cain v. Rinehart*, No. 22-1893, 2023 WL 6439438, at *2 (6th Cir. July 25, 2023).

▪ *Example 2*: Plaintiff brought action against federal and cross-deputized local law enforcement officers who were members of federal task force. He alleged the officers shouted at him as they approached his home without uniforms and failed to advise plaintiff that they were officers. Without a warrant, they forcibly entered unarmed plaintiff's home and shot him multiple times at point-blank range, causing broken bones, collapsed lung, nerve damage, and other serious injuries, after which they proceeded to drag plaintiff outside into the yard.

Outcome: No liability. *Bivens* relief unavailable; motion to dismiss granted without discussion of plaintiff's § 1983 claim because officers were cross-deputized members of a federal joint task force. *Smith v. Arrowood*, No. 6:21-CV-6318, 2023 WL 6065027 (W.D.N.Y. Sept. 18, 2023).

▪ *Example 3*: Plaintiff brought action against Deputy U.S. Marshal and cross-deputized local law enforcement officer who was member of federal task force, alleging that, in executing a

> state arrest warrant, defendants placed plaintiff in handcuffs, punched him in the face, lifted him up and slammed him to the ground, and continued to punch him as he lay on the ground, causing broken teeth and numerous lacerations. The officers then refused to take plaintiff to hospital and instead brought him to jail for intake.
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> Outcome: No liability. *Bivens* relief unavailable; § 1983 unavailable because "state officers are considered federal actors when carrying out their duties as part of a federal task force." *Challenger v. Bassolino*, No. 18-15240, 2023 WL 4287204, at *4 (D.N.J. June 30, 2023).

The decisions in these cases resulted from the lower courts' adoption of an unconstitutional blanket rule or presumption that cross-deputized task force officers act exclusively under color of federal law—and thus enjoy absolute immunity. Rather than assessing the officers' actions and the circumstances surrounding those actions, as required under § 1983 and this Court's precedent, they focused instead on the source of authority for the officers' cross-deputization.

In effect, what was once a confusing shell game has morphed into a futile game of "heads I win, tails you lose" for plaintiffs faced with filing suits seeking damages in one of the circuits employing the presumption that cross-deputized officers act exclusively under federal authority. Whether an officer is deemed to have acted under federal

authority or state authority while cross-deputized, the result is the same: no remedy.

III. CROSS-DEPUTIZED LAW ENFORCEMENT OFFICERS ARE PLAINLY STATE ACTORS UNDER THE STATE ACTION DOCTRINE

Any categorical rule or presumption that a cross-deputized law enforcement officer is immune from § 1983 liability contradicts Congress's purpose and design in enacting the Civil Rights Act. Though it purported to engage in the relevant factual analysis, the circuit court adopted just such a presumption. The court appeared to believe that, because Respondent was cross-deputized—in other words, because she had also been granted limited authority as a federal task force officer—she could evade responsibility for violating Petitioner's constitutional rights under color of state law. *See Mohamud v. Weyker*, 144 F.4th 1099, 1103 (8th Cir. 2025). Not so.

This Court has plainly held that the crucial question is not whether the defendant is a private individual, a federal employee, or a state employee, but whether he or she was acting under color of *state* law when engaging in rights-violative conduct. *See Lugar v. Edmonson Oil Co., Inc.*, 457 U.S. 922 (1982) (holding that petitioner could pursue § 1983 claim against private individual who acted jointly with state officers to deprive him of property rights). That precedent is consistent with Congress's stated aim in passing § 1983 ("*Every person* who, under color of any statute …") (emphasis added); *see* 42 U.S.C. § 1983. Accordingly, the circuit court's holding must be reversed.

As discussed in Part I, Congress passed the Civil Rights Act to ensure that state and local law enforcement officers may be held accountable when they violate an individual's constitutional rights. *See supra* at 7. As this Court has recognized, the purpose of § 1983 is both (1) "to deter state actors from using the badge of their authority" to commit such violations, and (2) "to provide relief to victims if such deterrence fails." *See Wyatt*, 504 U.S. at 161.

Thus, at a minimum, any § 1983 inquiry into the acts of a cross-deputized officer should be fact-specific and focused on whether the defendant was acting—to *any* extent—under the color of state law. *See Lugar*, 457 U.S. at 937–38; *West v. Atkins*, 487 U.S. 42, 49 (1988) ("the defendant in a § 1983 action [must] have exercised power 'possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.'") (quoting *United States v. Classic*, 313 U.S. 299, 326 (1941)).

Indeed, this Court has unequivocally held that "under-color-of-state-law" is effectively an identical concept to "state action" when assessing the viability of § 1983 actions. *See Lugar*, 457 U.S. at 935 ("If the challenged conduct of respondents constitutes state action as delimited by our prior decisions, then that conduct was also action under color of state law and will support a suit under § 1983"); *Dennis v. Sparks*, 449 U.S. 24, 27–28 (1980) ("Private persons, jointly engaged with state officials in the challenged action, are acting 'under color' of law for purposes of § 1983 actions"); *see also David v. City and Cnty. of Denver*,

101 F.3d 1344, 1354 (10th Cir. 1996) (holding that plaintiff may have been able to establish that her police officer colleagues "acted under color of law" when they sexually harassed her).

That assessment reflects a proper conception of Congress's purpose and design in enacting § 1983. And if private actors can be subject to § 1983 lawsuits when they are operating under color of state law, it is logically incoherent to absolve cross-deputized officers from responsibility simply because they are *also* granted authority under federal law. *See Lugar*, 457 U.S. at 934 (explaining that § 1983 "was passed for the express purpose of [enforcing] the Provisions of the Fourteenth Amendment" as "the history of [the Civil Rights Act] is replete with statements indicating that Congress thought it was creating a remedy as broad as the protection that the Fourteenth Amendment affords the individual.") (cleaned up). The question always must be whether the individual is—to some extent—acting under color of state law or jointly with the state. *See Burton v. Wilmington Parking Auth.*, 365 U.S. 715 (1961) (courts must look to totality of the circumstances to determine if person acts under color of state law).

Here, rather than meaningfully evaluate whether Respondent's framing of Petitioner for witness-tampering occurred, to any extent, "under color of state law," the court below woodenly applied circuit precedent dictating that, because Weyker was cross-deputized at the time of her misconduct, she acted under color of federal authority, and "[s]tate law had nothing to do with it." *Weyker*, 144 F.4th at 1104

(quoting *Yassin v. Weyker*, 39 F.4th 1086 (8th Cir. 2022)). Although the court acknowledged Rule 8(a)(2)'s generous pleading standard—that all well-pleaded allegations must be accepted as true and that a plaintiff need only state a claim that is "plausible on its face," *see id.* at 1103—it failed to apply that standard. Instead, the court treated the fact of Officer Weyker's cross-deputization as dispositive of the "under color of what law" inquiry, regardless of Petitioner's factual allegations to the contrary.

Indeed, Petitioner alleged, *inter alia*, that Weyker's cross-deputization conferred only limited federal authority—namely, seeking and executing arrest warrants in support of the federal task force—authority that Weyker did not exercise in connection with the framing of Ms. Mohamud and her friends for a state-law crime. Petitioner also alleged that Respondent at all relevant times remained a St. Paul Police Department (SPPD) officer; continued to report to a St. Paul sergeant as her direct supervisor; remained on SPPD's payroll; and carried out the investigation and framing of Petitioner through numerous actions undertaken pursuant to her state-law authority. *See* Pet. at 10-13.

Petitioner further alleged the existence of joint agreements between the St. Paul Police Department, Weyker's employer, and federal law enforcement agencies that govern operating procedures for cross-deputization. These memos state that:

> Liability for violations of federal constitutional law rests with the individual federal agent or officer

> pursuant to *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971) or pursuant to 42 U.S.C. § 1983 for State and local officers or cross-deputized federal officers.

Pet. App. 282a; *see also* Pet. App. 351a (similar). In other words, by entering into such joint agreements, cross-deputized SPPD officers are recognized both by their employers and the federal agencies that cross-deputize them as acting under color of *state* law. The agreement also reflects the parties' understanding that, accordingly, cross-deputized officers' "violations of federal constitutional law" lead to liability under § 1983. That was at least a fact that the courts below ought to have considered. *See West*, 487 U.S. at 51 (referring to manual governing prison health care in North Carolina to determine whether defendant, a private physician employed by the state to provide medical services to incarcerated individuals, could be held liable under § 1983).

Yet the court below dismissed these allegations in a footnote, asserting that the joint agreements "just state what we already know: officers can be liable under § 1983 or *Bivens* depending on the circumstances." *Weyker*, 144 F.4th at 1104 n.2. But that blithe assertion cannot be squared with the court's own analysis. Indeed, under the Eighth Circuit's approach, the mere fact of cross-deputization forecloses § 1983 liability of cross-deputized state or local officers altogether. *See id.* at 1104. The court likewise rejected Petitioner's allegation that a cross-

deputized officer can ever exercise state and federal authority simultaneously, reasoning that such a possibility "would give plaintiffs a choice between *Bivens* and § 1983 in cases like this one." *Id.* But even putting to one side whether *Bivens* is ever really an available source of relief, that observation exposes the flaw in the court's reasoning, rather than justifying it. Where an officer plausibly exercises both state and federal authority, the availability of alternative remedial paths is not anomalous—it is a necessary consequence of the distinct constitutional and statutory regimes that govern those exercises of power. And eliminating those alternatives leaves plaintiffs without any remedy at all.

As in all cases, the court was obliged to conduct an independent analysis of the specific facts presented in this case. The court's approach instead had the effect of presuming that any cross-deputized officer may simply enjoy immunity from § 1983, which is entirely at odds with the statute's aims—and, apparently, the understanding memorialized in joint agreements entered into by the St. Paul Police Department. *See supra* at 21-22.

If any case illustrates why the district court's approach was wrongheaded, it is this one. Officer Weyker has a documented history of framing at least 30 innocent people, many of whom have spent time in pretrial detention; Petitioner's friend even gave birth in custody due to Weyker's misuse of her authority as a law enforcement officer. *See Ahmed v. Weyker*, 984 F.3d 564, 566 (8th Cir. 2020). Petitioner spent over two years behind bars as a teenager before being

released without charges. These shocking allegations are not pulled out of thin air: courts have recognized that Weyker simply manufactured allegations to bolster her career and reputation. *See, e.g.*, *United States v. Adan*, No. 3:10-CR-260 (M.D. Tenn.) (the "Adan" cases); *Ahmed*, 984 F.3d at 565; *United States v. Fahra*, 643 F. App'x 480, 481–84 (6th Cir. 2016). Yet, without this Court's intervention, Weyker will suffer no consequences for her abominable conduct. That failing would convey a troubling message to police officers and other members of law enforcement that they can get away with the most egregious abuses of authority if they simply first ensure that they are cross-deputized.

That malicious message is not one that the courts should want to send, and it is certainly not the message that Congress conveyed when it passed § 1983. To the extent that an apparent trend in favor of the Eighth Circuit's practice is emerging among the lower courts in this country, that provides all the more reason why that pernicious development must immediately be halted and reversed in the interests of justice and to preserve Americans' most fundamental constitutional rights.

CONCLUSION

For the foregoing reasons, we respectfully urge the Court to grant Ms. Mohamud's petition.

Respectfully submitted,

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