2026

PRESENTED BY EMORY LAW MOOT COURT SOCIETY

20th ANNIVERSARY

CRAL

Civil Rights and Liberties Competition

COMPETITION PROBLEM

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INSTRUCTIONS

1. Do not cite to any case that was decided after July 31, 2026.

2. Assume that all motions, defenses, and appeals were timely filed in accordance with the Federal Rules of Civil Procedure.

3. When citing to the Record, use the page numbers located on the footer of each page of the Record.

4. The constitutional merits are not before the Court.

5. Arguments should remain limited to the stipulated facts and exhibits.

6. A team may make a request for clarification or interpretation of the Problem. Any such request must be emailed by a team member or student coach to emorymootcourt@gmail.com with the subject line "Problem Clarification" before Monday, September 14th, 2026, at 11:59 p.m. EST. All clarifications and interpretations will be posted on the CRAL website: www.law.emory.edu/cral.

No. 20-21429

IN THE

Supreme Court of the United States

OCTOBER TERM, 2026

MARIA SOLANO, PETITIONER,

v.

FEDERAL AGENT CHAD JONES IN HIS INDIVIDUAL CAPACITY, RESPONDENT.

THE PETITION FOR A WRIT OF CERTIORARI IS GRANTED, LIMITED TO THE FOLLOWING QUESTIONS:

I. Whether 28 U.S.C. § 2679 preempts a state-created cause of action for damages against a federal officer in his individual capacity when the action is predicated on a violation of the Constitution.

II. Whether qualified immunity applies to new state-created constitutional damages actions.

IN THE UNITED STATES COURT OF APPEALS

FOR THE 14TH CIRCUIT

No. 22-701025

District Court No. 2024-CV-050107

MARIA SOLANO,

Appellant

V.

FEDERAL AGENT CHAD JONES IN HIS INDIVIDUAL CAPACITY,

Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF EMORY

Decided: January 16, 2026

Before: WOODS, PAULSEN, GAMBINI, Circuit Judges.

OPINION

GAMBINI, *Circuit Judge*:

Maria Solano (hereinafter "Solano") filed this action in Emory state court under the Emory Constitutional Remedies Act (hereinafter "ECRA"). In her complaint, Solano alleged that Federal Agent Chad Jones (hereinafter "Jones"), an immigration officer who detained her, violated her rights under the Fourth and Fifth Amendments. Jones removed the action to federal court under 28 U.S.C. § 1442(a)(1), the federal officer removal statute, and moved to dismiss under Federal Rule of Civil Procedure 12(b)(6). He argued that 28 U.S.C. § 2679 (the "Westfall Act") bars Solano's state-law claim and that, in any event, qualified immunity is available as a defense. The district court agreed on both grounds and dismissed the complaint, holding that the Westfall Act's constitutional-claims exception preserves only *Bivens* actions, not state-created remedies, and that qualified immunity applies to ERCA claims against federal officers. We agree with the district court. Accordingly, we **AFFIRM**.

The instant matter presents two questions the Supreme Court has not resolved. The first has received limited appellate treatment, while the second presents a question of first impression. We address each in turn.

First, when Congress enacted the Westfall Act, it made the Federal Tort Claims Act (hereinafter "FTCA") the exclusive remedy for common-law torts committed by federal employees acting within the scope of their employment. *See* 28 U.S.C. § 2679(b)(1). By substituting the United States as the defendant and channeling such suits into the FTCA, the Act ordinarily forecloses damages actions against federal officers sued in their individual capacities. *Id.* Congress preserved two, and only two, exceptions to that bar: one for civil actions "brought for a violation of the Constitution of the United States," and another for actions "brought for a violation of a statute of the United States under which such action against an individual is otherwise authorized." 28 U.S.C. § 2679(b)(2).

The ECRA, by contrast, is a creature of state law. Enacted by the State of Emory in January 2025, it provides that "[a]ny person acting under color of any federal, state, or local law who deprives another person within the State of Emory of rights guaranteed by the Constitution of the United States shall be liable, in their individual capacity, to the injured party in tort. O.C.E. § 14-10-1(a). The statute authorizes compensatory damages, punitive damages in specified circumstances, injunctive and declaratory relief, and reasonable attorney's fees and costs. O.C.E. § 14-10-1(b). Statutes of this kind—sometimes called "converse-1983" laws because they reach federal officers where § 1983 reaches state officers—are a recent development. Because ECRA furnishes a state-law remedy for federal constitutional violations, the first question is whether the Westfall Act precludes that remedy.

Second, even if Solano's ECRA claim survives the Westfall Act, Jones argues that qualified immunity is available as a defense. Qualified immunity is a doctrine of federal law that shields government officials from damages liability in actions under § 1983 and in *Bivens* actions against federal officers. The Supreme Court has not decided whether that defense applies to a damages action created by a State. The second issue therefore presents an antecedent question of availability—not whether Jones's conduct satisfies the familiar qualified-immunity standard, but whether qualified immunity applies at all to a state-created constitutional remedy. With that framework in mind, we turn to the facts.

FACTUAL BACKGROUND[1]

Maria Solano is a United States citizen who has never traveled outside the country. She was born in El Paso, Texas, on April 3, 2005, and has lived in Gambrell County[2] for six years. She works as a shift manager at the twenty-four-hour MultiMart in Clifton City and attends Clifton

[1] Because this case comes to us on appeal from an order granting Respondent's motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), we draw the following facts from the allegations of the complaint and accept them as true. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).
[2] Gambrell County is located in the State of Emory which, along with the States of Dooley and Lullwater, is encompassed by the Fourteenth Circuit.

University part-time, paying her own tuition with what she earns at the store. She had been employed for roughly four years at the time of the events giving rise to this suit. Solano typically reported for the early-morning shift before dawn.

Chad Jones is a federal immigration officer employed with the United States Department of Foreign Migration (the "DFM"). Jones joined the DFM in 2019, after twelve years as a Border Patrol Agent. Before assuming his duties, Jones completed the basic immigration-enforcement course at the Federal Law Enforcement Training Center, which included instruction on verifying identity, evaluating claims of United States citizenship, and using the agency's databases to locate individuals subject to removal.

The DFM field office in which Jones was based had received tips in prior months reporting that undocumented workers were staffing overnight shifts at businesses along the commercial corridor that included the Clifton City MultiMart. On that basis, Jones drove to the MultiMart before dawn on May 2, 2025 as employees arrived for their shifts. At approximately 6:30 a.m., Solano arrived to begin her shift. As she crossed the parking lot, Jones stopped her and demanded a U.S. passport. Solano said she did not have one. Jones responded that she therefore must not be a citizen. Solano immediately told Jones that she was indeed a United States citizen born in Texas and offered to show him two forms of identification in her possession: her Emory driver's license and a photograph of her birth certificate stored on her phone.

Jones refused to review either document, claiming that a citizen would have a U.S. passport. At roughly 7:00 a.m., he zip-tied Solano's wrists, took her phone, and transported her to the DFM field office in Clifton City. There, Jones searched Solano's name in the DFM database and received a possible match. He then placed Solano in a holding room. Over the next several hours Solano repeatedly stated that she was a citizen and asked the officers to examine her identification. Her wrists remained bound during that time.

At approximately 2:30 p.m., a second officer reviewed Jones's work and discovered that the database match might be mistaken. The photograph in the database did not match Solano's appearance. By this time, Jones's shift had ended and he was no longer at the facility. The second officer went to Solano's holding room, removed the zip-ties from her wrists, and reviewed the documents she provided. Solano was released without charge shortly thereafter, having been detained for roughly eight hours.

The detention left Solano with concrete and lasting harm. The zip ties caused bruising and wrist pain, for which she sought treatment at an urgent-care clinic later that day and incurred medical expenses of approximately $1,400. She was scheduled to work on May 2 and again on May 3, and she missed both shifts as a result of the detention and its aftermath.

PROCEDURAL BACKGROUND

In August 2025, Solano filed suit against Jones in Emory state court. Proceeding under ECRA and naming Jones in his individual capacity, she alleged that he violated her Fourth Amendment right to be free from unreasonable seizure and her Fifth Amendment right to due process of law. She sought damages and reasonable attorney's fees.

In September 2025, Jones removed the action to the United States District Court for the Northern District of Emory under 28 U.S.C. § 1442(a)(1), the federal officer removal statute. The United States did not seek substitution under 28 U.S.C. § 2679(d)(1). Jones then moved to dismiss under Federal Rule of Civil Procedure 12(b)(6). Jones argued, first, that the Westfall Act bars Solano's state-law claim and, second, that even if the claim survives, he is entitled to qualified immunity as a matter of federal law.

Solano opposed dismissal on both grounds. She contended that the Westfall Act expressly preserves civil actions brought for violations of the Constitution, and that a federal court may not insert qualified immunity onto a cause of action that a State, rather than Congress, has created.

In October 2025, the district court granted the motion and dismissed the complaint. The court held that the constitutional-claims exception to the Westfall Act preserves only *Bivens* actions, not state-created constitutional remedies, and that qualified immunity is available as a defense to ECRA claims against federal officers. Solano timely appealed.

JURISDICTION AND STANDARD OF REVIEW

Solano filed this action in state court, and Jones removed it to federal court under 28 U.S.C. § 1442(a)(1). Federal officer removal supplies an independent basis for the district court's jurisdiction over the removed action, and no party challenges the propriety of removal or the district court's subject-matter jurisdiction. We therefore have no occasion to address either question.

We have jurisdiction under 28 U.S.C. § 1291. The district court's order dismissing the complaint disposed of all of Solano's claims and is a final, appealable judgment. Unlike the interlocutory posture that often attends the assertion of an immunity defense, this appeal arises from a complete and final disposition of the case, and we need not resort to the collateral order doctrine to reach it.

We review the grant of a motion to dismiss *de novo*. In doing so, we accept the well-pleaded factual allegations of the complaint as true and draw all reasonable inferences in Solano's favor, asking whether the complaint states a claim that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555–56 (2007). The two questions presented—whether the Westfall Act preempts Solano's claim, and whether qualified immunity attaches to a state-created cause of action—are pure questions of law that we likewise review *de novo*.

Finally, because the questions presented concern preemption and the availability of qualified immunity rather than the merits of the constitutional violations Solano alleges, we

assume without deciding that the complaint adequately alleges violations of the Fourth and Fifth Amendments for which ECRA would otherwise furnish a remedy. For purposes of the questions presented, the parties also agree that Jones was acting within the scope of his federal employment and that the certification and substitution procedures in 28 U.S.C. § 2679(d) are not at issue.

DISCUSSION

I.

On the issue of preemption, we hold that the Westfall Act's exclusivity provision precludes state-created constitutional damages actions like the ECRA because they fall outside the exceptions Congress preserved in 28 U.S.C. § 2679(b)(2).

Federal law may preempt state law in several ways. Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision. *Arizona v. United States*, 567 U.S. 387, 392 (2012). Absent express preemption, States are barred from regulating conduct in a field that Congress has impliedly reserved for exclusive federal control. *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947); *English v. Gen. Elec. Co.*, 496 U.S. 72, 79 (1990). Field preemption may arise where federal regulation is so pervasive that no room remains for state supplementation, or where the federal interest is so dominant that state laws on the same subject are presumed precluded. *Id.* State law is also preempted when it conflicts with federal law, either because simultaneous compliance with both is impossible, *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142–43 (1963), or because the state law stands as an obstacle to Congress's purposes and objectives, *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). In conducting this analysis, courts presume that the States' traditional police powers are not displaced unless that was Congress's clear and manifest purpose. *Rice*, 331 U.S. at 230; *Wyeth v. Levine*, 555 U.S. 555, 565 (2009). As we explain below, the ECRA conflicts with the Westfall Act's exclusive-remedy framework because it falls outside the two categories of claims Congress expressly preserved.

The Westfall Act bars civil actions for money damages against federal employees acting within the scope of their employment. The Westfall Act provides that the Federal Tort Claims Act ("FTCA") remedy against the United States "shall be exclusive of any other civil action or proceeding for money damages by reason of the same subject matter against the employee whose act or omission gave rise to the claim," and that "[a]ny other civil action or proceeding for money damages arising out of or relating to the same subject matter against the employee or the employee's estate is precluded." 28 U.S.C. § 2679(b)(1). Congress carved out two exceptions. The first covers "a civil action against an employee of the Government which is brought for a violation of the Constitution of the United States." 28 U.S.C. § 2679(b)(2)(A). The second covers a civil action "brought for a violation of a statute of the United States under which such action against an individual is otherwise authorized." 28 U.S.C. § 2679(b)(2)(B). Because the ECRA is a creature of state law, not federal statute, the second exception is inapplicable. The question is therefore, whether Solano's ECRA claim falls within § 2679(b)(2)(A). We hold that it does not.

In 1988, Congress enacted the Westfall Act to protect federal employees from personal liability for common-law torts committed within the scope of their employment. *See* H.R. Rep. No. 100-700, at 2-4 (1988). At the time, the only mechanism by which a person could sue a federal officer personally for a constitutional violation was the remedy the Supreme Court recognized in *Bivens v. Six Unknown Named Agents of Fed. Narcotics Agents*, 403 U.S. 388 (1971). This cause of action is implied directly from the Fourth Amendment by the federal judiciary, with no congressional authorization. The constitutional claims exception does not create new causes of action against federal officers; it preserves existing ones. 1 Jayson & Longstreth, Handling Federal Tort Claims § 6.01. The preservation of individual officer suits for constitutional violations necessarily refers to *Bivens*, the only such suit that existed when Congress enacted the Westfall Act.

The Supreme Court has repeatedly described § 2679(b)(2)(A) in *Bivens* terms. *See Hui v. Castaneda*, 559 U.S. 799, 807 (2010) (referring to the provision as "[t]he Westfall Act's explicit exception for *Bivens* claims"); *United States v. Smith*, 499 U.S. 160, 166–67 (1991) (describing the exception as covering "a *Bivens* action, seeking damages for a constitutional violation by a Government employee"). Neither case addressed whether the exception also reaches a state-created constitutional remedy. We nonetheless read the Court's consistent description, together with the Westfall Act's structure and history, as evidence that Congress meant to preserve *Bivens* claims rather than authorize new state-law causes of action against federal officers.

The only other federal appellate court to have directly addressed the question reached the same conclusion. In *Henry v. Essex Cnty*, the Third Circuit held that "[t]he Westfall Act only offers two exceptions to its exclusivity—one for *Bivens* actions, and the other for actions under federal statutes." 113 F.4th 355, 364 (3d Cir. 2024). Although *Henry* does not bind this Court, the majority's reading is consistent with our own. The constitutional claims exception was designed to preserve the federal constitutional remedy Congress knew in 1988. It does not expand to accommodate state-created causes of action enacted decades later.

Solano's claim under the ECRA falls outside both exceptions Congress preserved. The ECRA is not a *Bivens* action, but a cause of action created by the Emory state legislature. It is also not a claim under a federal statute authorizing suit against individual officers. Because the ECRA satisfies neither exception in § 2679(b)(2), the Westfall Act's general exclusivity provision bars Solano's claim. We affirm.

II.

Our resolution of the Westfall Act question ends this case. We reach the immunity question as an alternative and independent ground for affirmance.

Turning to whether qualified immunity applies to state-created constitutional damages actions, we hold that it does. While our resolution of the Westfall Act question is sufficient to affirm the dismissal, the second question presents an alternative and independent legal ground addressed by the district court. We therefore decide only whether qualified immunity is available as a defense to an ECRA claim, not whether Jones is entitled to immunity on these facts.

Qualified immunity is the doctrine that can shield government officials from damages liability. The Supreme Court has repeatedly re-affirmed the fact that widely discussed officials are entitled to some form of immunity. In *Harlow v. Fitzgerald*, the Supreme Court explicitly stated that "public officers require this protection to shield them from undue interference with their duties and from potentially disabling threats of liability." 457 U.S. 800, 806 (1982). More specifically, the test for determining if an officer is entitled to qualified immunity is whether their actions were reasonable under the circumstances. *Id*. at 818. In fact, qualified immunity as a legal doctrine is sufficiently broad that "it provides ample protection to all but the plainly incompetent or those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. 335, 341 (1986). However, the question before us is whether qualified immunity is even applicable to state-created constitutional damages actions, an exposure to liability under an entirely new statute and question of first impression in this court, not whether Jones is entitled to it.

The challenge here, and why we cannot conduct a *Harlow* analysis, is that there is a lack of any federal common law that addresses whether qualified immunity applies to state-created constitutional damages actions. The statute at issue in this case is one of the first of its kind, with only a handful of other states that have enacted similar ones. With a lack of guidance from the Supreme Court or any of our sister circuits, we address this issue today with the closest analog available: whether qualified immunity can be applied to novel contexts. The traditional test for extending the doctrine of qualified immunity to different contexts can be found in two Supreme Court cases: *Wyatt v. Cole* and *Richardson v. McKnight*. Both cases highlight the two-part test

that should be used by courts in determining whether qualified immunity applies to a given context. In applying qualified immunity to different contexts, courts should "look both to history and to the purposes that underlie government employee immunity in order to find the answer." *Richardson v. McKnight*, 521 U.S. 399, 404 (1997) (quoting *Wyatt v. Cole*, 504 U.S. 158, 164 (1992)). Although qualified immunity was not found to be applicable in either *Wyatt* or *Richardson*, those cases are distinguishable from our analysis today.

The first part of the inquiry is historical analysis. Qualified immunity has historically applied to government officials at all levels. In *Butz v. Economou*, the Supreme Court held "it untenable to draw a distinction for purposes of immunity law between suits brought against state officials under § 1983 and suits brought directly under the Constitution against federal officials." 438 U.S. 478, 504 (1978). In other words, the doctrine of qualified immunity is applicable to both state and federal officials.

The second part of the inquiry is whether applying qualified immunity to these circumstances would serve the policy function the doctrine was created to serve. The doctrine of qualified immunity was designed to balance two interests: "the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). Put another way, the Supreme Court has recognized that there are numerous social costs to subjecting government officials from litigation. These include "the expenses of litigation, the diversion of official energy from pressing public issues, and the deterrence of able citizens from acceptance of public office." *Harlow*, 457 U.S. at 814. The recognition by the Court of the costs of litigation reaffirms that qualified immunity protects government officials and the public from such burdens.

Here, Jones was essentially performing a law enforcement function. This makes his job duties and responsibilities analogous to that of a police officer. The historical prong of the analysis is satisfied as qualified immunity has been applied to federal officials in the past. Additionally,

where the actions of a federal official are reasonable under the circumstances, they should not expect to be subject to liability. See *Anderson v. Creighton*, 483 U.S. 635, 646 (1987). This points to the policy prong of the analysis also being satisfied as Jones reasonably performed his duties. Solano was a possible match as found by the federal database that Jones relied upon. The facts of this case and most closely applicable legal precedent deem it appropriate for us to hold that qualified immunity does apply to this converse-1983 action.

There are additional reasons for our finding today that qualified immunity applies to this state damages action. It is not within the purview of a state to determine whether qualified immunity, as federal common law doctrine, applies to a federal officer performing federal duties under color of federal authority. To hold otherwise would render the doctrine without jurisprudential teeth as states would simply allow liability suits against federal officials to pass through without any regard for federal common law doctrine. It is not hyperbole to say that allowing this practice would be dangerous to intergovernmental independence and the Supremacy Clause. That is not to say that state courts should completely disregard qualified immunity. However, whether qualified immunity applies to different and new contexts should fall within the purview of federal courts.

Finally, because there was no explicit foreclosure to the doctrine of qualified immunity, we hold that it can apply to converse-1983 claims such as the one before us today. The state of Emory could have explicitly stated that the doctrine of qualified immunity did not apply in the statute. The Emory State legislature undoubtedly heard about qualified immunity before and knew of its existence. Their decision not to include a provision addressing the doctrine should be viewed as intentional, and the statute should be interpreted to mean that it can apply. Legislative silence on a longstanding and well-known common law doctrine can certainly be viewed as an implied authorization for that doctrine's application. That is the view we hold today.

We also deem it appropriate to address, at least briefly, what kind of test to apply in determining if Jones is entitled to qualified immunity. Now that we have found that qualified

immunity applies to this state-created damages action, we will answer the question of what kind of test to apply. While most courts apply the objective test found in *Harlow*, we believe this situation and others like it warrant a return to the pre-*Harlow* standard. The standard here should be one that includes whether there was malicious intent on the part of the officer to determine whether qualified immunity exists. Therefore, we believe that a two-prong analysis is appropriate here: one of objective reasonableness and a subjective good faith standard. *See Scheuer v. Rhodes*, 416 U.S. 232 (1974); *see also Butz*, 438 U.S. 478. An officer can act without malice and simply commit a human error. The subjective intent prong of the analysis will prevent officers who violate a person's constitutional rights with malice from escaping liability.

III.

We hereby **AFFIRM** the decision of the district court.

WOODS, *Circuit Judge*, dissenting:

The majority answer two questions the Supreme Court has not resolved in a way that shutters the courthouse to a United States citizen who was zip-tied, denied so much as a glance at her identification documents, and held for roughly eight hours because of a mistaken database match. It does so by reading a remedial savings clause to save almost nothing, and by importing a federal defense into a remedy the federal courts did not create. With respect for my colleagues, the text of the Westfall Act forecloses the first holding, and the nature of qualified immunity forecloses the second. I would reverse on both questions, and therefore, I respectfully dissent.

I.

The presumption against preemption instructs that the historic police powers of the States are not superseded absent Congress's "clear and manifest purpose." *Rice*, 331 U.S. at 230. Providing a damages remedy to a person tortiously injured within the State's borders lies at the

core of that historic power, and a statute that expressly saves constitutional suits is the antithesis of a clear intent to displace them.

The Westfall Act's exclusivity provision yields to two exceptions, and the first decides this case. Section 2679(b)(2)(A) withdraws from the Act's bar "a civil action against an employee of the Government which is brought for a violation of the Constitution of the United States." 28 U.S.C. § 2679(b)(2)(A). The operative words describe an injury, not an author. A suit qualifies if it is "brought for a violation of the Constitution;" the provision says nothing of who must have created the cause of action, or when. Solano's complaint pleads that Jones seized her in violation of the Fourth Amendment and deprived her of liberty in violation of the Fifth Amendment. Whatever else may be said of her suit, it is unmistakably one "brought for a violation of the Constitution of the United States." By its terms, the exception applies.

The majority answers that the exception preserves existing causes of action—it does not create new ones—and that the only constitutional suit in existence when Congress legislated in 1988 was a *Bivens* action. From that premise it concludes that the exception is a *Bivens* exception and nothing more. However, the premise does not support the conclusion. A clause that preserves a category, i.e. suits "brought for" constitutional violations, is not confined to the particular members of that category that happened to exist on the date of enactment. Congress preserved a kind of action, defined by the constitutional nature of the wrong, and it chose words broad enough to capture any suit of that kind. Had Congress meant to save only *Bivens* actions, it knew how to say so, but it said something different, and broader, instead.

The structure of the statute confirms as much. The very next subparagraph preserves civil actions "brought for a violation of a statute of the United States under which such action against an individual is otherwise authorized." 28 U.S.C. § 2679(b)(2)(B). There, Congress expressly tethered the exception to a federal source, a statute that itself authorizes the suit. In subparagraph (A), Congress used no such limiting language. The contrast is deliberate, and it cuts against the

majority: where Congress wished to confine an exception to federally authorized actions, it said so, and it did not say so for constitutional claims. Courts "ordinarily resist reading words or elements into a statute that do not appear on its face." *Bates v. United States*, 522 U.S. 23, 29 (1997). To read a parallel "federal-source" limitation into subparagraph (A) is to add words Congress withheld.

The authorities the majority relies on do not bear the weight placed on them. *Hui* and *Smith* describe § 2679(b)(2)(A) as the exception for *Bivens* actions, but neither case decided whether the exception also reaches a constitutional remedy created by a State. The majority concedes precisely this. A shorthand reference to the most familiar occupant of a statutory category is not a holding that the category has but one occupant. As Judge Walker explained in *Buchanan v. Barr*, the exception can be read to preserve state-law suits brought to remedy constitutional injuries, a reading that honors Founding-era principles of officer accountability and closes the remedial gap that the contraction of *Bivens* has left behind. 71 F.4th 1003, 1016–17 (D.C. Cir. 2023).

That gap is not abstract. The majority's reading would mean that a citizen wronged by a federal officer's plain constitutional violation has a damages remedy only if the federal courts elect to recognize one. An officer who refuses to examine a citizen's driver's license or birth-certificate image and then detains her for hours is not, merely by virtue of federal employment, engaged in conduct that the Westfall Act necessarily shields from individual liability.

II.

The majority's second holding repeats the first error in a new form: it takes a doctrine the Supreme Court fashioned for federal causes of action and grafts it onto a remedy a State created. Qualified immunity is a judge-made gloss on § 1983 and does apply to *Bivens* actions. Yet, it is not a free-floating entitlement that attaches to every federal employee in every suit, whatever its

source. ECRA is a creature of state law, and the defenses available against a state cause of action are, in the first instance, a question for the State that created it.

The majority reasons from legislative silence to the opposite conclusion: because Emory did not expressly exclude qualified immunity, the doctrine must apply. That inverts the proper default. Qualified immunity is not a background rule of universal application that adheres to every damages remedy unless a legislature affirmatively disclaims it. It is a limitation the federal courts have engrafted onto particular federal causes of action against an historical backdrop not present here. The natural inference from a state statute that authorizes "damages, declaratory relief, injunctive relief, and reasonable attorney's fees" without a word about well-known immunities at the federal level is that the State did not adopt the federal officer-protective defense, not that the State silently embraced it. The majority's contrary rule would oblige every legislature to anticipate and renounce every federal common-law doctrine by name, on pain of having it read into state law by default.

The majority's own framework points the other way. Whether to extend qualified immunity to a new context turns on history and purpose, and in *Wyatt* and *Richardson* the Court declined to extend it. The historical inquiry asks whether a firmly rooted tradition of immunity existed at common law for the relevant action, and there is no tradition of qualified immunity in state-law damages suits against federal officers for constitutional violations because the cause of action is new. The majority bridges the gap with *Butz,* but there, the Supreme Court held only that a federal officer sued directly under the Constitution receives the same immunity as a state officer sued under § 1983. 438 U.S. at 500–04. It equalized two federal remedies. It did not hold that a State must build the federal immunity into a remedy of its own design. To equate "qualified immunity applies to *Bivens* suits" with "qualified immunity applies to any suit against a federal officer" is to key the doctrine to the defendant's federal paycheck rather than to the cause of action and the function performed, which is the very move *Wyatt* and *Richardson* forbid.

Even indulging the majority's premise that some immunity applies, its choice of test compounds the error. The majority does not adopt qualified immunity as the federal courts administer it. It adopts a hybrid: the objective "clearly established" inquiry, paired with an inquiry into the officer's subjective good faith. That second element has no place in federal qualified immunity doctrine. The Supreme Court removed it more than four decades ago. *Harlow*, 457 U.S. at 815–18. The majority now attempts to revive what *Harlow* buried. A legislature cannot silently adopt a version of qualified immunity that no longer existed when it enacted a pertinent statute, and a court borrowing a federal doctrine is not free to restore what the doctrine's own authors cast aside. That the majority must fashion a bespoke immunity to reach its result is the surest sign the State never enacted one.

The majority's new test also makes its pleading-stage error unmistakable. Under the standard the court adopts, immunity turns on whether Jones acted with malice or merely committed, in the majority's words, a "human error." But an officer's intent is a quintessential question of fact, and Solano's complaint squarely puts it in issue: she alleges that Jones refused even to glance at an Emory state driver's license or Texas birth certificate and left her wrists bound for eight hours while she repeatedly protested that she was a citizen. Whether that conduct denotes malice or reckless indifference, or even an honest mistake, is not a question a court may answer on a motion to dismiss. Yet the majority errs by answering it, pronouncing Jones' conduct a blameless human error and, on that basis, conferring the very immunity its test withholds from the malicious. At this stage we must accept Solano's allegations as true and draw every reasonable inference in her favor. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007). The majority thus resolves a contested factual question in the movant's favor at the pleading stage. Whatever else qualified immunity permits, it does not permit that. *See Behrens v. Pelletier*, 516 U.S. 299, 309 (1996).

III.

For the reasons above, I must respectfully **DISSENT**.

EXHIBITS

EXHIBIT A - ECRA

STATE OF EMORY

O.C.E. § 14-10-1 (Constitutional Remedies Act)

(a) Any person acting under color of any federal, state, or local law who deprives another person within the State of Emory of rights guaranteed by the Constitution of the United States shall be liable, in their individual capacity, to the injured party in tort.

(b) A person injured under Section (a) of this Act shall have a civil cause of action against the offending party for:

(1) compensatory damages;

(2) punitive damages, if the act in question was committed with malice, willfulness, or reckless disregard to the injured person's rights;

(3) injunctive and declaratory relief; and

(4) reasonable attorney's fees and costs.

(c) For purposes of this Act, a "person" includes any natural person. The term does not include any business entities or government or political subdivision.

EXHIBIT B - Agent Jones's Report

INCIDENT REPORT

Officer name:	**Badge number:**	**Agency:**	**Date:**
Chad Jones	20-39185	U.S. Department of Foreign Migration	05/02/2025
Offender name:	**Gender:**	**Physical/Demographic information:**	**DOB:**
Maria Solano	F	Long dark hair, glasses, silver cross necklace, birthmark on right index finger	04/03/2005

Description: Young female stopped outside MultiMart in Clifton City at around 6:30 a.m. as the subject was crossing the parking lot. The officer asked to see a passport to confirm citizenship status, but the subject did not produce one. The subject stated that she was a U.S. citizen born in Texas and offered to show a driver's license and a photograph of a birth certificate. The officer deemed neither sufficient to confirm citizenship status. At approximately 7:00 a.m., the subject was placed in restraints and transported to the DFM field office in Clifton City. At approximately 8:47 a.m., a search of the subject's name in the DFM database returned a possible match for a person documented as subject to removal. The subject was then moved to a holding room.

Signature: **/s/ Chad Jones**

Date: 05 /02 /2025

Exhibit C – Federal Database Search

Federal Immigration Information System (FIIS) Help | Settings | Log Out

Search | Alerts | Records | Cases | Reports

Person Search

Search Query:	Maria Solano	**Search Date:**	05/02/2025	**Time:**	08:47 AM
Searched By:	Officer Chad Jones	**Office / Location:**	Clifton City Field Office		

Search

Search Results

1 result found for "Maria Solano" Print Results

1 of 1 **Result:** Possible database match

Record Name:	Maria Solano
A-Number:	A205-771-443
Date of Birth:	06/17/1980
Citizenship Status:	⚠ Subject to removal file
Country of Birth:	Mexico
Last Known Address:	458 River Street Clifton City, Emory 74361
Case Reference:	REM-15-874512
Record Created:	09/14/2015
Last Updated:	01/21/2024



Database Photograph

⚠ **Note: Visual identity verification required.**

Second officer review, 2:30 PM: database photograph may not match detained subject.

Reviewed by: Officer Daniel Thompson Date/Time: 05/02/2025 02:30 PM

Exhibit D – Solano's License and Birth Certificate



STATE OF EMORY
DRIVER LICENSE

DL NO.
E123-456-789

MARIA SOLANO
1234 OAK RIDGE ROAD
KENTWOOD, EMORY 74361
GAMBRELL COUNTY

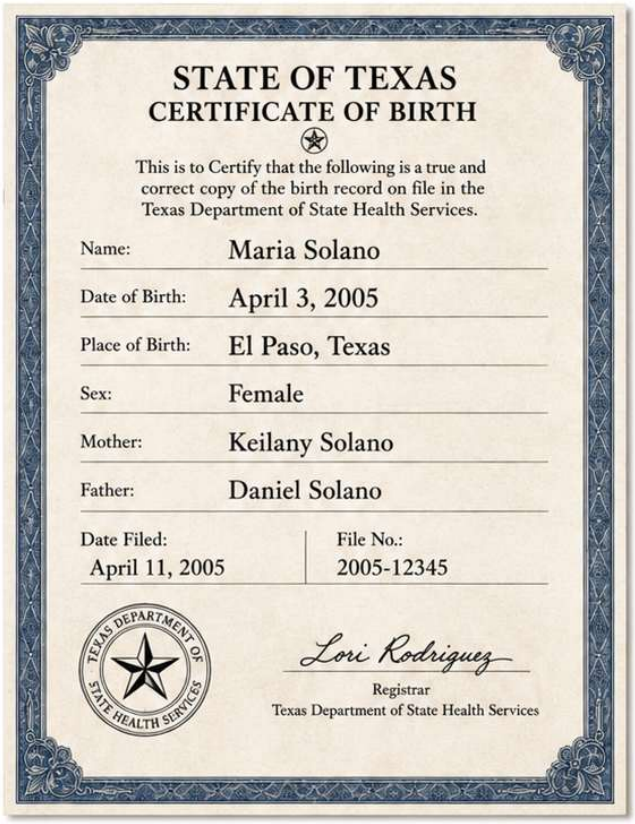
DOB: 04/03/2005

CLASS: C
END: NONE
RESTR: NONE

ISS: 04/15/2022
EXP: 04/03/2028

Maria Solano

SEX: F HGT: 5'-04" EYES: BRN
DD: 1234567890123456



STATE OF TEXAS
CERTIFICATE OF BIRTH

This is to Certify that the following is a true and correct copy of the birth record on file in the Texas Department of State Health Services.

Name:	Maria Solano
Date of Birth:	April 3, 2005
Place of Birth:	El Paso, Texas
Sex:	Female
Mother:	Keilany Solano
Father:	Daniel Solano

Date Filed: April 11, 2005

File No.: 2005-12345

TEXAS DEPARTMENT OF STATE HEALTH SERVICES

Lori Rodriguez
Registrar
Texas Department of State Health Services

EXHIBIT E – Medical Report

CLIFTON CITY URGENT CARE

104 Medical Plaza, Clifton City, Emory

Date of Service: May 2, 2025

Attending Physician: Dr. Sarah Jenkins, MD

Patient Information

- **Patient Name:** Maria Solano
- **Date of Birth:** April 3, 2005 (Age: 20 years and 1 month)
- **Patient Address:** Gambrell County, Emory

Clinical Notes

- **Time of Admittance:** 4:15 PM
- **Chief Complaint:** Bilateral wrist pain, severe bruising, numbness in extremities.
- **History of Present Illness:** Patient presents with acute bilateral wrist pain and visible ecchymosis (bruising). Patient reports being restrained with plastic zip-ties for approximately eight hours earlier today.
- **Physical Examination:**
    - Pronounced circular bruising and abrasions around both wrists.
    - Moderate swelling present.
    - Capillary refill is normal, but patient reports lingering tingling in fingers.
    - Palpation reveals tenderness over the distal radius and ulna bilaterally.
- **Imaging:** Bilateral wrist X-rays performed to rule out hairline fractures. No acute fractures or dislocations observed.
- **Diagnosis:** Bilateral wrist contusions; compressive neuropathy (temporary); superficial abrasions.
- **Treatment Plan:**
    - Wounds cleaned and dressed.
    - Bilateral wrist splints provided for comfort and stabilization.

- Prescribed a 5-day course of NSAIDs (Ibuprofen 800mg) for pain and inflammation.
- Advised to apply ice packs for 15-20 minutes every few hours and rest the wrists.

Itemized Billing Statement

Description	**Billing Code**	**Amount**
Level 4 Urgent Care Visit	99204	$ 450.00
X-Ray Bilateral Wrists (2 views)	73120	$ 620.00
Wound Care & Dressing	12001	$ 150.00
Orthopedic Supplies (2x Wrist Splints)	L3908	$ 180.00
Total Amount Due		**$ 1,400.00**

EXHIBIT F - MultiMart Wage Statement

MULTIMART – CLIFTON CITY (STORE #402)

EMPLOYEE TIME & WAGE STATEMENT

Employee Profile:

- **Name: Maria Solano**
- **Employee ID: 883-912**
- **Position: Shift Manager**
- **Pay Period: 04/28/2025 – 05/11/2025**

Timesheet Record (Week 1 excerpt):

Date	Day	Scheduled Shift	Clock-In	Clock-Out	Total Hours	Status
04/28/25	Mon	06:00 AM - 02:00 PM	05:56 AM	02:05 PM	8.00	Regular
04/29/25	Tue	06:00 AM - 02:00 PM	05:58 AM	02:02 PM	8.00	Regular
04/30/25	Wed	OFF	--	--	0.00	OFF
05/01/25	Thu	06:30 AM - 02:30 PM	05:55 AM	02:10 PM	8.00	Regular
05/02/25	Fri	06:30 AM - 02:30 PM	--	--	0.00	NO CALL / NO SHOW
05/03/25	Sat	06:30 AM - 02:30 PM	--	--	0.00	ABSENT (UNEXCUSED)
05/04/25	Sun	OFF	--	--	0.00	OFF

Supervisor Notes:

May 2, 2025: Employee did not arrive for shift. Unable to reach via phone. Marked as No Call/No Show. Missed 8.0 hours.

May 3, 2025: Employee called out prior to shift citing medical/personal emergency related to previous day's absence. Shift coverage arranged. Missed 8.0 hours.