Case No. 24-1875

In The United States Court of Appeals for the Eighth Circuit

HAMDI MOHAMUD,

Plaintiff-Appellant,

v.

HEATHER WEYKER,

Defendant-Appellee.

On Appeal from the United States District Court for the District of Minnesota
Case No. 17-cv-2069 (JNE/TNL)
The Honorable Judge Joan N. Ericksen

AMICUS CURIAE BRIEF OF THE NEW CIVIL LIBERTIES ALLIANCE IN SUPPORT OF PLAINTIFF-APPELLANT AND REVERSAL

Casey Norman
Jenin Younes
Gregory Dolin
NEW CIVIL LIBERTIES ALLIANCE
1225 19th Street NW, Suite 450
Washington, DC 20036
(202) 869-5210
casey.norman@ncla.legal

Counsel for Amicus Curiae

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, *amicus curiae* the New Civil Liberties Alliance certifies that it is a nonprofit organization, has no parent corporation, and has no shares or securities that are publicly traded.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

Regulations

STATEMENT OF INTEREST[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 the right to a jury trial, to due process of law, and to have laws made by the nation's elected legislators through constitutionally prescribed channels (*i.e.*, the right to self-government). 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—

[1] No party's counsel authored any portion of this brief, and no party, party counsel, or person other than *amicus curiae* paid for this brief's preparation or submission. All parties have consented to the filing of this brief.

a type that the Constitution was designed to prevent. This unconstitutional state within the Constitution's United States is the focus of NCLA's concern.

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 court 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 dangerous 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. By doing so, it 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 elected officials rather than judges legislating from the bench, 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). This case—in which the Defendant framed Plaintiff, then a teenager, resulting in the latter's incarceration for over two years—illustrates a quintessential example of the abuse of state power against which § 1983

is meant to protect. It also exemplifies the stark injustice and dangers posed by the unconstitutional practice of granting blanket immunity to cross-deputized law enforcement officers like Defendant Officer Weyker. Several courts have already found that Defendant appeared to have abused her authority as a law enforcement officer to fabricate allegations against Plaintiff and at least 30 other individuals for the purpose of promoting her own career. Despite her outrageous conduct, the information available indicates that Defendant remains employed as a police officer, earning a salary of over $120,000 per year, and has suffered no material consequences for her actions.[2]

In addition to evading any professional consequences from her state employer, Defendant has also, thus far, managed to avoid all liability in court. This results from the district court's categorical ruling that Defendant—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 Defendant was also a cross-deputized member of a federal joint task force—temporarily imbued with limited federal authority—and therefore, according to the court, she could only act under color of *federal* law.

---

[2] https://govsalaries.com/weyker-heather-l-158522068; Hassan Kanu, *Police empowered to lie about investigations after federal appeals court ruling*, REUTERS (June 20, 2022); https://www.reuters.com/legal/government/police-empowered-lie-about-investigations-after-federal-appeals-court-ruling-2022-07-20/.

Cross-deputized officers are imbued with limited federal authority to fulfill particular 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. Indeed, 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, § 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 creating only an implied cause of action for damages against federal actors. With *Egbert*'s erosion of the doctrine's already shaky footing, 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 thus crucial for plaintiffs who have been wronged by cross-deputized law enforcement officers. When courts, including the district 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 dangerous message to state and local officers that they may commit patently unconstitutional acts with total impunity, so long as the acts are undertaken while the officers are members of a joint task force.

The district court is not alone in its profligate, categorical approach to cross-deputization. Indeed, numerous courts across the nation have adopted just such a presumption of absolute immunity for cross-deputized state and local officers serving on federal task forces. However, it is both nonsensical and dangerous for a court to conclude, without meaningful review of the facts, that the mere existence of federal task force involvement means that all acts by a task force's members were carried out exclusively "under federal authority."

Indeed, the Supreme Court 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 "under the *exclusive* color" of state law or even "under the primary color" of state law. As the Supreme 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, 400 n. 17

(1979). That is because § 1983 is a remedial statute, which Congress enacted "in the aid of the preservation of human liberty and human rights." *Id*.

The categorical rule of absolute immunity adopted by many 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 legally supplied remedy to protect their most fundamental 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 '[enforcing] the Provisions of the Fourteenth Amendment.'" *Lugar*, 457 U.S. at 934 (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) (internal citations and quotation marks omitted). *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 v. Piphus*, 435 U.S. 247, 254–57 (1978)).

Section 1983 provides a direct cause of action against:

> [e]very 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 the 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.").

Congress did not limit application of the statute to actions taken "under the *exclusive* color" of state law or even "under the primary color" of state law. Nor has the Supreme Court read any such restriction into the statute. As the Supreme Court has instructed, § 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 the 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.

In the same vein, § 1983 provides no carveout or insulation from liability for state or local officers who also happen to be assisting with federal joint task forces—also known as "cross-deputized" officers. Cross-deputization is a practice whereby

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). Such 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 statutes, including 28 C.F.R. § 0.112—under which Defendant Weyker was cross-deputized—do not provide for immunity from lawsuits brought under § 1983. Weyker nevertheless contends, and apparently the district court agreed, that she is absolved from liability for her numerous[3] 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, Defendant 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

[3] As this Court has already concluded, Defendant Officer Weyker is not entitled to qualified immunity, as "a reasonable officer would know that deliberately misleading another officer 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).

crime. It is, in fact, doubtful whether the enabling statute or Weyker's cross-deputization support *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." App. 47; R. Doc. 76, at 23. Officer Weyker's actions in framing Mohamud and other adolescents for state-law crimes that Weyker knew were unsupported by even a scintilla of probable cause certainly fell well beyond the limits of any reasonable conception of the federal authority granted to her.

II. POST-*EGBERT*, § 1983 IS A PARTICULARLY 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 under the 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).[4] As a result, those whose constitutional rights have

[4] 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*

been violated by joint task force officers have been compelled to play a befuddling shell game, in which they 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 courts appears to be none of the above—which has left plaintiffs with no pathway to recovery, while empowering rogue cross-deputized officers to abuse their authority. That is because the Supreme Court's recent ruling in *Egbert v. Boule* all but eliminated the availability of *Bivens* relief to plaintiffs whose rights were violated by federal law enforcement officers, leaving § 1983 as a plaintiff's only remedy for relief against an officer committing unconstitutional acts under color of both state and federal law. Yet the 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 too limiting and inconsistent with the Constitution, the Supreme Court's rationale in that case was at least not antithetical to explicit congressional legislation, which cannot be said of the lower

---

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").

court's approach here. Indeed, although Congress expressly authorized actions for damages against *state* officers for constitutional violations through § 1983, it has neglected to do the same for suits against federal officials. *Bivens* and its progeny represent the few implied causes of action that the Supreme 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*, the Supreme Court disavowed its ruling in *Bivens* and all but eliminated the possibility of applying *Bivens* to any new contexts 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*, courts tended to apply *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 creating only an implied cause of action for damages against federal actors. With *Egbert*'s erosion of the doctrine's already shaky footing, courts have thus 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 is thus crucial for plaintiffs who have been wronged by cross-deputized law enforcement officers.[5] Thus, the end result of courts' effective refusal to subject cross-deputized officers to § 1983 liability is that state and local officers may commit patently unconstitutional acts with total 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

[5] 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 its powers. 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. 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 a workaround to the limitations on its police power.

enforcement power beyond its constitutional limits, with horrific consequences. Take a few of the most appalling examples committed only within the last year:

- *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.

  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.

  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 were the result of the various courts' unconstitutional adoption of a 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 Supreme Court precedent, they focused instead on the source of authority for the officers' cross-deputization.

In effect, what was once a frustrating 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.

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 is anathema to Congress's purpose and design in enacting the Civil Rights Act. Yet the district court, along with too many other courts throughout the nation in recent years, adopted just such a presumption, declining to meaningfully analyze the specific facts of Plaintiff's case and Defendant's conduct. Rather, the district court appeared to believe that, simply because Defendant Weyker 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 Plaintiff's constitutional rights under color of state law. Not so.[6]

The Supreme 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, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any … 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.") (emphasis added). *See* 42 U.S.C. § 1983. Accordingly, the district court's holding must be reversed.

---

[6] Not only did the court deny Plaintiff leave to amend, it also: inappropriately considered evidence outside the pleadings submitted by Officer Weyker in her *motion to dismiss*; denied Plaintiff's request to conduct *any* discovery; and, offering no analysis, granted Officer Weyker's motion to dismiss, which the court treated as motion for summary judgment despite Plaintiff's inability to conduct any discovery or to introduce critical new evidence raised in her proposed second amended complaint.

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 8. As the Supreme 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, the Supreme 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).

The Supreme Court's 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."). 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 ask whether Defendant's framing of Plaintiff for witness tampering (which resulted in Plaintiff's spending over two of her teenage years behind bars) occurred "under color of state law," the district court blindly followed

the holding in *Yassin v. Weyker*, 39 F.4th 1086 (8th Cir. 2022). Assuming *arguendo* and *dubitante* that this Court decided *Yassin* correctly, it contained critically different facts and allegations than the case at hand. For example, Plaintiff recently uncovered joint agreements between the St. Paul Police Department, Defendant'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, or employee, 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.

App. 67, 97; R. Doc. 76, at 43, 73. In other words, by entering into such joint agreements, cross-deputized St. Paul Police Department 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 district court 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).

Notwithstanding core constitutional principles and binding Supreme Court precedent, the district court, relying on *Yassin*, concluded without analysis that there is no § 1983 cause of action available to Plaintiff. As in all cases, the district 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 20–21.

If any case illustrates why the district court's approach was wrongheaded, it is this one. Defendant has a documented history of framing at least 30 innocent people, many of whom have spent time in pretrial detention; Plaintiff's friend even gave birth in custody due to Defendant's misuse of her authority as a law enforcement officer. *See Ahmed v. Weyker*, 984 F.3d 564, 566 (8th Cir. 2020). Plaintiff 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 Defendant simply manufactured allegations in order to bolster her career and reputation. *See, e.g.*, *United States v. Adan*, No. 3:10-CR-260 (M.D. Tenn.), *et al*. (the "Adan" cases); *Ahmed*, 984 F.3d at 565; *United States v. Fahra*, 643 F. App'x 480, 481–84 (6th Cir. 2016). Yet absent this Court's intervention, Defendant Weyker will suffer no consequences for her deplorable conduct, in part

because of the district court's ruling in this case. That failing conveys a 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 is not a message that this Court should 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 district court's practice is emerging among the lower courts in this country, that provides all the more reason why that 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, this Court should reverse the judgment of the district court, grant Plaintiff's motion for leave to file a second amended complaint, deny Defendant's motion for summary judgment, and remand this case for further proceedings.

July 16, 2024

Respectfully Submitted,

/s/ *Gregory Dolin*

Casey Norman
Jenin Younes
Gregory Dolin
NEW CIVIL LIBERTIES ALLIANCE
1225 19th St. NW, Suite 450

Washington, DC 20036
(202) 869-5210
Greg.Dolin@NCLA.legal

Counsel for Amicus Curiae

Certificate of Service

I hereby certify that on July 16, 2024, I electronically filed this brief *amicus curiae* with the Clerk of this Court using the CM/ECF system, which will send notice of such filing to all counsel of record.

July 16, 2024

Respectfully,
/s/ *Gregory Dolin*
Gregory Dolin

Counsel for Amicus Curiae

Certificate of Compliance

I certify that this filed brief *amicus curiae* complies with the type-volume limitation of Fed. R. App. P. 27 because this brief contains 5,578 words.

This brief complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared using a proportionally spaced typeface using Microsoft Word in Times New Roman 14-point font.

July 16, 2024

Respectfully,
/s/ *Gregory Dolin*
Gregory Dolin

Counsel for Amicus Curiae