

NOTE

Holding Law Enforcement Accountable: § 1983 and the Practice of Special Deputation

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ABSTRACT

For many years, federal agencies have deputized state and local law enforcement to serve on federal task forces in limited capacities. This Note addresses a loophole created by the unique legal status of specially deputized officers, whereby they have been able to escape civil liability for breaking the law. Traditionally, private citizens can hold state law enforcement civilly liable under 42 U.S.C. § 1983, but multiple circuits have interpreted § 1983 to exclude specially deputized officers. These courts have held that these officers do not act under color of state law—a requirement of § 1983—when participating in federal task forces. Further, the Bivens action, a judicially created cause of action against federal agents, has been constrained nearly to extinction. As a consequence, victims of specially deputized officers have been unable to recover monetary damages. This Note explores the statutory authority underpinning special deputation and proposes that specially deputized officers do indeed act under color of state law by virtue of their authority originating with the state, meaning § 1983 does apply to them. This Note therefore encourages courts to apply § 1983 to specially deputized officers to ensure that these officers are held accountable for civil rights violations. Finally, this Note proposes an amendment to § 1983 that clarifies that special deputies act under color of state law as a supplemental solution to close this loophole.

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INTRODUCTION

As the Supreme Court stated over 200 years ago in *Marbury v. Madison*,¹ “The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury.”² When it comes to the practice of law enforcement special deputation, however, this essential principle has failed. For decades, federal law enforcement agencies have deputized state and local law enforcement officers to serve on joint state-federal task forces, which often target issues that cross state lines, such as drug trafficking or gang violence.³ For example, the Presidential Threat Protection Act of 2000⁴ formally required the Attorney General to establish permanent Fugitive Apprehension Task Forces consisting of federal, state, and local

¹ 5 U.S. (1 Cranch) 137 (1803).

² *Id.* at 163.

³ See Stephen Owsinski, *Behind the Badges: Task Forces*, NAT’L POLICE ASS’N, <https://nationalpolice.org/main/behind-the-badges-task-forces/> [https://perma.cc/RA6A-EK3H] (last visited Aug. 9, 2025); see also *Fugitive Investigative Strike Teams - FIST IV*, U.S. MARSHALS SERV., <https://www.usmarshals.gov/who-we-are/history/historical-reading-room/fugitive-investigative-strike-teams-fist-iv> [https://perma.cc/7VPY-53J9] (last visited Apr. 14, 2026) (describing a joint task force between the Marshals Service and the District of Columbia Metropolitan Police Department); Mike Stokes, *U.S. Marshals Deputize Clay County Sheriff’s Deputies*, U.S. MARSHALS SERV. (July 8, 2021), <https://www.usmarshals.gov/news/press-release/us-marshals-deputize-clay-county-sheriffs-deputies> [https://perma.cc/XVQ8-HRJT] (describing a joint task force between the Marshals Service and assorted Missouri police departments).

⁴ Pub. L. No. 106-544, 114 Stat. 2715 (codified as amended in scattered sections of the U.S. Code).

law enforcement officers to be directed by the United States Marshals Service (“USMS”).⁵ Between 2020 and 2023, the USMS sponsored the special deputation of approximately 8,500 task force officers.⁶ These joint task forces combine resources to more effectively “address specific crime problems and national security threats,” acting as important force multipliers for federal agencies.⁷ However, the unique nature of these specially deputized officers creates a concerning loophole in the law.

Traditionally, Americans who are victims of overzealous policing are afforded relief under 42 U.S.C. § 1983, which provides a civil cause of action in instances when any person acting under color of state law deprives an individual of their rights.⁸ Several circuits have held, however, that § 1983 is inapplicable to these specially deputized officers, reasoning that these officers do not act under color of state law because they work under temporary federal authority.⁹ As a consequence of these holdings, Americans whose rights have been violated by specially deputized officers are often barred from relief.¹⁰ The issue is compounded by the Supreme Court’s continued narrowing¹¹ of its holding in *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*,¹² which provided an implied cause of action against federal agents.¹³ The unavailability of other remedies, such as state law claims and relief under the Federal Tort Claims Act (“FTCA”),¹⁴ means these deputized officers are effectively immune from civil liability. Closing this loophole is especially pressing considering an executive order issued on January 20, 2025, which requires the Secretary of Homeland Security to deputize state and local law enforcement officers to conduct immigration enforcement activities to the “maximum extent permitted by law.”¹⁵ As of April 2026, thirty-nine states and two territories have entered into

⁵ *Id.* § 6 (codified at 34 U.S.C. § 41503).

⁶ OFF. OF THE INSPECTOR GEN., DEP’T OF JUST., AUDIT OF THE U.S. MARSHALS SERVICE’S SPECIAL DEPUTATION AUTHORITY 12 (2024), <https://oig.justice.gov/sites/default/files/reports/24-116.pdf> [<https://perma.cc/Z9VX-NK4E>].

⁷ *Do FBI Agents Work with State, Local, or Other Law Enforcement Officers on “Task Forces”?*, FED. BUREAU OF INVESTIGATION, <https://www.fbi.gov/about/faqs/do-fbi-agents-work-with-state-local-or-other-law-enforcement-officers-on-task-forces> [<https://perma.cc/D8A7-KV6L>] (last visited May 13, 2026); *see also* OFF. OF THE INSPECTOR GEN., *supra* note 6, at i (“Federal agencies rely upon special deputations to be a force multiplier for federal task forces, respond to national emergencies and high-profile events, and protect government personnel and property.”).

⁸ *See* 42 U.S.C. § 1983.

⁹ *See infra* Section II.A.

¹⁰ *Id.*

¹¹ *See* *Egbert v. Boule*, 596 U.S. 482, 486, 501 (2022).

¹² 403 U.S. 388 (1971).

¹³ *See id.* at 397.

¹⁴ 28 U.S.C. §§ 1346(b), 2671–2680; *see infra* Section II.B.

¹⁵ Exec. Order No. 14159, 90 Fed. Reg. 8443, 8445 (Jan. 29, 2025).

agreements facilitating special deputations.¹⁶ One estimate suggests there are between 13,800 and 15,800 special deputies nationwide.¹⁷

This Note explores the treatment of specially deputized officers in the legal system and suggests how courts should approach this issue moving forward to ensure that Americans are able to recover damages following a deprivation of rights. Ultimately, all specially deputized officers act under color of state law for the purposes of § 1983. An analysis of their statutory authority reveals that the *state* must first use its authority to establish a civilian as a law enforcement officer before that officer can be selected for special deputation by a federal agency. Such an officer necessarily possesses their authority by virtue of the state and thus acts under color of state law. The only question under § 1983 would therefore be whether a deprivation of rights under the Constitution or federal law did indeed occur. By adopting this framework, courts can reverse the trend of effectively granting immunity to state and local government officials simply because they were chosen for temporary deputization with a federal agency.

This Note proceeds first with background on the relevant legal doctrine, including the history of § 1983, the evolution and subsequent restrictions placed on the *Bivens* doctrine, the application of both doctrines to special deputation, and the existence of alternative remedies. Next, this Note analyzes the statutory authority behind special deputation before exploring the possibility of concurrent federal and state action. This Note concludes by proposing a legislative remedy as a supplemental solution to close this loophole.

I. HISTORICAL BACKGROUND

Section I.A begins by exploring the history and purpose behind § 1983 and then analyzes how the Supreme Court has interpreted the statute's protections expansively for decades. Section I.B provides an overview of the *Bivens* doctrine, which recognizes an implied cause of action against federal officers. Judicial decisions have increasingly narrowed the doctrine, creating an accountability gap in the context of special deputation.

¹⁶ *Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*, U.S. IMMIGR. & CUSTOMS ENF'T (Apr. 13, 2026, at 11:46 ET), <https://www.ice.gov/identify-and-arrest/287g> [<https://perma.cc/K9GQ-ZKAE>].

¹⁷ FELICITY ROSE, FWD.US, "FORCE MULTIPLIER": HOW ICE IS PROMISING BILLIONS TO LOCAL LAW ENFORCEMENT TO EXPAND ITS REACH IN DANGEROUS WAYS 4 (2026), <https://www.fwd.us/wp-content/uploads/2026/02/287g.pdf> [<https://perma.cc/784L-7L42>].

A. *The History of § 1983 and Color of Law*

The relevant statute, 42 U.S.C. § 1983, was originally passed as section 1 of the Ku Klux Klan Act of 1871.¹⁸ The Act originated during a time of lawlessness in the South, when state officials refused to vindicate the constitutional rights of African Americans amid widespread violence by the Ku Klux Klan.¹⁹ It was enacted pursuant to Congress's power under section 5 of the Fourteenth Amendment.²⁰ The statute states:

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 redress²¹

The first phrase, “under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia,” is more commonly referred to as action taken under “color of state law.”²² The statute thus creates a civil remedy against any person acting under color of state law who violates the constitutional rights of any person within the United States.²³ Congress aimed to create a federal remedy that could be available when state remedies had failed.²⁴ And as § 1983 jurisprudence evolved over time, this color of law concept became consequential in determining the availability of the federal remedy.

¹⁸ Ch. 22, 17 Stat. 13 (codified as amended at 42 U.S.C. §§ 1983, 1985–1986); see *Monroe v. Pape*, 365 U.S. 167, 171 (1961), *overruled in part on other grounds by* *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978).

¹⁹ *Monroe*, 365 U.S. at 171–80 (examining the legislative history of the Act and finding that Congress relied on reports that certain states had been unable or unwilling to enforce state laws against the activities of the Klan).

²⁰ *Id.* at 171; see also U.S. CONST. amend. XIV, § 5 (“The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.”).

²¹ 42 U.S.C. § 1983.

²² *Id.*; see, e.g., *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 150 (1970) (stating that to recover through a § 1983 claim, “the plaintiff must show that the defendant deprived him of this constitutional right ‘under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory,’” which “requires that the plaintiff show that the defendant acted ‘under color of law’”).

²³ 1 STEVEN H. STEINGLASS, SECTION 1983 LITIGATION IN STATE AND FEDERAL COURTS § 2:2 (rev. ed. 2025).

²⁴ *Monroe*, 365 U.S. at 174; see also *id.* at 175–76 (explaining that the remedy is not targeted at the Klan or its members, but “against those who representing a State in some capacity were *unable* or *unwilling* to enforce a state law”).

Since the 1940s, the Supreme Court has defined "color of law" broadly.²⁵ In the 1941 case *United States v. Classic*,²⁶ the Court held that "[m]isuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken 'under color of' state law."²⁷ There, state election commissioners indicted for falsely certifying an election acted under color of state law because they were performing official duties authorized by state statute.²⁸ Although the commissioners exceeded their authority, their acts were still committed within the course of their duties and thus were actions under color of state law.²⁹

Further, in the 1945 case *Screws v. United States*,³⁰ the Court rejected the view that an officer acting under color of law may only be held accountable when a state law has been violated.³¹ The key inquiry is not whether there is a violation of the federal or state law under which the officer purports to act.³² Rather, the Court found that the narrow statutory language meant that the statute only applied to "those acts which deprived a person of some right secured by the Constitution or laws of the United States."³³ Therefore, the proper question was whether a constitutional deprivation had occurred.³⁴ *Classic* and *Screws* set the stage for an influential case that came two decades later and established "§ 1983 as the principal modern vehicle for the private enforcement of federal law against state and local . . . officials."³⁵

In the foundational 1961 case *Monroe v. Pape*,³⁶ the Supreme Court found a cause of action under § 1983 against Chicago police officers who broke into a home, ransacked it, and detained the homeowner, all without a search or arrest warrant.³⁷ The defendants argued that action taken under color of state law "excludes acts of an official or policeman who can show no authority under state law, state custom, or state usage

²⁵ Although early case law concerned the construction of a different statute, the Supreme Court later used these cases in defining "color of law" under § 1983. *See id.* at 183–87 (discussing different statutes and concluding "it is beyond doubt that [the phrase 'under color of' state law] should be accorded the same construction . . . in § [1983] and in 18 U.S.C. § 242").

²⁶ 313 U.S. 299 (1941).

²⁷ *Id.* at 326.

²⁸ *Id.* at 308–09, 325–26.

²⁹ *Id.* at 325–26.

³⁰ 325 U.S. 91 (1945).

³¹ *See id.* at 108–09.

³² *See id.* at 108.

³³ *Id.* at 109.

³⁴ *Id.* at 108–09.

³⁵ 1 STEINGLASS, *supra* note 23, § 2:4.

³⁶ 365 U.S. 167 (1961).

³⁷ *Id.* at 169, 187.

to do what he did.”³⁸ However, the Court adamantly reaffirmed that the broad interpretation of “color of law” in *Classic* and *Screws* was correct.³⁹ The Court concluded that § 1983 is intended to provide a remedy to citizens “deprived of constitutional rights . . . by an official’s abuse of his position,” regardless of whether an officer “act[s] in accordance with their authority or misuse[s] it.”⁴⁰ Additionally, the Court made clear that § 1983, as a federal remedy, is supplementary to any state remedy; a citizen need not pursue a state remedy before pursuing a § 1983 claim.⁴¹ Thus, even if an adequate state remedy exists, that does not preclude relief under this federal statute.⁴²

Monroe set the framework for § 1983 claims that is still accepted by the Court today, although it has been refined over time.⁴³ One such refinement came twenty years later in *Lugar v. Edmondson Oil Co.*,⁴⁴ in which the Supreme Court stated that a § 1983 claim requires that the conduct at issue be “fairly attributable to the State.”⁴⁵ The Court set out two determining factors in answering the question of fair attribution:

First, the deprivation must be caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the State or by a person for whom the State is responsible. . . . Second, the party charged with the deprivation must be a person who may fairly be said to be a state actor. This may be because he is a state official, because he has acted together with or has obtained significant aid from state officials, or because his conduct is otherwise chargeable to the State.⁴⁶

The Court thus identified the source of authority for the alleged deprivation as a central consideration in deciding whether § 1983 is applicable. Importantly, it clarified that the depriving party does not have to be a state official, so long as the state played a significant role in the party’s actions.⁴⁷ Indeed, private parties have been held liable under § 1983.⁴⁸

Beyond adding to the Court’s interpretation of “color of law,” the *Lugar* decision was significant because it reaffirmed that § 1983 is meant

³⁸ *Id.* at 172.

³⁹ *See id.* at 186–87.

⁴⁰ *Id.* at 171–72.

⁴¹ *Id.* at 183.

⁴² *Id.*

⁴³ 1 STEINGLASS, *supra* note 23, § 2:4.

⁴⁴ 457 U.S. 922 (1982).

⁴⁵ *Id.* at 937.

⁴⁶ *Id.*

⁴⁷ *See id.* at 937–39.

⁴⁸ *See, e.g.,* *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.”).

to provide broad protection.⁴⁹ The Court emphasized that any interpretation of § 1983 that would limit redress for Fourteenth Amendment violations would be antithetical to the statute's purpose.⁵⁰ In particular, the Court looked to the history of the Ku Klux Klan Act of 1871, finding that the purpose of section 1 was "enforcement . . . of the Constitution on behalf of every individual citizen . . . to the extent of the rights guarantied to him by the Constitution."⁵¹ This excerpt shows the Court's tendency to interpret § 1983 as a broad federal remedy.⁵²

This tendency is also reflected by the broad damages awarded under the statute, which largely track common law tort rules for damages and include compensation for monetary losses, "personal humiliation, and mental anguish and suffering."⁵³ Substantial damages require a plaintiff to prove "actual injury"; nominal damages exist as a remedy when such proof is not available because "the law recognizes the importance to organized society that [constitutional] rights be scrupulously observed."⁵⁴ Further, punitive damages are permitted when the defendant's conduct is "motivated by evil motive or intent" or "involves reckless or callous indifference to the federally protected rights of others."⁵⁵ Indeed, compensatory damages are broad due to the significance of the rights violation.⁵⁶

Supreme Court jurisprudence strongly upholds § 1983 as an important protection for private citizens against the deprivation of constitutional rights by state and local governments and their officials.⁵⁷ The statute's color-of-state-law requirement, however, has rendered relief unavailable in cases involving special deputation.⁵⁸ Relief is specifically unavailable because special deputies, although technically local law enforcement officers, are temporarily assigned to federal task forces and

⁴⁹ See *Lugar*, 457 U.S. at 934.

⁵⁰ *Id.*

⁵¹ *Id.* (quoting CONG. GLOBE, 42d Cong., 1st Sess. app. 81 (1871) (statement of Rep. John A. Bingham) (alterations in original)).

⁵² See, e.g., *Lake Country Ests., Inc. v. Tahoe Reg'l Plan. Agency*, 440 U.S. 391, 400 n.17 (1979) (stating that § 1983 must be interpreted with the "largest latitude consistent with the words employed" (quoting CONG. GLOBE, 42d Cong., 1st Sess. app. at 68 (1871) (statement of Rep. Samuel Shellabarger))).

⁵³ *Memphis Cmty. Sch. Dist. v. Stachura*, 477 U.S. 299, 307 (1986) (quoting *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 350 (1974)); see also *Carey v. Piphus*, 435 U.S. 247, 257–58 (1978) ("[O]ver the centuries the common law of torts has developed a set of rules . . . [that] provide the appropriate starting point for the inquiry under § 1983.").

⁵⁴ *Carey*, 435 U.S. at 266.

⁵⁵ *Smith v. Wade*, 461 U.S. 30, 56 (1983).

⁵⁶ See *Carey*, 435 U.S. at 258–59 ("In order to further the purpose of § 1983, the rules governing compensation for injuries caused by the deprivation of constitutional rights should be tailored to the interests protected by the particular right in question.").

⁵⁷ See 1 STEINGLASS, *supra* note 23, § 2:4.

⁵⁸ See *infra* Section II.A.

act within the scope of those federal duties.⁵⁹ For example, the USMS confers upon its special deputies federal law enforcement powers pursuant to Title 18, such as the ability “to make certain federal arrests, [and] to seek and execute warrants.”⁶⁰ If a special deputy is executing a federal arrest warrant and a constitutional deprivation occurs, it is less clear whether § 1983 applies. As this Note discusses, the recent trend among courts has been to interpret special deputies as acting under color of federal law, rather than state law.⁶¹ The consequence of this trend is especially concerning considering that recourse is rarely available against federal officials following changes to the *Bivens* doctrine, a judicially created remedy for constitutional violations committed by those acting under color of federal law.

B. Holding Federal Officers Accountable: The Evolution of the Bivens Doctrine

The availability of § 1983 is particularly important to consider with special deputation due to the difficulty private parties have in recovering money damages from federal officials. Although Congress has not passed a statute comparable to § 1983 that would apply to federal officials, in 1971, the Supreme Court recognized an implied cause of action against federal agents for money damages in *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*.⁶² In *Bivens*, agents from the Federal Bureau of Narcotics allegedly entered a home, searched it, arrested the homeowner, and subjected him to a visual strip search, all without a warrant or probable cause.⁶³ The Court held that state trespass laws were insufficient to protect the homeowner’s Fourth Amendment right against unreasonable searches and seizures.⁶⁴ As such, the Court found that such laws did not preclude the plaintiffs from seeking redress, as citizens should still be able to seek justice for unconstitutional exercises of federal power.⁶⁵ The Court noted that officers acting in the name of the United States possess a far greater capacity for harm than private trespassers and that “power, once granted, does not disappear like a magic gift when it is wrongfully used.”⁶⁶ Accordingly, the homeowner

⁵⁹ See *King v. United States*, 917 F.3d 409, 433 (6th Cir. 2019), *rev’d sub nom.*, *Brownback v. King*, 592 U.S. 209 (2021).

⁶⁰ OFF. OF THE INSPECTOR GEN., *supra* note 6, at i.

⁶¹ See *infra* Section II.A.

⁶² 403 U.S. 388 (1971).

⁶³ *Id.* at 389.

⁶⁴ See *id.* at 390–95.

⁶⁵ See *id.* at 391–92.

⁶⁶ *Id.* at 392.

was entitled to recover money damages for injuries he suffered as a result of the agents' Fourth Amendment violation.⁶⁷

The Court continued to update the *Bivens* doctrine in subsequent years. In the 1979 case *Davis v. Passman*,⁶⁸ the Supreme Court expanded the *Bivens* cause of action to Fifth Amendment violations.⁶⁹ A year later, in *Carlson v. Green*,⁷⁰ the Court expanded *Bivens* to Eighth Amendment violations, but also noted two instances in which *Bivens* would not apply:

The first is when defendants demonstrate “special factors counselling hesitation in the absence of affirmative action by Congress.” The second is when defendants show that Congress has provided an alternative remedy which it explicitly declared to be a *substitute* for recovery directly under the Constitution and viewed as equally effective.⁷¹

Examples of special factors include questions of federal fiscal policy, where Congress is normally quite ready to create liability, or an instance of a congressional employee exceeding the authority delegated to them by Congress.⁷² Although *Bivens* was at its most robust after *Carlson*, the Supreme Court proceeded to reject *Bivens* liability in several instances over the following decades.⁷³ Often, these rejections were based on a finding that the second *Carlson* factor failed because alternative remedies existed.⁷⁴

One such case was *Ziglar v. Abbasi*,⁷⁵ in which undocumented immigrants detained in the aftermath of the September 11 terrorist attacks claimed violations of their constitutional rights under a *Bivens* theory of liability.⁷⁶ The Court acknowledged that, at the time *Bivens* was decided, it had found it appropriate to provide remedies that Congress had not explicitly created.⁷⁷ Over time, however, the Court adopted a “far more cautious course” when finding implied causes of action, largely to maintain separation-of-powers principles.⁷⁸ The Court established a two-part test for a proper *Bivens* action, which first asks if the case is “different in a meaningful way from previous *Bivens* cases decided by this

⁶⁷ *Id.* at 397.

⁶⁸ 442 U.S. 228 (1979).

⁶⁹ *Id.* at 248–49.

⁷⁰ 446 U.S. 14 (1980).

⁷¹ *Id.* at 18–19 (citations omitted) (quoting *Bivens*, 403 U.S. at 396).

⁷² *Bivens*, 403 U.S. at 396–97.

⁷³ See *Hernandez v. Mesa*, 589 U.S. 93, 101–02 (2020) (gathering Supreme Court cases that declined to extend *Bivens*).

⁷⁴ See *id.*; Leading Cases, *Egbert v. Boule*, 136 HARV. L. REV. 370, 370 (2022).

⁷⁵ 582 U.S. 120 (2017).

⁷⁶ See *id.* at 125–26.

⁷⁷ *Id.* at 131–32.

⁷⁸ *Id.* at 132–34.

Court.”⁷⁹ Meaningful differences may include, for example, the rank of the officers involved or the constitutional right at issue.⁸⁰ If the case is not meaningfully different, then there is a cause of action.⁸¹ If the case is meaningfully different, then it “presents a new *Bivens* context,” and the next step is to perform the special-factors analysis.⁸²

In *Ziglar*, the Court held that despite “significant parallels” to *Carlson*, the detainees’ claims presented a new context, in part because a different constitutional right was at issue; the claim in *Carlson* involved the Eighth Amendment, but the detainees’ claim was based on the Fifth Amendment.⁸³ For two of the detainees’ claims, the Court further found that special factors counseled hesitation, including that the suit was against an official for the acts of a subordinate⁸⁴ and the existence of national security considerations.⁸⁵ Taken together, this resulted in the Court rejecting *Bivens* relief for those two claims.⁸⁶ Although the Court found that the detainees’ claims involving alleged prisoner abuse presented a new context, there was a lack of briefing on the special factors, so that analysis was remanded to the lower court.⁸⁷ *Ziglar* signaled the Supreme Court’s retreat from the *Bivens* doctrine, which continued in subsequent years.⁸⁸

The Court capped off its trend of rejecting *Bivens* liability with a decision strongly limiting the doctrine in the 2022 case *Egbert v. Boule*.⁸⁹ Robert Boule, the owner of a bed-and-breakfast by the U.S.–Canadian border, brought a *Bivens* claim against a U.S. Customs and Border Protection (“CBP”) agent, Erik Egbert.⁹⁰ Egbert had allegedly entered the driveway of the property to check a guest’s immigration status, refused to leave the property when Boule requested, “lifted [Boule] off the ground and threw him against [an] SUV,” and finally “threw [Boule] to the ground.”⁹¹ Boule filed a grievance with Egbert’s supervisors, and

⁷⁹ *Id.* at 139.

⁸⁰ *See id.* at 139–40.

⁸¹ *Id.* at 134–35, 140.

⁸² *Id.* at 139; *see also id.* at 136 (describing special factors as those that indicate “whether the Judiciary is well-suited, absent congressional action or instruction, to consider and weigh the costs and benefits of allowing a damages action to proceed”).

⁸³ *Id.* at 147–48.

⁸⁴ *Id.* at 141 (“*Bivens* is not designed to hold officers responsible for acts of their subordinates.”).

⁸⁵ *Id.* at 142–46.

⁸⁶ *Id.* at 146.

⁸⁷ *Id.* at 149.

⁸⁸ *See* Joanna C. Schwartz, Alexander Reinert & James E. Pfander, *Going Rogue: The Supreme Court’s Newfound Hostility to Policy-Based Bivens Claims*, 96 NOTRE DAME L. REV. 1835, 1836–39 (2021).

⁸⁹ 596 U.S. 482 (2022).

⁹⁰ *Id.* at 487, 490.

⁹¹ *Id.* at 489.

Egbert allegedly retaliated by reporting Boule's license plate—which said “SMUGLER”—for “referencing illegal conduct.”⁹² Boule claimed a Fourth Amendment violation for excessive use of force and a First Amendment violation for unlawful retaliation.⁹³ In analyzing Boule's claims, the Court noted that its days of creating common law causes of action were over, having “come ‘to appreciate more fully the tension between’ judicially created causes of action and ‘the Constitution’s separation of legislative and judicial power.’”⁹⁴ It further noted that recognizing a *Bivens* cause of action is a “disfavored judicial activity” and that if even a single reason exists for which Congress might doubt the need for such a remedy, the Court must refrain from creating one.⁹⁵

Applying the *Ziglar* two-step test, the Supreme Court first established that Boule's Fourth Amendment claim presented a new context.⁹⁶ Further, the Court found that two special factors counseled against a *Bivens* cause of action: the fact that “Congress is better positioned [than the judiciary] to create remedies in the border-security context,” and the fact that alternative remedies already existed.⁹⁷ The First Amendment retaliation claim likewise represented a new context.⁹⁸ Additionally, because Congress could better analyze whether the risk of financial liability would unduly inhibit officials, it was better equipped to authorize a remedy.⁹⁹ For these reasons, the Court found no *Bivens* cause of action.¹⁰⁰ Finally, the Court added an additional restriction: Even if there are no special factors counseling hesitation, no *Bivens* cause of action may be created when “an alternative remedial structure” exists.¹⁰¹ The Court held that regulations requiring CBP to investigate alleged violations and accept grievances were sufficient to deter the unconstitutional acts of individual officers and therefore “independently foreclose[d]” a *Bivens* action.¹⁰²

In the wake of *Egbert*, relief under *Bivens* is available only when the facts are similar enough to the three *Bivens* claims that the Supreme Court has previously approved that the case presents no new cause of action. Those three cases illustrate the current doctrine's narrowness.

⁹² *Id.* at 489–90.

⁹³ *Id.* at 490.

⁹⁴ *Id.* at 491 (quoting *Hernandez v. Mesa*, 589 U.S. 93, 100 (2020)).

⁹⁵ *Id.* (quoting *Ziglar v. Abbasi*, 582 U.S. 120, 135 (2017)); *see also id.* at 492 (stating that the two-step analysis “often resolve[s] to a single question: whether there is any reason to think that Congress might be better equipped to create a damages remedy”).

⁹⁶ *Id.* at 494.

⁹⁷ *Id.*

⁹⁸ *See id.* at 498.

⁹⁹ *Id.* at 499.

¹⁰⁰ *See id.* at 501.

¹⁰¹ *Id.* at 493 (quoting *Ziglar v. Abbasi*, 582 U.S. 120, 137 (2017)).

¹⁰² *Id.* at 497–98.

First, in *Bivens*, a man was arrested in his own home, jailed, and subjected to a visual strip search by Federal Bureau of Narcotics agents acting without a warrant, and successfully stated a cause of action for the violations of his Fourth Amendment right against unreasonable search and seizure.¹⁰³ Next, in *Passman*, a deputy administrative assistant to a U.S. Congressman, who was fired expressly because she was a woman, successfully stated a cause of action under *Bivens* for the violation of her Fifth Amendment Due Process rights.¹⁰⁴ Finally, in *Carlson*, the estate of a deceased federal prisoner successfully brought a *Bivens* claim against federal prison officials for violating the prisoner's Eighth Amendment right to be protected from cruel and unusual punishment after the officials denied him adequate medical treatment.¹⁰⁵

Case law demonstrates how closely facts must track *Bivens*, *Passman*, and *Carlson* to avoid presenting a new cause of action. For example, in *Lewis v. Bartosh*,¹⁰⁶ the Second Circuit rejected a *Bivens* claim against a Deputy U.S. Marshal for use of excessive force during an arrest at the plaintiff's home.¹⁰⁷ The facts were quite similar to *Bivens*, when federal agents also used unreasonable force in making an arrest at the plaintiff's home.¹⁰⁸ The Second Circuit, however, affirmed the lower court's ruling that the claim presented a new context because the agents in *Bivens* were federal narcotics agents as opposed to Deputy U.S. Marshals.¹⁰⁹ Similarly, the Third Circuit rejected a *Bivens* claim against an Immigration and Customs Enforcement ("ICE") officer for use of excessive force while executing an immigration administrative warrant at the plaintiff's apartment.¹¹⁰ As in *Lewis*, the court pointed to the different "category of defendant" in holding that the case presented a new context.¹¹¹ The court further noted that "even 'almost parallel circumstances' are insufficient 'to support the judicial creation of a cause of action.'"¹¹²

If there is a new cause of action, achieving relief is a much more difficult road following *Egbert*. As the Supreme Court stated, if there is any reason at all to think that Congress would be better suited than

¹⁰³ *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 389, 397 (1971).

¹⁰⁴ *Davis v. Passman*, 442 U.S. 228, 230–32, 248–49 (1979).

¹⁰⁵ *Carlson v. Green*, 446 U.S. 14, 16–18 (1980).

¹⁰⁶ No. 22-3060-pr, 2023 WL 8613873 (2d Cir. Dec. 13, 2023).

¹⁰⁷ *Id.* at *1.

¹⁰⁸ Compare *id.* (claims against Deputy U.S. Marshals for use of excessive force), with *Bivens*, 403 U.S. at 389–90 (claims against agents of the Federal Bureau of Narcotics for use of unreasonable force).

¹⁰⁹ *Lewis*, 2023 WL 8613873, at *2.

¹¹⁰ *Barry v. Anderson*, No. 22-3098, 2023 WL 8449246, at *1 (3d Cir. Dec. 6, 2023).

¹¹¹ *Id.* at *3.

¹¹² *Id.* (quoting *Egbert v. Boule*, 596 U.S. 482, 495 (2022)).

the judiciary to creating a damages remedy, expanding *Bivens* to a new context is precluded.¹¹³ Because of the Court's strong presumption that the political branches are better suited to address unlawful action by their agents,¹¹⁴ it appears unlikely that a new *Bivens* action will soon be created.

Additionally, even if there are no special factors counseling hesitation, a plaintiff still must show that alternative remedies were not available, and the Court set a low bar in *Egbert*.¹¹⁵ The CBP grievance procedures that the Court held to be sufficient to independently foreclose *Bivens* relief are similar to procedures that exist at the Department of Justice ("DOJ") and the Department of Homeland Security ("DHS"), which account for eighty percent of federal law enforcement officers.¹¹⁶ This final hurdle is of particular relevance to specially deputized officers because these grievance procedures often exist at agencies where special deputation is common, such as the USMS.¹¹⁷ The inaccessibility of *Bivens* relief is a key reason why specially deputized officers have been able to escape civil liability.

II. ANALYSIS

Courts have increasingly dismissed constitutional claims against state and local officers deputized to serve on federal task forces. Section II.A explores how multiple circuits have relied on a narrowed *Bivens* doctrine and an interpretation of officer conduct as under color of federal law—not state law—to bar relief under both § 1983 and *Bivens*. This reliance is present even in egregious cases involving excessive force and prolonged wrongful detention. Section II.B analyzes the effectiveness of alternative remedies, such as administrative grievances, the FTCA, and state tort claims, and finds that they have been unsuccessful at providing adequate compensation. This underscores the urgent need to close this loophole in constitutional rights.

A. *How Courts Have Applied § 1983 and Bivens to Special Deputation*

There has been a trend among courts, including the First, Sixth, Seventh, and Eighth Circuits, to dismiss suits against specially deputized

¹¹³ *Egbert*, 596 U.S. at 492.

¹¹⁴ See, e.g., *Hernandez v. Mesa*, 589 U.S. 93, 108–09 (2020).

¹¹⁵ See *Egbert*, 596 U.S. at 493.

¹¹⁶ See Leading Cases, *supra* note 74, at 377–78 (comparing relevant DOJ and DHS regulations).

¹¹⁷ See *infra* Section II.B.

officers who violate Americans' constitutional rights.¹¹⁸ This trend is because of the combination of a weakened *Bivens* doctrine and courts' interpretation of action taken under color of state law to exclude actions by specially deputized officers.

In 2023, the Sixth Circuit held that a county sheriff's officer, temporarily deputized as a member of a USMS fugitive-apprehension task force, acted under color of federal law when he attempted to execute an arrest warrant by entering a house belonging to the subject's uncle—without a search warrant for that house—and assaulted the subject's uncle.¹¹⁹ The Sixth Circuit stated that the officer was “acting on behalf of and under the control of the [USMS] and within the scope of his employment as a special deputy of the [USMS].”¹²⁰ The plaintiff argued that a cause of action still existed under § 1983 because the officer was executing an arrest warrant issued under state law.¹²¹ The court rejected this argument, holding that “the nature and character of a cooperative federal-state program is determined by the source and implementation of authority for the *program*, not for the particular work that the agency chooses, in the exercise of its authority, to perform on a given day.”¹²² The court found that the USMS was the source of the officer's authority in executing the arrest warrant, and therefore § 1983 did not apply.¹²³ Further, the court left the plaintiff without *any* cause of action by stating that this case presented a new *Bivens* context and that special factors precluded expansion of *Bivens*.¹²⁴

Other circuits have taken the same approach in holding § 1983 inapplicable to specially deputized officers, reasoning that the officers act under color of federal law. For example, the First Circuit affirmed the dismissal of a § 1983 claim against a state officer serving on a Drug Enforcement Administration (“DEA”) task force because the officer's conduct was related to the performance of his official duties to the DEA.¹²⁵ Despite the officer's employment as a state trooper at all

¹¹⁸ See, e.g., *Cain v. Rinehart*, No. 22-1893, 2023 WL 6439438, at *1–2 (6th Cir. July 25, 2023); *Askew v. Bloemker*, 548 F.2d 673, 677–78 (7th Cir. 1976); *Yassin v. Weyker*, 39 F.4th 1086, 1087–91 (8th Cir. 2022); *Jakuttis v. Town of Dracut*, 95 F.4th 22, 29–30, 37 (1st Cir. 2024).

¹¹⁹ *Cain*, 2023 WL 6439438, at *1–2.

¹²⁰ *Id.* at *2.

¹²¹ *Id.*

¹²² *Id.* (quoting *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)).

¹²³ *Id.*

¹²⁴ See *id.* at *3–4 (listing special factors, including (1) a concern that allowing claims for damages against task force members might impair the government's recruitment efforts and officer performance, (2) congressional silence on creating a cause of action against federal task forces, and (3) the existence of alternative remedies, including USMS's obligation to supervise its employees as well as investigate grievances filed against its deputies, and the authorization of Inspectors General to investigate and report abuses by U.S. Marshals).

¹²⁵ *Jakuttis v. Town of Dracut*, 95 F.4th 22, 29–30 (1st Cir. 2024).

relevant times, the conduct underlying the plaintiff's First Amendment retaliation claim occurred within DEA offices, and so it constituted action taken under color of federal law.¹²⁶

In another example, the Seventh Circuit specifically rejected an argument that state law enforcement officers who had been appointed as full-time members of a DOJ component were "dual-status" agents acting concurrently under color of federal and state law.¹²⁷ Although the agents "continued to carry their [state] badges, remained accountable to [state] supervisors, and were paid by checks issued by the [state]," they also had "official Justice Department credentials, were subject to the immediate control of [federal] supervisors," and received additional payment from federal funds.¹²⁸ According to the court, "These facts cast an indelibly federal hue upon the activities of these agents."¹²⁹ The court thus affirmed dismissal of the plaintiff's § 1983 claim because the defendants "were acting solely under color of federal law."¹³⁰

District courts in other Circuits have followed the trend of dismissing claims against specially deputized officers. In one case, state officers serving on a USMS task force allegedly forced their way into a residence, tried to physically subdue the plaintiff, and then shot the plaintiff multiple times, without either an arrest or a search warrant.¹³¹ The U.S. District Court for the Western District of New York found that relief under *Bivens* was not cognizable and dismissed the plaintiff's claim alleging violations of his Fourth and Fourteenth Amendment rights, in part because a new category of defendants was present: "[U]nlike the narcotics agents in *Bivens*, [the defendants here] were members of a [USMS] fugitive task force."¹³² Under this logic, every *Bivens* claim concerning special deputation would fail. The court outright rejected the plaintiff's § 1983 argument, implicitly finding that the officers acted as federal agents.¹³³

In another similar instance, a state officer serving on a USMS task force allegedly used excessive force in executing a state arrest warrant when he picked up the subject and "slammed him to the ground."¹³⁴ In granting summary judgment in the officer's favor, the U.S. District Court for the District of New Jersey held that the case presented a

¹²⁶ *Id.*; see also *id.* at 29 (dismissing the plaintiff's *Bivens* claim because "there is no *Bivens* action for First Amendment retaliation" (quoting *Egbert v. Boule*, 596 U.S. 482, 499 (2022))).

¹²⁷ *Askew v. Bloemker*, 548 F.2d 673, 677 (7th Cir. 1976).

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.* at 678.

¹³¹ *Smith v. Arrowood*, No. 21-cv-6318, 2023 WL 6065027, at *1–2, *4 (W.D.N.Y. Sep. 18, 2023).

¹³² See *id.* at *1, *4, *6.

¹³³ See *id.* at *3.

¹³⁴ *Challenger v. Bassolino*, No. 18-15240, 2023 WL 4287204, at *1–2 (D.N.J. June 30, 2023), *appeal dismissed*, No. 23-2339, 2023 WL 9378392 (3d Cir. Nov. 22, 2023).

new *Bivens* context because the officer acted pursuant to a warrant but *Bivens* involved a warrantless arrest.¹³⁵ The court further held that the existence of alternative remedies “counsel[ed] against extending *Bivens*” to this new context.¹³⁶ The court also held that the officer acted under color of federal law for the purposes of § 1983, citing the officer’s authorization to “seek and execute arrest and search warrants supporting a federal [task force]” and reasoning that his actions were part of his federal duties.¹³⁷

Finally, a series of Eighth Circuit cases that each involved the same defendant highlights how serious the consequences can be when both § 1983 and *Bivens* claims against special deputies fail. Several years ago, a St. Paul police officer working as a Special Deputy U.S. Marshal was found to have fabricated or greatly exaggerated evidence against dozens of people whom she implicated in an interstate sex trafficking scheme.¹³⁸ “Of the thirty people who were indicted, only nine were ultimately tried, and each was acquitted,”¹³⁹ yet many of them had already spent months or even years in custody.¹⁴⁰ One young girl, Hamdi Mohamud, spent more than two years in federal custody before the government dismissed the case against her.¹⁴¹ Another, Hawo Ahmed, gave birth during the more than twenty-five months she spent in federal custody.¹⁴² To date, however, none of the civil cases brought against Officer Heather Weyker have been successful.¹⁴³ In two separate cases, the Eighth Circuit held that a *Bivens* remedy was unavailable to the plaintiffs because Weyker’s actions were meaningfully different than those of the arresting officer in *Bivens*,¹⁴⁴ and special factors counseled hesitation against extending *Bivens*, including a concern about burdening the actions of the executive branch.¹⁴⁵

The Eighth Circuit has likewise held that § 1983 is unavailable for Weyker’s victims; in determining whether Weyker’s conduct was fairly attributable to the state, the court declared that “[s]tate law had

¹³⁵ *Id.* at *6–7.

¹³⁶ *Id.* at *8–10.

¹³⁷ *See id.* at *4–5 (alteration in original).

¹³⁸ *Ahmed v. Weyker*, 984 F.3d 564, 565–66 (8th Cir. 2020).

¹³⁹ *Id.* at 565 (citations omitted).

¹⁴⁰ *Id.* at 566.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *See* Anya Bidwell & Patrick Jaicomo, *She Was a Teenager When a Renegade Cop Framed Her. Will She Finally Get Justice?*, SLATE (Aug. 13, 2024, at 14:15 ET), <https://slate.com/news-and-politics/2024/08/minneapolis-cops-police-cop-framed-setup.html> [<https://perma.cc/KJA3-HGKJ>].

¹⁴⁴ *See Ahmed*, 984 F.3d at 568–70; *Farah v. Weyker*, 926 F.3d 492, 497–500 (8th Cir. 2019).

¹⁴⁵ *See Farah*, 926 F.3d at 500 (finding that “[t]he first special factor present here is . . . the risk of burdening and interfering with the executive branch’s investigative and prosecutorial functions”); *Ahmed*, 984 F.3d at 570–71 (quoting *Farah* for the same contention).

nothing to do with ‘the nature and circumstances’ of Weyker’s conduct.”¹⁴⁶ Despite Weyker presenting herself as a St. Paul police officer at times, the court held that she was acting within the scope of her “federal duties” because “[her] work on the federal sex-trafficking investigation led to [the plaintiff’s] arrest.”¹⁴⁷ Not only has Weyker avoided all civil liability, but she has also faced no criminal charges, and although the St. Paul Police Department opened an investigation into her conduct, she remains an employee as of August 2025.¹⁴⁸

These cases illustrate the importance of resolving the loophole whereby there is no § 1983 cause of action against special deputies. Furthermore, although courts have noted alternative remedies in many of the aforementioned cases that dismissed claims against special deputies,¹⁴⁹ the evidence suggests these remedies are ineffective, compounding the issue.

B. *Alternative Remedies Are Ineffective*

Although courts have pointed to the existence of alternative remedies when dismissing § 1983 and *Bivens* claims against specially deputized officers, there is evidence that these remedies are ineffective in enabling recovery of damages against such officers. In *Cain*, the Sixth Circuit rejected a *Bivens* claim in part due to the existence of alternative remedies.¹⁵⁰ The court cited both regulations and a statute that require the USMS to “supervise its employees and investigate grievances filed against its deputies.”¹⁵¹ Concerning statutory remedies, the court noted that “Inspectors General are authorized to investigate and report abuses by federal law enforcement officers, including employees

¹⁴⁶ Yassin v. Weyker, 39 F.4th 1086, 1090–91 (8th Cir. 2022) (quoting Magee v. Trs. of the Hamline Univ., 747 F.3d 532, 535 (8th Cir. 2014)).

¹⁴⁷ *Id.* at 1091.

¹⁴⁸ See Hassan Kanu, *Police Empowered to Lie About Investigations After Federal Appeals Court Ruling*, REUTERS (July 20, 2022, at 17:00 ET), <https://www.reuters.com/legal/government/police-empowered-lie-about-investigations-after-federal-appeals-court-ruling-2022-07-20/> [<https://perma.cc/VBG9-Z2BJ>]; Shaila Dewan, *If the Police Lie, Should They Be Held Liable? Often the Answer Is No*, N.Y. TIMES (Oct. 18, 2021), <https://www.nytimes.com/2021/09/12/us/federal-police-immunity.html> [<https://perma.cc/H44W-9K7G>]; Bidwell & Jaicomo, *supra* note 143; INST. FOR JUST., *Cop’s Lies Sent Innocent Girls to Prison... Still Employed*, at 38:48 (YouTube, Aug. 25, 2025), https://www.youtube.com/watch?v=rf_NetF2l9k (on file with the George Washington Law Review).

¹⁴⁹ See, e.g., *Cain v. Rinehart*, No. 22-1893, 2023 WL 6439438, at *1, *4–5 (6th Cir. July 25, 2023) (“[T]here are alternative processes and remedies in place . . . that preclude a *Bivens* claim in this context.”); *Challenger v. Bassolino*, No. cv18-15240, 2023 WL 4287204, at *2, *9, *11 (D.N.J. June 30, 2023) (“Remedial schemes of [the sort here] ‘foreclose a *Bivens* action’” (quoting *Egbert v. Boule*, 596 U.S. 482, 486, 497 (2022))).

¹⁵⁰ *Cain*, 2023 WL 6439438, at *4–5; see *supra* note 124 and accompanying text.

¹⁵¹ *Cain*, 2023 WL 6439438, at *4 (citing 28 U.S.C. § 561(g) and 28 C.F.R. §§ 0.5(a), 0.111(n)).

and officials of the U.S. Marshals Service” under 5 U.S.C. app. § 3.¹⁵² Since then, however, 5 U.S.C. app. § 3 has been repealed.¹⁵³ Finally, the Sixth Circuit pointed to the Attorney General’s authorization under 31 U.S.C. § 3724 as an alternative remedy precluding *Bivens* liability.¹⁵⁴ This statute allows the Attorney General to settle certain “claim[s] for personal injury, death, or [property] damage” caused by a law enforcement officer employed by the DOJ acting within the scope of employment.¹⁵⁵

There is evidence that the administrative solutions suggested by the court in *Cain*, such as agency internal grievance procedures, have little impact. For example, according to a 2001 DOJ report on the USMS’s disciplinary process, twenty-five of the fifty reviewed cases presented “serious concerns” over the adequacy of the discipline imposed.¹⁵⁶ In eight cases, there was no evidence that disciplinary action had been enforced.¹⁵⁷ A 2024 DOJ report on the USMS’s special deputation authority found inconsistent reporting of task-force officer misconduct and noted that the USMS’s process for documenting the outcome of misconduct allegations was inadequate.¹⁵⁸ Concerningly, the DOJ report also noted instances where terminated deputations continued due to a lack of oversight.¹⁵⁹ Indeed, the plaintiff in *Egbert* filed a grievance with CBP against the officer who allegedly used excessive force against him, and the agency failed to take any action.¹⁶⁰ Heather Weyker, the special deputy who fabricated and exaggerated evidence against thirty people, has completely avoided liability in court.¹⁶¹ Additionally, even though she no longer serves on a federal task force, she remains employed as a police officer.¹⁶² Even if these agents *are* terminated, that termination still provides no compensation to the victim of the deprivation.

In addition to administrative remedies, the court in *Smith v. Arrowood*¹⁶³ cited both the FTCA and potential state law tort claims as alternative remedies in its decision to reject *Bivens* relief.¹⁶⁴ The FTCA allows private parties to sue the United States for negligent or wrongful

¹⁵² *Id.*

¹⁵³ See Act of Dec. 27, 2022, Pub. L. No. 117-286, § 7, 136 Stat. 4196, 4361 (repealing 5 U.S.C. app. § 3).

¹⁵⁴ *Cain*, 2023 WL 6439438, at *4.

¹⁵⁵ 31 U.S.C. § 3724.

¹⁵⁶ OFF. OF THE INSPECTOR GEN., DEP’T OF JUST., REVIEW OF THE UNITED STATES MARSHALS SERVICE DISCIPLINARY PROCESS 5–7 (2001), <https://www.govinfo.gov/content/pkg/GOVPUB-J37-PURL-gpo133848/pdf/GOVPUB-J37-PURL-gpo133848.pdf> [<https://perma.cc/YZW3-G5RX>].

¹⁵⁷ *Id.* at 14.

¹⁵⁸ OFF. OF THE INSPECTOR GEN., *supra* note 6, at 14–15.

¹⁵⁹ *Id.* at 4, 10.

¹⁶⁰ See *Egbert v. Boule*, 596 U.S. 482, 489–90 (2022).

¹⁶¹ See *supra* notes 138–48 and accompanying text.

¹⁶² See *Bidwell & Jaicomo*, *supra* note 143.

¹⁶³ 21-cv-6318, 2023 WL 6065027 (W.D.N.Y. Sep. 18, 2023).

¹⁶⁴ *Id.* at *5–6.

acts of federal agency employees to the extent that a private person would be liable for such acts.¹⁶⁵ Following an amendment in 1988, the FTCA became “the exclusive remedy for most claims against Government employees arising out of their official conduct,” with an exception for constitutional violations.¹⁶⁶

Under the statute, state and local government employees on detail to federal agencies are considered employees of the agency for FTCA purposes.¹⁶⁷ As the Supreme Court has suggested, however, a *Bivens* remedy is more effective than a FTCA remedy because (1) “the *Bivens* remedy is recoverable against individuals,” meaning it serves as a greater deterrent, (2) unlike *Bivens*, the FTCA prohibits punitive damages, (3) a plaintiff can only opt for a jury trial in a *Bivens* action, and (4) an FTCA cause of action exists only if an action would otherwise be authorized in the state where the alleged misconduct occurred.¹⁶⁸ The Court has therefore concluded that the “FTCA is not a sufficient protector of the citizens’ constitutional rights.”¹⁶⁹ Despite the Court’s claim that it is not its place to provide a damages remedy if Congress has not statutorily provided one,¹⁷⁰ the FTCA indeed carved out an exception for *Bivens* suits by including civil claims brought for constitutional violations.¹⁷¹ The availability of a *Bivens* remedy and a § 1983 remedy when *Bivens* is unavailable is therefore important in protecting constitutional rights.

Finally, state law remedies, such as state law tort suits, are similarly inadequate. As the Supreme Court has pointed out, the interests protected by state laws may be inconsistent with those protected by the Constitution.¹⁷² In *Monroe*, Justice John Marshall Harlan II contended that the Congress that enacted § 1983 believed “a deprivation of a constitutional right is significantly different from and more serious than a violation of a state right and therefore deserves a different remedy.”¹⁷³

¹⁶⁵ 28 U.S.C. § 2672; *see also* United States v. Olson, 546 U.S. 43, 44 (2005) (“The [FTCA] authorizes private tort actions against the United States . . .”).

¹⁶⁶ Hui v. Castaneda, 559 U.S. 799, 806–07 (2010); *see* 28 U.S.C. § 2679(b)(1).

¹⁶⁷ 5 U.S.C. § 3374(c)(2); *see also* 28 U.S.C. § 2671 (designating “persons acting on behalf of a federal agency in an official capacity, temporarily or permanently in the service of the United States,” as employees of the government for purposes of the FTCA).

¹⁶⁸ Carlson v. Green, 446 U.S. 14, 20–23 (1980).

¹⁶⁹ *Id.* at 23.

¹⁷⁰ Hernandez v. Mesa, 589 U.S. 93, 113–14 (2020).

¹⁷¹ *See id.* at 129 (Ginsburg, J., dissenting). The Supreme Court has also made clear that a *Bivens* remedy is available even if the allegations could support a suit under the FTCA. *See Carlson*, 446 U.S. at 19–20.

¹⁷² *See Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 394 (1971).

¹⁷³ *See Monroe v. Pape*, 365 U.S. 167, 196 (1961) (Harlan, J., concurring); 1 STEINGLASS, *supra* note 23, § 2:4 (rev. ed. 2025)..

Additionally, state-law claims have largely been unsuccessful with special deputations.¹⁷⁴ In one instance, a Massachusetts district court dismissed all state-law claims “on the ground that the exclusive remedy for these claims is an action against the United States.”¹⁷⁵ Importantly, the Supreme Court has made it clear that § 1983 is supplementary to state remedies.¹⁷⁶ This instruction means that a plaintiff may bring a § 1983 claim if a state cause of action is also available.¹⁷⁷ To ensure sufficient protection of constitutional rights, courts should adopt a new interpretation of special deputy actions that ensures a remedy is available.

III. SOLUTION

The inadequacy of alternative remedies for victims of special deputy abuses emphasizes § 1983’s importance. Section III.A explains how special deputation statutes support the conclusion that the home state is a source of authority for these officers and that they accordingly act under color of state law. Further, Section III.B addresses the counterargument that the federal nature of the programs means these officers act under color of federal law, concluding that state and federal action can properly be considered concurrent. Finally, Section III.C proposes an amendment to § 1983 as a supplementary solution that would ensure the statute’s application to special deputies.

A. *Specially Deputized Officers Act Under Color of State Law*

An analysis of the statutory authority underpinning special deputation reveals that special deputies do indeed act under color of state law, even when performing duties pursuant to their position on a federal task force. In determining whether agency employees act under color of state law, “all of the circumstances surrounding the challenged action must be taken into account.”¹⁷⁸ The key factors that lower courts have considered when determining whether officers act under color of state or federal law include the source of the authority for carrying out

¹⁷⁴ See, e.g., *Cain v. Rinehart*, No. 22-1893, 2023 WL 6439438, at *2 (6th Cir. July 25, 2023) (collecting cases); *Couden v. Duffy*, 446 F.3d 483, 498 (3d Cir. 2006) (finding a task force officer who allegedly used excessive force immune from liability under a Delaware tort statute which protects government employees from “any and all tort claims seeking recovery of damages” (quoting DEL. CODE ANN. tit. 10, § 4011 (2025))); *Jakuttis v. Town of Dracut*, 95 F.4th 22, 34–35 (1st Cir. 2024) (finding a task force officer immune from liability for First Amendment retaliation under Massachusetts law because the officer did not violate a “clearly established” right).

¹⁷⁵ *Jakuttis*, 95 F.4th at 28.

¹⁷⁶ See *Knick v. Twp. of Scott*, 588 U.S. 180, 194 (2019).

¹⁷⁷ *Id.*

¹⁷⁸ *Johnson v. Orr*, 780 F.2d 386, 393 (3d Cir. 1986).

the action in question,¹⁷⁹ whether state or federal officers have direct authority over the officer,¹⁸⁰ and whether the officer's salary comes from state or federal funds.¹⁸¹ Essentially, courts have conceptualized this issue by asking whether the officer, in performing the allegedly unconstitutional act, was "clothed with" the power of the federal government or of a state government.¹⁸² Thus, courts have generally found that specially deputized officers are acting under color of federal law because the federal government creates the deputation programs. So, for example, an officer who has been specially deputized to serve on a joint task force acts under color of federal law when carrying out the actions authorized by the federal program.¹⁸³

A totality of the circumstances analysis, however, must also consider the source of the officer's authority. In the case of the USMS, Special Deputy U.S. Marshals are deputized pursuant to 28 C.F.R. § 0.112.¹⁸⁴ This regulation states that the Director of the USMS is authorized to deputize federal, state, or local law enforcement officers "to perform the functions of a Deputy U.S. Marshal" at any time "the law enforcement needs of [USMS] so require."¹⁸⁵ When the special deputy is a state or local officer, at least one source of the special deputy's authority is necessarily the state. Under the traditional test for color of state law, Special Deputy U.S. Marshals fall squarely in the category of acting under color of state law pursuant to § 1983; regardless of the source of authority for the particular action constituting the violation, these officers exercise power "possessed by virtue of state law."¹⁸⁶ A foundation of the officer's authority is the state—the state trains them, continues to pay them,¹⁸⁷ and provides them with baseline arrest and detention powers, and they still answer to the state chain of command.¹⁸⁸ USMS deputation merely supplements the officer's state authority for specific federal tasks.

¹⁷⁹ See *Jakuttis*, 95 F.4th at 29–30; *Yassin v. Weyker*, 39 F.4th 1086, 1090–91 (8th Cir. 2022); *King v. United States*, 917 F.3d 409, 433 (6th Cir. 2019).

¹⁸⁰ See *Askew v. Bloemker*, 548 F.2d 673, 677 (7th Cir. 1976); *King*, 917 F.3d at 433–34; *Cabrera v. Martin*, 973 F.2d 735, 744 (9th Cir. 1992).

¹⁸¹ See *Askew*, 548 F.2d at 677. For further discussion of these factors, see *supra* Section II.A.

¹⁸² See *West v. Atkins*, 487 U.S. 42, 49 (1988); *Askew*, 548 F.2d at 677.

¹⁸³ See *supra* Section II.A.

¹⁸⁴ 28 C.F.R. § 0.112 (2024).

¹⁸⁵ *Id.* § 0.112(b).

¹⁸⁶ See *United States v. Classic*, 313 U.S. 299, 326 (1941).

¹⁸⁷ See, e.g., *Askew*, 548 F.2d at 677 ("[D]uring their assignment to [the federal task force], the three SLPD-affiliated agents . . . were paid by checks issued by the SLPD."); see also U.S. MARSHALS SERV., DEP'T OF JUST., UNITED STATES MARSHALS SERVICE FY 2022 ANNUAL REPORT 19 (2023), <https://www.usmarshals.gov/sites/default/files/media/document/PUB-2-2022-Annual-Report.pdf> [<https://perma.cc/K52K-DFUZ>] (describing oversight forms completed "in collaboration with the employers of all Special Deputy U.S. Marshals").

¹⁸⁸ See *Askew*, 548 F.2d at 677; U.S. MARSHALS SERV., *supra* note 187, at 19.

This is especially true for the DEA and ICE, where a state officer cannot be specially deputized without *first* being authorized by their state to become a state law enforcement officer. For example, under 21 U.S.C. § 878, the DEA has the power to deputize others with particular law enforcement functions, but this authority is limited to “any State, tribal, or local law enforcement officer designated by the Attorney General.”¹⁸⁹ These deputized officers serve on task forces under the authority of Homeland Security Investigations, with the “full range of DEA officers’ authorities.”¹⁹⁰ Under 21 U.S.C. § 878, these functions include carrying firearms, executing search and arrest warrants under the authority of the United States, and any other law enforcement duties that the Attorney General designates.¹⁹¹ The statute does provide that these officers are federal employees for the purposes of “any . . . Federal tort liability statute,”¹⁹² which some courts have interpreted to include civil rights actions.¹⁹³ Special deputation under the DEA, however, is limited to state, tribal, and local officers, and so even as task force officers, they act pursuant to state authority. Under the *Lugar* test, the actions of a Special Deputy are attributable to the state because the state played an indispensable role.¹⁹⁴

The same is true for ICE under the 287(g) Program of the Immigration and Nationality Act.¹⁹⁵ This program, which exists within 737 state or local law enforcement agencies across forty states as of June 30, 2025,¹⁹⁶ gives the Attorney General the ability to enter into agreements with state governments that allow qualified state officers or employees to function as immigration officers “in relation to the investigation, apprehension, or detention of aliens in the United States.”¹⁹⁷ Similar to the DEA special deputation statute, 8 U.S.C. § 1357(g)(8) provides that officers operating pursuant to this program act “under color of Federal authority for purposes of determining the liability[] and immunity from suit” in federal civil actions.¹⁹⁸ Although this suggests an intent to shield special deputies from immunity, this statute does not explicitly preclude § 1983 relief. Further, this statute is clear that only state officers may be

¹⁸⁹ 21 U.S.C. § 878(a).

¹⁹⁰ Designation of Homeland Sec. Investigations Special Agents and State and Loc. Officers Serving on HSI Task Forces to Assist with Controlled Substances Act Investigations, 49 Op. O.L.C. (Jan. 15, 2025) (slip op. at 12).

¹⁹¹ 21 U.S.C. § 878.

¹⁹² 5 U.S.C. § 3374(c)(2).

¹⁹³ See *Aikman v. Cnty. of Westchester*, 691 F. Supp. 2d 496, 498–99 (S.D.N.Y. 2010); *Martin v. Unknown U.S. Marshals*, 965 F. Supp. 2d 502, 537 (D.N.J. 2013).

¹⁹⁴ See *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937 (1982).

¹⁹⁵ 8 U.S.C. § 1357(g).

¹⁹⁶ AM. IMMIGR. COUNCIL, THE 287(G) PROGRAM: AN OVERVIEW 1 (2025), <https://www.americanimmigrationcouncil.org/research/287g-program-immigration> [<https://perma.cc/78TM-BVHP>].

¹⁹⁷ 8 U.S.C. § 1357(g).

¹⁹⁸ *Id.* § 1357(g)(8).

deputized; therefore, one source of authority is the state. It is especially pressing to ensure that ICE special deputies can be held accountable, as 287(g) programs have been a source of thousands of new special deputations since January 2025.¹⁹⁹

In cases where only preexisting state and local law enforcement officers may be deputized, such officers certainly act under color of state law. Although the officers are then able to exercise authority pursuant to federal law, the authority would not exist without the original authority of the home state. For that reason, the officers act under color of state law. Going forward, courts should look to the original authority for a defendant acting in an official capacity, rather than the character of the program alone. This does not completely remove the character of the program from the analysis, as state and federal action may be concurrent.²⁰⁰ Rather, *all* sources of the officer's authority should be considered when determining if § 1983 is applicable.

By closing the loophole created by the unique case of special deputation, this proposed approach will better reflect Congress's intent in enacting § 1983. Multiple circuits have focused on the nature of the program under which officers are authorized to act, holding that because those programs are federal in nature, the action by the special deputy is federal in nature.²⁰¹ The practical impact, however, has been multiple officers escaping civil liability entirely,²⁰² and in at least one case, avoiding any repercussions at all.²⁰³ This does not serve "the enforcement . . . of the Constitution on behalf of every individual citizen of the Republic . . . to the extent of the rights guaranteed to him by the Constitution."²⁰⁴ A key purpose for which § 1983 was enacted is to provide a federal remedy when state remedies fail.²⁰⁵ By ensuring that special deputies can be held accountable, this Note's approach will better protect citizens' constitutional rights and may also deter future violations. Although precedent might suggest that special deputies act under federal law, the following Part explains that an action can be taken under color of both state and federal law.

B. State and Federal Action May Be Concurrent

Although many courts have treated the color of law analysis under § 1983 as a binary, nothing in the statute requires actions to be

¹⁹⁹ See *supra* notes 16–17.

²⁰⁰ See *infra* Section III.B.

²⁰¹ See *supra* Section II.A.

²⁰² See *supra* Section II.B.

²⁰³ See *supra* notes 161–62 and accompanying text.

²⁰⁴ *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 934 (1982) (quoting CONG. GLOBE, 42d Cong., 1st Sess. app. 81 (1871) (statement of Rep. John A. Bingham) (alterations in original)).

²⁰⁵ See *Monroe v. Pape*, 365 U.S. 167, 174 (1961).

exclusively under the color of state law to be cognizable.²⁰⁶ There is precedent to support this theory; in the 1979 case *Rowe v. Tennessee*,²⁰⁷ the Sixth Circuit rejected the argument that color of state and federal law are mutually exclusive, finding that there may never be “pure” state action in “a federal system where state and national action is often parallel.”²⁰⁸ The court further acknowledged that if the judiciary precluded § 1983 relief in every instance where there was even a hint of federal authority, relief would be extremely rare.²⁰⁹

Rowe involved National Guardsmen who discharged a technician after the technician filed a grievance.²¹⁰ The technician claimed violations of his First, Fifth, and Fourteenth Amendment rights under § 1983.²¹¹ The Sixth Circuit found that the Guardsmen acted under color of state law because, although the discharge was pursuant to a federal statute, the National Guard Technicians Act²¹² explicitly provided for statutory administrative authority at the state level.²¹³ The court expressly rejected the view that federal statutory involvement automatically negates state action, warning that such a rule “would be nearly impossible to meet” in a system where state and national authority frequently operate in parallel.²¹⁴

In comparison, the Seventh Circuit has declined to find concurrent authority, holding in *Askew v. Bloemker*²¹⁵ that police officers assigned to work with a federal agency were solely acting pursuant to federal authority, even though they carried St. Louis Police Department badges and remained accountable to St. Louis Police Department supervisors.²¹⁶ *Askew* illustrates why it is unreasonable to preclude acts arising from concurrent state and federal action; by wearing their state police department badges, the officers were “clothed with the authority

²⁰⁶ See Brief for New Civil Liberties Alliance as Amici Curiae Supporting Petitioner at 10, *Mohamud v. Weyker*, No. 17-cv-2069, 2024 WL 1255536 (D. Minn. Mar. 25, 2024) (pointing out that Congress did not insert “exclusive” or even “primary” into the statute to qualify “color” of state law).

²⁰⁷ 609 F.2d 259 (6th Cir. 1979).

²⁰⁸ *Id.* at 263; see also *Cabrera v. Martin*, 973 F.2d 735, 742 (9th Cir. 1992) (finding that federal officials acting under federal authority may still be liable under § 1983 if they conspired with state officials to “some substantial degree”).

²⁰⁹ *Rowe*, 609 F.2d at 263.

²¹⁰ *Id.* at 261–62.

²¹¹ *Id.* at 260.

²¹² 32 U.S.C. § 709.

²¹³ *Rowe*, 609 F.2d at 264–65; see also *Johnson v. Orr*, 780 F.2d 386, 387, 390–92 (3d Cir. 1986) (holding that Air National Guard technician supervisory personnel acted under color of state law when they dismissed technicians pursuant to the National Guard Technicians Act).

²¹⁴ *Rowe*, 609 F.2d at 263.

²¹⁵ 548 F.2d 673 (7th Cir. 1976).

²¹⁶ *Id.* at 677.

of state law.”²¹⁷ Such an interpretation permits courts to find that state officers who are participating in concurrent state and federal actions, *even wearing their state police department badges*, are only acting under the color of federal law.²¹⁸ These officials, however, are literally “clothed with the authority of state law,” meaning § 1983 should apply.

Adopting a framework that would treat a deputized officer as a state actor whenever the conduct occurs while the officer is still employed, paid, supervised, and credentialed by the state or local agency would provide relief to victims of constitutional deprivations. The federal deputation would be viewed as merely supplemental authority, not as a complete displacement of the officer’s underlying state role. Under this framework, a plaintiff like Hamdi Mohamud, who spent nearly two years in federal custody based on evidence fabricated by a special deputy and who has received nothing in damages,²¹⁹ could move forward with her claim under § 1983. It would not guarantee relief, as the plaintiff would also have to establish a deprivation of rights under the Constitution or federal law,²²⁰ but it would give the plaintiff a fighting chance.

This solution is particularly effective because the current state of the doctrine makes it unlikely that *Bivens* will be expanded in the near future.²²¹ Importantly, the Supreme Court chose to limit new causes of action under *Bivens* because it felt that Congress was “better suited” to authorize a damages remedy that might increase social costs by inhibiting officials in the discharge of their duties.²²² Unlike the *Bivens* remedy, § 1983 is a product of Congress and demonstrates Congress’s intent to establish a damages remedy against state actors for the deprivation of federal rights.²²³

If an action is successful, then a plaintiff would be entitled to compensatory damages, as “the basic purpose of a § 1983 damages award should be to compensate persons for injuries caused by the deprivation of constitutional rights.”²²⁴ The statute’s legislative history demonstrates that Congress’s intent was to establish a “species of tort liability.”²²⁵ This

²¹⁷ *United States v. Classic*, 313 U.S. 299, 326 (1941).

²¹⁸ *Askew*, 548 F.2d at 677.

²¹⁹ See *supra* notes 138–42 and accompanying text.

²²⁰ 42 U.S.C. § 1983; see also *West v. Atkins*, 487 U.S. 42, 48 (1988) (“To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law.”).

²²¹ See *supra* Section II.B.

²²² *Egbert v. Boule*, 596 U.S. 482, 499 (2022).

²²³ *Memphis Cmty. Sch. Dist. v. Stachura*, 477 U.S. 299, 305–07 (1986).

²²⁴ *Carey v. Piphus*, 435 U.S. 247, 254 (1978).

²²⁵ *Id.* at 253.

supports the broad range of § 1983 damages²²⁶ being made available to plaintiffs in special deputation cases. Because state and federal action may be concurrent,²²⁷ monetary damages may theoretically also be sought pursuant to a *Bivens* claim.²²⁸ In practice, however, the fact that special deputies are considered a “different category” of defendant suggests that a *Bivens* action against a special deputy will almost certainly fail,²²⁹ at least without substantial changes to the *Bivens* doctrine. Thus, damages would be limited to those allowed under § 1983 and any state remedies which may be available.²³⁰ As this Note has discussed, state remedies may not necessarily be sufficient to protect constitutional rights,²³¹ which underlies the necessity of ensuring plaintiffs can recover damages under § 1983.

C. *Legislative Action as a Supplemental Remedy*

Although a proper interpretation of § 1983 would provide relief, an amendment to the statute would also provide clarity for circuit courts that show hesitancy in recognizing such an interpretation. Congress should ensure the availability of a remedy for injured plaintiffs by amending § 1983 to clarify that any state or local law enforcement officers temporarily deputized as federal agents act “under color of state law” for purposes of the statute. This Note proposes the following amended statute:

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 redress²³² **For the purposes of this section, state and local officers acting pursuant to section 878 of title 21, section 3374 of title 5, section 1357(g) of title 8, section 44922**

²²⁶ See *supra* notes 51–54 and accompanying text.

²²⁷ See *supra* note 208 and accompanying text.

²²⁸ See *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 397 (1971) (holding that a plaintiff is “entitled to recover money damages” for violations of their Fourth Amendment rights).

²²⁹ See *supra* text accompanying note 132.

²³⁰ See *supra* Section II.B.

²³¹ See *id.*

²³² 42 U.S.C. § 1983 (stating the statute’s original text with the proposed amendment following in bold).

of title 49, or 28 C.F.R. § 0.112 shall be considered persons who act under color of a State.

The named laws and regulations cover the special deputation authorization mechanisms for the USMS, ICE, FBI, DEA, and the Transportation Security Administration ("TSA").²³³ By explicitly implicating independent statutes that give the federal government power to specially deputize, the proposed amendment would ensure that the statute applies to as many officers as possible.

This amendment would automatically grant a § 1983 cause of action in cases involving special deputy defendants if the special deputy acted within the course of their official duties during the alleged deprivation.²³⁴ This does not *guarantee* relief, as a plaintiff would still have to establish that a constitutional deprivation occurred to successfully bring a claim. In a case like Hamdi's, in which *Bivens* relief was foreclosed,²³⁵ however, Hamdi would not have to litigate whether the officer acted under color of state law. Instead, she would only have to prove that her Fourth Amendment rights were violated after she was falsely detained for more than two years.²³⁶ This would put Hamdi in the same position as any victim of state law enforcement, if not for the quirk that the officer was on a temporary federal task force. For that reason, this Note suggests an immediate adoption of this amendment. The timing is ripe considering the potential increase in special deputations as states nationwide authorize their officers to work on federal immigration enforcement task forces.²³⁷

CONCLUSION

As the Supreme Court has stated, "[W]here federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief."²³⁸ Every American should accordingly be able to rest assured that they have recourse for violations of their rights under federal law. The trend among courts to delineate special deputies as acting solely under federal law, however, has left many Americans out in the cold. Hamdi Mohamud lost two years of her life to federal custody as a

²³³ See *supra* Section III.A (describing special deputation authorization mechanisms for USMS, ICE, and DEA); *supra* note 7 (same for FBI); 49 U.S.C. § 44922 (same for TSA).

²³⁴ See *Screws v. United States*, 325 U.S. 91, 111 (1945) ("It is clear that under 'color' of law means under 'pretense' of law. Thus[,] acts of officers in the ambit of their personal pursuits are plainly excluded.").

²³⁵ *Ahmed v. Weyker*, 984 F.3d 654, 571 (8th Cir. 2020).

²³⁶ See *supra* note 143 and accompanying text.

²³⁷ See *supra* notes 15–17 and accompanying text.

²³⁸ *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 392 (1971) (quoting *Bell v. Hood*, 327 U.S. 678, 684 (1946)).

direct consequence of the action of one specially deputized officer, and because of a loophole of the law which made § 1983 unavailable, she has seen nothing in damages.²³⁹

It is incumbent upon courts to reverse this trend by recognizing that special deputies do, in fact, act under color of state law. The Supreme Court's precedent is clear that state action is action possessed by virtue of state law,²⁴⁰ and many special deputies would not have their authority without first being recognized as officers of the state. Further, § 1983 does not preclude concurrent state and federal authority,²⁴¹ so although special deputies may be acting pursuant to a federal task force authorization, they should still be considered as acting under color of state law. Finally, an amendment to § 1983 would ensure protection by clearly providing that the statute applies to state and local law enforcement officers acting pursuant to federal agency special deputation. These solutions will ensure that United States law continues to hold all those who violate it accountable, which is particularly important as special deputations may increase in the near future.

²³⁹ See *supra* note 143 and accompanying text.

²⁴⁰ See *supra* notes 30–34 and accompanying text.

²⁴¹ See *supra* Section III.B.

