No. 25-1726

IN THE

Supreme Court of the United States

OCTOBER TERM 2025

WILLOW SCHIMMEL,
Petitioner,

-versus-

UNITED STATES,
Respondent.

ON WRIT OF CERTIORARI FOR THE UNITED STATES COURT OF APPEALS
FOR THE THIRTEENTH CIRCUIT

BRIEF FOR RESPONDENT

ORAL ARGUMENT REQUESTED

Team 806
Chicago
Counsel for Respondent

ISSUES PRESENTED FOR REVIEW

I. Whether Transportation Security Administration screeners are "investigative or law enforcement officers" within 28 U.S.C. § 2680(h)'s law enforcement proviso, such that the United States' sovereign immunity is waived for the intentional tort of false imprisonment.

II. Whether the discretionary function exception, 28 U.S.C. § 2680(a), bars a tort action notwithstanding a plausible allegation that a government employee's conduct violated the Constitution.

TABLE OF CONTENTS

TABLE OF CONTENTS (cont'd)

TABLE OF AUTHORITIES

United States Supreme Court

TABLE OF AUTHORITIES (cont'd)

TABLE OF AUTHORITIES (cont'd)

United States Court of Appeals

TABLE OF AUTHORITIES (cont'd)

TABLE OF AUTHORITIES (cont'd)

Secondary Sources

TABLE OF AUTHORITIES (cont'd)

STATEMENT OF CASE

Petitioner Arrives Late at the Eastland International Airport

In March 2024, Ms. Willow Schimmell (hereinafter "Petitioner") arrived at the Eastland International Airport (hereinafter "Airport"), with less than an hour to spare before her flight's boarding closed. R. at 2. Petitioner queued at the Airport's one and only TSA security checkpoint. *Id*. With no secondary screening location, this checkpoint is where TSA employees must verify that every traveler has undergone screening. R. at 3. Among those TSA employees are Transportation Security Officers (hereinafter "TSO"), who screen passengers and their baggage as they make their way through the checkpoint. R. at 3. Petitioner, fearful her boarding gate would be closed by the time she made it through security, decided to take out her smartphone to record herself and the screening process. R. at 2–3. While recording, Petitioner filmed the TSOs performing their job duties while calling them derogatory names, including "TSA clowns." R. at 3 (internal quotations omitted).

Petitioner Disobeys TSA Officers Asking Her to Put Away Her Smartphone

Petitioner continued recording until the final queue, stopping only when she had to present her identification. R. at 3. At the final queue, TSO John Lurie (hereinafter "TSO Lurie") stopped Petitioner and notified her that she was not permitted to film the TSOs while they screened passengers. *Id*. Instead of discontinuing her recording, Petitioner argued with TSO Lurie, accusing the TSOs of "frisking" the passengers and their luggage, and refused to put her smartphone down until she had to put her luggage on the security belt. *Id*. TSO Lurie explained that Petitioner's recording was preventing the TSOs from performing their duties and that she must stop before proceeding. *Id*. TSO Lurie moved the retractable belt to prevent the Petitioner from continuing through the line. *Id*. TSO Lurie notified Petitioner that he alerted his supervisor of the issue and that, if she did not stop recording, he would call a police officer who would escalate the situation. *Id*. While waiting for TSO Lurie's supervisor to appear, Petitioner and TSO Lurie underwent a brief "standoff" for about four minutes. *Id*. After which, Petitioner ultimately stopped recording so she could attempt to catch her flight. *Id*. Upon Petitioner's compliance, TSO Lurie allowed Petitioner to go through the remainder of the checkpoint. *Id*. Once past the checkpoint, Petitioner ran through the airport to make her flight. *Id*. While running, she fell and injured her ankle—ultimately missing her flight. *Id*.

Petitioner Files Suit

After the incident, Petitioner filed a complaint against the United States in October 2024. R. at 4. According to the complaint, Petitioner contends she underwent "false imprisonment by assertion of authority" under the common law tort of Eastland. *Id*. The complaint alleges that TSO Lurie lacked legal authority to prevent Petitioner from proceeding through the checkpoint unless she stopped recording. *Id*. The allegations claim that this conduct violated Petitioner's right to record under the First Amendment and TSA policy. *Id*. The complaint does not assert that TSO Lurie used physical force or threatened to use physical force against Petitioner at any time during their encounter. *Id*. Moreover, the complaint does not allege that TSO Lurie attempted to view the content Petitioner recorded or instructed Petitioner to delete the recordings from her phone. *Id*. The complaint further explains that Petitioner seeks to obtain compensatory damages for the "mental anguish, physical injury, and . . . economic loss" resulting from false imprisonment. *Id*.

After Petitioner filed the complaint, the United States filed a Motion to Dismiss (hereinafter "Motion") under the Federal Rule of Civil Procedure 12(b)(1) due to lack of subject matter jurisdiction. R. at 4–5. The United States District Court of Eastland granted the government's Motion. R. at 2. After Petitioner appealed the holding, the United States Court of Appeals for the Thirteenth Circuit affirmed the District Court's grant of the government's Motion. R. at 12.

SUMMARY OF ARGUMENT

I.

The Federal Tort Claims Act (hereinafter "FTCA") does not permit suit against the United States for the conduct at issue because the intentional-tort exception reinstates sovereign immunity for government actors, and the law-enforcement proviso is inapplicable to Transportation Security Officers acting in their capacity as Transportation Security Administration (hereinafter "TSA") screeners. Congress narrowly construed when a waiver of sovereign immunity applies pursuant to the FTCA. Although the FTCA generally permits specific state-law tort claims, section 2680(h) expressly preserves immunity for intentional torts such as false imprisonment. However, an exception does apply under the law enforcement proviso.

This exception excludes immunity if the claim involves an "investigative or law enforcement officer" empowered to exercise traditional criminal investigative powers, including executing searches, seizing evidence, or making arrests for violations under federal law. TSA screeners—formally designated as Transportation Security Officers—are not authorized to exercise those traditional criminal investigative powers. They conduct administrative, suspicionless security screenings designed to regulate access to secure areas, not to enforce criminal law or gather evidence for prosecution. Congress deliberately bifurcated TSA personnel into distinct classes, authorizing TSA officers to arrest and seize evidence while assigning TSA screeners a purely regulatory role. This structural distinction matters because the FTCA's waiver of sovereign immunity turns on the specific authority Congress has granted to different categories of federal employees. Consistent with that framework, TSA screeners are not "law enforcement officers" within the meaning of the FTCA. As a result, the law-enforcement proviso does not apply to their conduct. Because waivers of sovereign immunity must be unequivocally expressed and strictly construed, the law-enforcement proviso exception cannot be expanded to encompass TSA screeners, and the United States retains immunity from the intentional tort at issue here.

II.

The discretionary function exception independently bars the claim at issue because section 2680(a) applies to discretionary governmental conduct regardless of "whether or not the discretion involved be abused," and allegations of constitutional violations do not remove such conduct from the exception's scope. The FTCA's waiver of sovereign immunity excludes claims arising from discretionary acts grounded in policy judgment. This reflects Congress's view that courts should not second-guess policy-laden decisions through tort litigation. Under this Court's framework, conduct is discretionary unless a statute or policy mandates a specific course of action. Where discretion exists, courts presume it is objectively grounded in policy considerations.

TSA screeners necessarily exercise judgment in managing airport security checkpoints, including decisions about passenger movement and interference with screening—judgments that implicate public safety and national security concerns. Conditioning the application of § 2680(a) on the adjudication of whether that discretion was exercised constitutionally would invert the statute's structure, collapse jurisdiction into the merits, and undermine the exception's role. Because the FTCA does not waive sovereign immunity for constitutional violations and § 2680(a) applies regardless of alleged abuse, the discretionary function exception forecloses tort liability in this case.

ARGUMENT

I. THE UNITED STATES RETAINS SOVEREIGN IMMUNITY BECAUSE TSA SCREENERS ARE NOT INVESTIGATIVE OR LAW ENFORCEMENT OFFICERS PURSUANT TO 28 U.S.C. § 2680(h).

It is presumed the United States is immune from suit absent an unequivocal statutory waiver of sovereign immunity. *Eastern Transp. Co. v. United States*, 272 U.S. 675, 686 (1927); *United States v. Idaho, ex rel. Director, Idaho Dept. of Water Resources*, 508 U.S. 1, 6 (1993). In turn, private parties are typically barred from suing the federal government. *United States v. Mitchell*, 463 U.S. 206, 212 (1983). However, Congress enacted the FTCA to provide a narrow waiver of immunity for specific state-law torts committed by federal government employees acting within the scope of their employment. 28 U.S.C. §§ 1346(b), 2680; *Hui v. Castaneda*, 559 U.S. 799, 806 (2010) (explaining the FTCA preserves immunity for discretionary functions, intentional torts by non–law-enforcement officers, and constitutional claims). These limitations reflect Congress's view that exposing the United States to tort liability in defined circumstances must be balanced against the structural interest sovereign immunity protects, including separation of powers, effective governmental decision-making, and protection of the public funds. *Gray v. Bell*, 712 F.2d 490, 511 (D.C. Cir. 1983).

Consistent with that design, Congress preserved immunity for specific categories of claims through the FTCA's exceptions, which are strictly construed in the federal government's favor. 28 U.S.C. § 2680; *FDIC v. Craft*, 157 F.3d 697, 707 (9th Cir. 1998). One of those is the intentional tort exception, which reinstates sovereign immunity for claims arising out of specified intentional torts, including false imprisonment and false arrest. 28 U.S.C. § 2680(h); *Levin v. United States*, 568 U.S. 503, 506 (2013). Congress then created a narrow exception to the intentional tort exception—the law enforcement proviso—which subjects the government to liability for intentional torts committed by a tightly defined class of federal officers empowered by law to execute searches, seize evidence, or make arrests for violations of federal law. 28 U.S.C. § 2680(h); *Millbrook v. United States*, 569 U.S. 50, 55–56 (2013).

Congress enacted this proviso to ensure accountability where federal officers exercise traditional law-enforcement powers that closely resemble those exercised by private individuals, and where abuses of that authority could otherwise leave victims without a remedy. *Millbrook*, 569 U.S. at 55. At the same time, Congress carefully limited the scope of that waiver to avoid exposing the United States to broader liability than it expressly authorized. *Id.* Waivers of sovereign immunity must be strictly construed, and courts may not expand the proviso beyond its plain terms or infer liability where Congress has not clearly consented. *Eastern Transp. Co.*, 272 U.S. at 686; *McMahon v. United States*, 342 U.S. 25, 27 (1951).

Applying that statutory framework here, Petitioner's claim fails at the doorstep. *Millbrook*, 569 U.S. at 55–56. Even though the FTCA applies to certain federal airport employees, TSA screeners[1] are not amongst those subject to liability under the law enforcement proviso. *See* 28 U.S.C. § 2680(h) (limiting the proviso to "investigative or law enforcement officers" empowered to perform law enforcement activity); *Millbrook*, 569 U.S. at 55–56. TSA screeners perform administrative security screening rather than criminal law enforcement tasks. *United States v. Aukai*, 497 F.3d 955, 960 (9th Cir. 2007). Consequently, TSA screeners lack the traditional investigative powers that trigger the proviso—falling outside the FTCA's limited waiver of sovereign immunity. *Id*; *Getsy v. United States*, 400 F. Supp. 3d 859, 864 (D. Ariz. 2019). The distinction between administrative tasks and criminal law duties is critical because Congress drew

[1] "TSA employs screening personnel, called TSOs, to carry out passenger and baggage screening operations." Jennifer A. Grover, *Aviation Security: TSA Is Taking Steps to Improve Expedited Screening Effectiveness, but Improvements in Screener Oversight Are Needed*, U.S. GOV'T ACCOUNTABILITY OFF., at 1 (Jun. 2016). This brief uses the term "TSA screeners" to refer to TSOs throughout.

a clear line between administrative screeners and law enforcement officers, granting only the latter authority to trigger the FTCA's narrow waiver. 28 U.S.C. § 2680(h). Because Congress did not clearly authorize suit to perform administrative tasks, sovereign immunity bars the claim.

A. TSA Screeners Lack the Required Traditional Federal Police Powers Enumerated Under Section 2680(h).

The law enforcement proviso does not apply because TSA screeners do not possess any of the statutory federal law enforcement authority that Congress requires to trigger the revival of sovereign immunity for false-imprisonment claims. 28 U.S.C. § 2680(h). Section 2680(h) restores the FTCA's waiver of sovereign immunity for certain intentional torts only when the conduct exercised is committed by an "investigative or law enforcement officer." *Id*. An investigative or law enforcement officer is defined as a federal officer "empowered by law to execute searches, to seize evidence, or to make arrests for violations of federal law." 28 U.S.C. § 2680(h). This definition signals Congress's intent for there to be a distinction between criminal and administrative enforcement. *Millbrook*, 569 U.S. at 55–56; *Corbett v. Transp. Sec. Admin.*, 568 F. App'x 690, 701–02 (11th Cir. 2014).

In 1974, Congress enacted the law enforcement proviso to address specific conduct exercised by federal *criminal* investigators executing raids, detentions, and arrests in the enforcement of federal *criminal* law. S. Rep. No. 93-588, at 2–4 (1973) (emphasis added). The legislative record reflects congressional concern over specific incidents in which individuals were harmed by federal law enforcement officers exercising traditional police powers, yet were left without any meaningful remedy. *See Millbrook*, 569 U.S. at 55. One such incident involved the notorious raid on the home of Herbert and Evelyn Giglotto, where federal narcotics agents mistakenly raided the wrong residence, terrorized the homeowners, and caused significant damage, all without legal recourse under then-existing law. *Martin v. United States*, 649 F.2d 701, 703–04

(9th Cir. 1981). That incident prompted Congress to enact the law-enforcement proviso, ensuring that victims of similar misconduct would have a remedy when officers acting with arrest or search authority abused that power. *Millbrook*, 569 U.S. at 55–56.

The enumerated powers—executing searches, seizing evidence, and making arrests—are criminal law enforcement authorities used to investigate crimes and gather evidence for prosecution. *Id.* at 55–56. This history underscores that the proviso was intended to address concrete abuses arising from traditional law-enforcement activity, not to expand liability to administrative or regulatory functions that do not involve comparable exercises of coercive authority. *Id.*; *Corbett*, 568 F. App'x at 701–02.

Congress did not intend to convert every government interaction into a potential tort claim. *Martin*, 649 F.2d at 706. It sought only to ensure accountability where federal officers exercised coercive police powers capable of grave intrusion on personal liberty. *Id*. Read together, these powers describe an officer vested with criminal enforcement authority and evidentiary control. *Vanderklok v. United States*, 868 F.3d 189, 208–09 (3d Cir. 2017). History confirms that § 2680(h) is aimed at classic law enforcement abuses, not TSA screening procedures carried out by administrative personnel lacking investigative authority. *Hernandez v. United States*, 34 F. Supp. 3d 1168, 1178–82 (D. Colo. 2014). Therefore, the threshold inquiry under § 2680(h) is not the nature of the plaintiff's allegation, but the legal authority vested in the federal actor at the time of the challenged conduct. *Millbrook*, 569 U.S. at 54–56; *Dickson v. United States*, 11 F.4th 308 (5th Cir. 2021).

1. Congress Drew a Deliberate Statutory Line Between Administrative Screening and Law Enforcement.

Congress deliberately separated screening from law enforcement when it enacted the Aviation and Transportation Security Act (hereinafter "the Act"). 49 U.S.C. § 114(p). Under that framework, TSOs, functioning as TSA screeners, are employees charged with administrative functions, distinct from TSA law enforcement officers, who are authorized under the Act to carry firearms, execute warrants, seize evidence, and make arrests. *Id*. This statutory bifurcation confirms that Congress knew how to confer police powers and chose not to do so for screeners. *Vanderklok*, 868 F.3d at 208–09.

When interpreting statutes, this Court begins with its text. *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997). Where the statutory language is clear, the inquiry ends, as courts must give effect to the "plain meaning" of Congress's words. *Id.*; *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 240 (1989). In discerning that meaning, this Court looks not only to isolated terms but to the whole statutory context. *Bostock v. Clayton County*, 590 U.S. 644, 655 (2020); *Smith v. United States*, 508 U.S. 223, 241 (1993) (Scalia, J., dissenting). The law enforcement proviso waives sovereign immunity only for certain intentional torts committed by "investigative or law enforcement officers," defined as officers "empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law." 28 U.S.C. § 2680(h). This language is precise and deliberately narrow. *Id*. It is not mere interaction with the public or involvement in security functions, but instead requires formal legal authority to conduct criminal investigations and enforcement. *Id*. As a result, the statutory question is not whether TSOs may touch property or interact with passengers—it is whether they possess criminal enforcement authority. *Millbrook*, 569 U.S. at 55–56.

Even under the canon *noscitur a sociis*, Congress's grouping of these three powers—"execute searches," "seize evidence," and "make arrests"—confirms that each power must be read at a similar level of criminal investigative seriousness. *Jarecki v. G.D. Searle & Co*., 367 U.S. 303, 367 (1961) (applying the doctrine to avoid giving "unintended breadth to the Acts of Congress"). Although the term "search" can extend beyond the criminal context in some circumstances, it cannot be read so broadly here that it erases the distinction between administrative regulation and criminal investigation. *City of Indianapolis v. Edmond*, 531 U.S. 32, 47–48 (2000); *Michigan Dep't of State Police v. Sitz*, 496 U.S. 444, 455. Doing so would impermissibly expand what qualifies as a seizure of persons or property and transform routine regulatory screening into law enforcement activity. *Jarecki*, 367 U.S. at 367. Therefore, the power "execute searches" cannot be expanded to include suspicionless administrative screenings conducted for aviation security purposes. *Vanderklok*, 868 F.3d at 208–09.

This Court has repeatedly emphasized administrative searches, such as sobriety checkpoints, border inspections, and airport screenings, are constitutionally distinct from criminal investigative searches because they lack an enforcement purpose and are not directed at uncovering evidence of completed crimes. *Edmond*, 531 U.S. at 47–48; *Sitz*, 496 U.S. at 455. Unlike traditional criminal investigations, which generally require individualized suspicion, administrative searches are permitted precisely because they serve broader public safety objectives rather than law enforcement goals. *Edmond*, 531 U.S. at 47; *Sitz*, 496 U.S. at 455.

In each of these contexts, the government actions are not to investigate a specific crime or gather evidence for prosecution, but to prevent harm before it occurs by enforcing neutral, programmatic safety measures. *Edmond*, 531 U.S. at 47–48; *Sitz*, 496 U.S. at 455. For instance, at sobriety checkpoints, officers momentarily stop drivers to deter impaired driving, to preserve safety on public roads, not to investigate specific crimes. *Sitz*, 496 U.S. at 455. Likewise, at immigration checkpoints, inspections are conducted to regulate legal entry into the country, not to gather evidence of a crime. *United States v. Martinez-Fuerte*, 428 U.S. 543, 556–58 (1976). This distinction matters because suspicionless searches are constitutionally permissible only in limited administrative contexts tied to public safety, not as tools of general crime control. *Edmond*, 531 U.S. at 47–48. Airport screenings are conducted to regulate air travel, not to stop travelers suspected of criminal activity. *Id.* Consequently, TSA screening falls squarely within this administrative framework, as it is designed to prevent threats to aviation security rather than to investigate criminal conduct. *Id.*; *Sitz*, 496 U.S. at 455. Treating TSA screeners as criminal investigators would collapse this Court's long-standing constitutional distinction and improperly expand § 2680(h)'s narrow waiver. *Id.*

Here, the law enforcement proviso cannot stand because Petitioner's claim is not against an "officer" as defined under the statute, but instead a TSA screener—formally designated as TSO Lurie. 28 U.S.C. § 2680(h); R. at 4. By contrast, TSA screeners are authorized to conduct administrative screenings, which the statute defines as a "physical examination" of persons or property to ensure aviation safety. 49 U.S.C. § 44901(a), (g)(4). TSO Lurie only temporarily stopped Petitioner to enforce restrictions on recordings in the screening area, to secure safety at the security checkpoint. R. at 3. He carried no firearm, made no arrest, and at no point expressed suspicion that Petitioner had violated federal law. *Id.* TSO Lurie did not inspect, seize, or demand access to Petitioner's phone. In fact, he never viewed the recording or exercised any authority to confiscate or retain it as evidence. *Id.* Instead, TSO Lurie radioed for his supervisor to take over the situation, but the conflict was resolved when Petitioner voluntarily placed her phone in her bag to complete screening. *Id.*

These facts are emblematic of ordinary TSA screening encounters, not of a criminal investigative search or detention. TRANSP. SEC. ADMIN., *Can I film and take photos at a security checkpoint?,* https://www.tsa.gov/travel/frequently-asked-questions/can-i-film-and-take-photos-security-checkpoint; TRANSP. SEC. ADMIN., *Security Screening*, https://www.tsa.gov/travel/security-screening. They illustrate the absence of every statutory police power identified by Congress in § 2680(h). 28 U.S.C. § 2680(h). Additionally, TSA's own classification scheme explicitly states that TSOs "are not law enforcement officers and do not act as such." *Vanderklok*, 868 F.3d at 208. If a situation required criminal enforcement, airport police—not TSA screeners—would assume that role. *Id* at 209; *Mengert v. United States*, 120 F.4th 696, 721–22 (10th Cir. 2024) (Tymkovich, J., dissenting).

Nothing in the facts presented remotely resembles the exercise of statutory investigatory or arrest power described in § 2680(h). 28 U.S.C. § 2680(h); *Weinraub v. U.S.*, 927 F.Supp.22 258 (E.D.N.C. 2012). Because TSO Lurie's conduct involved no criminal investigative authority and TSOs lack all three statutory police powers enumerated in § 2680(h), TSA screeners do not fall within Congress's narrow class of investigative or law-enforcement officers. *Metz v. United States*, 788 F.2d 1528, 1532 (11th Cir. 1986).

2. Law Enforcement Duties Require Statutory Authority to Investigate, Seize Evidence, or Make Arrests.

Congress defines law enforcement duties as the authority to execute searches, seize evidence, or make arrests for violations of federal law. 28 U.S.C. § 2680(h). These powers are hallmarks of criminal investigation and prosecution; they authorize officers to enforce criminal statutes, initiate arrests, and gather evidence for use in criminal proceedings. *Millbrook*, 569 U.S. at 55–56; *Weinraub.*, 927 F.Supp.2d at 262–63 (explaining the duties enumerated in § 2680(h) traditionally performed by law enforcement officers who possess broad investigative and arrest authority, such as FBI agents, Bureau of Prisons officers, and INS agents). Law enforcement searches and seizures require at least reasonable suspicion or probable cause, depending on the intrusion, and are undertaken to enforce criminal law. *Terry v. Ohio*, 392 U.S. 1, 21–22 (1968); *Illinois v. Gates*, 462 U.S. 213, 238 (1983). These powers are central to criminal investigation because they authorize the government to intrude upon individual liberty in pursuit of law enforcement objectives. *Weinraub*, 927 F.Supp.2d at 262–63.

Administrative duties, by contrast, are regulatory and preventative in nature. *Aukai*, 497 F.3d at 960. Unlike criminal law enforcement, which focuses on detecting wrongdoing and gathering evidence for prosecution, administrative screenings are designed to manage access to secure government-controlled areas and to ensure compliance with safety regulations to prevent harm from occurring. *Id.*; *United States v. Davis*, 482 F.2d 893, 910 (9th Cir. 1973). Administrative screening does not involve suspicion of criminal wrongdoing or the gathering of evidence for prosecution. *Hernandez*, 34 F. Supp. 3d at 1185. Instead, it serves as a preventive regulatory measure to protect public safety by applying standardized procedures to all travelers. *Id.*; *Aukai*, 497 F.3d at 960.

TSA screeners fall within administrative enforcement. *Corbett*, 568 F. App'x at 701–02. Their conduct is constitutionally and doctrinally distinct from criminal investigative searches. *Vanderklok*, 868 F.3d at 208–09. The role of a TSA screener is to ensure compliance with security protocols designed to protect the traveling public through administrative, suspicionless, programmatic civil-aviation screenings. TRANS. SEC. ADMIN., *Security Screening*, https://www.tsa.gov/travel/security-screening. Courts have repeatedly emphasized TSA screening is administrative rather than investigative. *Aukai*, 497 F.3d at 960.

In *United States v. Aukai*, the Ninth Circuit explained that airport screening constitutes a justified, compelling government interest to prevent threats to aviation safety through administrative enforcement. *Id.* There, TSA screeners required a traveler to remove an item from his pocket and, only after identifying a potential threat, referred the matter to law enforcement for further action. *Id*. The TSA screeners did not conduct a criminal search or investigation of the traveler, but instead escalated the situation to those with the authority to do so. *Id.*; *Leuthauser*, 2020 WL 4677296, at *3–4. The court emphasized that this distinction matters because administrative screening serves a fundamentally different purpose than criminal investigation.

Aukai, 497 F.3d at 960. Screening is designed to protect public safety by preventing dangerous items from entering secure areas, not to determine guilt or gather evidence for prosecution. *Id.* at 960.

Because the goal of administrative screening is prevention rather than to penalize, it may occur without individualized suspicion. *Id.* By contrast, criminal investigations implicate a person's liberty interests and therefore require heightened justification, such as reasonable suspicion or probable cause. *Id.* The Ninth Circuit stressed screening searches are permissible precisely because they are not aimed at uncovering evidence of criminal wrongdoing but at preventing dangerous items from entering secure areas. *Id.* This preventative and regulatory purpose places TSA screening within the category of administrative searches. *Id*. Under this category, the proviso cannot be enforced. *Id.*

To trigger the proviso, an officer must be empowered by law to perform at least one of the three enumerated criminal powers: execute searches, seize evidence, or make arrests for violations of federal law. *Getsy*, 400 F. Supp. 3d at 864. Further, the officer must be vested with one of those powers at the time of the challenged conduct. *Id*. Administrative screening powers that do not involve individualized suspicion, criminal enforcement authority, or evidence-gathering for prosecution do not satisfy the statutory mandate. *Hernandez*, 34 F. Supp. 3d at 1178–82. TSA screeners do not qualify as investigative or law enforcement officers because they lack the authority to conduct criminal searches, seize evidence for prosecution, or make arrests. *Getsy*, 400 F. Supp. 3d at 864; *Leuthauser v. United States*, 2020 WL 4677296, at *3–4 (D. Nev. Aug. 12, 2020).

In *Leuthauser v. United States*, the district court explained even when TSA screeners physically handle personal property, they do not "seize" it within the meaning of § 2680(h) because the property is not taken for evidentiary or prosecutorial purposes. *Leuthauser*, 2020 WL 4677296, at *3–4. There, the court held the TSA agents' conduct falls outside the law enforcement proviso because it lacks any connection to a criminal investigation. *Id.* Emphasizing where there is an absence of criminal investigation, temporary handling of prohibited items during screening does not constitute a "seizure" within the meaning of § 2680(h). *Id.*

As in *Leuthauser*, the actions at issue here were taken to maintain aviation security, not to gather evidence or pursue criminal enforcement. *Id*. Because the conduct was administrative and preventative, rather than investigative and prosecutorial, it falls outside the law-enforcement proviso and remains protected by the FTCA's sovereign immunity framework. *Id*. Allowing such routine screening activity to trigger liability would collapse the distinction Congress drew between administrative security measures and criminal law enforcement, undermining the careful limits placed on the FTCA's waiver of immunity. *Millbrook*, 569 U.S. at 55–56. Therefore, the Government's sovereign immunity remains intact.

B. Waiver Does not Apply Because the Statutory Preconditions Congress Established for the Law Enforcement Proviso are not Satisfied.

The FTCA waives sovereign immunity only in narrow and carefully defined circumstances. *United States v. Mitchell*, 463 U.S. 206, 212 (1983). Even where a there are allegations of serious misconduct, waiver does not occur unless each statutory prerequisite is satisfied. *Id*. Congress designed the FTCA to function as a limited and conditional waiver, not a general mechanism for adjudicating claims against the government. *Id*. If any required element is missing, the court lacks jurisdiction, and sovereign immunity remains intact. *Id*. The FTCA, therefore, operates as a limited and conditional waiver that must be strictly construed in the government's favor; it is not a general authorization to file suit against the government. *Lane v. Peña*, 518 U.S. 187, 192 (1996). Congress structured the FTCA to ensure that sovereign immunity remains the rule and waivers are an exception to that rule. *FDIC v. Meyer*, 510 U.S. 471, 475

(1994). If any statutory prerequisite is missing, the courts lack jurisdiction to proceed. *Id.* at 477 78. This threshold requirement reflects Congress's view that exposure to liability must be carefully balanced and cannot depend solely on the nature or seriousness of the alleged misconduct. *Id.*

The law enforcement proviso reflects this same deliberate construction. 28 U.S.C. § 2680(h). The proviso does not broadly waive immunity for all intentional torts committed by federal employees. *Id*. Instead, it reinstates liability only for a narrow category of claims—those committed by "investigative or law enforcement officer[s]," defined as officers "empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law." *Id*. The statutory text makes clear that waiver occurs only if this threshold requirement is met. *Millbrook*, 569 U.S. 50, 54–56.

Congress did not build § 2680(h) as a flexible or equitable provision. *Lane*, 518 U.S. at 192. Its purpose is to operate as a precise statutory gatekeeping mechanism. *Meyer*, 510 U.S. at 477. As this Court has repeatedly emphasized, waivers of sovereign immunity must be "unequivocally expressed" and are to be strictly construed in favor of the government. *Lane*, 518 U.S. at 192. Courts, therefore, lack the authority to expand the waiver beyond the boundaries Congress established. *Eastern Transp. Co*., 272 U.S. at 686. This principle is central to the FTCA's structure. *Lane*, 518 U.S. at 192.

In *FDIC v. Meyer*, this Court explained the FTCA does not authorize suits against the government merely based on an allegation of wrongdoing. *Meyer*, 510 U.S. at 477–78. Rather, it waives immunity only when the claim falls within the statute's carefully drawn limits. *Id*. Where it does not, the government "simply has not rendered itself liable." *Id.* at 477. As explained in *Meyer*, the statute does not permit courts to assess whether government conduct was improper and then infer consent to suit. *Id.* Instead, waivers exist only where Congress has affirmatively instructed it. *Id.*

Congress limited the law enforcement proviso to federal employees who exercise traditional criminal law-enforcement powers, such as executing searches, seizing evidence, and making arrests. *Millbrook*, 569 U.S. at 55–56; S. Rep. No. 93-588, at 2–4 (1973). Even when Congress later enacted the Aviation and Transportation Security Act, it deliberately did not expand the category of employees covered by the law-enforcement proviso. 49 U.S.C. § 114(p). This statutory design confirms that Congress intended administrative screening and criminal law enforcement to remain distinct for purposes of FTCA liability. *Vanderklok*, 868 F.3d at 208–09.

Consistent with that framework, courts interpreting § 2680(h) have recognized that TSA screeners do not qualify as law-enforcement officers because they lack authority to conduct criminal investigations, seize evidence for prosecution, or make arrests, and because routine screening serves a regulatory—rather than investigatory—function. *See, e.g.*, *Getsy*, 400 F. Supp. 3d at 864; *Leuthauser,* 2020 WL 4677296, at *3–4; *Corbett*, 568 F. App'x at 701–02. This conclusion aligns with this Court's Fourth Amendment jurisprudence, which makes clear that suspicionless activity may be upheld only for administrative, regulatory purposes and not as a tool of general crime control. *Edmond*, 531 U.S. at 47–48.

Here, TSO Lurie, tasked to conduct administrative screenings, lacked the authority to execute searches, seize evidence, or make arrests for violations of federal law. 49 U.S.C. § 114(p); *Vanderklok*, 868 F.3d at 208–09. Congress expressly limited those powers to a separate category of TSA law-enforcement personnel, while assigning TSA screeners the distinct and narrower role of conducting administrative screening. 49 U.S.C. § 114(p). That statutory division reflects Congress's deliberate choice to separate TSO Lurie's regulatory screening functions from criminal law enforcement authority. *Id.*

Consistent with Congress's framework, TSO Lurie's conduct was solely to enforce checkpoint screening procedures—ensuring compliance with screening protocols and maintaining the orderly flow of passengers through security. *Getsy*, 400 F. Supp. 3d at 864. He did not initiate a criminal investigation, exercise arrest authority, or seize evidence for use in a criminal proceeding. R. at 3. Courts have repeatedly emphasized such conduct is administrative in nature and does not transform a TSA screener into a law-enforcement officer within the meaning of § 2680(h). *Getsy*, 400 F. Supp. 3d at 864; *Leuthauser*, 2020 WL 4677296, at *3–4.

Congress designed the law-enforcement proviso to apply only when federal officers exercise traditional police powers—such as executing criminal searches, seizing evidence for prosecution, or making arrests. *Millbrook*, 569 U.S. at 55–56. Unlike administrative screenings, which by nature are preventive and regulatory, and aimed at ensuring safety rather than enforcing criminal law. *Getsy*, 400 F. Supp. 3d at 864. Accordingly, this Court should affirm the lower court's decision because TSO Lurie's conduct fell entirely within that administrative sphere, and does not meet the statutory prerequisites for waiver.

C. Expanding the Law Enforcement Proviso to TSA Screeners Would Improperly Broaden Congress's Limited Waiver of Sovereign Immunity.

Waiver of sovereign immunity is deliberately difficult to obtain because it constitutes a narrow, carefully circumscribed departure from the foundational principle that the government may not be sued without its consent. *Mitchell*, 463 U.S. at 212. That principle reflects not mere procedural formality, but a substantive judgment that exposing the federal government to liability implicates separation-of-powers concerns, fiscal accountability, and the proper functioning of the executive branch. *Gray*, 712 F.2d at 511. For that reason, "[w]aivers of sovereign immunity must be unequivocally expressed," and any ambiguity must be resolved in favor of immunity. *FAA v. Cooper*, 566 U.S. 284, 290 (2012); *United States v. King*, 395 U.S. 1, 4 (1969).

Importantly, courts may not infer or expand a statutory waiver beyond its express terms. *Cooper,* 566 U.S. at 290. This principle ensures that courts do not intrude into areas Congress has chosen to reserve for executive discretion or legislative control. *Manfre v. Shinkle*, 184 So. 3d 641, 644 (Fla. Dist. Ct. App. 2016). Additionally, courts may not rely on policy concerns, perceived fairness, or the frequency of government-citizen interactions to justify expanding liability. *United States v. Nordic Village*, 503 U.S. 30, 33–34 (1992). Where two interpretations exist, the one preserving immunity must be adopted. *Cooper,* 566 U.S. at 290.

The FTCA reflects this deliberate restraint. 28 U.S.C. § 2680(h). Congress did not create a general mechanism for suing the United States whenever federal employees interact with the public. *Id*. Instead, it crafted a narrow and targeted waiver, limited to specific torts committed by a specific category of federal officials—those empowered to execute searches, seize evidence, or make arrests for violations of federal law. *Id*; *Millbrook*, 569 U.S. at 55–56. The statute, therefore, requires more than misconduct; it requires statutory authority of a particular kind. *Id*.

This structure reflects Congress's considered judgment about when exposure to tort liability is appropriate. *Mitchell*, 463 U.S. at 212. As this Court explained, Congress enacted the law enforcement proviso in response to concerns about abuses by federal criminal investigators—officers exercising coercive police powers while enforcing federal law. *Millbrook*, 569 U.S. at 55–56. Congress did not design the proviso as a general accountability mechanism for all federal employees who interact with the public. *Id.* The proviso represents a carefully limited carve-out from sovereign immunity tied to a defined category of law enforcement authority. *Id*. Expanding that carve-out beyond its text would undermine the balance Congress struck. *Varig Airlines*, 467 U.S. at 814. Courts, therefore, may not infer waiver, nor may they broaden it simply because a plaintiff alleges harm arising from government conduct. *Meyer*, 510 U.S. at 477–78. Where Congress has not clearly consented, "the United States simply has not rendered itself liable." *Id.*

In *Millbrook v. United States*, this Court reaffirmed that the law-enforcement proviso applies only where officers exercise traditional police powers, such as executing searches, seizing evidence, or making arrests. *Millbrook*, 569 U.S. at 55–56. This Court emphasized Congress deliberately limited the waiver to a narrow category and did not authorize courts to extend it based on the nature or consequences of the conduct at issue. *Id.* Thus, an expansion would undermine both sovereign immunity and the separation of powers. *Varig Airlines*, 467 U.S. at 814; *Meyer*, 510 U.S. at 477.

Here, expanding the law enforcement proviso to encompass TSA screeners would erase the statutory line designed by Congress. 49 U.S.C. § 114(p). It would transform routine screening interactions—occurring by the millions each year—into an endless source of potential tort liability against the government. *United States v. Varig Airlines*, 467 U.S. 797, 814 (1984) (warning subjecting routine regulatory activity to tort liability would expose the government to "massive" and unpredictable liability). Such a result would dramatically expand the scope of the FTCA far beyond what Congress authorized. *Millbrook*, 569 U.S. at 55–56. As this Court cautioned, waivers of sovereign immunity cannot be inferred from policy considerations or practical concerns; they must be grounded in clear statutory text. *Lane*, 518 U.S. at 192. Yet, under Petitioner's rule, every TSA screener at every airport—over 50,000 employees—would suddenly become an investigative police officer for FTCA purposes.[2] TRANS. SEC. ADMIN., *TSA by the Numbers*, U.S., https://www.tsa.gov/news/press/factsheets/tsa-numbers; *Vanderklok*, 868 F.3d at 208–09.

That result would detach the proviso from its historical purpose of addressing abuses of criminal investigative power and instead convert it into a sweeping mechanism for challenging

[2] TSA is "responsible for the security of nearly 440 federalized airports" at which "more than 50,000 transportation security officers keep people secure." *See* TRANS. SEC. ADMIN., *TSA by the Numbers*, https://www.tsa.gov/news/press/factsheets/tsa-numbers.

routine administrative conduct. *Millbrook*, 569 U.S. at 55–56; *Welch v. United States*, 409 F.3d 646, 652 (4th Cir. 2005). Congress expressly rejected such an outcome when it confined the proviso to only officers empowered to enforce federal criminal law. S. Rep. No. 93-588, at 2–4 (1973). The same framework applies here. TSO Lurie falls outside the purview of the proviso because he lacked the authority to exercise any of the traditional police powers enumerated in § 2680(h). 49 U.S.C. § 114(p); *Vanderklok*, 868 F.3d at 208–09. TSO Lurie was only authorized to enforce routine screening procedures within the scope of his administrative duties, not duties designed to enforce criminal law. R. at 3.

Because the statutory prerequisites for waiver are absent, the law enforcement proviso does not apply. *Millbrook*, 569 U.S. at 54–56; *Getsy*, 400 F. Supp. 3d at 864. Allowing this claim to proceed would impermissibly expand Congress's limited waiver of sovereign immunity and erase the statutory distinction between administrative screening and criminal law enforcement. *Lane*, 518 U.S. at 192. The FTCA does not permit such an expansion. *Mitchell*, 463 U.S. at 212. Accordingly, sovereign immunity remains intact, and the claim must be dismissed.

II. THE DISCRETIONARY FUNCTION EXCEPTION BARS TORT CLAIMS EVEN WHERE THERE IS AN ALLEGETION OF A CONSTITUTIONAL VIOLATION CONDUCTED BY A TSA SCREENER.

The mere allegation that a discretionary act was unconstitutional does not, by itself, displace the government's immunity. *Shivers v. United States*, 1 F.4th 924, 930 (11th Cir. 2021); *Recovering the Lost Meaning of the Federal Tort Claims Act's Discretionary Function Exception,"* 138 HARV. L. REV. 654, 656 (2024). Section 2680(a) of the FTCA, known as the discretionary function exception, preserves immunity for discretionary conduct, "whether or not the discretion involved be abused," leaving no textual basis for a constitutional carve-out. 28 U.S.C. § 2680(a); *Shivers*, 1 F.4th at 930. The discretionary function exception protects governmental decision-making that involves judgment or choice, particularly where that judgment is informed by policy considerations. *United States v. Gaubert*, 499 U.S. 315, 322–23 (1991); *Berkovitz v. United States*, 486 U.S. 531, 536–37 (1988). Congress enacted the exception to preserve sovereign immunity for discretionary governmental functions and to prevent courts from second-guessing policy-laden decisions through tort litigation. *Varig Airlines*, 467 U.S. at 814; *Zeng v. United States*, No. 14-cv-3924, 2016 WL 8711090, at *6 (E.D.N.Y. Sept. 30, 2016). In doing so, Congress recognized that certain governmental decisions, especially those involving safety, security, and resource allocation, are not amenable to judicial review under tort law. *Varig Airlines*, 467 U.S. at 814.

Section 2680(a), therefore, operates as a structural limitation on the FTCA's waiver of sovereign immunity. *Id;* Jeffrey Robinson, *The Discretionary Function Exception: Is It A Bar To Federal Jurisdiction?,* 1983 UTAH L. REV. 117, 120 (1983). It ensures that liability does not attach to discretionary decisions grounded in social, economic, or political policy considerations. *Varig Airlines*, 467 U.S. at 814; *Gaubert*, 499 U.S. at 323. The purpose of this limitation is not to excuse wrongdoing, but to preserve separation of powers, by preventing courts from substituting the judgment of the legislative branch. *Varig Airlines*, 467 U.S. at 814.

This Court refined the inquiry in *Berkovitz v. United States*, establishing a two-part test. 486 U.S. 531, 536–37 (1988). First, a court asks whether the challenged conduct involved an element of judgment or choice. *Id*. If a federal statute, regulation, or policy specifically prescribes a mandatory course of action, the conduct is not discretionary. *Id*. But if a government actor must exercise judgment or choice, the conduct is discretionary unless constrained by a mandatory directive. *Id.; Gaubert*, 499 U.S. at 322. Second, if the discretionary element is met, the court determines objectively whether the judgment exercised is the type of discretionary function the exception is designed to shield—namely, decisions susceptible to policy analysis. *Berkovitz*, 486

U.S. at 536–37; *Gaubert*, 499 U.S. at 325. Courts do not ask whether the official actually weighed policy considerations, but whether the decision is the kind that is generally grounded in policy concerns. *Gaubert*, 499 U.S. at 325.

This Court has defined discretionary conduct as multifaceted. *Gaubert*, 499 U.S. at 322–23. In *Gaubert*, this Court clarified discretionary conduct "is not confined to the policy or planning level," but extends to day-to-day operational decisions when policy considerations guide those decisions. *Id*. The governing inquiry, therefore, turns on "the *nature of the conduct*, rather than the status of the actor." *Id.* at 322 (emphasis added). Where agency guidance permits discretion, courts must presume the resulting conduct is grounded in policy. *Id.* at 324–25. This framework reflects the core principles of separation of powers by preventing courts from transforming tort suits into vehicles for reviewing executive policymaking. *Varig Airlines*, 467 U.S. at 814.

As a result, courts must assess the *nature of the function*, not the alleged illegality of its execution. *Gaubert*, 499 U.S. at 323–25. This assessment is grounded in the statutory text of § 2680(a), which preserves immunity for discretionary conduct regardless of whether the discretion is abused. 28 U.S.C. § 2680(a). It is further supported by this Court's framework for applying the discretionary function exception, which directs courts to focus on the nature of the conduct rather than the propriety or legality of the decision. *Gaubert*, 499 U.S. at 323–25. Finally, the structure of the FTCA confirms that Congress intended § 2680(a) to operate as a threshold limitation on the waiver of sovereign immunity, preventing courts from second-guessing governmental decisions through tort litigation. *Varig Airlines*, 467 U.S. at 814.

These three levels of analysis confirm that courts must assess the *nature of the function*, not the alleged illegality of its execution. *Gaubert*, 499 U.S. at 323–25. Courts applying the exception, therefore, do not inquire into the correctness, propriety, or legality of the decision itself, but instead ask only whether the challenged conduct is the type of function Congress intended to shield from tort liability. *Id.*

A. Conditioning Application of Section 2680(a) on Constitutional Adjudication Would Defeat the Discretionary Function Exception's Jurisdictional Purpose.

This Court has emphasized the discretionary function exception preserves sovereign immunity to prevent judicial second-guessing of government decisions that rest on social, economic, and political policy judgments. *Varig Airlines*, 467 U.S. at 814. It does so by removing those decisions from tort litigation entirely—not by allowing the case to proceed and then providing a defense at the end. *Id.*; *Gaubert*, 499 U.S. at 323. If courts must decide whether conduct was constitutional before applying § 2680(a), the exception stops operating as a jurisdictional boundary and instead becomes a merits inquiry in disguise. *Shivers*, 1 F.4th at 930; *Linder v. United States*, 937 F.3d 1087, 1090 (7th Cir. 2019).

Therefore, the inquiry asks whether the challenged conduct is the type of decision that is susceptible to policy analysis, not whether there was an actual weighing of policy considerations or whether the decision ultimately complied with legal norms. *Gaubert*, 499 U.S. at 325. The focus is on the nature of the function performed, not the quality or legality of the decision itself. *Id.* at 323–25. Requiring courts to probe a decisionmaker's reasoning or to evaluate the legality of the outcome would defeat the purpose of the discretionary function exception by drawing courts into precisely the kind of policy judgments Congress sought to insulate from judicial review. *Id.* at 323–24.

In *United States v. Gaubert*, this Court made clear that the discretionary function exception operates as a threshold jurisdictional limitation, protecting even day-to-day operational decisions so long as they are susceptible to policy analysis. *Id.* This Court rejected any inquiry into whether the government actor actually weighed policy considerations or exercised judgment correctly. *Id.*

Instead, the inquiry is jurisdictional: whether the nature of the challenged conduct is the type Congress insulated from judicial review. *Id*.

By contrast, *Indian Towing Co. v. United States* illustrates when courts may reach the merits because jurisdiction already exists. 350 U.S. 61, 69 (1955). There, this Court allowed a determination of liability only after the government had already made a discretionary decision to operate a lighthouse and then negligently failed to maintain it. *Id*. The claim did not challenge a policy choice or discretionary judgment, but rather the government's failure to carry out an established operational duty. *Id*. This Court emphasized liability rests where negligence is exercised, not in matters of policy outcomes. *Gaubert*, 499 U.S. at 323–25. That distinction underscores the point: courts may assess negligence once the government has committed to a course of action, but they may not second-guess discretionary policy judgments themselves. *Id*.

Because § 2680(a) is jurisdictional, it must be applied at the outset of litigation, before courts reach the merits of the underlying claim. *See Hardscrabble Ranch, L.L.C. v. United States*, 840 F.3d 1216, 1220 (10th Cir. 2016). Jurisdiction concerns the court's power to hear a claim at all, whereas liability concerns whether the government may be held responsible once jurisdiction exists. *Meyer*, 510 U.S. at 475. The discretionary function exception operates at the former stage: it determines whether Congress has authorized courts to entertain the claim in the first place. *Hardscrabble Ranch*, 840 F.3d at 1220.

Treating the exception as contingent on constitutional adjudication would invert that framework, transforming a threshold immunity inquiry into a merits-based determination and collapsing the distinction between jurisdiction and liability. *Shivers*, 1 F.4th at 930; *Linder*, 937 F.3d at 1090. This outcome is precisely what § 2680(a) is designed to prevent. *Shivers*, 1 F.4th at 930. Requiring courts to evaluate constitutional validity at the jurisdictional stage would entangle them in substantive judgments about the reasonableness, justification, or legality of executive action—questions that go to liability, not jurisdiction. *Id.* In other words, courts would be forced to decide whether the government acted lawfully to decide whether they may hear the case at all. *Id*. That inversion undermines the basic structure of the FTCA and erases the line Congress drew between threshold immunity and ultimate liability. *Id.*

This Court has consistently emphasized Congress designed the discretionary function exception to operate as a gatekeeping doctrine, insulating specific categories of governmental conduct from tort litigation altogether. *Varig Airlines*, 467 U.S. at 814; *Gaubert*, 499 U.S. at 323. The exception reflects Congress's judgment that courts are not equipped to evaluate policy-based governmental decisions through after-the-fact tort review, particularly where those decisions involve balancing safety, efficiency, and resource constraints. *Varig Airlines*, 467 U.S. at 814. In *United States v. Varig Airlines*, this Court considered whether the Federal Aviation Administration (FAA) could be held liable for allegedly negligent aircraft certification procedures. *Id*. The plaintiffs argued the agency failed to detect safety defects during its inspections. *Id.* at 800–02. This Court rejected that theory, explaining the FAA's certification process required officials to exercise judgment in allocating limited resources and determining the best way to ensure compliance with safety regulations. *Id.* at 807–08. Those choices were inherently policy-driven, not due to negligent conduct. Id. at 814. Consequently, those choices were not subject to judicial second-guessing through tort law. *Id*.

Critically, this Court emphasized allowing tort liability in that context would require courts to evaluate whether the agency should have exercised its discretion differently after the fact — precisely the type of inquiry Congress intended to foreclose. *Id.* at 814. The problem was not simply that the claimants in *Varig Airlines* alleged negligence, but that adjudicating the claim would force courts to assess the reasonableness of policy choices entrusted outside the court realm and to executive agencies. *Id.* In that sense, the discretionary function exception was designed to prevent courts from becoming de facto overseers of administrative policymaking. *Id.*

Building on that principle, *Gaubert* instructs courts to assess whether the challenged conduct is "susceptible to policy analysis," rather than whether a government actor actually weighed policy considerations or if the decision was correct. 499 U.S. at 325. This Court warned probing the decisionmaker's reasoning or the legality of the outcome would defeat the exception's purpose by entangling courts in precisely the policy judgments Congress sought to shield. *Id.* at 323–24. If judges were to scrutinize whether an official's decision was "right" or "lawful," it would require them to second-guess the discretionary choices made by an official who was privy to real-world limitations at the time—something Congress has decided courts are not qualified to do. *Id.* at 323; *Varig Airlines*, 467 U.S. at 814.

Lower courts have echoed this concern, cautioning that transforming § 2680(a) into a merits-based inquiry would collapse the distinction between jurisdiction and liability. *See*, *e.g.*, *Ramirez v. Reddish*, No. 2:18-cv-00176, 2020 WL 1955366, at *29 (D. Utah Apr. 23, 2020), aff'd, 104 F.4th 1219 (10th Cir. 2024). In *Ramirez v. Reddish*, for example, the district court rejected the claimant's attempt to predicate jurisdiction on allegations of unconstitutional conduct, explaining doing so would require the court to resolve the legality of the government's actions before determining whether Congress had consented to suit. *Id*. The court emphasized that jurisdiction asks whether Congress has authorized the court to hear the claim at all, while liability concerns whether the government should ultimately be held responsible on the merits. *Id.* Treating § 2680(a) as contingent on a merits determination, the court explained, would invert that framework by allowing liability questions to dictate jurisdiction. *Id.*

Here, resolving whether the challenged conduct violated the Constitution would require an inquiry into the scope of First Amendment protections in airport security checkpoints, the reasonableness of time, place, and manner restrictions, and the operational demands of national security screening. *USPS v. Council of Greenburgh Civic Ass'ns*., 453 U.S. 114, 132 (1981). Requiring such an analysis as a prerequisite to applying § 2680(a) would upend the statutory framework. *Shivers*, 1 F.4th at 930. That inquiry would require courts to evaluate competing governmental and individual interests, assess alternative security measures, and weigh operational consequences—tasks that demand precisely the type of policy judgment Congress sought to remove from judicial review. *Id*

A constitutional prerequisite shifts the inquiry from whether Congress insulated the conduct to deciding constitutional questions at the jurisdictional stage. This is precisely the form of judicial second-guessing that *Varig* and *Gaubert* forbid. *Varig Airlines*, 467 U.S. at 814; *Gaubert*, 499 U.S. at 323–25. As this Court has emphasized, § 2680(a) exists to prevent courts from reexamining discretionary policy judgments through the lens of tort litigation, particularly where those judgments implicate public safety and resource allocation. *Varig Airlines*, 467 U.S. at 814. The discretionary function exception reflects Congress's view that specific categories of governmental decision-making should not be subjected to litigation. *Id.* Under this congressional framework, that protection should not be conditioned on constitutional adjudication. *Shivers*, 1 F.4th at 930. Such an approach would collapse the purpose behind Congress enacting the exception in the first place. *Linder*, 937 F.3d at 1090.

The conduct at issue arises from the day-to-day operational judgments of TSA officers charged with maintaining checkpoint security and efficiency. *Aukai*, 497 F.3d at 960; *Dyer*, 56 F.4th at 280. Those judgments are inherently susceptible to policy analysis and therefore fall within the core of the discretionary function exception. *Pudeler v. United States*, No. 3:09-cv-1543, 2013 WL 6511937, at *7 (D. Conn. Dec. 12, 2013). That conclusion rests on the nature of the function at issue, rather than on whether the officers exercised their discretion correctly, reasonably, or constitutionally. *Gaubert*, 499 U.S. at 325.

As the District Court of Eastland correctly recognized, making constitutional adjudication a threshold requirement for sovereign immunity would eviscerate § 2680(a)'s function as a jurisdictional bar and expose the government to litigation Congress expressly sought to avoid. *Shivers*, 1 F.4th at 930; *Ramirez*, No. 2:18-cv-00176, 2020 WL 1955366, at *29. Because § 2680(a) is intended to foreclose judicial review of discretionary, policy-laden decisions at the outset of litigation, courts must not resolve alleged constitutional violations before applying the discretionary function exception.

B. Allegations of Constitutional Violations Do Not Defeat Section 2680(a)'s Discretionary Conduct Exception.

Sovereign immunity is not defeated simply by alleging that a government employee acted unconstitutionally. *Varig Airlines*, 467 U.S. at 811–14. Section 2680(a) applies to "[a]ny claim" based on discretionary conduct by a federal employee, "whether or not the discretion involved be abused." 28 U.S.C. § 2680(a). That language reflects a deliberate choice: courts may not deny immunity simply because a plaintiff characterizes government action as unlawful or unconstitutional. *Shivers v. United States*, 1 F.4th 924, 930 (11th Cir. 2021).

In *Gaubert*, this Court explained conduct is discretionary unless a statute, regulation, or policy specifically prescribes a mandatory course of action that leaves the employee "no rightful option but to adhere to the directive." *Gaubert*, 499 U.S. at 322 (explaining discretion exists where an employee is permitted to exercise judgment or choice). If discretion exists, courts presume the conduct is grounded in policy considerations, even if there is no explicit articulation of those considerations. *Id.* at 324.

Nothing in § 2680(a) conditions immunity on the legality or constitutionality of the discretionary act, nor does the statute contain any textual basis for a constitutional exception. *See Shivers*, 1 F.4th at 930. The discretionary function exception embodies Congress's determination that some forms of governmental decision-making should not be subjected to tort liability, even when allegations of misconduct or error in the exercise of that discretion arise. *Varig Airlines*, 467 U.S. at 814. Therefore, the exception should not be used to assess whether the discretionary action was "correct" in nature. *Gaubert*, 499 U.S. at 323; *Shivers*, 1 F.4th at 930.

Courts have rejected the argument that allegations of unconstitutional conduct preclude the exercise of discretion under § 2680(a). *Welch v. United States*, 409 F.3d 646, 652 (4th Cir. 2005). The Fourth Circuit, in *Welch v. United States*, explained § 2680(a) exists to prevent tort suits from being used to challenge the legality of governmental decision-making itself. *Welch*, 409 F.3d at 652. The argument advanced in *Welch* asserted the same tautological argument pressed here, that government officials cannot exercise discretion if, when applied, it would be unconstitutional. *Id*. Rejecting this position, the Fourth Circuit concluded "this argument is refuted by the plain language of the statute." *Id.* at 653. By expressly insulating discretionary acts "whether or not the discretion involved be abused," Congress foreclosed efforts to collapse the discretionary function inquiry into an assessment of constitutional validity. *Id*.

Additionally, a growing minority[3] of courts have rejected the argument that an allegation of unconstitutional conduct precludes the exercise of discretion under § 2680(a). *Kiiskila v. United States*, 466 F.2d 626, 628 (7th Cir. 1972); *Shivers*, 1 F.4th at 930; *Castro v. United States* (*Castro III*), 608 F.3d 266, 268 (5th Cir. 2010) (en banc). The Seventh Circuit in *Linder v. United States*

[3] At least five circuits have held or implied that discretionary acts do not implicate the Constitution. Daniel Raddenbach, Note, *Unconstitutional but Authorized: The Federal Tort Claims Act Should Not Immunize the United States When Federal Officers Violate the Constitution*, 106 MINNESOTA L. REV. 1121, 1147 (2021).

analyzed the premise of the principle that "no one has discretion to violate the Constitution" under the FTCA. *Linder*, 937 F.3d at 1090. The court recognized that constitutional limitations may exist generally, but explained such considerations are irrelevant to the FTCA because the statute "does not apply to constitutional violations at all." *Id.* Instead, the proper inquiry under § 2680(a) is whether the challenged conduct is discretionary under *Gaubert*. *Id*.

Aligning with its sister court, the Eleventh Circuit in *Shivers v. United States* expressly rejected a proposed "constitutional claims exclusion" from § 2680(a). *Shivers*, 1 F.4th at 930. The court emphasized the statutory text does not support an exclusion for discretionary conduct by examining whether the governmental employees' exercise was unconstitutional. *Id* (rejecting the inquiry into "whether the governmental employee's exercise of his or her discretion is appropriate, slightly abusive, or so abusive that it is unconstitutional"). The court held the focus when analyzing an employee's conduct must remain on the nature of the function, not the alleged degree of wrongdoing. *Id*. These decisions reflect a consistent understanding: importing a constitutional merits analysis to the discretionary function inquiry contradicts the statute's text and transforms a jurisdictional limitation into a substantive adjudication of liability. *Id.*; *Linder*, 937 F.3d at 1090.

1. TSA Screeners Must Exercise Discretion When Managing Security Checkpoints.

The discretionary function exception is analyzed under the two-step framework established in *Berkovitz* and refined in *Gaubert*. *Berkovitz*, 486 U.S. at 536; *Gaubert*, 499 U.S. at 322–23. Under the first prong, courts determine whether the employee exercised judgment or choice, rather than having "no rightful option but to adhere to the directive." *Berkovitz*, 486 U.S. at 536; *Gaubert*, 499 U.S. at 322–23. Where governing law leaves room for judgment, the resulting decisions are presumed to be grounded in policy considerations, even if those considerations are not expressly articulated at the time of execution. *Id*. The focus is therefore not on whether the decision was correct or lawful, but on whether it is the type of decision Congress intended to shield from tort liability. *Id.*

Here, the conduct at issue clearly falls within the category of discretionary functions protected by § 2680(a). *Gaubert*, 499 U.S. at 322–23. TSA screeners are responsible for a wide range of day-to-day operational functions that necessarily require judgment and discretion. *Aukai*, 497 F.3d at 960; *Dyer v. Smith*, 56 F.4th 271, 280 (4th Cir. 2022). Their duties include operating screening equipment to identify potentially dangerous items, conducting physical screening procedures like pat-downs and bag searches, controlling access to secure areas by managing access points, and interacting with the public. TRANS. SEC. ADMIN., *Transportation Security Officer*, https://jobs.tsa.gov/tso-ssa. While TSA officers operate within an established regulatory framework, no statute or regulation prescribes a sole mandatory response for every passenger interaction or security concern. *Dyer*, 56 F.4th at 280. Instead, officers must exercise judgment in applying general security directives to real-time and often unpredictable circumstances. *Gaubert*, 499 U.S. at 325.

These responsibilities require TSA screeners to make rapid, context-specific assessments based on evolving conditions at security checkpoints. *Id* (explaining TSOs must be able to respond quickly and be on high alert at all times); *Aukai*, 497 F.3d at 960. The discretionary function exception does not depend on whether each decision was correct, optimal, or constitutionally sound. But instead, whether the conduct at issue is of the type Congress intended to protect from litigation. *Gaubert*, 499 U.S. at 325.

Accordingly, because the challenged conduct here involves discretionary, policy-laden judgments made while carrying out airport security responsibilities, it falls within the core of the discretionary function exception. *Berkovitz*, 486 U.S. at 536–37; *Gaubert*, 499 U.S. at 325. Treating TSO Lurie's conduct as non-discretionary would effectively require this Court to evaluate the propriety of his day-to-day security decisions: an outcome Congress expressly sought to avoid. *Varig Airlines*, 467 U.S. at 814. Consequently, the challenged conduct satisfies the first prong of the *Berkovitz* and *Gaubert* test. *Berkovitz*, 486 U.S. at 536–37; *Gaubert*, 499 U.S. at 325.

2. TSA Checkpoint Judgments are Inherently Susceptible to Policy Considerations.

The second prong of the *Berkovitz* and *Gaubert* test asks whether the discretionary judgment is of the kind the exception intends to shield. *Berkovitz*, 486 U.S. at 536–37; *Gaubert*, 499 U.S. at 325. Congress intended to protect the policy considerations surrounding decisions about checkpoint control, passenger movement, and interference with screening that implicate public safety and national security concerns from tort litigation. *Varig Airlines*, 467 U.S. at 814; *Gaubert*, 499 U.S. at 323. Managing the flow of passengers through a security checkpoint requires balancing competing policy considerations, including screening effectiveness, operational efficiency, risk allocation, and the prevention of disruptions that could compromise security. *Aukai*, 497 F.3d at 960. Because those judgments are inherently amenable to policy analysis, they fall within the heartland of the discretionary function exception. *Gaubert*, 499 U.S. at 325; *Varig Airlines*, 467 U.S. at 814.

The governing TSA policy permits travelers to record activity around TSA checkpoints, provided the screening process is not interfered with and sensitive information is not disclosed. *See* TRANS. SEC. ADMIN., *Can I Film and Take Photos at a Security Checkpoint?*, https://www.tsa.gov/travel/frequently-asked-questions/can-i-film-and-take-photossecurity-checkpoint. However, the limitations surrounding this policy are subject to the TSA screener's judgment in real time. *Id*. The policy does not prescribe a single mandatory course of action for addressing traveler misconduct; it instead allows for discretion. *Id* As in *Gaubert*, the absence of a specific directive leaves room for discretion, triggering the presumption that the resulting decisions are grounded in policy considerations related to safety and security. 499 U.S. at 325

The allegation that the officer exercised their discretion in a constitutionally impermissible manner does not alter the analysis. *Shivers*, 1 F.4th at 930. As *Linder* and *Shivers* make clear, the FTCA does not condition sovereign immunity on whether discretionary decisions were correct or unconstitutional. *Linder*, 937 F.3d at 1090; *Shivers*, 1 F.4th at 930. Instead, this Court must focus on the nature of the function performed, which here is policy-driven, rather than on the legality of the outcome. *Shivers*, 1 F.4th at 930. Accordingly, allegations of unconstitutional conduct do not transform discretionary actions into nondiscretionary ones for purposes of the discretionary function exception. *Linder*, 937 F.3d at 1090; *Shivers*, 1 F.4th at 930. To hold otherwise would restrict the policy considerations Congress authorized for the TSA checkpoint. *Varig Airlines*, 467 U.S. at 814; *Gaubert*, 499 U.S. at 323–25. Thus, because § 2680(a) applies to discretionary conduct regardless of whether there is an abuse of discretion, an allegation that such conduct violated the Constitution does not remove it from the scope of the discretionary function exception.

C. § 2680(a) is Not a Backdoor Remedy for Constitutional Claims.

Section 2680(a) operates as a threshold limitation on the FTCA's waiver of sovereign immunity, ensuring that courts do not reach the merits of claims Congress has chosen to exclude from judicial review. *Varig Airlines*, 467 U.S. at 814. To understand how the limitation functions, one must attend to both *what* the statute permits courts to adjudicate and *when* that determination must be made. *Meyer*, 510 U.S. at 475. The analysis, therefore, proceeds in two steps. First, courts must determine whether Congress has authorized jurisdiction at all because, without a valid waiver of immunity, no claim may proceed. *Meyer*, 510 U.S. at 475; *Hardscrabble Ranch*, 840 F.3d at 1220. Second, courts must assess whether the challenged conduct falls within the discretionary function exception, which preserves immunity for policy-laden governmental decisions. *Gaubert*, 499 U.S. at 323–25; *Varig Airlines*, 467 U.S. at 814. Together, these principles prevent constitutional claims from being repackaged as tort actions and ensure courts do not resolve the merits of a dispute before confirming their authority to do so. *Shivers*, 1 F.4th at 930; *Linder*, 937 F.3d at 1090.

1. Sovereign Immunity is a Threshold Requirement That Must be Resolved Before any Merits Inquiry.

Congress did not authorize § 2680(a) to operate as an indirect vehicle for constitutional damages claims against the government. *Meyer*, 510 U.S. at 477. Because constitutional violations may be committed only by government actors, they lack a private-person analogue under state tort law. *Id.* The FTCA therefore excludes claims based directly on constitutional violations. *Id.* Consequently, the discretionary function exception bars claims alleging constitutional violations. *Loumiet v. United States*, 828 F.3d 935, 945–46 (D.C. Cir. 2016).

Sovereign immunity is "axiomatic," and the United States may not be sued without consent. *United States v. Mitchell*, 463 U.S. 206, 212 (1983). That consent is a prerequisite to jurisdiction, meaning courts must determine whether Congress has authorized suit *before* addressing the merits of any claim. *Id.*; *Meyer*, 510 U.S. at 475. This requirement ensures that courts do not exceed the limits of their constitutional authority by adjudicating claims Congress has not permitted. *Meyer*, 510 U.S. at 475; *Mitchell*, 463 U.S. at 212.

This threshold principle is critical to this Court's analysis because it fixes the order of decision-making. *Id.* Courts must first decide whether a claim falls within the scope of the FTCA's waiver of immunity before it considered the claim at all. *Meyer*, 510 U.S. at 475. The FTCA does not waive immunity for claims predicated on constitutional violations; therefore, courts lack jurisdiction and may not proceed further. *Mitchell*, 463 U.S. at 212. Allowing constitutional allegations to dictate jurisdiction would invert this framework by requiring courts to resolve the merits of a claim before determining whether they have authority to hear it at all—an approach this Court has repeatedly rejected. *Id.*; *Loumiet*, 828 F.3d at 945–46.

2. *Constitutional Claims Fall Outside the FTCA Because the Constitution Restricts Government Conduct not Private Individuals.*

The FTCA waives sovereign immunity only where the government would be liable "in the same manner and to the same extent as a private individual under like circumstances." 28 U.S.C. § 1346(b)(1). Accordingly, a claim can proceed only if a private person could be held liable for the same conduct under state tort law. *Meyer*, 510 U.S. at 477. If there is no private person analogue, there is no waiver—and the court lacks jurisdiction. *Id*.

Constitutional claims fail this requirement because constitutional violations can only be committed by government actors. *Civil Rights Cases,* 109 U.S. 3, 17 (1883) ("[c]ivil rights, such as are guaranteed by the Constitution against State aggression, cannot be impaired by the wrongful acts of individuals, unsupported by State authority…"). A private individual cannot violate the First Amendment, the Fourth Amendment, or any other provision of the Constitution because those provisions restrict governmental, not private, conduct. *Id*. As a result, there is no private-person analogue for constitutional wrongs, and the FTCA does not authorize claims based directly on alleged violations of the Constitution. *See Meyer*, 510 U.S. at 477–78.

A clear and categorical boundary was drawn by this Court in *FDIC v. Meyer* on the scope of the FTCA's waiver of sovereign immunity. *Meyer*, 510 U.S. at 473–74. There, the plaintiff sought damages from a federal agency for an alleged violation of the Due Process Clause, attempting to proceed under the FTCA. *Id* at 473–74. This Court rejected the claim, holding constitutional torts are not cognizable under the FTCA because they fail the statute's "private person" analogue requirement. *Id.* at 477. Because constitutional violations can be committed only by government actors and have no private-person counterpart under state law, they fall outside the category of claims for which Congress waived sovereign immunity. *Id.* This Court emphasized this limitation was structural rather than formalistic. *Id.* at 485–86. In other words, the exclusion of constitutional claims does not turn on pleading labels or technical distinctions; it reflects Congress's deliberate choice to limit the scope of the government's waiver of sovereign immunity. *Id.* Allowing constitutional claims under the FTCA would expand liability beyond what Congress authorized and would undermine the statute's carefully calibrated remedial scheme. *Id*.

Congress confirmed this limitation by expressly excluding constitutional claims from the FTCA while preserving individual-capacity remedies against federal officers. 28 U.S.C. § 2679(b)(2)(A). Rather than consenting to suit against the United States for constitutional violations, Congress chose to leave those claims to be pursued, if at all, against individual officers in their personal capacities. *Meyer*, 510 U.S. at 485–86; 28 U.S.C. § 2679(b)(2)(A). As this Court explained in *Meyer*, that structure reflects a deliberate legislative choice about how constitutional claims should be addressed and a refusal to expand the FTCA's waiver of sovereign immunity to encompass them. *Meyer*, 510 U.S at 485–86. Allowing plaintiffs to proceed against the United States by recasting constitutional claims as tort actions would defeat that choice and improperly enlarge the FTCA's limited waiver. *Id.* at 477–78.

Accordingly, lower courts may not circumvent Congress's design by permitting constitutional damages claims to proceed against the United States under alternative legal labels. *Id.* at 477–78. Allowing such repackaging would expand the FTCA's waiver beyond what Congress expressly authorized and undermine the statute's jurisdictional limits. *Id.* As *Meyer* makes clear, regardless of how a claim is framed, the FTCA cannot be used to impose tort liability on the United States for alleged constitutional violations. *Id.*

Here, the claim's asserted unlawfulness turns entirely on an alleged violation of the First Amendment. R. at 13. Although pleaded as a state-law false imprisonment claim, its theory of liability depends on the premise that a federal officer acted unconstitutionally. *Id; Meyer*, 510 U.S. at 477–78. Under *Meyer*, that premise is fatal to FTCA jurisdiction. *Meyer*, 510 U.S. at 477–78. That framing is critical because, under the FTCA, a claim is cognizable only if a private person could be held liable under state law for the same conduct. *Id.*

A private individual does not violate the First Amendment because the Constitution limits government power, not private conduct. *Civil Rights Cases,* 109 U.S. at 17*; Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n*, 531 U.S. 288, 295–9 (2001) (discussing the state action doctrine). While a private individual may commit a tort such as false imprisonment, that conduct does not become a constitutional violation unless it is attributable to the government. *Id*; Jared Lenow, *First Amendment Protection for the Publication of Private Information*, 60 VANDERBILT L. REV. 235, 253 (2019) ("There is no violation of a constitutional right when a private party abridges a person's freedom of speech…"). The absence of a private person analogue places the claim outside the FTCA's waiver of sovereign immunity. *Id.* at 477–78; 28 U.S.C. § 1346(b)(1).

Permitting such a claim to proceed would accomplish precisely what *Meyer* forbids: allowing recovery against the United States for a constitutional violation through the medium of tort law. *Meyer*, 510 U.S. at 477–78. Section 2680(a) prevents that result by stopping the inquiry at the jurisdictional threshold. *Gaubert*, 499 U.S. at 323–25. Rather than requiring courts to decide constitutional questions in order to determine liability, the discretionary function exception directs courts to examine whether the challenged conduct falls within a protected category of governmental decision-making. *Id.*

The discretionary function exception prevents that result by barring jurisdiction from the onset, before courts are forced to adjudicate constitutional questions that Congress excluded from the FTCA's scope. *Id*; *Shivers*, 1 F.4th at 930. That sequencing matters because jurisdiction must be resolved before any inquiry into the legality or constitutionality of the government's conduct. *Meyer*, 510 U.S. at 475. The district court below correctly recognized requiring constitutional adjudication as a predicate to immunity would collapse the statute's jurisdictional limits. *Ramirez*, No. 2:18-cv-00176, 2020 WL 1955366, at *29.

As *Shivers* emphasizes, § 2680(a) contains no constitutional carve-out, and courts may not require a finding of constitutional compliance before immunity attaches. *Shivers*, 1 F.4th at 930. Conditioning jurisdiction on constitutional adjudication would upend the statutory scheme, expand the FTCA's waiver beyond *Meyer*, and nullify Congress's separation of remedies between tort and constitutional wrongs as state law causes of action. *Id*; *Meyer*, 510 U.S. at 477–78. Because the FTCA does not waive sovereign immunity for constitutional violations, § 2680(a) bars claims seeking to impose tort liability on the government by repacking alleged constitutional wrongs as state-law causes of action.

CONCLUSION

The District Court and the Thirteenth Circuit correctly held under the FTCA, sovereign immunity cannot be waived because the law enforcement proviso does not apply to TSA screeners. Congress carefully limited the proviso to officers who are empowered to execute searches, seize evidence, or make arrests for violations of federal law. TSA screeners possess none of those authorities. Their role is strictly administrative, not investigative, and Congress deliberately preserved that distinction when it structured the TSA and delineated law-enforcement authority elsewhere in the statutory scheme. Because waiver exists only when all statutory prerequisites are satisfied—and none are satisfied here—the United States must retain sovereign immunity. Expanding the proviso beyond its text would improperly transform a narrow exception into a general waiver, contrary to both congressional intent and settled precedent.

Even if the challenged conduct were characterized as unconstitutional, the FTCA still does not permit suit because a waiver cannot arise from allegations of wrongdoing alone. Congress made clear that sovereign immunity is relinquished only when statutory conditions are met, not merely when attempts are made to reframe administrative conduct as a constitutional violation. The discretionary function exception, therefore, independently bars this claim, as it protects policy-driven governmental activity from judicial second-guessing regardless of the alleged impropriety of the conduct. Allowing such claims to proceed would collapse the FTCA's carefully drawn jurisdictional limits and expose the government to liability Congress expressly declined to authorize. Because neither statutory pathway to waiver is satisfied, the Eastland District Court and the Thirteenth Circuit Court of Appeals correctly dismissed the action for lack of subject-matter jurisdiction.

For the foregoing reasons, Respondent, United States of America, respectfully request this Court affirm the judgment of the United States Court of Appeals for the Thirteenth Circuit.

Respectfully submitted this 5th day of January, 2026.

/s/ Team 806
Team 806
Counsel for Respondent