THE SHAPE-SHIFTING SOVEREIGNTY OF STATE OFFICERS ON FEDERAL LAW ENFORCEMENT TASK FORCES

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INTRODUCTION

In February 2016, a Michigan state court issued an arrest warrant for Corey Mathis after he violated his probation.[1] Months later, sheriff's deputy Brian Rinehart and other members of a U.S. Marshals fugitive apprehension task force arrived at the address listed for Mathis in law enforcement databases.[2] There they encountered Derrick D. Cain,

> who told them that he was Mathis's uncle and that Mathis did not live there. According to Cain, he refused to consent to a search of his home, went back inside, and closed the door. He alleged that the officers then threatened to take him to jail, threatened to tear his door down, and "rushed" at him with their weapons drawn. Believing that he might be shot, Cain put his hands up and was then assaulted, taken to the ground by Rinehart and other officers, and handcuffed. While other officers searched the home, Rinehart remained with Cain on the porch and held him by the arm. The officers did not find [Corey] Mathis in Cain's home.[3]

When the Sixth Circuit heard the appeal of Cain's dismissed § 1983 claims against Rinehart, the court affirmed not based on qualified immunity, but by recasting and dismissing his claims as ones against a federal agent under *Bivens*—§ 1983's judicially-created counterpart for claims against federal officers.[4] According to the court, Rinehart, though employed as a sheriff's deputy, was acting under the color of *federal* law due to his temporary deputization as a member of a U.S. Marshals task force.[5] Because Cain, operating pro se, failed to recognize the transforming effect of deputization, he had overlooked claims under the only viable path to relief—the Federal Tort Claims Act (FTCA).[6] As a result, he failed to present his claims to the U.S. Marshals within two years under the FTCA's notice provision, and his FTCA claims were consequently barred.[7]

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1. Cain v. Rinehart, No. 22-1893, 2023 WL 6439438, at *1 (6th Cir. July 25, 2023).
2. *Id.*
3. *Id.*
4. *See id.* at *1–3.
5. *Id.* at *2.
6. *See* Cain v. Rinehart, No. 19-11278, 2022 WL 6600923, at *2 (E.D. Mich. July 18, 2022), *report and recommendation adopted*, No. 19-cv-11278, 2022 WL 3999959 (E.D. Mich. Sep. 1, 2022).
7. *Id.* (quoting 28 U.S.C. § 2401(b)).

More than a small-scale loophole, this federalization of state law enforcement has a broad impact on the availability of civil rights remedies due to the widespread use of multijurisdictional law enforcement task forces and the inherent operational problems that arise when forming an ad hoc team out of organizations with different missions, training requirements, and in-house accountability mechanisms. In addition to isolated incidents of flagrant corruption,[8] the massive number of multijurisdictional task forces renders civil rights abuses inevitable.[9] Constitutional abuses by multijurisdictional law enforcement task forces can affect anyone unlucky enough to be the relative of a fugitive,[10] live at a fugitive's old address,[11] or simply look like them.[12]

In Part I, this paper will explore the history of these task forces and their proliferation. Parts II and III will identify their legal authority and the respective motivations for state and federal agencies to participate, including the ability of multijurisdictional task forces to emphasize either their state or federal facets when they provide greater authority or less accountability than the other. Part IV constitutes the bulk of this paper and lays out the most problematic of these motivations: a remedial framework for civil rights actions that is legally inconsistent and full of pitfalls for plaintiffs. Part V addresses concerns about this framework and offers recommendations for protecting plaintiffs' claims from bureaucratic frustration. A brief Conclusion follows.

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8. *See* Justin Fenton, *'No Heroes Here': Exhaustive Report Lays out Two Decades of Baltimore Police and City Failure that Led to GTTF Scandal*, BALT. SUN (Jan. 14, 2022, at 04:56 ET), https://www.baltimoresun.com/2022/01/13/no-heroes-here-exhaustive-report-lays-out-two-decades-of-baltimore-police-and-city-failure-that-led-to-gttf-scandal/ [https://perma.cc/K7NV-MGWD]; *see also* Nathan Levy, *Bringing Justice to Hearne*, TEX. OBSERVER (Apr. 29, 2005, at 12:00 CT), https://www.texasobserver.org/1935-bringing-justice-to-hearne-residents-and-the-national-aclu-team-up-to-bring-justice-to-hearne/ [https://perma.cc/8HY4-2E6U].

9. *See* Radley Balko, *Another Narcotics Task Force Is in the Midst of a Corruption and Brutality Scandal. This Is Nothing New.*, WASH. POST (July 6, 2017), https://www.washingtonpost.com/news/the-watch/wp/2017/07/06/another-narcotics-task-force-is-in-the-midst-of-a-corruption-and-brutality-scandal-this-is-nothing-new/ [https://perma.cc/974P-TTRM] (citing instances in New Orleans, Texas, Georgia, South Carolina, Minnesota, Ohio, Utah, Louisville, Chicago, Northern Kentucky, Virginia, and along the southern border).

10. *See, e.g.*, Cain v. Rinehart, No. 22-1893, 2023 WL 6439438, at *1 (6th Cir. July 25, 2023).

11. *See* McLeod v. United States, No. 20-cv-00595, 2024 WL 4311531, at *2, *5–6, *17 (S.D. Ala. Sep. 26, 2024); Derek Hawkins, *Authorities Shot a Woman During a Botched Raid at Her Home. The Real Suspect Was Already in Jail.*, WASH. POST (Dec. 24, 2019), https://www.washingtonpost.com/nation/2019/12/24/authorities-shot-teen-during-botched-raid-her-home-suspect-was-already-jail/ [https://perma.cc/8PNG-M689].

12. *See* Brownback v. King, 592 U.S. 209, 213 (2021) ("[M]embers of a federal law task force . . . mistook King for a fugitive.").

I. THE HISTORY OF MULTIJURISDICTIONAL LAW ENFORCEMENT TASK FORCES

A. Initial Development

Multijurisdictional task forces implicated federalism from their inception. The late '60s and early '70s saw the creation of both the Drug Enforcement Agency (DEA) and the first multijurisdictional law enforcement task forces.[13] In 1968, President Johnson proposed Reorganization Plan No. 1, combining the Treasury Department's Bureau of Narcotics with the Department of Health, Education, and Welfare's Bureau of Drug Abuse Control into the Bureau of Narcotics and Dangerous Drugs (BNDD), housed within the Department of Justice (DOJ).[14] This was not the plan's only goal. In addition to consolidating drug enforcement authority, Johnson wanted the new Bureau to "work with state and local governments in their crackdown on illegal trade in drugs and narcotics and help to train local agents and investigators."[15] To this end, the first narcotics task force was established in New York in 1970, combining personnel from the BNDD, the New York State Police, and the New York City Police Department.[16]

Then, in 1973, President Nixon initiated Reorganization Plan No. 2, further consolidating drug enforcement authority by creating the DEA as a comprehensive drug enforcement entity within the DOJ.[17] One of his goals was to provide "a focal point for coordinating federal drug enforcement efforts with those of state and local authorities, as well as with foreign police forces."[18] The newly formed DEA quickly created a unit based on the task force concept—the Unified Intelligence Division—composed of DEA special agents, DEA intelligence analysts, and New York State Police investigators.[19] As the War on Drugs heightened, the number of task forces continued to grow as policymakers observed the effects of horizontal integration (interagency collaboration) and vertical integration (federal–state–local collaboration) on intelligence gathering and enforcement.[20]

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13. DRUG ENF'T ADMIN., THE EARLY YEARS, 26–29, https://www.dea.gov/sites/default/files/2018-05/Early%20Years%20p%2012-29.pdf [https://perma.cc/TTC6-UBQL] (last visited Sep. 15, 2025).

14. *Id.* at 26.

15. DRUG ENF'T ADMIN., THE DEA YEARS 31, https://www.dea.gov/sites/default/files/2021-04/1970-1975_p_30-39_0.pdf [https://perma.cc/2PCM-BD5F] (last visited Aug. 24, 2025).

16. *Id.* "Since then, the Task Force expanded from the original 43 members. In 1971 it increased to 172 members, and by 2003 it had 211 law enforcement personnel assigned." *Id.*

17. *Id.* at 34; THE EARLY YEARS, *supra* note 13, at 29.

18. THE DEA YEARS, *supra* note 15, at 34.

19. THE DEA YEARS, *supra* note 15, at 35.

20. *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/J35E-PQXF] (last visited July 18, 2025) ("Naturally, local cops know the players in their jurisdiction better than agents operating

B. Task Forces Today

Today, there are many kinds of multijurisdictional task forces targeting crime related to terrorism, drugs, fugitives, gangs, and more.[21] As of 2023, the DEA alone managed 317 state and local multijurisdictional task forces.[22] Elsewhere within the DOJ, the U.S. Marshals oversee fifty-six local and several regional fugitive task forces,[23] while the Federal Bureau of Investigation (FBI) coordinates about 200 Joint Terrorism Task Forces[24] and "178 Violent Gang Safe Streets Task Forces nationwide."[25] Several other agencies take part as well.[26]

II. FEDERAL AUTHORITY

Multijurisdictional law enforcement task forces display both the prohibitive and enabling aspects of dual sovereignty. Seemingly, these task forces are composed of willing participants, as the federal government cannot compel state and local law enforcement officials to aid the federal government in enforcing federal law.[27] The Supreme Court has observed that "where the Federal Government compels States to [act], the accountability of both state and federal officials is diminished."[28] As a result, state law enforcement entities have the option of joining or leaving at their discretion.[29] At the same time, the overlapping powers of federal and state governments often lead to two layers

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in a much larger context[.]"); *Joint Terrorism Task Forces*, FBI, https://www.fbi.gov/investigate/terrorism/joint-terrorism-task-forces [https://perma.cc/E9L5-D896] (last visited Sep. 14, 2025).

21. *See infra* notes 22–25 and accompanying text.

22. *State and Local Task Forces*, DRUG ENF'T ADMIN. (Aug. 25, 2025), https://www.dea.gov/state-and-local-task-force [https://perma.cc/U86B-JZU2].

23. *Fugitive Task Forces*, U.S. MARSHALS SERV., https://www.usmarshals.gov/what-we-do/fugitive-investigations/fugitive-task-forces [https://perma.cc/QMB6-6H7Y] (last visited July 18, 2025).

24. *See Joint Terrorism Task Forces, supra* note 20.

25. *Violent Gang Task Forces*, FED. BUREAU OF INVESTIGATION, https://www.fbi.gov/investigate/violent-crime/gangs/violent-gang-task-forces [https://perma.cc/U846-2W6A] (last visited Sep. 14, 2025).

26. *See generally* CONNOR BROOKS, U.S. DEP'T OF JUST., FED. L. ENF'T OFFICERS, 2020 – STATISTICAL TABLES 1 (David Fialkof ed., 2023), https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/fleo20st.pdf [https://perma.cc/TG8L-HUDV] ("In fiscal year (FY) 2020, federal law enforcement agencies in the United States employed almost 137,000 full-time federal law enforcement officers who were authorized to make arrests, carry firearms, or both."). Specifically, within the Department of Homeland Security, Homeland Security Investigations and Immigration and Customs Enforcement also take part in these and other task forces. *See Border Enforcement Security Task Force (BEST)*, U.S. IMMIGR. & CUSTOMS ENF'T, https://www.ice.gov/partnerships-centers/best [https://perma.cc/UP2H-784A] (last visited Sep. 15, 2025); United States v. Brito-Arroyo, No. 20-10974, 2021 WL 3661200, at *1 (11th Cir. Aug. 18, 2021).

27. *See* Printz v. United States, 521 U.S. 898, 935 (1997).

28. New York v. United States, 505 U.S. 144, 168 (1992).

29. *See, e.g.*, Susan N. Herman, *Collapsing Spheres: Joint Terrorism Task Forces, Federalism, and the War on Terror*, 41 WILLAMETTE L. REV. 941, 942 (2005) (describing Portland's exceptional withdrawal from and reentry into a JTTF).

of regulation.[30] This dual sovereignty enables federal and state law enforcement to jointly investigate and separately prosecute conduct criminalized by both.[31] But the muddy rules on cross-enforcement of the other sovereign's laws indicate a collapsing of our federalist structure.[32]

Yet these task forces have been endorsed by every branch of government. Congress has repeatedly granted federal agencies the authority to federalize state entities.[33] One example, the Presidential Threat Protect Act, authorized the establishment of "permanent Fugitive Apprehension Task Forces consisting of Federal, State, and local law enforcement authorities . . . to be directed and coordinated by the United States Marshals Service, for the purpose of locating and apprehending fugitives."[34] State and local law enforcement officers participating in these task forces are "deputized" to perform the functions of deputy marshals.[35]

III. MOTIVATORS OF TASK FORCE INVOLVEMENT

Task Forces are not merely a manifestation of agencies' existential dispositions toward a particular criminal issue; they offer practical and legal perks. The relationship between the parties involved, set out in Memoranda of Understanding (MOU),[36] which are not binding contracts but a formal recognition of mutual benefit.[37] However, these MOUs are not always public.[38] Those that are available reveal some of the ways that federal agencies incentivize nonfederal entities to participate.[39] In addition to the promise of accomplishing

30. *See, e.g.*, Gamble v. United States, 587 U.S. 678, 690 (2019).

31. *See id.* at 684–88.

32. *See generally* Orin S. Kerr, *Cross-Enforcement of the Fourth Amendment*, 132 HARV. L. REV. 471, 477–78 (2018) (analyzing cross-enforcement under the Fourth Amendment).

33. *See e.g.*, 5 U.S.C. §§ 3372–73 (2012) ("[F]or work of mutual concern . . . that [the head of a Federal agency] determines will be beneficial to both."); *see also* 34 U.S.C. § 10211 (allowing the FBI to federalize state authorities).

34. Presidential Threat Protection Act of 2000, 34 U.S.C. § 41503(a).

35. *See* 28 C.F.R. § 0.112(b) (2025). Strangely enough, this applies even when the task force is executing state warrants. *See* Robinson v. Sauls, 102 F.4th 1337, 1339 (11th Cir. 2024). As a further complication, Marshals are empowered "in executing the laws of the United States within a State, [to] exercise the same powers which a sheriff of the State may exercise in executing the laws thereof." *See* 28 U.S.C. § 564.

36. *See* Herman, *supra* note 29, at 951.

37. *Id.* at 950 ("[E]nlisting the numerically superior manpower of the states and localities to complement federal efforts, on the one hand, and sharing information gathered by the federal government with state and local enforcement officials on the other.") (footnote omitted).

38. *See* Matthew C. Waxman, *National Security Federalism in the Age of Terror*, 64 STAN. L. REV. 289, 327 (2012) ("[W]ith few exceptions, the memoranda of understanding that spell out the terms of cooperation for Joint Terrorism Task Forces are not publicly available."). For an exception, see Standard Memorandum of Understanding Between the Fed. Bureau of Investigation and The City of Portland and the Portland Police Bureau, Portland Joint Terrorism Task Force (Feb. 25, 2011), https://www.brennancenter.org/sites/default/files/analysis/PORTLAND%20JTTF%20MOU%20Draft.pdf [https://perma.cc/HUE2-EXJ4].

39. *See* Memorandum of Understanding Between the Bureau of Alcohol, Tobacco, Firearms and Explosives and the Minot Police Dep't, ATF N. Border Violent Crime Task Force,

shared goals,[40] these incentives can be loosely divided into three categories: money, power, and freedom from oversight.

A. Financial Perks

Notably, for the most part, a paycheck is not one of the incentives offered to state officers through participation in a multijurisdictional task force.[41] Despite generally being regarded as federal agents under the law, state-turned-task-force officers are still on the state's payroll.[42] However, there are ample financial incentives for their participation. Namely, the use of federal resources,[43] federal grants,[44] and a split of the money earned through asset forfeiture.[45] As to federal resources, one MOU listed "office space, office supplies, travel funds, funds for purchase of evidence and information, investigative equipment, training, and other support items."[46] The federal government also incentivizes the creation of multijurisdictional task forces through federal grants, such as the Edward Byrne Memorial Justice Assistance Grant Program.[47] To critics, this federally funded militarization of local police forces "creates incentives to increase arrests, prosecutions, and incarceration" instead of true crime reduction.[48]

But the greatest financial incentive is that participation in a multijurisdictional task force also earns state agencies a cut of the property taken through the equitable sharing of asset forfeiture.[49] This legal tool enables the government to recover property without compensation because of its

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https://www.minotnd.gov/AgendaCenter/ViewFile/Item/2562?fileID=11617 [https://perma.cc/43J8-9DL5] (last visited July 18, 2025) [hereinafter ATF North Border MOU].

40. *Id.* at 2 ("in order that the Task Force's activities will result in effective prosecution before the courts of the United States and the State of North Dakota.").

41. *See id.* at 6 ("During the period of the MOU, the Participants will provide for the salary and employment benefits of their respective employees. All Participants will retain control over their employees' work hours, including the approval of overtime. ATF may have funds available to reimburse overtime to the State and Local TFO's agency, subject to guidelines of the Department of Justice Asset Forfeiture Fund.").

42. *See* Herman, *supra* note 29, at 954–55.

43. *See* ATF North Border MOU, *supra* note 39, at 2 ("ATF will also, subject to the availability of funds, provide necessary funds and equipment to support the activities of the ATF Special Agents and officers assigned to the Task Force.").

44. City of Los Angeles v. Barr, 941 F.3d 931, 934–35 (9th Cir. 2019).

45. *See* GUIDE TO EQUITABLE SHARING FOR STATE, LOCAL, AND TRIBAL LAW ENFORCEMENT AGENCIES, U.S. DEP'T OF JUST. 1–2 (2024), https://www.justice.gov/criminal/media/1044326/dl [https://perma.cc/AV4G-L6HE] [hereinafter *Guide to Equitable Sharing*].

46. ATF North Border MOU, *supra* note 39, at 2.

47. *See Barr*, 941 F.3d at 942 (acknowledging one purpose of the Edward Byrne Grant and its predecessor statutes as "setting up task forces consisting of local government and federal law enforcement officials").

48. Nicole Fortier & Inimai Chettiar, *Success-Oriented Funding: Reforming Federal Criminal Justice Grants*, BRENNAN CTR. FOR JUST. 1–2 (2014), https://www.brennancenter.org/sites/default/files/publications/SuccessOrientedFunding_ReformingFederalCriminalJusticeGrants.pdf [https://perma.cc/K4KM-HTNQ].

49. *See Guide to Equitable Sharing*, *supra* note 45, at 3.

connection to criminal activity, which, according to the federal government's *Guide to Equitable Sharing*, "can be used to compensate victims of the crime underlying the forfeiture, among other important law enforcement interests."[50] What often goes unsaid is how much law enforcement depends on asset forfeiture for funding.[51] Agencies can use this money to "purchase or lease equipment and other tangible items as well as pay direct operational expenses such as leases, utilities, and cell phones for the benefit of the task force."[52]

While typically an agency "must assist in the law enforcement effort resulting" in a forfeiture to receive an equitable share, [53] the Departments of Justice and Treasury "will generally honor written sharing MOUs" with "pre-arranged sharing percentages that reflect overall agency investigative, financial, or administrative contributions to the task force."[54] As a result, the decision maker "may allocate percentages to the individual member agencies based on the agencies' participation in the task force rather than any specific officer's participation in the law enforcement effort leading to forfeiture."[55]

B. Increased Authority

Another incentive presented by task force involvement is the ability to jump jurisdictional hurdles. As recounted in the report on the infamous Baltimore-based Gun Trace Task Force, one of the Baltimore Police Department's most anticipated benefits in participating was the broad geographic jurisdiction acquired through the cooperation of the Maryland State Police and the Baltimore County Police Department.[56]

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50. *Id.* at 1. According to the FBI, these interests include "punish[ing] criminals," "deter[ing] illegal activity," "disrupt[ing] criminal organizations," "remov[ing] the tools of the trade from criminals," "return[ing] assets to victims," and "protect[ing] communities." *Asset Forfeiture*, FED. BUREAU OF INVESTIGATION, https://www.fbi.gov/investigate/white-collar-crime/asset-forfeiture [https://perma.cc/9AM5-KLAN] (last visited Jan. 7, 2025).

51. Culley v. Marshall, 601 U.S. 377, 396 (2024) (Gorsuch, J., concurring) ("[I]t seems that, when local law enforcement budgets tighten, forfeiture activity often increases." (citing Brian D. Kelly, *Fighting Crime or Raising Revenue? Testing Opposing Views of Forfeiture*, INST. FOR JUST. 15 (2019)).

52. *Guide to Equitable Sharing*, *supra* note 45, at 6.

53. *Id.* at 9.

54. *Id.* at 12.

55. *Id.* at 13; *see, e.g.*, *ATF North Border MOU*, *supra* note 39, at 7 ("The MOU provides that proceeds from forfeitures will be shared, with sharing percentages based upon the U.S. Department of Justice Asset Forfeiture policies on equitable sharing of assets, such as determining the level of involvement by each participating agency."). Presumably this MOU's allocation "based upon the number of full-time persons committed by each participating agency" meets the DOJ's equitable sharing requirement for the honoring of a pre-arranged allocation. *Id.*

56. STEPTOE & JOHNSON LLP, ANATOMY OF THE GUN TRACE TASK FORCE SCANDAL: ITS ORIGINS, CAUSES, AND CONSEQUENCES 229 (2022), https://www.steptoe.com/a/web/219380/GTTF-Report.pdf [hereinafter *GTTF Scandal*] [https://perma.cc/L34N-MTYV] (citing Md. Code Ann., Crim. Proc. § 2-102(b)(1), (3)(i)(1) ("a police officer may make arrests, conduct investigations, and otherwise enforce the laws of the State throughout the State without limitations as to jurisdiction" where "the police officer is participating in a joint investigation with officials from another state, federal, or local law enforcement unit, at least one of which has local jurisdiction")).

Similarly, participation on multijurisdictional task forces grants state officers the jurisdictional authority of their federal counterparts.[57] Because localities simply do not have the resources to carry out full-scale intelligence operations, the allure of entering the federal government's intelligence network is powerful.[58] While the FBI-led Joint Terrorism Task Forces are emblematic of federal–local collaborative intelligence gathering "across bureaucratic lines,"[59] intelligence-sharing benefits task forces in all specialty areas.[60]

What's more, this "cooperative federalism" allows state prosecutors to "circumvent[] defendant-friendly state and local laws on street crime" through advantageous federal rules.[61] These include "more restrictive pre-trial bail laws, longer sentences," and more favorable suppression law.[62] State prosecutors can then use the threat of these differences to encourage more severe plea deals for state crimes, in a good-state-cop, bad-federal-cop routine.[63]

C. Practical and Legal Obstacles to Oversight

State officers on multijurisdictional law enforcement task forces also benefit from less stringent accountability mechanisms. In addition to legal limitations on the individual liability of task force officers,[64] there are both legal and practical difficulties in oversight. While the placement of task forces largely outside of traditional law enforcement agency hierarchies is part of their appeal,[65] it also, unsurprisingly, leads to difficulties in managing them. This can vary from the verification of hours worked[66] to the ability to measure the

57. *See supra* notes 33–35.

58. U.S. DEP'T OF JUST., OFFICE OF JUST. PROGRAMS, BUREAU OF JUST. ASSISTANCE, INTELLIGENCE-LED POLICING: THE NEW INTELLIGENCE ARCHITECTURE 1 (2005), https://www.ojp.gov/pdffiles1/bja/210681.pdf [https://perma.cc/4TA3-QZMN] [hereinafter *The New Intelligence Architecture*].

59. Waxman, *supra* note 38, at 308; *see also Joint Terrorism Task Forces*, FED. BUREAU INVESTIGATION, https://www.fbi.gov/investigate/terrorism/joint-terrorism-task-forces [https://perma.cc/6KNU-K65A].

60. *See GTTF Scandal*, *supra* note 56, at 236 (citing correspondence with GTTF leadership that they "need[ed] to have a strong relationship with ATF[,] which can be extremely beneficial for . . . intelligence reasons"); *see also More About Us*, GULF COAST HIGH INTENSITY DRUG TRAFFICKING AREA, https://www.gchidta.org/moreaboutus.html [https://perma.cc/P8RY-VZBG] (last visited Sep. 15, 2025) ("These task forces . . . share intelligence and pertinent case information with federal, state and local law enforcement agencies and other HIDTAs around the country, as appropriate.").

61. William Partlett, *Criminal Law and Cooperative Federalism*, 56 AM. CRIM. L. REV. 1665 (2019); *see e.g.*, United States v. Brito-Arroyo, No. 20-10974, 2021 WL 3661200, at *5 (11th Cir. Aug. 18, 2021) (holding that evidence obtained from a state warrant that was void under state law should not be excluded because it satisfied constitutional requirements).

62. Partlett, *supra* note 61, at 1677.

63. *Id.*

64. *See infra* notes 71–146.

65. *See The New Intelligence Architecture*, *supra* note 58, at vii ("Traditional, hierarchical intelligence functions need to be reexamined and replaced with cooperative, fluid structures that can collect information and move intelligence to end users more quickly.").

66. *See GTTF Scandal*, *supra* note 56, at 426 (citing "difficulties with tracking specialized squads that had city-wide jurisdiction because they were traveling throughout Baltimore and were not always near a time

performance of a task force at all.[67] For example, a 2009 DOJ effort to "develop a methodology for evaluating those task forces" had to pivot because "[n]ot only were data insufficient to estimate what task forces accomplished, data were inadequate to even tell what the task forces did as routine work."[68]

Task forces emphasize and downplay the aspects of their sovereignty that provide the greatest legal authority and most protect them from oversight in any given situation. Multijurisdictional task forces use their state character to avoid Freedom of Information Act (FOIA) requests, and their federal character to avoid similar state laws. District courts have held that these task forces' federal funding, weapons resourcing, monitoring, and agent deputization are inadequate to justify a FOIA request.[69] But in northwest Missouri, the "Nitro" Task Force invoked its federal status in claiming it didn't have to respond to Missouri's Sunshine Act.[70] Similarly, task forces will stress their federal authority when encountering state asset forfeiture restrictions and their state character when the state's forfeiture authority is greater.[71]

IV. EFFECT ON RECOVERY

In addition to the policy-driven incentives for state law enforcement cooperation and the legal obstacles freeing them from oversight, state participants in multijurisdictional task forces benefit from a remedial framework that obfuscates, recasts, and limits plaintiffs' claims for constitutional abuses.

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clock or the personnel responsible for verifying their overtime"); *see also id.* at 230 (citing an officer recounting that he did not meet his supervisor until weeks after he joined the unit and that his initial observations suggested, incorrectly, that an MSP sergeant was in charge).

67. WILLIAM RHODES ET AL., EVALUATION OF THE MULTIJURISDICTIONAL TASK FORCES (MJTFS), PHASE II: MJTF PERFORMANCE MONITORING GUIDE, NAT'L CRIM. JUST. REFERENCE SERV., (2009), https://www.ojp.gov/pdffiles1/nij/grants/228942.pdf [https://perma.cc/C2CW-G3EV] ("MJTFs lack a history of collecting performance measures and using them to justify program operations.").

68. *Id.*

69. *See* Withrow v. U.S. Dep't of Agric., Forest Serv., No. 18-CV-00446, 2019 WL 1083698, at 3 (D. Colo. Jan. 3, 2019); *see* Martinson v. Violent Drug Traffickers Project, No. CIV. A. 95-2161 1996 WL 411590, at 1 (D.D.C. July 11, 1996), *aff'd sub nom.* Martinson v. Drug Enf't Agency, No. 96-5262, 1997 WL 634559 (D.C. Cir. Sep. 22, 1997) (holding the same where Pennsylvania officers allegedly operated "under federal authority during the investigation in question"). *But see* Grand Cent. P'ship, Inc. v. Cuomo, 166 F.3d 473, 484 (2d Cir. 1999) (reserving the question of whether "documents generated by state or local officials who are participants with federal officials in joint federal criminal or civil investigations, or task forces or other federal-state or local partnerships are not covered by FOIA").

70. *See* William Freivogel, Brian Munoz & Mimi Wright, *'Cowboy' Tactics, Limited Oversight: How Missouri's Drug Task Forces Avoid Accountability*, PULITZER CTR. (Jan. 2, 2020), https://pulitzercenter.org/stories/cowboy-tactics-limited-oversight-how-missouris-drug-task-forces-avoid-accountability [https://perma.cc/P7QX-HS9N]. The article also recounts Missouri-based task forces failing to keep required meeting minutes, arguing they can't be taken to court, and even claiming they don't exist. *Id.*

71. *See* Radley Balko, *State-Federal Task Forces Are Out of Control*, WASH. POST (Feb. 14, 2020, at 05:23 ET), https://www.washingtonpost.com/opinions/2020/02/14/state-federal-task-forces-are-out-control/ [https://perma.cc/VM2B-VXK4].

A. The Federalization Problem

The first complication in civil rights actions against state officers on multijurisdictional task forces is the nebulousness of their sovereignty. While § 1983 provides a remedy for constitutional deprivations under the color of state law,[72] the deprivation must be "fairly attributable to the State,"[73] not a private or federal actor.[74] The bulk of court decisions on this issue hinge on the blurred distinction between private and state actors,[75] not the line between state and federal sovereignty.[76] As a result, the courts presented with the latter question often poach reasoning from the former.[77] Broadly, circuit courts confronted with the federal–state question look to see whether "the state has cloaked the defendants in some degree of authority"[78] or where "the defendants [have] 'conspired or acted in concert with state officials to deprive a person of his civil rights.'"[79] But the case law is highly inconsistent, with explanations ranging from one-sentence footnotes[80] to full analyses of an officer's employment, duties, and conduct.[81]

Fortunately, the federal–state discussion is complemented by § 1983 cases against federal officers outside of the task force environment. In *Case v. Milewski*, the Seventh Circuit evaluated whether police officers employed by a naval base should be liable under § 1983 for acts cloaked in some degree of state authority.[82] In that case, the court rejected § 1983 liability, holding that "federal officers appeared at a federal property in response to a complaint by a federal employee" and "their . . . conduct reflected their federally-assigned duty

72. 42 U.S.C. § 1983 ("Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .").

73. Lugar v. Edmondson Oil Co., 457 U.S. 922, 937 (1982).

74. District of Columbia v. Carter, 409 U.S. 418, 424–25 (1973) ("It does not reach purely private conduct and . . . actions of the Federal Government and its officers are at least facially exempt from its proscriptions.").

75. *See Lugar*, 457 U.S. at 937–39 (collecting cases); Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n, 531 U.S. 288, 295 (2001) (stating the Court's "cases try to plot a line between state action subject to Fourteenth Amendment scrutiny and private conduct" but "the criteria lack rigid simplicity").

76. For an early exception, *see* Norton v. McShane, 332 F.2d 855, 862 (5th Cir. 1964).

77. *See, e.g.*, King v. United States, 917 F.3d 409, 433 (6th Cir. 2019), *rev'd sub nom.*, Brownback v. King, 592 U.S. 209 (2021) (citing *Lugar*, 457 U.S. at 937).

78. Case v. Milewski, 327 F.3d 564, 567 (7th Cir. 2003).

79. Williams v. United States, 396 F.3d 412, 414 (D.C. Cir. 2005) (quoting *Milewski*, 327 F.3d at 567–68).

80. *See* Guerrero v. Scarazzini, 274 F. App'x 11, 12 n.1 (2d Cir. 2008) ("[B]ecause Scarazzini and McAllister were federally deputized for their Task Force work, this claim was properly brought . . . as a *Bivens* action.").

81. Yassin v. Weyker, 39 F.4th 1086, 1090–91 (8th Cir. 2022), *cert. denied*, 143 S. Ct. 779 (2023).

82. *Milewski*, 327 F.3d at 565–67.

to patrol federal property."[83] Without weighing or prioritizing any particular element, the *Milewski* court rejected the plaintiff's argument despite the plaintiff's citation for "exclusively state criminal offenses . . . prepared on state forms" on what was technically state property.[84]

And in *Billings v. United States*, the Ninth Circuit dismissed § 1983 claims on the basis of joint action against Secret Service Agents who had worked with sheriff's deputies to secure a public speaking event.[85] Not only was the event a typical mission set for the Secret Service, they also initiated and effected the arrest pursuant to their procedures, only later turning the plaintiff over to the local sheriff's deputies.[86] In the Court's view, "[i]f the Secret Service Agents and the Sheriff's officers acted jointly, it was under the color of federal law."[87]

Neither holding is surprising or even problematic. Because of the cross-jurisdictional nature of much of law enforcement,[88] § 1983 liability should not be available against federal officers unless they engage in more serious cross-jurisdictional conduct than that in *Milewski*.[89] And while *Billings* is short on analysis, it captures the need to amend the state–private joint activity analysis[90] where state and federal officers are cooperating. Because the conduct in *Billings* was so clearly part of the Secret Service's prerogative, its narrowest reading is that federal–state joint action has the sovereign tint of whichever agency oversaw a particular operation.[91] However, this presents numerous analytical issues, such as the long-term mutualism defining the task force relationship and the extent to which operational goals overlap. On the other end of the spectrum, a reading that finds all federal–state joint action to be under color of federal law leaves open the possibility of a federal–state conspiracy on par with the Supreme Court's state–private predicament in *U.S. v. Price*.[92] The middle ground, which places federal–state joint action under the color of federal law both where its sovereignty is clearly federal and when its character is ambiguous, more properly balances attendant concerns.

Together, *Milewski* and *Billings* create a reasonable template for the resolution of claims against state officers on multijurisdictional task forces. In addition to the presumption of federal sovereignty where the nature of joint

83. *Id.* at 568.

84. *Id.* at 567–68. The officers had followed the plaintiff off the grounds of the naval base and toward a roadway when the incident occurred. *Id.* at 566.

85. Billings v. United States, 57 F.3d 797, 801 (9th Cir. 1995).

86. *Id.* at 799, 801.

87. *Id.* at 801.

88. *See* Kerr, *supra* note 32; *see generally* Partlett, *supra* note 61 (discussing cooperative federalism).

89. Section 1983 actions can lie against federal employees "if they conspire or act in concert with state officials to deprive a person of her civil rights" under color of state law. *See Billings*, 57 F.3d at 801 (citing Collins v. Womancare, 878 F.2d 1145, 1154 (9th Cir. 1989)).

90. *See* United States v. Price, 383 U.S. 787, 794–95 (1966).

91. *See Billings*, 57 F.3d at 801.

92. *See Price*, 383 U.S. at 794–95.

action is ambiguous, independent conduct should be evaluated to gauge if it is cloaked under the authority of state or federal law. The Eighth Circuit case *Yassin v. Weyker* exemplifies this approach.[93] In *Yassin*, Ifrah Yassin sued St. Paul police officer Heather Weyker, claiming Weyker falsely accused her of witness tampering, leading to Yassin's wrongful arrest and lengthy detention.[94] Weyker was a deputized federal agent on a sex-trafficking task force and allegedly fabricated details to protect a federal witness who was involved in a dispute with Yassin.[95] The court determined that Weyker was not acting under color of state law for § 1983 purposes because her conduct was exclusively tied to her deputization on a multijurisdictional task force.[96] The court highlighted that Weyker's alleged misconduct, including her fabrications, was motivated by her federal responsibilities to protect a witness involved in a federal investigation.[97] Although Weyker identified herself as both a St. Paul police officer and a federal agent during her interactions, her conduct was sufficiently federal to evade liability under § 1983.[98]

The path left open by *Yassin* is narrow. There are no instances known to the author of state officers on multijurisdictional task forces being held to act under color of state law. In fact, there are few in which a non-task force officer of ambiguous sovereignty was held to act under color of state law.[99] This is likely due to the assumption that multijurisdictional task force work is per se joint action, in combination with the tendency expressed in *Billings* of viewing joint action as federal action. Additionally, common sense dictates that most of the conduct performed by state multijurisdictional task force officers under the authority of state law are the administrative tasks connected to their state employment, such as pay, evaluations, and other routine tasks that do not cause constitutional violations. On the other hand, the conduct they perform implicating constitutional rights will often be the kinetic law-enforcement tasks associated with their deputization on the task force.

Yet assuming that these officers are always operating under color of federal law will fail to catch edge cases where they violate constitutional rights in a manner entirely consistent with their state employment. This simplified approach would also conflict with the Supreme Court's focus on realities, not appearances.[100] One can imagine a local police officer who works part-time on a Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) task force but conducts a violative seizure of a person while working with the local police

93. *See* Yassin v. Weyker, 39 F.4th 1086, 1090 (8th. Cir. 2022).
94. *Id.* at 1088.
95. *Id.*
96. *Id.* at 1091.
97. *Id.* at 1090–91.
98. *Id.*
99. *See* Williams v. United States, 396 F.3d 412, 415 (D.C. Cir. 2005) (collecting cases).
100. *See* United States v. Price, 383 U.S. 787, 794–95 (1966).

department vice squad on which they are employed. The fact that some amount of their time is spent on task force work has nothing to do with this violation, and it would not be fair to say that their authority to conduct the arrest came from their task force deputization. Additionally, should their involvement be considered joint action, it has an unquestionably state flavor, with their federal deputization the sole exception. If the federal–state distinction is flattened into the binary question of deputization, then these edge cases will evade the congressionally-created cause of action designed to remedy them.

B. What's Left of Bivens

For plaintiffs with claims against state task force officers who are considered federal officers in the eyes of the court, the cause of action under *Bivens v. Six Unknown Named Agents* offers little reprieve. In a controversial act of judicial policymaking, the *Bivens* Court recognized an implied cause of action for damages against federal officers for constitutional violations.[101] Both in terms of the rights it sought to protect and the scope of the remedy it provided, the *Bivens* cause of action was properly considered the counterpart to § 1983 for federal defendants.[102] But because of its judicial, as opposed to legislative, origin, the modern Court is increasingly reluctant to extend the *Bivens* remedy into new contexts, viewing each extension as a further infringement of the proper roles of the courts and the Legislature.[103]

Because of the Court's demonstration of this reluctance in *Egbert v. Boule*, it is doubtful that a *Bivens* claim can be brought against state members of multijurisdictional task forces. In *Egbert*, Robert Boule, owner of an inn near the U.S.–Canadian border, alleged that Border Patrol Agent Erik Egbert used excessive force against him on his property while he was investigating Boule's guest.[104] In making its decision, the Court laid out a two-part test.[105] First, the Court asked if the case presented a "new *Bivens* context," meaning it differed meaningfully from previous cases where *Bivens* remedies were recognized.[106] Because it was a new context, the Court then considered whether "special factors" counseled against allowing a judicial remedy, focusing on whether Congress, rather than the courts, was better equipped to address the issue.[107]

The *Egbert* Court noted that the first element will nearly always be satisfied, so the second prong becomes the critical question.[108] Then the Court held that

101. *See* Bivens v. Six Unknown Named Agents, 403 U.S. 388, 391–93 (1971).

102. *See* Butz v. Economou, 438 U.S. 478, 500–04 (1978).

103. *See generally* Egbert v. Boule, 596 U.S. 482, 490–93 (2022) (recognizing the tension in expanding *Bivens* to new contexts).

104. *Id.* at 487–90.

105. *Id.* at 492–93.

106. *Id.* at 492 (quoting Ziglar v. Abbasi, 582 U.S. 120, 139 (2017)).

107. *Id.* at 493.

108. *Id.* at 492.

the national security concerns implicated in regulating the conduct of border agents met this threshold.[109] But it is unclear what would not qualify, as "'[e]ven a single sound reason to defer to Congress' is enough."[110] Although the Supreme Court has not examined the question, several circuits have found the chilling effect on task force participation generally as a key reason not to extend *Bivens*.[111] These courts speculate that the potential for liability under *Bivens* would deter state officers from taking part in multijurisdictional task forces, harming law enforcement operations.[112]

Also, the *Egbert* Court found an independent reason for foreclosing relief—the Border Patrol's grievance process was a sufficient alternative remedy.[113] According to the *Egbert* Court, "*Bivens* 'is concerned solely with deterring the unconstitutional acts of individual officers.'"[114]

Therefore, if Congress or the Executive has created a sufficiently deterring remedial process, "the courts cannot second-guess that calibration by superimposing a *Bivens* remedy."[115] What's more, the determination of the remedy's sufficiency is a legislative decision, unaffected by a court's determination that an individual damages remedy is more effective.[116]

C. The Federal Tort Claims Act

What remains is the narrow waiver of sovereign immunity for certain torts committed by federal employees acting within the scope of their employment under the Federal Tort Claims Act.[117] Through the FTCA, plaintiffs can bring civil suits in federal courts if the claims are

> against the United States, for money damages, . . . for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of [a federal] employee . . . while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable . . . .[118]

In line with its policy balancing of compensation for victims, incentivization of good governance, and freedom from undue interference with

109. *See id.* at 494 (holding that relief was unavailable also because the Government has provided alternative remedies for the plaintiff's claims).

110. *Id.* at 491 (quoting Nestlé USA, Inc. v. Doe, 593 U.S. 628, 634 (2021)).

111. *See, e.g.*, Logsdon v. U.S. Marshal Serv., 91 F.4th 1352, 1358 (10th Cir. 2024).

112. *Id.*; Cain v. Rinehart, No. 22-1893, 2023 WL 6439438, at *4 (6th Cir. July 25, 2023).

113. *Egbert*, 596 U.S. at 498.

114. *Id.* at 497 (citing Corr. Servs. Corp. v. Malesko, 534 U.S. 61, 71 (2001)).

115. *Id.*

116. *Id.* (citing *Bush v. Lucas*, 462 U.S. 367, 372 (1983)).

117. *See* Brownback v. King, 592 U.S. 209, 212 (2021).

118. 28 U.S.C. § 1346(b)(1); FDIC v. Meyer, 510 U.S. 471, 477 (1994).

government officials' independent judgment,[119] the FTCA requires administrative notice within two years after the claim accrues.[120] Generally, plaintiffs cannot sue the United States under the FTCA unless they "first presented the claim to the appropriate Federal agency and [the] claim [was] finally denied by the agency."[121] This gives the agency both notice of the potential suit and an opportunity to settle it without litigation.[122]

Although suits for intentional torts are generally excepted from this waiver, suits against law enforcement officers for intentional torts are not.[123] Under this carveout, dubbed the "law enforcement proviso," suits for the following intentional torts are permitted: assault, battery, false imprisonment, false arrest, abuse of process, and malicious prosecution.[124] This proviso applies where the alleged tortfeasor is an "investigative or law enforcement officer[]," defined as "any officer of the United States who is empowered by law to execute searches, . . . seize evidence, or . . . make arrests for violations of Federal law."[125]

Under the FTCA, "employee" includes officers or employees of any federal agency as well as persons acting on behalf of a federal agency in an official capacity.[126] As long as the officer was acting within the scope of his or her employment as defined by state law,[127] the United States substitutes itself as the defendant[128] and the employee is barred from any other claim "by reason of the same subject matter."[129] Though state law varies, considerations include whether the employer hired the employee to perform the act, whether the act occurred within the space and time authorized by the work, and whether the employee acted in pursuit of the employer's interests.[130] If this "threshold

119. *See* Loumiet v. United States, 828 F.3d 935, 941 (D.C. Cir. 2016) ("Congress enacted the FTCA to remedy and deter tortious conduct by federal personnel, but sought in the FTCA's discretionary-function exception to prevent such claims from impairing the government's legitimate exercises of policy discretion.").

120. 28 U.S.C. § 2401(b).

121. 28 U.S.C. § 2675(a). However, "[t]he failure of an agency to make final disposition of a claim within six months after it is filed shall . . . be deemed a final denial of the claim." *Id.*

122. *See* Michels v. United States, 31 F.3d 686, 688 (8th Cir. 1994) ("In 1966, to encourage more administrative settlements, Congress amended the FTCA to require administrative claims in all cases.") (citing S. REP. NO. 89-1327, at 2 (1966), *reprinted in* 1966 U.S.C.C.A.N. 2515, 2516–18).

123. *See* Martin *ex rel.* G.W. v. United States, 145 S. Ct. 1689, 1695 (2025).

124. 28 U.S.C. § 2680(h); *see, e.g.*, Millbrook v. United States, 569 U.S. 50, 52 (2013).

125. 28 U.S.C. § 2680(h).

126. 28 U.S.C. § 2671.

127. Bodin v. Vagshenian, 462 F.3d 481, 484 (5th Cir. 2006) (citing Williams v. United States, 350 U.S. 857 (1955)).

128. *See* Osborn v. Haley, 549 U.S. 225, 230 (2007) (citing 28 U.S.C. §§ 2679(d)(1)–(2)).

129. 28 U.S.C. § 2676.

130. *See* MICHAEL D. CONTINO & ANDREAS KUERSTEN, CONG. RSCH. SERV., R45732, THE FEDERAL TORT CLAIMS ACT (FTCA): A LEGAL OVERVIEW 12 n.98 (2023), https://crsreports.congress.gov/product/pdf/R/R45732/8 [https://perma.cc/B8ZP-FDN7] (listing cases).

requirement" is not met, there is no federal jurisdiction over the claim,[131] and instead the plaintiff may file an action in state court against the employee.[132]

In a similar vein to the § 1983 cases, the predominant distinction courts must make in evaluating the scope of employment is whether the act was within or without the officer's federal scope of employment, not whether it was within an officer's federal or state scope of employment.[133] While the FTCA addresses the status and scope of the defendant's employment[134] and *Bivens* the federal character of the action taken,[135] legislative history and practical concerns suggest an overlap of these two analyses when a plaintiff makes both claims against a state officer on a multijurisdictional task force. In fact, according to the Senate report on the amendment adding the law enforcement proviso, its intended effect was "to deprive the Federal Government of the defense of sovereign immunity in cases in which Federal law enforcement agents, acting *within the scope of their employment*, or *under color of Federal law*, commit" the listed torts.[136] While there may be edge cases in which officers operating within the scope of their federal employment actually acted under color of state law,[137] and vice versa, the facts that support a designation as a federal officer for the purposes of the FTCA will likely also support a finding that an act was under the color of federal law for purposes of § 1983 and *Bivens*.[138]

D. Fitting the Pieces Together: McLeod v. United States

When these pieces are put together, they can result in preventable tragedies with almost no path to recovery under the law. Consider *McLeod v. United States*: "Operation the Grinch" was the 2019 Christmastime iteration of a semiannual round-up by the Mobile County Sheriff's Office (MCSO) of drug suspects in cases accumulated during the year.[139] During the operation's planning, the MCSO invited the Gulf Coast Regional Fugitive Task Force (GCRFTF) to participate.[140] The involvement of task force members was only to "show up at the 5 a.m. pre-operational briefing and then help make the arrest."[141] The

131. Johnson v. United States, 534 F.3d 958, 963 (8th Cir. 2008).

132. *See* CONTINO & KUERSTEN, *supra* note 130, at 11–12.

133. *See, e.g.*, *Johnson*, 534 F.3d at 963.

134. *See* CONTINO & KUERSTEN, *supra* note 130, at 11–13.

135. *See supra* notes 100–16 and accompanying text.

136. *See* S. REP. NO. 93-588, at 3 (1973), *reprinted in* 1974 U.S.C.C.A.N. 2789, 2791 (emphasis added).

137. Such as those acting "in concert" with state officers. Billings v. United States, 57 F.3d 797, 801 (9th Cir. 1995) (holding that federal agents did not act in concert with local sheriff's deputies).

138. See McLeod v. United States (*McLeod III*), No. 20-cv-00595, 2024 WL 4311531, at *7 (S.D. Ala. Sep. 26, 2024), for an example of defendants drawing on FTCA case law to argue their actions were under the color of federal law for the purposes of § 1983. The district court noted that the U.S. Attorney had certified the defendants as federal employees in evaluating the § 1983 claim. *Id.* at *9.

139. *Id.* at *3.

140. *Id.*

141. *Id.*

GCRFTF neither adopted the warrants nor "prepare[d their own] operational plan" and only "skimmed over" the MCSO's.[142] The head GCRFTF member even told his subordinates "this is not our operation."'[143]

Early in the morning, a group of officers including deputized GCRFTF members arrived at the location they believed to be the home of a fugitive on their list.[144] There they encountered two men who told them that (1) the fugitive did not live there, (2) they believed the fugitive was in jail, and (3) there was a woman inside the home.[145] Meanwhile, one officer crossed "through the neighbor's yard and into the side and back yard of the Property while checking the windows in order create [sic] a perimeter."'[146] As the other officers approached the home, tragedy unfolded:

> According to Plaintiff, she was in bed when she saw a beam of light in the side yard. Believing a prowler was outside, she got out of bed, picked up her pistol, and walked through the house towards the kitchen to ensure the door was locked. As she reached for the lock, the kitchen door flew open towards her and all she saw were bright lights. According to Plaintiff, when the door flew open, she was holding a gun aimed at the floor. The officers yelled "Whoa, Whoa gun, gun" and [all three] all opened fire. The officers collectively fired sixteen to eighteen bullets into the house, hitting Plaintiff five times.[147]

Not only did the "fugitive" in question not live in the home, but he had moved an hour north.[148] What's more, his "warrants were not active . . . because on that morning, [he] was incarcerated"—having been booked on the same warrant with information tying him to his new address.[149] Additionally, the officers had reason to suspect that the warrants might be stale, having previously encountered a warrant for a "fugitive" already booked in the Metro Jail earlier in the operation.[150]

Even though two of the defendants were local law enforcement officers "attempting to serve state warrants, for state crimes, on a state resident, at a[n] in-state location" as part of a local sheriff's office's operation,[151] the court held

142. *Id.*

143. *Id.* at *5.

144. *See id.* at *5, *9.

145. *Id.* at *5.

146. McLeod v. United States, No. 20-cv-00595, 2024 WL 4310863, at *5 (S.D. Ala. Sep. 26, 2024). The court held that entry to conduct a protective sweep was not permitted. *Id.* at *20 (citing Maryland v. Buie, 494 U.S. 325, 337 (1990)).

147. *McLeod III*, 2024 WL 4311531, at *5 (S.D. Ala. Sep. 26, 2024) (citations omitted). The court found that the officers stacked against the door were "not entitled to qualified immunity based on Plaintiff's unlawful entry claim for failure to knock and announce." *Id.* at *22 (citing Richards v. Wisconsin, 520 U.S. 385, 394 (1997)).

148. *Id.* at *4–5.

149. *Id.* at *4, *6.

150. *Id.* at *5.

151. *Id.* at *8 (alteration in original).

that they were acting under color of federal law.[152] While facially applying the *Lugar* totality of the circumstances test, the court hinged its decision on the fact that their presence that night was "dictated by their assignment to the RFTF"[153]—reducing that test to a binary "but for" question of deputization.

Additionally, the *McLeod* court rejected the idea of joint action, finding that because "the MCSO determined the round-up suspects, obtained the warrants, and asked the USMS to assist in the execution of the warrants[,] . . . [t]he USMS were not jointly participating with the state in any investigation or planning of the operation."[154] This is even though the very joint action adjudged to be lacking would presumably place the entire operation under color of federal law under the reasoning in *Billings*.[155] Together, the holdings in *McLeod* and *Billings* mean that conduct involving these officers is under federal authority if federal actors own the operation, if federal actors cooperate equally with state actors, and if federal actors are only hitching onto a state operation—in other words, always.

Next, the *McLeod* court declined to extend *Bivens* due to the "chilling effect"[156] special factor and dismissed all but certain claims under the FTCA.[157]

This holding was not so much a departure from the law, but a careful, detailed analysis of a line of cases that is reluctant to question these officers' sovereignty when their deputization is invoked.[158] This civil rights framework, while composed of doctrines facially valid when viewed separately, greatly limits recovery against state officers on multijurisdictional task forces in ways that fail to vindicate civil rights and hold law enforcement accountable.

V. CONCERNS AND RECOMMENDATIONS

This channeling of claims produces legal doctrines that are inconsistent and constitutionally problematic. First is the consideration of state task force officers as federal agents when performing acts entirely consistent with their state employment. While the situation of the deputized U.S. marshal in *McLeod* and *Cain* may be unique due to a marshal's transjurisdictional authority, it is not difficult to imagine similar situations occurring on other task forces—such as

152. *Id.* at *9.

153. *Id.*

154. *Id.*

155. Billings v. United States, 57 F.3d 797, 801 (9th Cir. 1995).

156. *See McLeod III*, 2024 WL 4311531, at *13.

157. McLeod v. United States, No. 20-cv-00595, 2025 WL 321544, at *1 (S.D. Ala. Jan. 28, 2025). In April of 2025, over five years after the events took place, the case settled. WALA Digital Staff, *Lawsuit in Mistaken Identity Raid Settled*, FOX10 NEWS (Apr. 9, 2025, at 18:25 CT), https://www.fox10tv.com/2025/04/09/lawsuit-mistaken-identity-raid-settled/ [https://perma.cc/Q2UC-88SF].

158. *See McLeod III*, 2024 WL 4311531, at *2 (listing twenty-six counts against a half dozen defendants under several causes of action).

the earlier hypothetical situation involving the local police officer on an ATF task force. Such logic would allow them to engage in a drug bust on a state resident at an in-state location as part of an operation led by the local police department—yet qualify as a federal officer due to their participation on the ATF task force. The framework is seemingly not built to fairly resolve situations where an officer's conduct is attributable to both their state employment and federal deputization. The binary question of deputization is necessarily less than and in conflict with the *Lugar* totality of the circumstances test.[159] If the potential for gamification is an indicator of legal issues, then the ability of local police departments to abuse the deputization of their officers while the federal government picks up the bill is troubling.

With the dissolution of *Bivens*, the most practical solution to these issues is a more faithful application of § 1983's "under color of" analysis.[160] With the development of key factors, deputization will not always operate as a liability trump card. For instance, the ownership of specific law enforcement operations could be determinative in whether a task force officer is acting in concert with state law enforcement. So too should the fact that the activity conducted by the deputized officer is the same as that conducted by undeputized peers. Additionally, the government could prescribe a clearer demarcation between these officers' state and federal nature, perhaps modelled after the more transparent dual nature of national guardsmen.[161] While these factors may not change the outcome of most cases, the application of a true "totality" analysis will provide a more sensible approach and prevent the worst inconsistencies of this bureaucratized path to recovery in egregious edge cases.

Second, the lack of deterrence for constitutional violations is alarming, as state officers can be protected from § 1983 liability by the federal character of their presence on a multijurisdictional task force, but can also be protected from *Bivens* liability because their state or local employment is a special factor justifying such a bar. This "chilling effect" of state officer participation on multijurisdictional task forces rings hollow when liability for constitutional violations is the default for state and local officers via § 1983.[162] Instead of disincentivizing participation, *Bivens* liability for these officers would be a continuation of the norm. To view the situation otherwise gives up the game, in that it presupposes that these officers are motivated by the opportunity to operate without repercussions. Separately, while the claims paid out under the FTCA must take some toll on the purse of federal agencies' budgets, it is doubtful that this will ever be enough to counteract the benefits of federalizing local police.

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

160. *See* 42 U.S.C. § 1983.

161. *See* Schultz v. Wellman, 717 F.2d 301, 305 (6th Cir. 1983) ("Officers in the National Guard, such as the appellees here, are officers of the state militia until called into active federal duty.").

162. *See* 42 U.S.C. § 1983.

Third, the adequacy of an in-house alternative remedy under *Bivens* is potentially nonexistent when the defendant is a state officer on a multijurisdictional law enforcement task force. Consider the in-house accountability mechanisms held to be sufficient alternative remedies in *Egbert v. Boule*:

> The U. S. Border Patrol is statutorily obligated to "control, direc[t], and supervis[e] . . . all employees." And, by regulation, Border Patrol must investigate "[a]lleged violations of the standards for enforcement activities" and accept grievances from "[a]ny persons wishing to lodge a complaint." As noted, Boule took advantage of this grievance procedure, prompting a year-long internal investigation into Agent Egbert's conduct.[163]

While the Supreme Court has made clear that the sufficiency determination belongs to the legislature,[164] it is doubtful that Congress considered the indirect impact of its law enforcement petitioner statutes on suits against state officers on multijurisdictional law enforcement task forces. Generally, these officers are employed by the state, paid by the state, and disciplined by the state;[165] internal accountability mechanisms for true federal employees have little effect on them. The worst punishments that could result from an internal federal review of the officer's actions—removal from the task force and possibly the dissolution of a task force relationship—are far removed from the officer's particular action and have seemingly no inherent effect on her employment or finances with the state or local law enforcement agency. What's more, the second Trump Administration has slashed agency personnel dedicated to resolving civil rights violations internally,[166] further reducing the likelihood of internal accountability.

Fourth, the channeling of claims against state officers on multijurisdictional task forces through the FTCA has significant detrimental effects on plaintiffs. FTCA cases are generally tried without a jury[167] and with no punitive damages[168] or attorneys' fees[169] available. Also, the ambiguity of an officer's sovereignty will complicate litigation, prolong its resolution, and require more resources from all parties. At a case's outset, there may be uncertainty as to who exactly a defendant is, who they work for, and the nature of the action they took. The predominant view is that this determination is a question of law,[170] enabling it to be made at the summary judgment stage. But even though a

163. Egbert v. Boule, 596 U.S. 482, 497 (2022) (alterations in original) (citations omitted).

164. *Id.*

165. *See, e.g.*, *Memorandum of Understanding*, *supra* note 38, at 4; *ATF North Border MOU*, *supra* note 39, at 6.

166. *See, e.g.*, Ellen M. Gilmer, *Trump Aides Shutter Homeland Security Civil Rights Office*, BLOOMBERG GOV'T (Mar. 21, 2025 at 13:31 CT), https://news.bgov.com/bloomberg-government-news/civil-rights-advocates-brace-for-cuts-in-homeland-security-unit [https://perma.cc/RT86-R2AF].

167. Carlson v. Green, 446 U.S. 14, 22 (1980) (citing 28 U.S.C. § 2402).

168. *Id.* (citing 28 U.S.C. § 2674).

169. *E.g.*, Anderson v. United States, 127 F.3d 1190, 1191–92 (9th Cir. 1997).

170. Yassin v. Weyker, 39 F.4th 1086, 1089 (8th Cir. 2022) (collecting cases).

dismissal due to a finding of federal authority is without prejudice,[171] the determination prolongs litigation and pushes a plaintiff past the FTCA's two-year statute of limitations.[172] Without equitable tolling between the time a state court suit is filed and learning that the defendant is a federal agent, cases may be procedurally defeated in this manner. As a result, plaintiffs should include state law, § 1983, *Bivens*, and Federal Tort Claims Act claims in their complaint against state multijurisdictional task force members.[173]

CONCLUSION

Together, these holdings mean that when a state officer on a multijurisdictional task force violates the Constitution, it will most likely not be the officer who picks up the bill, but the United States, and only to the extent that the violation can be transposed as one of a few tort actions. This wholesale federalization infringes on the objective of § 1983 by removing the liability of these state officers even though their state character is precisely what provides value to federal agencies. Stepping back, it also undercuts the very federalism that the Constitution's structure is designed to protect. As the Court emphasized in *New York v. United States*, the Constitution protects state sovereignty not for the benefit of states as abstract entities, but for the benefit of the people—by dispersing power to reduce the risk of tyranny and abuse from either front.[174] Additionally, mass deputization blurs the clear demarcation of political responsibility that the Tenth Amendment is supposed to protect.[175] Without a shake-up of this framework, the structural safeguard promised by federalism will fail to protect civil liberties by providing inadequate judicial and political remedies for these constitutional violations.

*Noah M. Harrelson**

171. Ramirez v. City of Trenton, No. 21-CV-10283, 2022 WL 1284737, at *9 (D.N.J. Apr. 29, 2022).

172. *See id.* at *9 & n.7 (dismissing state tort claims after a determination that the defendants were federal actors and noting that two years had passed since the inciting incident).

173. *E.g.*, McLeod v. United States, No. 20-CV-595, 2024 WL 4311531, at *2 (S.D. Ala. Sep. 26, 2024) (listing over two dozen claims).

174. New York v. United States, 505 U.S. 144, 181 (1992).

175. Murphy v. Nat'l Collegiate Athletic Ass'n, 584 U.S. 453, 473–74 (2018).

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