UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ROBERT BOULE, Plaintiff-Appellant, v. ERIK EGBERT, Defendant-Appellee.	)	No. 18-35789

MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE* IN SUPPORT OF PLAINTIFF-APPELLANT

The American Immigration Council and Northwest Immigrant Rights Project (NWIRP) hereby request leave to file the accompanying brief as *amici curiae* in support of Plaintiff-Appellant. Plaintiff-Appellant consents to the filing of this brief. Defendants-Appellees do not consent.

Amici curiae proffer this brief to assist the Court in reviewing the question of whether a remedy under *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), is available where a U.S Border Patrol agent violated a U.S. citizen's Fourth Amendment right by entering the curtilage to his home without a warrant or any exception to the warrant requirement and refused to leave when the property owner told him to do so.

Although the district court recognized that the Defendant violated Mr.

Boule's Fourth Amendment rights, it nevertheless dismissed the case. The lower court concluded that a *Bivens* remedy was not available to Mr. Boule because his claim presented a new context and special factors counseled hesitation against recognizing it. *Boule v. Egbert*, No. C17-0106RSM, 2018 U.S. Dist. LEXIS 141916, at *10-14 (W.D. Wash., Aug. 21, 2018).

The district court's analysis would appear to provide carte blanche protection to CBP agents, rendering them immune from any potential *Bivens* actions. That holding does not comport with this Court's recent case law. *Rodriguez v. Schwartz*, 899 F.3d 719 (9th Cir. 2018); *Lanuza v. Love*, 899 F.3d 1019 (9th Cir. 2018).

As explained fully in the proffered amicus brief, in cases such as this, *Bivens* remedies provide the only legal recourse for redressing these violations and deter future violations by making it clear that immigration officers will be held individually liable for constitutional violations that cross clear lines. Moreover, the district court failed to apply this Court's most recent cases in determining that this case requires an extension of *Bivens*. Even were it found to extend *Bivens*, however, there are no special factors counseling against a *Bivens* remedy. To the contrary, this case presents a classic example of when a *Bivens* remedy is appropriate: a low-level law enforcement agent's unlawful entry onto the property of a private citizen in violation the Fourth Amendment.

The American Immigration Council is a non-profit organization established to increase public understanding of immigration law and policy, advocate for the fair and just administration of our immigration laws, protect the legal rights of noncitizens, and educate the public about the enduring contributions of America's immigrants. NWIRP is a non-profit legal organization dedicated to the defense and advancement of the legal rights of noncitizens in the United States with respect to their immigrant status. NWIRP provides direct representation to low-income immigrants facing enforcement actions by Border Patrol officers. Both organizations have an interest in ensuring that noncitizens are not unduly prevented from pursuing remedial suits in response to unconstitutional action by federal officers.

For these reasons, proposed *amici curiae* respectfully request leave to file the proffered brief.

Respectfully submitted,

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Dated: February 6, 2019

CERTIFICATE OF COMPLIANCE

This motion complies with the volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 480 words.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Motion for Leave to File Brief of *Amici Curiae* with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on October 6, 2015. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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UNITED STATES COURT OF APPEALS
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Robert BOULE,
Plaintiff-Appellant,

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Erik EGBERT,
Defendant-Appellee.

ON APPEAL FROM THE U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON

BRIEF OF THE AMERICAN IMMIGRATION COUNCIL AND NORTHWEST IMMIGRANT RIGHTS PROJECT AS AMICI CURIAE IN SUPPORT OF PLAINTIFF-APPELLANT

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CORPORATE DISCLOSURE STATEMENT UNDER FRAP 26.1

I, Matt Adams, attorney for amici certify that the American Immigration Council and Northwest Immigrant Rights Project are non-profit organizations that do not have any parent corporations or issue stock and, consequently, there exists no publicly held corporation which owns 10% or more of stock.

DATED: February 6, 2019

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I. INTRODUCTION[1]

Amici curiae the American Immigration Council and Northwest Immigrant Rights Project proffer this brief in support of Plaintiff-Petitioner Robert Boule (Mr. Boule) to assist the Court in reviewing the district court's decision denying Plaintiff's motion for summary judgment, granting Defendants' motion for summary judgment and dismissing Plaintiff's Fourth Amendment claim brought pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). That claim alleges that Mr. Boule's Fourth Amendment rights were violated by Erik Egbert, an agent of U.S. Customs and Border Protection (CBP), when Mr. Egbert drove onto Mr. Boule's property to question a noncitizen about his immigration status and refused Mr. Boule's request to leave the property. Although recognizing that the Defendant violated Mr. Boule's Fourth Amendment rights, the district court nevertheless dismissed the case. The lower court concluded that a *Bivens* remedy was not available to Mr. Boule because his claim presented a new context and special factors counsel hesitation against recognizing it. *Boule v. Egbert*, No. C17-0106RSM, 2018 U.S. Dist. LEXIS 141916, at *10-14 (W.D. Wash., Aug. 21, 2018).

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[1] Amici state that no party's counsel authored the brief in whole or in part; that no party or party's counsel contributed money that was intended to fund preparing or submitting the brief; and that no person other than the amici curiae, their members, and their counsel contributed money that was intended to fund preparing or submitting the brief. Fed. R. App. P. 29(a)(4)(E).

The district court's analysis would appear to provide carte blanche protection to CBP agents, rendering them immune from any potential *Bivens* actions. That holding does not comport with this Court's recent case law. In cases such as this, *Bivens* remedies provide the only legal recourse for redressing these violations and deter future violations by making it clear that immigration officers will be held individually liable for constitutional violations that cross clear lines. For the foregoing reasons, the Court should reverse the district court's decision and recognize a *Bivens* remedy in this case.

II. STATEMENT OF AMICI

The American Immigration Council (the Council) is a non-profit organization established to increase public understanding of immigration law and policy, advocate for the just and fair administration of our immigration laws, protect the legal rights of noncitizens, and educate the public about the enduring contributions of America's immigrants.

Northwest Immigrant Rights Project (NWIRP) is a non-profit legal organization dedicated to the defense and advancement of the legal rights of noncitizens in the United States with respect to their immigrant status. NWIRP provides direct representation to low-income immigrants placed in removal proceedings.

Both organizations frequently appear before federal courts on issues relating to abuse and misconduct by federal immigration officers. Both organizations have a direct interest in ensuring that both citizens and noncitizens are not unduly prevented from pursuing remedial suits in response to unconstitutional action by federal officers.

III. ARGUMENT

A. *Bivens* is An Important Deterrent and Compensatory Remedy to CBP Abuse and Misconduct.

Amici underscore the breadth of unconstitutional actions that are potentially immunized from damages remedies and accountability by the lower court's position. The district court found that—because Defendant Egbert was a U.S. Border Patrol agent—he had no liability to provide redress notwithstanding that "[i]In physically intruding on the curtilage of [Mr. Boule's] home/inn to stop and search the vehicle, Defendant Egbert not only invaded [Mr. Boule's] Fourth Amendment interest in the item searched, i.e., the vehicle, but also invaded Plaintiff's Fourth Amendment interest in the curtilage of his home/inn." *Boule*, at *9, 12-14. This Court should reject this position, both because the district court erred in its *Bivens* analysis, *see supra* III.B and III.C, but also because recognizing the propriety of a damages remedy is necessary to deter future unconstitutional conduct by Border Patrol agents.

In *Bivens*, the Supreme Court provided a remedy where federal agents violated the Fourth Amendment when, without a warrant or probable cause, they entered and searched the plaintiff's apartment, arrested him using unreasonable force, interrogated him, and conducted a visual strip search. *Bivens*, 403 U.S. at 390-91. The Court "held that the *Fourth Amendment* implicitly authorized a court to order federal agents to pay damages to a person injured by the agents' violation of the Amendment's constitutional strictures." *Minneci v. Pollard*, 132 S. Ct. 617, 621 (2012) (explaining *Bivens*). In support, the *Bivens* Court explained that "'[h]istorically, damages have been regarded as the ordinary remedy for an invasion of personal interests in liberty.'" *Id.* at 622 (quoting *Bivens*, 403 U.S. at 395).

Importantly, *in addition to* providing a remedy for the injured individual, *Bivens* actions serve to hold immigration agents and the agencies within which they work accountable for their unlawful conduct and, therefore, serve to curb such conduct in the future. *See Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 70 (2001) (recognizing the dual purpose of a *Bivens* case); *Carlson v. Green*, U.S. 14, 21-23 (1980) (reasoning that *Bivens* "serves a deterrent purpose," has the potential for an award of "punitive damages," permits a trial by a jury of one's peers, and allows the federal judiciary to redress federal constitutional violations); *FDIC v. Myer*,

510 U.S. 471, 485 (1994) ("It must be remembered that the purpose of *Bivens* is to deter *the officer*.") (emphasis in original).

These rationales all apply here. The threat of individual officer liability is critical to deter similar Fourth Amendment violations, particularly by U.S. Border Patrol agents whose actions are largely directed against a vulnerable population of noncitizens, or those the agents perceive to be noncitizens. In addition, the availability of punitive damages is warranted here given the racial profiling implicit in Defendant Egbert's actions. Moreover, the availability of a jury trial is necessary, both to determine the amount of any damages and to promote public accountability and transparency.

Furthermore, contrary to the district court's conclusion, the fact that this Fourth Amendment violation was conducted by a Border Patrol agent under the guise of enforcing federal immigration policy strongly favors recognition of a *Bivens* claim rather than reliance on state law or internal agency remedies. As amicus the American Immigration Council has reported, CBP has no functional internal mechanism to hold officers accountable for complaints of abuse or misconduct; even if CBP undertakes an investigation, it rarely takes action against CBP officers. *See* American Immigration Council, *No Action Taken: Lack of CBP Accountability in Responding to Complaints of Abuse*, May 4, 2014; *Still No Action Taken, Complaints Against Border Patrol Agents Continue to Go*

Unanswered, August 2017.[2]

Federal courts, including this Court, long have allowed *Bivens* claims to proceed in cases like the instant case, where an immigration agent—as opposed to another type of law enforcement officer—committed the constitutional violation.[3] Despite the district court's conclusion, the Supreme Court's most-recent *Bivens* decision in *Ziglar v. Abbasi*, 137 S. Ct. 1843 (2017), does not immunize immigration officers from liability. As this Court explained just one week prior to

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[2] *Available at* http://www.immigrationpolicy.org/special-reports/no-action-taken-lack-cbp-accountability-responding-complaints-abuse; https://www.americanimmigrationcouncil.org/sites/default/files/research/still_no_action_taken_complaints_against_border_patrol_agents_continue_to_go_unanswered.pdf.

[3] *See, e.g.*, *Franco-de Jerez v. Burgos*, 876 F.2d 1038, 1044 (1st Cir. 1989) (allowing case to proceed to discovery against immigration officer on *Bivens* claim where noncitizen held incommunicado for ten days); *Morales v. Chadborne*, 793 F.3d 208, 211-12 (1st Cir. 2015) (recognizing availability of *Bivens* and affirming district court's denial of qualified immunity to immigration officer and his supervisors based on Fourth Amendment claim that agency lacked probable cause to hold U.S. citizen plaintiff in immigration detention); *Martinez-Aguero v. Gonzalez*, 459 F.3d 618, 627 (5th Cir. 2006) (denying qualified immunity defense to immigration officer where noncitizen alleged that immigration officer physically assaulted and arrested her without provocation); *Papa v. United States*, 281 F.3d 1004, 1013 (9th Cir. 2002) (reversing dismissal of *Bivens* claims against immigration agents on behalf of noncitizen killed in detention); *Guerra v. Sutton*, 783 F.2d 1371, 1375 (9th Cir. 1986) (finding *Bivens* available where immigration officers assisted in searches and arrests "without knowledge of the details of the warrant under which [they] presume[d] to act"); *Jasinski v. Adams*, 781 F.2d 843, 850 (11th Cir. 1986) (affirming denial of summary judgment to defendants in *Bivens* challenge to detention and search by immigration officers at checkpoint).

the district court's ruling, "*Abbasi* makes clear that, though disfavored, *Bivens* may still be available in a case against an individual federal officer who violates a person's constitutional rights while acting in his official capacity." *Lanuza v. Love*, 899 F.3d 1019, 1028 (9th Cir. 2018).

As further discussed below, this Court has twice recognized the availability of a *Bivens* remedy against immigration officers post-*Abbasi*. *See Rodriguez v. Schwartz*, 899 F.3d 719 (9th Cir. 2018) (recognizing right to a *Bivens* remedy for the mother of a sixteen-year-old boy who was shot with ten bullets and killed by a U.S. Border Patrol Agent while walking along a street in Mexico); *Lanuza*, 899 F.3d 1019 (recognizing *Bivens* remedy where a DHS trial attorney forged and submitted evidence in removal proceedings that rendered the noncitizen ineligible for immigration relief); *accord Tun-Cos v. Perrotte*, No. 1:17-cv-943, 2018 U.S. Dist. LEXIS 124768 (E.D. Va. Apr. 5, 2018) (finding *Bivens* remedy against immigration officers for illegal stops and searches and rejecting qualified immunity defense). Indeed, in *Lanuza*, the Court expressly found that *Abbasi* "makes clear" that the case does not categorically bar *Bivens* remedies in the immigration context; rather, courts "must look to the specific facts of the case and claims presented." *Lanuza*, 899 F.3d at 1027.

Whatever limitations the Supreme Court placed on *Bivens* in *Abbasi* or any other case, it has not questioned its core holding. The Court also never has

questioned the propriety of a damages remedy where the threat of individual liability is necessary, either to deter future unconstitutional acts or to ensure that the plaintiff has a remedy to compensate for the constitutional harm. *Malesko*, 534 U.S. at 67-8, 70. Here, recognizing a *Bivens* remedy would serve both purposes.

B. The District Court Erroneously Dismissed Plaintiff's *Bivens* Claim

1. The district court erred in its analysis as to whether this claim presents a new context.

Controlling jurisprudence already recognizes the availability of *Bivens* for Fourth Amendment violations in the context of immigration enforcement actions—including actions against Border Patrol agents. Permitting a *Bivens* action in Mr. Boule's case thus falls within the natural ambit of the case law. The "core holding" in *Bivens* provides that money damages may be sought from "federal officers who abuse their constitutional authority." *Corr. Servs. Corp.*, 534 U.S. at 67 (declining to apply *Bivens* to a private operator as opposed to a federal officer). Defendant Egbert was a federal officer who is empowered to enforce federal immigration law. In his role as a CBP agent, Defendant Egbert is entrusted with the critical task of upholding the integrity of the enforcement process. Instead, Defendant Egbert abused his power by trampling the well-established Fourth Amendment rights of a homeowner, intruding without a warrant or reasonable suspicion, let alone probable cause of a crime, and thereafter refusing to accede to Mr. Boule's request that he leave his property. Instead, Defendant Egbert acted with impunity in

shoving his way past Mr. Boule and insisting on continuing with an investigation of the guest in Mr. Boule's car. In these circumstances, the line between lawful and unlawful conduct was very clear, and as such, this is the type of conduct *Bivens* is meant to address.

> This case involves the invasion of the home and its surrounding property:
>
> the Fourth Amendment's protection of curtilage has long been black letter law. '[W]hen it comes to the Fourth Amendment, the home is first among equals.' *Fla. v. Jarines*, 569 U.S. 1, 6 (2013). 'At the Amendment's very core' stands the right of ta man to retreat in to his own home and there be free from unreasonable governmental intrusion.' *Id.*

Collins v. Virginia, 138 S.Ct. 1663, 1670 (2018). "The protection afforded the curtilage is essentially a protection of families and personal privacy in an area intimately linked to the home, both physically and psychologically, where privacy expectations are most heightened." *California v. Ciraolo*, 476 U.S. 207, 212-13 (1986). It is where such flagrant violations occur— where such clear lines can be drawn—that the Supreme Court has allowed a *Bivens* remedy. *See Carlson v. Green*, 446 U.S. 14, 21 (1980).

Indeed, this case falls within the parameters of the conduct, an unlawful search and seizure, that gave rise to *Bivens.* In the instant case, after holding that there was a clear Fourth Amendment violation, the district court recognized, "the alleged conduct has the recognizable substance of *Fourth Amendment* violations. Nevertheless, Defendant Egbert is a U.S. Border Patrol Agent, rather than a

traditional law enforcement officer." *Boule*, at *12. In making this determination, the district court focused on the fact that "the Supreme Court has not previously recognized an action against Border Patrol agents conducting immigration checks, an action arising out of the use of force to overcome a bystander's attempt to impede an investigation, or an action for alleged retaliation." *Id.*, at *10.

The district court failed to recognize that just two weeks before it issued its order, this Court extended *Bivens* to recognize an action against a Border Patrol agent for an alleged Fourth Amendment violation. *Rodriguez*, 899 F.3d 719.[4] As such, the fact a Border Patrol agent committed the obvious Fourth Amendment violation, in and of itself, is not sufficient to assert that this case extends *Bivens* to a new context.[5]

2. There are no special factors counseling against an extension of *Bivens* in this case.

Even were this case found to present an extension of *Bivens*, there are no special factors that counsel hesitation. Rather, this case presents a classic example of when a *Bivens* remedy is appropriate: a low-level law enforcement agent's unlawful entry onto the property of a private citizen in violation the Fourth

[4] Similarly, just one week before it issued its decision, this Court extended *Bivens* by allowing a plaintiff to challenge conduct by a federal immigration officer in removal proceedings. *Lanuza*, 899 F.3d 1019.

[5] *See infra* n.3.

Amendment. None of the special factors identified by this Court following *Abbasi* are present: Mr. Boule does not have an adequate alternative remedy; neither national security nor agency policy concerns are at issue; no high-level officials have been sued; no sensitive information will be revealed; Congress has not indicated that a damages remedy should be foreclosed; and, without a damages remedy, deterrence of future, similar constitutional violations is unlikely. *Lanuza*, 899 F.3d at 1028. As such, this Court should not hesitate to extend *Bivens* here.

a. Mr. Boule does not have an alternative remedy.[6]

The district court assumed without deciding that there was no adequate alternative remedy available to Mr. Boule. This was a correct assumption. He seeks to remedy a constitutional tort; that is, an injury resulting from what the district court found to be the Defendant's violation of his Fourth Amendment right to be secure in his own home. *Boule*, 2018 U.S. Dist. LEXIS 141916 at *9. Constitutional torts are "a more serious intrusion of the rights of an individual" than common law torts and thus "merit[] special attention." *Rodriguez*, 899 F.3d at 740 (quoting H.R. REP. NO. 100-700, at 6 (1988), *as reprinted in* 1988

[6] This Court has found that whether the availability of an adequate alternate remedy is considered under the "special factors" test or as an independent step in the *Bivens* analysis is a "variance [ ] of form, not substance." *Lanuza*, 899 F.3d at 1031 (discussing it under the special factors analysis but recognizing that the Court addressed it as an independent step in *Rodriguez*).

U.S.C.C.A.N. 5945, 5950). Due to this distinction, the Federal Tort Claims Act (FTCA)—which is the only other remedy for a tort committed by a federal officer—is unavailable to remedy constitutional torts. Congress, through the Westfall Act's amendment to the FTCA, created an "explicit exception for *Bivens* claims." *Id.* (citing 28 U.S.C. § 2679). This "ensures that federal officers cannot dodge liability for their own constitutional violations by foisting their liability onto the government." *Id.* There is no other possible means for Mr. Boule to seek compensation for the injury he suffered; instead, "it is damages under *Bivens* or nothing" for Mr. Boule. *Id.*, at 744.

Notably, Mr. Boule is a U.S. citizen who was not placed in removal proceedings; thus there can be no allegation that the Immigration and Nationality Act (INA) provides an alternative remedy. Moreover, the INA itself also explicitly acknowledges that damages actions may be brought against officers responsible for enforcing immigration laws. 8 U.S.C. §§ 1357(g)(7), (8). As this Court recognized,

> Subsection 8 provides that any state employee 'shall be considered to be acting under color of Federal authority for purposes of determining the liability, and immunity from suit, of the officer or employee in a civil action brought under Federal or State law.' *Id.* This demonstrates Congress contemplated that civil actions would be maintained against both federal immigration officers and state employees acting in the capacity of federal immigration officers when their actions allegedly violate the Constitution or other laws.

Lanuza, 899 F.3d at 1031. Thus, it is clear the INA is not an alternative remedy.

b. This case does not implicate national security interests or agency policies.

With little explanation, the district court found that "Plaintiff's claims raise significant separation-of-powers concerns by implicating the other branches' national-security policies." *Boule*, 2018 U.S. Dist. LEXIS 141916 at *13. This is in error for two reasons. First, there are no "policies" at issue. Neither CBP nor its parent agency, the Department of Homeland Security (DHS), have a policy that permits their agents to enter private homes without a warrant or consent. Nor could they, as such a policy would violate the Fourth Amendment.

As such, the case is entirely dissimilar to *Abbasi*, which involved *Bivens* claims brought against high level executive officials over policies they adopted in the aftermath of the September 11, 2001 terrorist attacks. The Court held that a damages remedy under *Bivens* was not "'a proper vehicle for altering an entity's policy.'" *Id.*, 137 S. Ct. at 1860 (quoting *Corr. Servs. Corp.*, 534 U.S. at 74).

Similarly, and also unlike *Abbasi*, this case does not involve national security issues. As this Court explained, the "plaintiffs [in Abbasi] challenged the government's response to September 11. That was a special factor because determining how best to protect the United States is a job for Congress and the President, not judges." *Rodriguez*, 899 F.3d at 745. However, the Supreme Court in *Abbasi* also cautioned that "'national-security concerns must not become a

talisman used to ward off inconvenient claims—a label used to cover a multitude of sins.'" *Id*. (quoting *Abbasi*, 137 S. Ct. at 1862) (internal quotations omitted).

In *Rodriquez*, this Court considered precisely the question raised here: whether the actions of an individual Border Patrol agent who violates the Constitution while carrying out his job implicates national security. The Court "recognize[d] that Border Patrol agents protect the United States from unlawful entries and terrorist threats" and that [t]hose activities help guarantee our national security." *Id*. (internal citations omitted). Nevertheless, it found that not all conduct of Border Patrol agents implicates national security; "no one suggests that national security involves shooting people who are just walking down a street in Mexico." *Id*. Similarly, national security is not implicated by an agent's unlawful entry onto private property, without a warrant, consent or exigent circumstances.

Subsequently, in *Lanuza*, this Court again distinguished *Abbasi* on national security grounds from the "routine immigration proceeding" in the case before it.[7] 899 F.3d at 1027 (finding that the case before it involved only "an individual

[7] The Court also distinguished *Mirmedhi v. United States*, 689 F.3d 975 (9th Cir. 2012) on this same basis, explaining that *Mirmehdi* did implicate national security because it involved the detention of suspected terrorists and, if a *Bivens* suit were allowed to go forward, would "result in disclosing 'foreign-intelligence products.'" *Lanuza*, 899 F.3d at 1027 (quoting *Mirmehdi*, 689 F.3d at 983). These concerns are not present here.

attorney's violation of [the plaintiff's] due process rights in a routine immigration proceeding").

c. The case involves only a low-level agent and will not burden executive level officials.

As was true in both *Rodriguez* and *Lanuza*, this case involves only the conduct of "a rank-and-file officer, not the head of the Border Patrol or any other policy-making official." *Rodriguez* at 745; *see also Lanuza*, 899 F.3d at 1029 (noting that "this is a straightforward case against a single low-level federal officer"). As such, this case, like both of them, is similar to cases that "*Abbasi* distinguished—those involving 'standard law enforcement operations' and 'individual instances of . . . law enforcement overreach.'" *Rodriguez*, at 745.

Moreover, and contrary to the district court's conclusion, allowing a *Bivens* action to proceed will not "cause Border Patrol agents to hesitate and second guess their daily decisions about whether and how to investigate suspicious activities near the border." *Boule*, 2018 U.S. Dist. LEXIS 141916 at *14. As the district court found, the Fourth Amendment protects against nonconsensual, warrantless entries into private homes and immediately adjacent areas. *Id*. at *7-8. Even if this was unclear to Defendant Egbert when he first entered the property, it should not have remained unclear once Mr. Boule instructed him to leave. This is clear-cut Fourth Amendment law. Where there are clear lines to be drawn, there are fewer concerns with respect to special factors that may counsel against a *Bivens* remedy.

See Wilkie, 551 U.S. at 555 ("On the other side of the ledger there is a difficulty in defining a workable cause of action."). In this case, the line was crystal clear. There are no judgment calls to be made about when it is appropriate enter a home or the immediate surrounding area without a warrant or consent. The lines are clearly drawn and understood by all. Allowing this case to proceed will more likely deter future violations of this nature than inhibit lawful border enforcement. *See Lanuza*, 899 F.3d at 1033 (emphasizing the importance of deterrence).

IV. CONCLUSION

For the foregoing reasons, amici urge the Court to reverse the district court's decision and recognize a *Bivens* remedy in this case.

Dated: February 6, 2019 Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because this brief contains 3,705 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), which is less than half the words authorized for a principal brief (13,000 words). This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(b) because this brief has been prepared using Microsoft Word 2010, is proportionately spaced, and has a typeface of 14 point.

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Dated: February 6, 2019

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Brief of *Amici Curiae* with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on February 6, 2019. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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