No. 12-4476

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MICHAEL BRAY, *ET AL.*,

Plaintiffs-Appellants,

v.

PLANNED PARENTHOOD COLUMBIA-WILLAMETTE, *ET AL.*,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

BRIEF FOR APPLELEES CHRIS RILEY AND JOEL KIMMET

STUART F. DELERY
Acting Assistant Attorney General

CARTER M. STEWART
United States Attorney

RICHARD MONTAGUE
(202) 616-4158
Senior Trial Counsel
Constitutional Tort Litigation Staff
Torts Branch, Civil Division
U.S. Department of Justice
Box 7146
Washington, D.C. 20044

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STATEMENT OF JURISDICTION

The plaintiffs originally filed this action in the Court of Common Pleas for Clinton, County Ohio. Defendants Chris Riley and Joel Kimmet timely removed it to the United States District Court for the Southern District of Ohio because they were sued for acts taken under color of office as Deputy United States Marshals and are entitled to assert an immunity defense under federal law. Notice of Removal ¶¶ 2, 5, 6, R1 (Page ID # 1-3). *See* 28 U.S.C. §§ 1442(a)(1); *Mesa v. California*, 489 U.S. 121, 129 (1989). In an amended complaint, the plaintiffs conceded the propriety of the removal. First Amended Complaint ¶ 2, R13 (Page ID # 108) (hereinafter "Complaint"). The district court had jurisdiction under § 1442(a)(1).

On March 17, 2011, the district court entered an order dismissing the plaintiffs' claims against Deputies Riley and Kimmet (R 42 (Page ID # 340)), but the suit proceeded against the other defendants. On November 5, 2012, the district court entered final judgment disposing of all claims in the case. R68 (Page ID # 432). On December 5, 2012, the plaintiffs noticed their appeal from the order dismissing the claims against Deputies Riley and Kimmet. R69 (Page ID # 433). This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

To enforce a federal court judgment against plaintiff Michael Bray, the United States District Court for the Southern District of Ohio issued a writ of execution and a related order commanding the United States Marshals Service to seize certain of his

property. Following the Marshals' execution of those orders and post-seizure proceedings, Bray and his family sued two Deputy U.S. Marshals alleging violations of their federal constitutional rights. These questions are presented:

1. Are the Deputy U.S. Marshals entitled to absolute immunity for enforcing the federal court's writ of execution and a related order?

2. Alternatively, are the Deputy Marshals shielded by qualified immunity because their actions in enforcing the orders violated no clearly-established constitutional right?

3. Is a judicially-implied damages remedy under *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), available to challenge a levy on property under Federal Rule of Civil Procedure 69?

STATEMENT OF THE CASE

A. The Nature of the Case.

This is a "*Bivens*" action by which the plaintiffs complain about the enforcement of a federal-court judgment against their property. Although the plaintiffs were heard in federal court both before and after United States Marshals Deputies enforced the district court's writ of execution, they nonetheless seek a money damages remedy against two deputy marshals. The Brays complain about the manner in which the Marshals Service executed the writ. They do not complain that property was damaged or that excessive force was used against anyone. Instead, they

complain that the Marshals Service did not sufficiently communicate with them as to when the writ of execution would be served; it did not enlist their cooperation in searching the home and seizing property; the searching officers limited family members' movement in the home during the writ's execution, (including requiring plaintiff Michael Bray to remain seated on a front-room sofa during the search); the Marshals videotaped the inside of the home; and they permitted attorneys for the judgment-creditor to be present to identify property subject to seizure. In addition the Brays complain that some of the property the Marshals Service seized was exempt from execution under Ohio law or was not subject to seizure under the district court's writ. That property was returned to the plaintiffs after a post-seizure hearing. Complaint ¶ 9.2, R13 (Page ID # 121). *See* Brief for Appellants at 14-16.

In response to the *Bivens* claims, the defendant Deputy Marshals asserted defenses of absolute and qualified immunity, which the district court sustained. It is that ruling the Brays appeal.

B. The Facts of the Case.

"It is the primary role and mission of the United States Marshals Service to provide for the security and to obey, execute, and enforce all orders of the United States District Courts, the United States Courts of Appeals, the Court of International Trade, and the United States Tax Court, as provided by law." 28 U.S.C. § 566(a). This case arises from the Marshals' enforcement of federal-court orders. According to the

complaint, in 1995 Planned Parenthood of the Columbia/Willamette ("Planned Parenthood") sued Michael Bray and other defendants in a civil case in the United States District Court for the District of Oregon. Complaint ¶ 4.4, R13 (Page ID # 112). Planned Parenthood eventually won a judgment in excess of $850,000 against Bray. *Id.* ¶ 4.6, R13 (Page ID # 113); *see also Planned Parenthood of Columbia/Willamette Inc. v. Am. Coal. of Life Activists*, 422 F.3d 949 (9th Cir. 2004). In 2005, Planned Parenthood sued Michael Bray in the United States District Court for the Southern District of Ohio looking to collect on its Oregon judgment. *Id.* ¶ 4.7, R13 (Page ID # 114). After discovery and other proceedings, the Ohio district court issued a Writ of Execution. The writ, directed to the United States Marshals Service, provided as follows:

> This writ is for the seizure of the following real and personal property located at the following address:
>
> 1. All real property located at 308 High Street in Wilmington, Ohio 45177;
>
> 2. A Compaq desktop computer in Defendant's bedroom, along with a modem or other data transmission device, a Hewlett Packard scanner, a Hewlett Packard printer, and a facsimile machine;
>
> 3. A desktop computer located in Defendant's study, along with a data transmission device (modem) and all other associated equipment;
>
> 4. Each and every other computer, printer, scanner, data transmission device, and all other home office equipment;
>
> 5. An RCA-type of camcorder located in the library area of the Defendant's residence, along with any other camera or camcorder located in the library

> area;
>
> 6. Two or more cameras located in the Defendant's bedroom, one digital and one thirty-five millimeter;
>
> 7. Any other camera or video recording devices located in the residence;
>
> 8. All books located in the Defendant's library and throughout the remainder of the house, with the exception of children's entertainment and educational books and bibles. Those books should include any and all copies of materials written by the Defendant, both in published and unpublished form;
>
> 9. All VCR and DVD video equipment located throughout the residence, along with all televisions located throughout the residence; and
>
> 10. All stereo equipment located throughout the residence, including both shelf and portable models.
>
> THEREFORE, YOU ARE COMMANDED to sell the above described property of Defendant Michael Bray after giving the public notice of the time and place of the sale as required by law. You are further commanded to make out of any other property of Defendant Michael Bray subject to execution the costs of suit and the costs of executing this writ.
>
> You shall execute this writ according to its terms and according to law.

Writ of Execution, *Planned Parenthood of the Columbia/Willamette, Inc. v. Am. Coal. Of Life Activists*, Civ. No. 2:05-mc-002, Doc. 43 (S.D. Ohio, Aug. 17, 2006), R31-2 (Page ID # 272-73); *see also* Opinion at 5-6, R42 (Page ID # 344-45). The court followed the writ with an additional order, entered on September 7, 2006 (R31-3 (Page ID # 275)), directing the United States Marshal to "'seize property identified in the Writ' and authorized the Marshal to 'enter upon the premises described in the Writ of Execution' to seize the property." Opinion at 6, R42 (Page ID # 345) (citation

omitted). The September 7 order also provided that "Until the actual sale of the real estate occurs, the real property will not be damaged, impaired, or diminished in value by the acts or omissions of any person." R31-3 (Page ID # 275). The order further required that a representative of Planned Parenthood assist in the seizure if requested by the Marshals Service. R31-3 (Page ID # 276).

Further litigation in the judgment-enforcement case, including plaintiff Jayne Bray's filing of an intervention motion asserting her own interests in the property, delayed the execution of the writ. Complaint ¶ 4.9, R13 (Page ID # 114). On July 20, 2007, eleven months after the writ first issued, the district court issued another order reactivating it and again commanding the Marshal to seize the property described in it. Opinion at 7, R42 (Page ID # 346); *see also* Complaint ¶ 4.9, R13 (Page ID # 114).

On October 1, 2007, at around 10:00 a.m., U.S. Marshals Deputies arrived at the Brays' home in Wilmington, Ohio to enforce the writ of execution. Along with Deputy U.S. Marshals Chris Riley and Joel Kimmet were other Deputy Marshals, an agent from the Bureau of Alcohol, Tobacco and Firearms, two Clinton County, Ohio sheriff's deputies, and attorneys from the law firm of Squire, Sanders & Dempsey, which represented Planned Parenthood in its litigation against Michael Bray. People unknown to the Brays also were present. Complaint ¶ 4.11, R13 (Page ID # 115). Deputy Marshal Riley told Michael Bray that the Marshals Service had come to enforce the court's writ of execution, which involved seizing the personal property

described in the writ and informing the plaintiffs that they must vacate the house within 30 days. *Id.* Riley asked Bray if any guns were in the house, and directed him to remain seated on a sofa in a front room during execution of the writ. *Id.* According to Bray, he wasn't permitted to walk about his house during the Marshals' operation, nor was he permitted to call his attorney or anyone else. *Id.* But Deputy Marshal Micah Stevenson called Bray's attorney and left a voice message. The attorney arrived shortly before the operation wound up. *Id.*

In the meantime, the Marshals Service searched for and seized property specified in the writ. According to the complaint, an unidentified male videotaped the inside of the house. Deputy Marshal Riley explained that Planned Parenthood's attorneys wanted a record to assure that the interior of the house remained undamaged in accordance with the court's order. Complaint ¶¶ 4.12, 4.13 (Page ID # 116).

In addition to directing Michael Bray to remain on the front room sofa, the deputies limited other family members' movements within the house. Plaintiff Beseda Bray had to leave her cell phone outside the house and was questioned by a deputy before being allowed to go upstairs to her room to change. (The complaint does not allege that she was denied permission). *Id.* ¶ 4.14 (Page ID # 116). Plaintiff Perseverance Bray was told that she could not go anywhere in the house, and was

escorted to the kitchen when she wanted to eat lunch. Instead, she elected to leave the house and did so. *Id.* (Page ID # 116-17).

Around 2:00, the operation wound up, and the officers departed with property seized under the writ. Complaint ¶ 4.15, R13 (Page ID # 117). The district court subsequently conducted a hearing in which the Brays contended that some of the property seized on October 1 was exempt from execution under Ohio law or was not subject to seizure under the writ. On November 16, 2007, the court issued an order returning some of the seized personal property to the Bray family. Complaint ¶ 9.2, R13 (Page ID # 121).

C. The Course of Proceedings.

The Brays filed this suit in the Clinton County, Ohio Common Pleas Court against Planned Parenthood, the law firm of Squires, Sanders & Dempsey, and Deputy U.S. Marshals Riley, Kimmet, and Stevenson. Deputies Riley and Kimmet removed under 28 U.S.C. § 1442(a). After an intra-district venue transfer, Riley and Kimmet moved to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). (R31). The basis for that motion was four-fold: First, absolute immunity shields them for executing the district court's orders in the judgment-enforcement case. Second, absolute immunity aside, Deputies Riley and Kimmet have qualified immunity because they violated no clearly established constitutional right. *See generally Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Third, the judicially-implied *Bivens* remedy is not

available to challenge searches and seizures performed under the district court's orders. Finally, the Brays' Ohio state-law conversion claim had to be dismissed because the "Westfall Act" amendments to the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b)(1); 2671-2680 (2006) ("FTCA"), made an FTCA suit against the government the exclusive remedy for that claim. *See* 28 U.S.C. § 2679(b)(1), (d).

In an Opinion and Order entered on March 17, 2011, the district court granted the Deputies' dismissal motion ("Opinion").[1] The court identified five claims against Deputies Riley and Kimmet: 1) a Fourth Amendment claim for the asserted unreasonable seizure of Michael Bray; 2) a Fifth Amendment claim for depriving him of liberty without due process of law; 3) a Fourth Amendment claim for an unreasonable search of the Bray family home; 4) a Fourth Amendment claim for violating the Brays' privacy rights; and 5) an Ohio state-law claim for conversion of property. Opinion at 3, R42 (Page ID # 342).

Beginning with the absolute immunity defense, the court held that the Brays had not made sufficient allegations that Riley and Kimmet acted outside the scope of the court's writ of execution and the related order when carrying them out. *Id.* at 7, R42 (Page ID # 346). The court recognized that "absolute quasi-judicial immunity has been held to extend to officials 'enforcing or executing a court order' because such an

[1] Defendant Micah Stevenson was not served with process and never appeared. The district court noted, however, that its decision dismissing all claims against Riley and Kimmet also would apply to Stevenson. *See* Opinion at 3, R42 (Page ID # 342).

action is 'intrinsically associated with a judicial proceeding.'" *Id.* at 5, R42 (Page ID # 344) (quoting *Bush v. Rauch*, 38 F.3d 842, 847 (6th Cir. 1994)) (citations omitted). After noting that the Brays did not challenge the validity of the writ or the related order (*id.* at 5, R42 (Page ID #344)), the court rejected their argument that Riley and Kimmet exceeded those orders' scope. The court explained that "a writ of execution issued by a federal court is an exercise of force by the federal government against an individual's property" and that "[i]mplicit with the authority vested in the Marshals by a duly authorized writ of execution is the authority to exercise a degree of control over both the property being seized, the location wherein the property is located, and, by extension, those present at the location." *Id.* at 8, R42 (Page ID # 347). Absolute immunity therefore barred the Fourth and Fifth Amendment claims based on Bray's temporary restraint because that step "served reasonable and legitimate safety and operational concerns ancillary to the seizure of property authorized by the writ," and it "in no way exceeded the scope of Riley and Kimmet's authority pursuant to the writ of execution and the other orders pertaining thereto." *Id.*

As for the Fourth Amendment search and "invasion of privacy" claims, the district court first recognized them to be redundant of one another and to "identically state claims for unreasonable searches and seizures." Opinion at 7, R42 (Page ID # 346). Absolute immunity barred these as well. First, the "searches through every room and of the family's papers" were authorized by the writ of execution: "[W]hile the writ

did expressly require seizure of specific objects in specific rooms, it also included more general commands." *Id.* at 9, R42 (Page ID # 348). By way of example, the court pointed to commands to search for and seize: "[e]ach and every other computer, printer, scanner, data transmission device, and all other home office equipment;" "[a]ny other cameras or video recording devices located in the residence;" "[a]ll books located in the Defendant's library and throughout the remainder of the house, includ[ing] any and all copies of materials written by the Defendant, both in published and unpublished form;" "[a]ll VCR and DVD video equipment located throughout the residence, along with all televisions located throughout the residence;" and "[a]ll stereo equipment located throughout the residence, including both shelf and portable models." *Id.* (internal quotations omitted, brackets original). These commands, the court pointed out, necessarily conferred authority to search throughout the residence, and in light of the command to seize Michael Bray's writings, "Riley and Kimmet were required to carefully examine the family's papers so that the writings could be identified." *Id.*

The district court similarly held that the remainder of the deputies' conduct was authorized by the writ of execution and related order. Making a videotape record of the home's interior condition was appropriate in light of the writ's directive that no one damages the home prior to sale. Opinion at 9, R42 (Page ID # 348). The same was true for permitting additional law enforcement personnel to be present.

"[A]uthority to use sufficient resources to efficiently carry out the writ [was] also implicit." *Id.* at 10, R42 (Page ID # 349). The court brushed aside the allegation that the deputies improperly allowed multiple Planned Parenthood representatives to assist, pointing out that the language providing that "a representative from the plaintiff shall be present" if requested by the Marshals Service did not mean just one representative. *See id.*

Finally, the district court rejected the Brays' argument that Riley and Kimmet forfeited absolute immunity because they exceeded the writ's scope when seizing property not specifically included in it. Here, the court concluded that the plaintiffs misread its writ. The writ excluded "'children's entertainment and educational books,'" the court pointed out, and not, as the Brays alleged, a broader category of "'books that Mr. Bray used to educate his children on religion, history and other subjects.'" Opinion at 10, R42 (Page ID # 349) (citations omitted). In any event, even if the Deputy Marshals exceeded the writ's scope in this last respect, they still had qualified immunity. "[E]ven if the taking of property not covered in the writ could be considered a Fourth Amendment violation," the court explained, "the discretion inherent in determining whether a particular book could be considered a children's book, and thus outside the scope of the writ, is exactly the type that is protected by qualified immunity." *Id.* at 11, R42 (Page ID # 350).

Having disposed of the constitutional claims, the district court then dismissed the Ohio-law conversion claim because the United States had substituted itself under the Westfall Act, and the Brays had not complied with the administrative claim prerequisite necessary to pursue FTCA relief from the government. Opinion at 11-12, R42 (Page ID # 350-52).

After the dismissal of the claims against Deputies Riley and Kimmet, the suit proceeded on the Brays' claims against Planned Parenthood and Squires, Sanders & Dempsey. Following a settlement and dismissal of those claims, the district court entered final judgment. R68 (Page ID # 432). The Brays then timely appealed from the district court's ruling dismissing their constitutional claims against Deputy Marshals Riley and Kimmet. R. 69 (Page ID # 433).

SUMMARY OF ARGUMENT

The district court's judgment was correct and should be affirmed. To protect the courts' authority and ability to function, the law extends absolute immunity to officers who enforce their orders. The district court properly relied on that principle and this Court's precedents when concluding that all of the Marshals' conduct was within the scope of its orders in the judgment-enforcement case. The temporary restraint of plaintiff Michael Bray during the property levy enforced a term in the district court's orders precluding any person from damaging the subject property. In light of this Court's analogous precedent in *Cooper v. Parrish*, 203 F.3d 937 (6th Cir.

2000), the district court correctly held that absolute immunity barred suit based on that restraint.

The district court also correctly dismissed on absolute immunity grounds the property search and seizure claims. The writ of execution authorized the Marshals Service to enter on the premises and to seize property "located in the residence" or found "throughout the remainder of the house." Similarly, the district court's orders expressly authorized the Deputy Marshals to seek assistance from Planned Parenthood representatives, and the orders were broad enough to permit the Marshals to use enough personnel to effectively carry out the writ's commands.

The Brays' novel theory that lawful execution of these court orders required the Marshals to enlist the Brays' own participation in the searches is unsupported by authority and unworkable in practice. It would ensnare levying officers in disputes among private parties over what property is subject to seizure. Absolute immunity applies precisely to avoid entangling law-enforcement officers in matters properly decided by the courts.

The Brays' arguments that the district court's decision overlooks their conspiracy allegations and that it conflicts with cases from other circuits are unpersuasive. Absolute immunity is not defeated by conspiracy allegations. Additionally, the district court acknowledged the limits on absolute immunity, and it

properly applied this Court's precedents when it decided that all of the Marshals' conduct was within the scope of the orders enforced.

The district court also correctly decided that qualified immunity bars claims based on the seizure of property exempt from levy. The Brays misconstrue the writ's terms, and in any event, they failed to carry their burden of showing how the Marshals' actions were unreasonable in light of clearly-established law and the circumstances. Their novel theory that the Marshals Deputies relied on the judgment-creditor's assistance while excluding the Brays' own participation, does not show a clearly-established rights violation. This Court has recognized that the Fourth Amendment permits officers executing a search warrant to rely on the assistance of private citizens who can help identify property subject to seizure. There is no reason to think a different rule applies to searches and seizures under writs of execution. Similarly, nothing in clearly-established law suggests that officers enforcing writs of execution are required to enlist the assistance of residents of the place to be searched.

Restricting the family's movements in the house during the levy, including requiring Michael Bray to remain seated on the sofa, was reasonable in light of the case law authorizing limited duration detention of the occupants of a dwelling during a lawful search. The Deputies also could have reasonably believed the court's orders to authorize a search throughout the home because the orders authorized them to "enter upon the premises" and to seize property found "throughout" it. They also

could have reasonably believed that videotaping the home's interior was a reasonable way to enforce the orders' terms precluding any person from damaging the home interior, and they could have thought that the presence of multiple representatives of the judgment-creditor and multiple law enforcement officers to be lawful.

The district court's dismissal of the property search and seizure claims also may be affirmed on the alternative ground that no *Bivens* remedy should be implied. The Supreme Court has stressed that a *Bivens* remedy is inappropriate where a claimant has an "alternative, existing process" that protects his interest by allowing him to "defend and make good on his position." The Brays had such an alternative, existing process under Federal Rule of Civil Procedure 69(a) in the judgment-enforcement case. That proceeding actually provided them a remedy for the seizure of some of the property they claimed as exempt from levy, and the courts do not fashion additional *Bivens* remedies merely because an existing remedy is somehow "incomplete."

STANDARD OF REVIEW

This Court reviews de novo district court decisions dismissing under Federal Rule of Civil Procedure 12(b)(6). *City of Columbus, Ohio v. Hotels.com, L.P.*, 693 F.3d 64, 68 (6th Cir. 2012). "To survive a motion to dismiss," under that Rule, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A reviewing court applying that standard

takes factual allegations as true, but disregards "legal conclusion[s] couched as a factual allegation." *Twombly*, 550 U.S. at 555. "A claim has facial plausibility," and thereby survives dismissal, only "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556); *see also Reilly v. Vadlamudi*, 680 F.3d 617, 623 (6th Cir. 2012). For purposes of that inquiry, "[d]ocuments that a defendant attaches to a motion to dismiss are considered part of the pleadings if they are referred to in the plaintiff's complaint and are central to her claim." *Weiner v. Klais and Co.*, 108 F.3d 86, 89 (6th Cir. 1997) (brackets original, internal quotations omitted).

The district court's decision granting both absolute and qualified immunity similarly presents questions of law that this Court reviews de novo. *Spurlock v. Satterfield*, 167 F.3d 995, 1000 (6th Cir. 1999) (citation omitted). In addition, the question, raised below but not passed on by the district court, of whether a *Bivens* remedy is available for an asserted constitutional violation is one of law. *See Schweiker v. Chilicky*, 487 U.S. 412, 429 (1988). This Court may affirm the lower court's judgment on any ground supported in the record. *See In re Cleveland Tankers, Inc.*, 67 F.3d 1200, 1205 (6th Cir. 1995).

ARGUMENT

I. The district court correctly held that absolute and qualified immunity shield the Deputy Marshals from personal liability.

"Litigation, though necessary to ensure that officials comply with the law, exacts heavy costs in terms of efficiency and expenditure of valuable time and resources that might otherwise be directed to the proper execution of the work of the Government." *Ashcroft*, 556 U.S. at 685. And "[w]hen officials are threatened with personal liability for acts taken pursuant to their official duties, they may well be induced to act with an excess of caution or otherwise to skew their decisions in ways that result in less than full fidelity to the objective and independent criteria that ought to guide their conduct." *Forrester v. White*, 484 U.S. 219, 223 (1988). The law responds to these considerations through "the creation of various forms of immunity from suit for certain government officials." *Id.* Although "qualified immunity represents the norm," *Harlow v. Fitzgerald*, 457 U.S. 800, 807 (1982), for some official functions absolute immunity is necessary "to ensure that they are performed with independence and without fear of consequences." *Rehberg v. Paulk*, 132 S. Ct. 1497, 1503 (2012) (citations and internal quotations omitted). Those include functions that, although "executive" in nature, are nonetheless "intimately associated with the judicial process." *Adams v. Hanson*, 656 F.3d 397, 399 (6th Cir. 2011).

The district court properly relied on these principles in holding that all of the Brays' claims were barred by absolute immunity (for enforcing the court's orders in the judgment-enforcement action) or qualified immunity (for conduct reasonable in light of clearly-established law). That judgment was correct, and should be affirmed.

A. Absolute immunity extends to executive officials' actions in executing or enforcing court orders.

"It is well established that judges are entitled to absolute judicial immunity from suits for money damages for all actions taken in the judge's judicial capacity, unless these actions are taken in the complete absence of any jurisdiction." *Bush v. Rauch*, 38 F.3d at 847 (citations omitted). That immunity is essential to ensuring the integrity of the judicial process; it ensures that judges are free "to make impartial decisions without the threat of personal liability." *Id.* at 847 n.5. The same policy considerations warrant absolute immunity for "those persons performing tasks so integral or intertwined with the judicial process that these persons are considered an arm of the judicial officer who is immune." *Id.* at 847. After all, "[t]he fearless and unhesitating execution of court orders is essential if the court's authority and ability to function are to remain uncompromised." *Coverdell v. Department of Social and Health Servs.*, 834 F.2d 758, 765 (9th Cir. 1987). Consequently, this Court, like others, has held that "enforcing or executing a court order is intrinsically associated with a judicial

proceeding," and hence is protected by absolute immunity from damages suits. *Bush*, 38 F.3d at 847; *see also Foster v. Walsh*, 864 F.2d 416, 417 (6th Cir. 1988).

Applying these principles, the district court held that Deputy Marshals Riley and Kimmet have absolute immunity for all of their conduct challenged in the complaint. Opinion at 7-11, R42 (Page ID # 346-50). None of the Bray's arguments for reversal are persuasive, and the district court's judgment should be affirmed.

1. The Brays describe the Marshals' directive that Michael Bray remain seated on a sofa during execution of the writ as an "arrest," and a step not authorized by the district court's orders in the judgment-enforcement proceeding. *See* Brief for Appellant at 22-24. The event cannot fairly be described as an "arrest," *see Michigan v. Summers*, 452 U.S. 692, 699-705 (1981), and more importantly, the district court's decision was correct. In *Cooper v. Parrish*, 203 F.3d 937 (6th Cir. 2000), this Court held that absolute immunity applied in analogous circumstances. Local prosecutors filed nuisance suits against nightclubs in the Memphis, Tennessee area and obtained from the county chancery court temporary restraining orders authorizing officials to enter and seize eight clubs. *See id.* 943. The club owners, a club employee, and others sued for damages. The prosecutors and investigators claimed absolute immunity for their roles in enforcing the restraining orders. The district court dismissed on that basis, and this Court affirmed.

On appeal, the plaintiffs argued that the prosecutors and investigators "exceeded the scope of the temporary restraining orders when they detained those customers who were at the nightclubs and seized property that was not explicitly identified in the temporary restraining orders." 203 F.3d at 948. This Court rejected that argument, explaining that even assuming the plaintiffs had standing to complain about the customers' treatment, "the language in the temporary restraining orders is broad enough to cover both the temporary detention of the customers at the nightclubs and the seizure of the business offices of . . . a company that conducted various business functions related to those of the nightclubs." *Id.* at 949. The orders "authorized the prosecutors to restrain all 'parties, proprietors, putative owners, employees, agents . . . [and] all other *persons* of any kind or at any place *from* devaluing, removing, diminishing in quality or quantity, destroying, deleting, amending or altering the *Res*.'" *Id.* (citation omitted) (editing and emphasis original). Because the orders thereby "authorize[d] law enforcement officials to restrain any person who could devalue, remove, or diminish the property—a category that could reasonably include those customers who were at the nightclubs on the night of the raid," this Court explained, the prosecutors did not exceed the scope of those orders and were entitled to absolute immunity for the patrons' detention. *See id.* The law enforcement officers assisting the prosecutors similarly had absolute immunity because "the language in the

temporary restraining orders [wa]s broad enough to cover the detention of the customers at the nightclubs . . . ." *Id.* at 950.

The district court adopted essentially the same reasoning here, and in light of *Cooper*, its immunity ruling was correct. Contrary to the Brays' argument that this holding was unsupported in the record (Brief for Appellants at 26), the orders enforced here, like the restraining orders in *Cooper*, provided for preserving the property against damage by "any person." *See* R31-3 (Page ID # 275) (Sept. 7, 2006 order providing that "[u]ntil the actual sale of the real estate occurs, the real property will not be damaged, impaired, or diminished in value by the acts or omissions of any person."). And like the temporary restraint of the patrons in *Cooper*, Bray's temporary restraint served as a means of achieving that goal. The district court's ruling is both supported in the record and it follows from this Court's precedent in *Cooper*. Because Deputies Riley and Kimmet have absolute immunity in this respect, the court correctly dismissed the Brays' first and second causes of action asserting an unreasonable seizure of Mr. Bray and a deprivation of his liberty.

2. The Brays' claim that the Deputy Marshals exceeded the scope of the court's orders in searching their home and property is no more persuasive. As the district court observed, not only did the writ of execution authorize the seizure of specific items in the Bray house, "it also included more general commands" the execution of which necessarily required searching the home. *See* Opinion at 9, R42 (Page ID #

348). Obviously, the Marshals could not seize the various other categories of property described in the writ as "located in the residence," or located "throughout the remainder of the house," or found "throughout the residence" without searching "in" and "throughout" the residence. *See* R31-2 (Page ID # 273). Similarly, videotaping the inside of the home was a means of ensuring compliance with the court's order that the residence remain free from damage by "any person." *See* Opinion at 9, R42 (Page ID # 348); *see also* R31-3 (Page ID # 275). *Cf. Cooper*, 203 F.3d at 949 (orders that "authorize[d] law enforcement officials to restrain any person who could devalue, remove, or diminish the property" were broad enough to authorize restraint of nightclub customers). The same is true for enlisting other law enforcement officers and Planned Parenthood representatives in the operation; the district court's writ of execution and related order expressly authorized the Marshals to seek assistance from Planned Parenthood representatives and were otherwise broad enough to permit the Marshals to use sufficient resources to carry out the writ's commands. *See* Opinion at 9-10, R42 (Page ID # 348-49); *see also id.* at 5-7 (Page ID # 344-46) (describing the writ and related order).

In challenging the district court's ruling, the Brays argue essentially that all of this was unnecessary; "the Bray family was prepared to be compliant with the Marshals while the Marshals were themselves hatching a pre-conceived plan with Planned Parenthood's attorneys to treat the Writ of Execution like a sweeping search

warrant (and arrest warrant)." Brief for Appellant at 27. The Brays cite no authority to support their theory that the Deputy Marshals had to enlist their participation in the search. As already demonstrated, the writ of execution and the September 7 order were broad enough to authorize the manner in which the Marshals Service carried them out, including searching the Bray residence for the property described in the writ. And while the September 7, 2006 order authorized a Planned Parenthood representative's assistance, it in no way hinted that the Marshals had to enlist the Brays as well. *See* R31-3 (Page ID # 276).

Aside from those problems, the practical import of the Brays' theory is unworkable. Mandating such a role for the judgment-debtor would create the temptation for cat-and-mouse games, and in many cases it would place deputies in the unenviable position of adjudicating on-the-spot disputes between private parties over what property is subject to levy. Resolving such disputes is the courts' function, and requiring officers levying on property to take account of the debtor's claims might "result in the official second-guessing the judge who is primarily responsible for interpreting and applying the law." *Bush*, 38 F.3d at 848. The Brays' theory actually underscores the need for absolute immunity in these circumstances.[2]

[2] Although conceding that the writ of execution and related order authorized the Marshals Deputies to enter their home, they Brays nevertheless suggest that a warrant was needed to search for personal property within it. *See* Brief for Appellants at 25 & n.2. As demonstrated above, the district court was plainly correct in holding

The Brays make two other arguments, neither of which is persuasive. First, they argue that the district court did not sufficiently consider their "conspiracy" allegations. *See* Brief for Appellant at 26-27. But because the district correctly ruled that the Deputy Marshals' conduct was covered by absolute immunity, the conspiracy allegations are irrelevant. "[A]llegations of malice, or bad faith or, as here, a claim of conspiracy will not defeat the protection of derivative absolute immunity for actions taken pursuant to court orders." *Cok v. Cosentino*, 876 F.2d 1, 3 (1st Cir. 1989) (per curiam) (citations omitted). The Brays alleged nothing to show that the supposed conspiratorial agreement altered the functional character of the deputies' acts, and so absolute immunity applies. *Cf. Cooper*, 203 F.3d at 945 (absolute immunity applied because judge "was acting in his judicial capacity when he engaged in *ex parte* contact with the prosecutors and gave the prosecutors legal advice regarding ways that they could improve their case").

Second, the Brays urge, the district court's ruling is too broad and conflicts with decisions from the courts of appeals in other circuits. *See* Brief for Appellant at 28-29 (collecting cases). Other circuits, they say, extend absolute immunity only when the plaintiff's lawsuit effectively challenges decisions by the issuing judge, not those of

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that the writ and related order authorized a search of the residence. In any event, the Brays expressly declined to develop their "search-warrant" theory, *see id.* at 26, and it need not be considered further. *See Vance v. Wade*, 546 F.3d 774, 781 (6th Cir. 2008) ("an issue is deemed forfeited on appeal if it is merely mentioned and not developed") (citation omitted).

the executing officer. *See id.* But the district court did acknowledge this limit. *See* Opinion at 5, R42 (Page ID # 344) (citing *Cooper*, 203 F.3d at 948, and *Richman v. Sheahan*, 270 F.3d 430, 436 (7th Cir. 2001)). More importantly, it applied the test prescribed by this Court's precedents, asking whether the deputies' actions were "taken within the scope of the order being executed." *Id.* (citing *Cooper*). This circuit's test is consistent with the law in other circuits, moreover, because when an officer is sued for acts taken within the scope of a court order, the suit *does* challenge a decision of the issuing judge, namely the decision to confer the authority the officer relied on.

Because all of the acts the Brays attribute to Deputies Riley and Kimmet are covered by absolute immunity, the district court's judgment dismissing the claims against them was correct and should be affirmed. *See Rippy ex rel. Rippy v. Hattaway*, 270 F.3d 416, 423 (6th Cir. 2001).

B. The district court correctly ruled that the Deputy Marshals have qualified immunity.

The district court ruled alternatively that even if deputies Riley and Kimmet did not have absolute immunity for seizing certain property outside the writ's scope, they nonetheless have qualified immunity. The Brays challenge that ruling, arguing that the law governing searches and seizures is clear and that "immunity should be denied because of the Marshals' deliberately chosen but unreasonable approach to the raid—complete collaboration with Planned Parenthood and the complete exclusion of the

Bray family when it came to identifying the property to be seized." Brief for Appellants at 31. The Brays identify no clear legal rule supporting that theory, and the district court's decision on this point was correct.

The qualified immunity defense applies to public officials across the board and is forfeited only if they violate "clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow*, 457 U.S. at 818. Because the "touchstone" of this defense is "objective legal reasonableness," it is not overcome "simply by alleging violation of extremely abstract rights." *Anderson v. Creighton*, 483 U.S. 636, 639 (1987). Instead, the right must be clear in the particular circumstances; "[t]o be clearly established, a right must be sufficiently clear that every reasonable official would [have understood] that what he is doing violates that right." *Reichle v. Howards*, 132 S. Ct. 2088, 2093 (2012) (citations and internal quotations omitted, brackets original). The defense protects reasonably mistaken judgments and gives "ample protection to all but the plainly incompetent or those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. 335, 341 (1986); *see also Chappell v. City of Cleveland*, 585 F.3d 901, 907 (6th Cir. 2009). Once an official raises qualified immunity, the plaintiff bears the burden of showing that he violated clearly-established law. *Toms v. Taft*, 338 F.3d 519, 525 (6th Cir. 2003).

Although the qualified immunity inquiry generally entails two steps—first, whether the plaintiff's allegations make out any constitutional violation at all, and, if

so, second, whether the violation was "clearly established"—in *Pearson v. Callahan*, 555 U.S. 223 (2009), the Supreme Court gave courts discretion to dispense with the first step in appropriate cases. *See Clemente v. Vaslo*, 679 F.3d 482, 489 (6th Cir. 2012). Given the at-times uncertain focus of the Brays' case and the comparative ease of the "clearly-established" inquiry here, that is the most appropriate ground for affirmance.

1. The district court upheld the qualified-immunity defense to the extent the Brays complained that the Marshals Deputies erroneously seized property not covered by the writ of execution. Opinion at 11, R42 (Page ID # 350). That ruling was correct. The Supreme Court recently has emphasized that "[w]here the alleged Fourth Amendment violation involves a search or seizure pursuant to a warrant, the fact that a neutral magistrate has issued a warrant is the clearest indication that the officers acted in an objectively reasonable manner or, as we have sometimes put it, in 'objective good faith.'" *Messerschmidt v. Millender*, 132 S. Ct. 1235, 1245 (2012) (quoting *United States v. Leon*, 468 U.S. 897, 922–23 (1984)) (footnote omitted). This Court has said much the same. *See Hale v. Kart*, 396 F.3d 721, 725 (6th Cir. 2005) ("In § 1983 actions, an officer ordinarily receives qualified immunity if he or she relies on a judicially secured warrant.") (citation omitted). The same principle logically applies to searches and seizures pursuant to other court orders, such as the writ of execution here. *See, e.g., Revis v. Meldrum*, 489 F.3d 273, 285-86 (6th Cir. 2007) (deputy sheriff had qualified immunity given an absence of case law and his reliance on writ of execution

and advice of county attorney). As the district court explained, the Brays' allegation that the deputies improperly seized "books that Mr. Bray used to educate his children on religion, history and other subjects" misconstrues the exclusion in the writ. *See* Complaint ¶ 4.15, R13 (Page ID # 117). The writ did not exclude all books that Bray might happen to use for educational purposes, it excluded "children's entertainment and educational books," a plainly narrower category. Writ of Execution, R31-2 (Page ID # 273). In any event, the Brays, who have the burden of establishing a violation of clear law, have alleged nothing to suggest that the Marshals acted unreasonably by seizing particular materials and leaving it for the issuing court to resolve disputes between the private litigants over exemptions from levy.

2. The Brays make no attempt to show on appeal that any particular materials were clearly exempt from levy under the writ of execution. Instead, they challenge the district court's immunity ruling on the novel theory that the Marshals Deputies violated clearly-established law "because of the Marshals' deliberately chosen but unreasonable approach to the raid—complete collaboration with Planned Parenthood and the complete exclusion of the Bray family when it came to identifying the property to be seized." Brief for Appellants at 31. But they fail to show how that approach to enforcing the writ violated clearly-established law. This Court has recognized that the Fourth Amendment permits law enforcement officers executing a search warrant to rely on the assistance of private citizens who can help identify

property as subject to seizure. *See Bills v. Aseltine*, 52 F.3d 596, 602-03 (6th Cir. 1995); *United States v. Clouston*, 623 F.2d 485, 486 (6th Cir. 1980) (per curiam). Here also there is no reason to think that a different rule applies to searches and seizures under writs of execution. Indeed, in *Revis*, despite allegations that the defendant deputy sheriff conspired with representatives of the judgment-creditor (one of whom was present during the levy), this Court sustained his qualified immunity defense. *See* 489 F.3d at 286-87. The district court expressly authorized the Marshals Service to seek assistance from Planned Parenthood's representatives, and the deputies acted reasonably in relying on that authorization.

Nothing in clearly-established law suggests that officers enforcing writs of execution have to enlist residents of the place to be searched in a joint enterprise. *Cf. Baranski v. Fifteen Unknown Agents of Bureau of Alcohol, Tobacco and Firearms*, 452 F.3d 433, 443 (6th Cir. 2006) ("In carrying out a search, officers need not cooperate with uncooperative property owners or those who threaten to put the search at risk."). The idea itself strains common sense. Judgment-debtors have little incentive to surrender their property; that is the point of sending law-enforcement officers to levy on it. By no means did Deputies Riley and Kimmet violate clearly-established law by not involving the Brays in the searches and seizures at issue.

3. The qualified immunity defense provides ample alternative basis for affirming the district court's judgment with respect to other things the complaint

alleges. Restricting the family's movements in the house during the levy, including requiring Michael Bray to remain seated on the sofa, was reasonable in light of the case law authorizing limited-duration detention of the occupants of a dwelling during a lawful search. *See Summers*, 452 U.S. at 705; *Marcilis v. Township of Redford*, 693 F.3d 589, 602-03 (6th Cir. 2012). The district court's absolute-immunity reasoning fully supports qualified immunity as well: "implicit [in the writ] is the authority to ensure that the property being seized is not damaged or destroyed, and the authority to take reasonable steps to ensure the safety of those tasked with seizing the property." Opinion at 8, R42 (Page ID # 347). Compare *Summers*, 452 U.S. at 702-03 ("The risk of harm to both the police and the occupants is minimized if the officers routinely exercise unquestioned command of the situation."). Contrary to the Brays' arguments (Brief for Appellants at 22-23), by no stretch did the limited intrusion on Michael Bray's freedom of movement amount to an "arrest" or similar seizure requiring probable cause, and in light of *Summers* and like cases, it was reasonable. Compare *Dunaway v. New York*, 442 U.S. 200, 213-14 (1979); *see also United States v. Avery*, 137 F.3d 343, 352 (6th Cir.1997). Thus, Deputies Riley and Kimmet have qualified immunity from both the Fourth Amendment seizure claim in the complaint's first cause of action and from the redundant Fifth Amendment liberty-deprivation claim set out in the second. *See Graham v. Connor*, 490 U.S. 386, 394 (1989) (claims involving "an arrest or investigatory stop of a free citizen" are "most properly characterized as

one[s] invoking the protections of the Fourth Amendment"); *Lanman v. Hinson*, 529 F.3d 673, 680 (6th Cir. 2008) ("[T]he Fourth Amendment reasonableness standard generally applies any time a government official seizes a free citizen with the purpose of potentially creating an involuntary custodial relationship with the State.").

Similarly, the Deputy Marshals reasonably could have thought the writ of execution and related order to authorize a search the home. Those orders "directed [them] to enter upon the premises," R31-3 (Page ID # 275), and to seize property "throughout" it. *See* Writ of Execution, R31-2 (Page ID # 273); Opinion at 6, 9, R42 (Page ID # 345, 348). Videotaping the interior of the home, a step that served the legitimate purpose of making a record of the home's condition, was also not clearly unlawful. *See Marks v. Clarke*, 102 F.3d 1012, 1033 n.37 (9th Cir.1996) (noting that cases have assumed without deciding that videotaping a search for law enforcement purposes is lawful (citations omitted)). Finally, no clearly-established law regulates the number of persons who may assist in a levy on property, nor was it unreasonable for the deputies, like the district court here, to read the indefinite article "a" in the September 7, 2006 order to authorize the assistance of more than one Planned Parenthood representative. *See* Opinion at 9-10, R42 (Page ID # 348-49); R31-3 (Page ID # 276).

Because the Brays fail to identify any conduct by Deputies Riley and Kimmet that violated any clearly-established constitutional right, the deputies are entitled to qualified immunity, and the district court's judgment may be affirmed on that basis.

II. A *Bivens* Remedy should not be implied to challenge execution of a federal court order.

In addition to the immunity defenses the district court sustained, Deputies Riley and Kimmet moved to dismiss the third and fourth causes of action (based on property searches and seizures) because no *Bivens* remedy should be implied to challenge their enforcement of the lower court's orders. *See* Opinion at 4, R42 (Page ID # 343). Although the Brays' complaint invokes both *Bivens* and 42 U.S.C. § 1983, the Deputy Marshals plainly acted under color of federal, not state, law when enforcing the federal courts' orders. *See Hall v. United States*, 773 F.2d 703, 707 (6th Cir. 1985). *Bivens* therefore provides the liability template. But the Brays' opportunity to litigate and seek remedies in the judgment-enforcement proceeding amounts to an alternative ground for affirming the dismissal of the Brays' third and fourth causes of action.

A. Federal courts should not create *Bivens* remedies where an alternative, existing process protects or vindicates the plaintiff's interest.

In *Bivens*, 403 U.S. at 388, the Supreme Court held that a citizen alleging that federal law enforcement officers violated his Fourth Amendment rights by arresting

him and searching his home, all without a warrant, could pursue a damages remedy against those officers notwithstanding the absence of any express authorization for it in either the Fourth Amendment or an act of Congress. The case "involve[d] no special factors counseling hesitation in the absence of affirmative action by Congress," *id.* at 396, and Congress had not explicitly declared that "persons injured by a federal officer's violation of the Fourth Amendment may not recover money damages from the agents but must instead be remitted to another remedy, equally effective in the view of Congress." *Id.* at 397. "[T]he Fourth Amendment d[id] not in so many words provide for its enforcement by an award of money damages for the consequence of its violation," but relying on cases that had implied damages remedies for violations of federal statutes, the Court held that in the circumstances presented Bivens could seek such a remedy. *Id.* at 396.

In two subsequent cases, *Davis v. Passman*, 442 U.S. 223 (1977), and *Carlson v. Green*, 446 U.S. 14 (1980), the Supreme Court similarly recognized such "implied" rights of action for a violation of the Fifth Amendment and the Eighth Amendment. But in the three decades since *Carlson*, the Supreme Court has not further expanded upon *Bivens*. Instead, it has "consistently refused to extend *Bivens* liability to any new context or new category of defendants." *Correctional Servs. Corp. v. Malesko*, 534 U.S. 61, 68 (2001); *see also Schweicker v. Chilicky*, 487 U.S. 412, 421 (1988) ("Our more recent decisions have responded cautiously to suggestions that *Bivens* remedies be extended

into new contexts."). The Court recently reformulated and summarized the "basic considerations that underlie" the decision to grant or withhold a *Bivens*-type remedy in *Wilkie v. Robbins*, 551 U.S. 537 (2007); *see also Minneci v. Pollard*, 132 S. Ct. 617, 623 (2012) ("*Wilkie* fairly summarizes the basic considerations that underlie those [prior] decisions.") (citation omitted). *Wilkie* distills the relevant considerations into a two-step inquiry:

> [O]n the assumption that a constitutionally recognized interest is adversely affected by the actions of federal employees, the decision whether to recognize a *Bivens* remedy may require two steps. In the first place, there is the question whether any alternative, existing process for protecting the interest amounts to a convincing reason for the Judicial Branch to refrain from providing a new and freestanding remedy in damages. *Bush*, supra, at 378, 103 S. Ct. 2404. But even in the absence of an alternative, a *Bivens* remedy is a subject of judgment: 'the federal courts must make the kind of remedial determination that is appropriate for a common-law tribunal, paying particular heed, however, to any special factors counselling hesitation before authorizing a new kind of federal litigation.' *Bush*, supra, at 378, 103 S. Ct. 2404.

Wilkie, 551 U.S. at 550; *see also Koubriti v. Convertino*, 593 F.3d 459, 466 (6th Cir. 2010) ("Under the *Bivens* line of cases, the Supreme Court has recognized a cause of action against federal officials for certain constitutional violations when there are no alternative processes to protect the interests of the plaintiff and no special factors counseling against recognizing the cause of action.") (citing *Wilkie*, 551 U.S. at 550).

In *Wilkie*, a land owner named Robbins sued officials of the Bureau of Land Management for a campaign of harassment and intimidation that he said was designed

to coerce him into granting the Bureau an easement over his land. He sought *Bivens* relief for "retaliation for standing on his right as a property owner to keep the Government out" by refusing to grant the easement. 551 U.S. at 555. In analyzing that claim, the Supreme Court first grouped the government misconduct Robbins complained about into four categories: "torts or tort-like injuries inflicted on him, charges brought against him, unfavorable agency actions, and offensive behavior by Bureau employees falling outside those three categories." *Id.* at 551. And in examining these, the *Wilkie* court suggested that if taken as discrete wrongs, things like torts, administrative proceedings and even the filing of baseless criminal charges would not warrant creation of a *Bivens* remedy because Robbins would have remedies in the administrative or judicial proceedings themselves: "For each charge, in any event, Robbins had some procedure to defend and make good on his position. He took advantage of some opportunities, and let others pass; although he had mixed success, he had the means to be heard." *Id.* at 552. So "when the incidents [we]re examined one by one, Robbins's situation d[id] not call out for creating a constitutional cause of action for want of other means of vindication, so he [wa]s unlike the plaintiffs in cases recognizing freestanding claims," *i.e.*, *Bivens*, *Davis*, and *Carlson*. *Id.* at 555 (citations omitted).

The Supreme Court in *Wilkie* ultimately rejected the *Bivens* claim at step-two of the analysis, but only because Robbins' constitutional theory aggregated the various

wrongs into a larger whole that discrete remedies might not address. *See* 551 U.S. at 554-55. Important for the present case is the *Wilkie* court's suggestion that the opportunity to "defend and make good" on one's position in federal proceedings, such as criminal or administrative proceedings, is usually grounds not to create new *Bivens* claims. The Brays had just such an opportunity to defend and make good on their position regarding the search and seizure of their property. In light of *Wilkie*, that is dispositive of their third and fourth causes of action invoking *Bivens* for unreasonable searches and seizures of property.

B. The Federal Court judgment-enforcement proceedings were an alternative, existing process that protected or vindicated the plaintiffs' interests in protection from unreasonable searches and seizures of property.

A federal court judgment for the recovery of money or property may be registered in any other federal judicial district by filing a certified copy of the judgment. Then the judgment has the same effect as if issued by that court, and it may be enforced to the same extent. *See* 28 U.S.C. § 1963. Under Federal Rule of Civil Procedure 69(a), a money judgment is typically enforced by writ of execution. That rule builds into federal-court judgment-enforcement proceedings the substantive and procedural safeguards found in state law except to the extent a federal statute might apply. *See id.*; *see also Lewis v. United Joint Venture*, 691 F.3d 835, 839-40 (6th Cir. 2012). These procedures are no mere post-judgment formality. As this Court has explained, a

money judgment generally "represents only an adjudication of [the judgment debtor's] liability on a monetary debt, not a transfer to [the judgment creditor] of title to any particular item of [the judgment debtor's] property." *Revis v. Meldrum*, 489 F.3d 273, 282 (6th Cir. 2007) (quoting *Finberg v. Sullivan*, 634 F.2d 50, 58 (3d Cir. 1980 (en banc)) (citation and internal quotations omitted, brackets original). Rule 69 thus provides the means for adjudicating the judgment debtor's substantive and procedural rights in property potentially subject to levy. And as the Brays' complaint makes abundantly clear, they had the full benefit of these federal-court proceedings under Rule 69, both before and after the Marshals Service levied on their property. Those proceedings provided "alternative processes to protect the interests of the plaintiff," *Koubriti*, 593 F.3d at 466, so the Brays have no need for a *Bivens* remedy against Deputy Marshals on top of them.

The Brays had the opportunity to be heard both before and after enforcement of the judgment. For example, although the writ of execution issued on August 17, 2006, its enforcement was delayed after plaintiff Jayne Bray moved to intervene to assert her own interest in some of the property at issue. Complaint ¶¶ 4.8, 4.9, R13 (Page ID # 114). The district court eventually issued an order reactivating its writ on July 20, 2007, eleven months after first issuing it. *Id.* ¶ 4.9, R13 (Page ID # 114). After the Marshals Service executed the writ, the district court conducted a follow-up evidentiary hearing "to determine, among other things, the rights of Mr. and Mrs.

Bray to have certain property exempted from the execution on their personal property." *Id.* ¶ 9.2, R13 (Page ID # 121). According to the complaint, they met with some success; the court ruled that "(i) many of the household goods and other items taken from the Bray home were exempt from execution under Ohio law, and (ii) certain items taken from the Bray home belonged to the Bray children or other third parties," and it ordered the Brays' property not subject to execution returned to them. *Id.*

Against this backdrop, the Brays stand on a footing quite different from claimants in other *Bivens*-type cases. They had ample pre- and post-seizure federal judicial process by which to contest whether and to what extent their property was subject to levy. At worst, they were deprived for a temporary period of some property that was exempt from levy. *See* Complaint ¶ 9.2, R13 (Page ID # 114). But that was remedied, and it is well-settled that federal courts do not supply *Bivens* remedies just because alternatives do not give "complete relief" or something akin to damages. *See Chilicky*, 487 U.S. at 423 (citing *Bush*, 462 U.S. at 388). To the extent that the Brays challenge the searches and seizures of their property, then, a *Bivens* remedy is inappropriate in this context, and the district court's dismissal of the property search and seizure claims can be affirmed on that additional ground.

CONCLUSION

For the foregoing reasons, the district court's judgment should be affirmed.

Respectfully submitted,

STUART F. DELERY
Acting Assistant Attorney General

CARTER M. STEWART
United States Attorney

s/ Richard Montague
RICHARD MONTAGUE
(202) 616-4158
Senior Trial Counsel
Constitutional Tort Litigation Staff
Torts Branch, Civil Division
U.S. Department of Justice
Box 7146 Washington, D.C.
200444

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CERTIFICATE OF COMPLIANCE WITH FEDERAL RULE OF APPELLATE PROCEDURE 32(a)

I hereby certify that that this brief complies with the requirements of Fed. R. App. P. 32(a)(5) and (6) because it has been prepared in 14-point Garamond, a proportionally-spaced font.

I further certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 9853 words, excluding the parts of the brief exempted under Rule 32(a)(7)(B)(iii), according to the count of Microsoft Word.

s/ Richard Montague
RICHARD MONTAGUE

CERTIFICATE OF SERVICE

I hereby certify that on March 22, 2013, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the appellate CM/ECF system, which constitutes service on counsel for the Appellants under the Court's rules.

s/ Richard Montague
RICHARD MONTAGUE

ADDENDUM DEISNGATING RELEVANT DOCUMENTS PURSUANT TO SIXTH CIRCUIT RULE 30(g)(1)

Record Entry Number	Document Description and Page ID #
Record Entry 1 ("R1")	Notice of Removal, Page ID # 1-5
Record Entry 13 ("R13")	First Amended Complaint, Page ID # 107-123
Record Entry 31 ("R31")	Motion to Dismiss by Defendants Riley and Kimmet, Page ID # 245-68
Record Entry 31-2 ("R31-2")	Writ of Execution, Civ. No. 2:05-mc-002 (S.D. Ohio, Aug. 17, 2006) (Exhibit supporting Motion to Dismiss), Page ID # 272-73
Record Entry 31-3 ("R31-3")	Order of September 7, 2006 Order, Civ. No. 2:05-mc-002 (S.D. Ohio) (Exhibit Supporting Motion to Dismiss), Page ID # 275-76
Record Entry 42 ("R42")	Opinion and Order, Page ID # 340-52
Record Entry 67 ("R67")	Order, Page ID # 430-31
Record Entry 68 ("R68")	Judgment, Page ID # 432
Record Entry 69 ("R69")	Notice of Appeal, Page ID # 433-34