No. 22-15402

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MICHELE LEUTHAUSER,
Appellant

v.

UNITED STATES OF AMERICA,
AND
ANITA SERRANO,
Appellees

On Appeal from the United States District Court
for the District of Nevada
Case No. 20-CV-479, Hon. James C. Mahan

BRIEF OF APPELLANT MICHELE LEUTHAUSER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

ISSUE PRESENTED

Are TSA screeners "investigative or law enforcement officers" for the purposes of the Federal Tort Claims Act, 28 U.S.C. § 2680(h)?

JURISDICTIONAL STATEMENT

This is an appeal of a final order of a U.S. District Court. Jurisdiction is proper pursuant to 28 U.S.C. § 1291.

ORAL ARGUMENTS REQUESTED

The application of the Federal Tort Claims Act to screeners of the U.S. Transportation Security Administration is an important question, as it is likely the only avenue of relief for those injured at airport security checkpoints. The question has divided multiple Courts of Appeals and Appellant respectfully requests oral arguments to sharpen the issues for the panel.

INTRODUCTION

The Federal Tort Claims Act waives sovereign immunity for certain intentional torts committed by federal employees *only if* the tortfeasor is an "investigative or law enforcement officer." 28 U.S.C. § 2680(h). The statute defines this group as "any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law." *Id*.

The Transportation Security Administration ("TSA") screeners in blue uniforms found operating x-rays and patting down travelers at airports are not law enforcement officers, but they are obviously "empowered by law to execute searches" and thus fall into the "investigative or" portion of this group. Only two circuits have precedential holdings on this matter, and both hold the same. The issue is of first impression in this circuit[1]. *Pellegrino v. Transp. Sec. Admin.*, 937 F.3d 164 (3rd Cir. 2019) (*en banc*); *Iverson v. United States*, 973 F.3d 843 (8th Cir. 2020).

Notwithstanding, the government convinced the court below that when Congress said "searches," they meant "criminal law enforcement searches," and

[1] A panel of this Court recently heard arguments in *Lundquist v. United States*, 21-55908, in which this issue was raised in the *appellee's* brief, without the filing of a Notice of Cross Appeal. The appellant requested that the Court consider the issue improperly raised and the appellee also requested that the Court dismiss the entire appeal as procedurally improper. It is thus unclear if the FTCA issue will clear these procedural hurdles such that the court will consider the merits of the issue, and at the time of filing of this document, no decision has been made in that case.

therefore TSA screeners are not "investigative or law enforcement officers," sovereign immunity is not waived, and travelers, such as Appellant, who are intentionally injured by TSA screeners have no right to *any remedy in the courts whatsoever*[2]. This holding improperly inserts words into a plainly written statute, turns other words into surplusage, and results in manifest injustice. The Court should reverse.

STATEMENT OF THE FACTS[3]

On June 30th, 2019, Plaintiff-Appellant Michele Leuthauser was a ticketed passenger attempting to travel through Harry Reid International Airport (formerly, Las Vegas-McCarran International Airport). Compl., ER-008. After stepping into a TSA body scanner, Leuthauser was told that the scanner had alerted on her "groin" and would she would need to submit to a pat-down search in a private room. *Id*.

[2] Since *Ziglar v. Abbasi*, 582 U. S. ___ (2017), it is virtually certain that the U.S. Supreme Court would disapprove of "expanding" *Bivens* remedies to include TSA screeners, and thus far no Court of Appeals has done so. And, the government is given the privilege to (and regularly does) veto state-law claims brought against individual TSA screeners personally pursuant to the Westfall Act, 28 U.S.C. § 2679. Without FTCA remedies, a person injured at the checkpoint has no *right* to demand a remedy.

[3] The court below dismissed on the government's motion for summary judgment; the Court should view all facts in the light most favorable to the non-moving party. Order on Motion for Summary Judgment, ER-003-005.

Leuthauser and two TSA screeners[4] entered a private room and she was directed to stand on a floor mat with "foot prints" painted on it that direct a person being searched as to where to place their feet. Compl., ER-009. Several times, Leuthauser was directed to spread her legs wider than the foot prints indicated, after which one of the TSA screeners began a pat-down that culminated in digitally penetrating Leuthauser's genitals. *Id*. At this point, Leuthauser pulled away and reported the incident to both a TSA supervisor and airport police. Compl., ER-010.

TSA standard operating procedure did not require Leuthauser to be in a private room for this screening, and TSA procedure never allows for penetration of the body of a traveler under any circumstance. Compl., ER-009, ¶ 34. There was no dispute between the parties in the court below that such a search would be prohibited[5]; however, the government and TSA screener allege that Leuthauser was directed to a private room as a result of a good-faith mistake, and that the search of Leuthauser did not include penetration as alleged in the complaint.

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[4] One of the two screeners participated only as a witness. The other screener was Defendant Anita Serrano.

[5] Nor could there be: the limited nature of administrative searches has never been held to include body cavity searches – doubly-so as a response to a body scanner alert, because body scanners do not detect items inside of the body. *See* U.S. Dep't. of Homeland Security, Privacy Impact Assessment for TSA Whole Body Imaging, https://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_tsa_wbi.pdf (Published October 17th, 2008) ("showing the surface of the skin and revealing objects that are on the body, not in the body").

STATEMENT OF THE CASE

Leuthauser filed suit in the United States District Court for the District of Nevada on March 6th, 2020. Dist. Ct. Docket, ER-029.

Individual defendant Anita Serrano, the TSA employee who injured Leuthauser sued in her individual capacity pursuant to the framework in *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971), moved to dismiss on December 28th, 2020, on the grounds that *Bivens* remedies are not available against TSA screeners and, if they were, Serrano would be entitled to qualified immunity. The motion was granted on the *Bivens* argument December 21st, 2021. By stipulation between all parties, this appeal is discontinued against Serrano and thus the issue of whether *Bivens* remedies are available in this context is not presented to the Court.

The government moved to dismiss on June 26th, 2020. Dist. Ct. Docket, ER-030. An order on the motion was filed on August 12th, 2020, holding that TSA screeners who are not also law enforcement officers are not "investigative or law enforcement officers," but that the record was unclear as to whether the TSA screener who injured Leuthauser was law enforcement. Order Denying Motion to Dismiss, ER-017-022. The parties had never argued that the TSA screener who injured Leuthauser may have been law enforcement, and Leuthauser was explicit in

her opposition to the motion that she was not arguing the same; the district court's need to be satisfied as to this matter was entirely *sua sponte*. *Id*., ER-022.

On August 31st, 2020, the Eighth Circuit came to the opposite conclusion in a different case, and a motion to reconsider was filed in this case on the same day. Dist. Ct. Docket, ER-031; *Iverson v. United States*, 973 F.3d 843 (8th Cir. 2020). The motion was denied on October 28th, 2020, with the court noting it would not reconsider based on a foreign circuit's holding[6]. Order Denying Motion for Reconsideration, ER-023-027.

After depositions were completed, the government moved for summary judgment on July 1st, 2021, arguing, *inter alia*, that the screener was not law enforcement. Leuthauser again conceded the same, and the district court dismissed the action based on its prior holding that non-law enforcement TSA screeners are not "investigative or law enforcement officers" on March 9th, 2022.

A timely notice of appeal was filed on March 14th, 2022.

[6] For the purpose of clarity, the court below did not reconsider and come to the same conclusion; it refused to reconsider at all. Order Denying Reconsideration, ER-025 ("Absent new binding authority—let alone a strong consensus of persuasive authority—this court will not reconsider the reasoning in its dismissal order").

SUMMARY OF THE ARGUMENT

Congress did not leave the courts in the dark as to what they meant when they spoke of "investigative or law enforcement officers" in the Federal Tort Claims Act. Instead, they provided a definition using unambiguous, simple, and clear words:

> "For the purpose of this subsection, 'investigative or law enforcement officer' means any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law."

28 U.S.C. § 2680(h). As the primary job responsibility of TSA screeners, as defined by federal law, is to search people and things as they traverse the nation's airport, TSA screeners meet this definition when using a plain reading of the statute, unadulterated by attempts to manipulate these words to have a meaning other than that they are ordinarily understood to have.

The government places the words of the statute into a "context" where "searches" are not searches, "officers" are not officers, and "federal law" is not "federal law," and the court below adopted this context. TSA's searches do not count as searches because the word "'search' invokes traditional law enforcement responsibilities as opposed to the consensual[7], administrative screenings performed

[7] TSA screenings are not consent searches. *U.S. v. Aukai*, 497 F.3d 955, 961 (9th Cir. 2007) ("consent is not required"). Leuthauser certainly did not consent to a TSA screener putting her hands inside of her vagina.

by TSA screeners." Order Denying Motion to Dismiss, ER-019. TSA screeners are not "officers of the United States," despite holding the title "Transportation Security *Officer*" and wearing badges that read "U.S. Officer," because Congress must have meant only "those with police powers." *Pellegrino v. U.S. Transp. Sec. Admin.*, 937 F.3d 164, 193 (3rd Cir. 2019) (Krause, J., *dissenting*). And TSA does not search for "violations of Federal law" because that phrase has "criminal connotations" and therefore does not apply to administrative searches. *Id.* at 186.

To date, three circuits have decided this question. The first was the Eleventh Circuit, in a non-published, non-precedential[8] opinion where the appellant was a non-attorney, *pro se* litigant and the case was decided without the benefit of oral argument. *Corbett v. Transp. Sec. Admin.*, 568 F. App'x 690, 700–02 (11th Cir. 2014). In that case, the court adopted the second of the rationales described *supra*, holding that TSA screeners are not "officers of the United States" and therefore, notwithstanding what they are "empowered by law" to do, the law enforcement proviso does not apply to them. *Id*.

The other two circuits to decide this question are the Third and Eighth Circuits. *Pellegrino v. Transp. Sec. Admin.*, 937 F.3d 164 (3rd Cir. 2019) (*en banc*); *Iverson v. United States*, 973 F.3d 843 (8th Cir. 2020). These cases are published,

[8] *See* 11th Cir. R. 36-2.

precedential in their circuits, were argued by experienced counsel, were decided with the benefit of oral arguments, and in the case of *Pellegrino*, it was decided *en banc*[9] and with a decisive 9-4 vote. Both of these cases found that TSA screeners are covered by the law enforcement proviso because they are plainly and obviously "*empowered by law* to execute searches." *Iverson* at 851. Both cases explicitly cited the Eleventh Circuit's decision in *Corbett* and rejected it. *See also Webb-Beigel v. United States*, No. CV-18-00352-TUC-JGZ (D. Ariz., Sep. 30th, 2019) ("The Third Circuit had the benefit of deciding *Pellegrino* after extensive briefing on the issue from both sides. This appears not to have been the case in other courts," citing *Corbett* "where plaintiff filed a *pro se* complaint and appeal").

Leuthauser asks the Court to join the Third and Eighth circuits in rejecting the government's attempt to re-write the law.

[9] It is worthy of note that *Pellegrino* had been decided before this case began in the district court, and despite being the only precedential (in its circuit) decision of a Court of Appeals on the matter at the time and having been thoroughly briefed by both sides, the court below did not even mention the case in its order holding that only traditional law enforcement searches qualify. While the court below was certainly free to come to a different conclusion than that of a foreign circuit, doing so without even engaging with the foreign circuit's reasoning – especially a 36-page *en banc* opinion dedicated to nothing but the issue at hand – it is a recipe for judicial error. The district court's order on reconsideration – explicitly refusing to give its opinion reconsideration based on a new holding from another circuit – gives reason to suspect that the court simply does not appreciate the decisions of other circuits as having much value. Order on Motion for Reconsideration, ER-025.

ARGUMENT

I. The FTCA's Waiver of Sovereign Immunity Is To Be Construed Broadly

Before parsing the words of the law enforcement proviso, the Court should consider the Supreme Court's holding that the FTCA is generally to be broadly construed in favor of affording a remedy for torts by government employees. *Dolan v. U.S. Postal Serv.*, 546 U.S. 481 (2006). In *Dolan*, the Supreme Court explicitly stated that the FTCA "does not implicate the general rule that 'a waiver of the Government's sovereign immunity will be strictly construed ... in favor of the sovereign," because Congress intentionally worded the FTCA to waive sovereign immunity using "sweeping language." *Id*. at 491.

Courts in many circuits have faithfully applied *Dolan*, including in this exact context. *Pellegrino* at 171 (in considering law enforcement proviso, "if there were uncertainty about the reach of the term 'officer of the United States,' it would be resolved in favor of a broad scope."); *Iverson* at 854 (in considering law enforcement proviso, construing waiver broadly "is consistent with the Supreme Court's instructions and our sister circuits' interpretations."); *see also Bunch v. United States*, 880 F.3d 938, 944-45 (7th Cir. 2018) ("As we construe this language, we must bear in mind the Supreme Court's insistence that we not construe the waiver of sovereign immunity in the FTCA too strictly.").

Tellingly, both the Eleventh Circuit and the court below entirely neglected to engage with *Dolan*[10]. *Corbett* at 700–02. Dissenting Judges Krause in *Pellegrino* and Gruender in *Iverson* attempted to engage with *Dolan* by positing that since the law enforcement proviso is an "exception to an exception," the courts should reverse course and go back to the traditional rule of narrow construction. *Pellegrino* at 200 (Krause, J., *dissenting*); *Iverson* at 866 (Gruender, J., *dissenting*). They cite *Foster v. United States*, 522 F.3d 1071, 1079 (9th Cir. 2008), in support of construing the "exception to the exception" narrowly, but the *Foster* court was interpreting a *different* "exception to the exception," and made clear that it was "the text" and "policy rationales" of *that particular exception* that "provides some support for a narrow reading." *Id*. The majority holding in *Iverson*, interpreting *Dolan* as standing for a broad waiver of sovereign immunity "within the FTCA context," whether "analyzing an exception or an exception to the exception," makes sense in this context, for this particular statutory text, because there are no indicia that Congress intended § 2680(h) to be construed narrowly. *Iverson* at 854.

[10] A review of the briefs of the parties in *Corbett* shows that *Dolan* was not brought to the court's attention, perhaps leading to its erroneously narrow construction of the waiver provided by the law enforcement proviso.

II. TSA Searches Are "Searches"

A TSA screener's job is *almost exclusively* that of executing searches of both passengers and their property, as required by law codified in several statutes and regulations. 49 U.S.C. § 44901(a) requires "the screening of all passengers and property." 49 U.S.C. § 44902 requires TSA to promulgate regulations to deny boarding to "a passenger who does not consent to a search[11] under" §44901(a). TSA implemented §§ 44901 and 44902 with, *inter alia*, 49 C.F.R. § 1540.107(a), which provides that no one may "board an aircraft without submitting to the screening and inspection of his or her person and accessible property." And it is the Transportation Security Officers ("TSOs") – like those who injured Leuthauser – who are the ones empowered to carry these searches out. *Iverson* at 851 ("Congress thus mandated that TSOs carry out screenings and authorized physical searches as one means to complete that duty. The statute specifically authorizes federal employees, TSOs, to screen passengers and property. We consider this sufficient to conclude that they are empowered by law to conduct searches.").

[11] TSA's enabling statutes vacillate between describing this work as "searches," "screenings," "examinations," and "inspections." The statutes appear to use these words entirely interchangeably, but it matters not: just as a police officer cannot evade a search warrant requirement by describing their conduct as a "screening" or "inspection," TSA is plainly "searching" whether they call it that or not.

The court below found that "searches" are something that only law enforcement does. Order on Motion to Dismiss, ER-019. This cramped definition is without foundation. "TSO screenings are 'searches' (i) as a matter of ordinary meaning, (ii) under the Fourth Amendment, and (iii) under the definition provided in *Terry v. Ohio*, 392 U.S. 1 (1968). Attempts to distinguish (iv) between administrative and criminal 'searches' are divorced from the plain text, and any distinction, if one must be made, should account for (v) the fact that TSA searches extend to the general public and involve examinations of an individual's physical person and her property." *Pellegrino* at 172.

The court below's reasoning can only be vindicated by modifying the text of the statute to cover only "criminal searches" or "law enforcement searches." By effectively inserting the words "criminal law enforcement" between the words "execute" and "searches" in § 2680(h), the court below distinguished between checkpoint screening staff on one side of the line and TSA's federal law enforcement officers (such as federal air marshals) are on the other. Order on Motion to Dismiss, ER-020. But the text of the law plainly makes no such distinction[12], and in fact, the

[12] The *Iverson* court went a step further and found that *even if* the law did make such a distinction, TSA screeners *do* conduct searches in the criminal context because they are searching for contraband, the possession of which may be a criminal offense. "Under a heading indicating that it is discussing 'Criminal Law,' Black's defines a *search* as '[a]n examination of a man's ... person, with a view to the discovery of contraband or illicit or stolen property.' *Search*, Black's Law Dictionary (4th ed., rev. 1968). As discussed above, TSOs are given the power to execute

addition of the words "investigative or" make crystal clear that Congress intended *more* than law enforcement searches to be covered by the proviso. The existence of law enforcement employees of TSA who are empowered to conduct criminal searches does not mean that the administrative searches conducted by TSOs are not *also* "empowered by law," or that they are not *also* "searches:" the law enforcement proviso covers *both* sets of employees.

"*Searches* is neither an obscure word nor is its meaning doubtful." *Iverson* at 853 (refusing to resort to canons of construction[13] to define "searches" when the meaning is already plain); *see also Iverson* at 854 (refusing to resort to legislative history for the same reason). The Court should find that TSOs are plainly "empowered by law to execute searches."

physical searches, such as pat downs, with the intent of finding weapons, explosives, or other prohibited items. So even in the criminal context, TSOs' screenings constitute *searches*." *Iverson* at 853.

[13] Resorting to canons of construction would not be particularly helpful to the government anyway. The *Pellegrino* court indulged the government's insistence that *noscitur a sociis* resolves the statutory scope in their favor and found the canon to be "of little help" because the phrases are listed in the disjunctive. *Pellegrino* at 174, 175.

III. Transportation Security Officers Are "Officers"

The Eleventh Circuit in *Corbett*, and the dissenting judge in *Iverson*, found (and the government argued in the court below) that Transportation Security Officers for the United States Transportation Security Administration are not "officers of the United States." *Corbett* at 700-02, *Iverson* at 855-68 (Gruender, J., *dissenting*). They argue that we must distinguish "officers" from "employees" and that the law enforcement proviso cannot apply to the latter.

As a threshold matter, TSA screeners, including the ones who injured Plaintiff, hold the title "Transportation Security Officer, and TSOs wear uniforms with badges that prominently display the title 'US Officer[14].'" *Pellegrino* at 170.

[14] It should be noted that TSA purposely added "Officer" badges to their checkpoint screeners' uniforms in 2008 to command respect from the public. *See Pellegrino* at 170, fn. 1. The badge on the left is that of a TSO. The badge on the right is that of a TSA federal law enforcement officer (air marshal). One is an "Officer of the United States" and the other is not??

"Officer of the United States" is more broad than "Law Enforcement Officer of the United States, and in both traditional and contemporary usage of the word "officer" harmonizes with the role TSA screeners perform:

> "'Ordinarily, a word's usage accords with its dictionary definition.' *Yates v. United States*, 135 S. Ct. 1074, 1082 (2015). Under one prominent dictionary definition shortly before 1974, the year of the proviso's enactment, an officer 'serve[s] in a position of trust' or 'authority,' especially as 'provided for by law.' *Officer*, Webster's Third New International Dictionary (1971); *see also Officer*, Black's Law Dictionary (4th ed. rev. 1968) ('[A]n officer is one holding a position of trust and authority…'). TSOs satisfy this definition, as they are 'tasked with assisting in a critical aspect of national security — securing our nation's airports and air traffic.' *Vanderklok v. United States*, 868 F.3d 189, 207 (3d Cir. 2017). To take another definition from the time, officers are 'charged' by the Government 'with the power and duty of exercising certain functions . . . to be exercised for the public benefit.' *Officer*, Black's Law Dictionary, *supra*. TSOs qualify under this definition as well, as they perform 'the screening of all passengers and property,' 49 U.S.C. § 44901(a), to protect travelers from hijackings, acts of terror, and other threats to public safety. For good reason, the role is Transportation Security Officer, and TSOs wear uniforms with badges that prominently display the title 'Officer.' Hence they are 'officer[s]' under the proviso."

Pellegrino at 170. *Iverson* held the same:

> We also conclude that TSOs are officers. They are "charged with a duty," *Officer*, Webster's Third New Int'l Dictionary (1971), and "charged by a superior power ... with the power and duty of exercising certain functions." *Officer*, Black's Law Dictionary (4th ed., rev. 1968). Congress, by statute, charged TSOs with the power to conduct airport screenings. See 49 U.S.C. § 44901.
>
> Those screenings are a "function[ ] of the government ... exercised for the public benefit." *Officer*, Black's Law Dictionary (4th ed., rev. 1968). Specifically, the screenings ensure that no passenger enters a plane with

> a prohibited item, including "weapons, explosives, and incendiaries." 49 C.F.R. § 1540.5 (defining "Screening function"). This function protects passenger safety and national security.
>
> Further, TSOs "serve in a position of ... authority." *Officer*, Webster's Third New Int'l Dictionary (1971). The TSA holds them out to the public as officers through their title and uniforms. It does so to ensure the public respects them.

Iverson at 848.

In addition to the sound reasoning of the *Pellegrino* and *Iverson* courts, there is another fundamental reason why we should not construe "officers of the United States" to speak only of law enforcement officers: adopting the logic that "Officers of the United States" speaks only traditional law enforcement officers would mean that when Congress said "investigative or law enforcement officers," they intended to cover the exact same group of people as if they had only said "law enforcement officers." This converts the words "investigative or" into surplusage. When possible, "we should interpret the standard to give effect to each word and clause." *Canyon Fuel Co. v. Sec'y of Labor*, 894 F.3d 1279, 1289 (10th Cir. 2018).

IV. TSA Is Searching "For Violations of Federal Law"

The government also argued in the court below that TSA does not search "for violations of Federal law" because this phrase implies a criminal law enforcement

context. This argument has not had much success in the courts, but we address it and to do so, we must return again to the text of the statute:

> "For the purpose of this subsection, 'investigative or law enforcement officer' means any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law."

§ 2860(h). "To begin, the phrase 'for violations of Federal law' may not even apply to the power to 'execute searches.' When interpreting a statute that includes a list of terms or phrases followed by a limiting clause, that clause should ordinarily be read as modifying only the noun or phrase that it immediately follows." *Pellegrino* at 177 (*cleaned up*).

But this matters not: TSA screeners are clearly looking "for violations of Federal law" when they are conducting their searches. Weapons and explosives are banned from entering the secure area of the airport by federal law. 49 U.S.C. § 46505 (possession subject to *criminal* penalties). Surely it is not Defendant's position that "preventing weapons from entering" is anything but of paramount importance on the list of daily tasks for a TSA screener. It is indisputable that bringing a gun past the checkpoint is a violation of federal law and that TSA's searches are aimed at stopping that violation of federal law. And, even for prohibited-but-not-a-crime-to-possess items, such as water bottles over 3.4 oz, it is still federal law that they may not enter. "The phrase 'for violations of Federal law'

sweeps notably broader than other statutes that specify violations of *criminal* law." *Pellegrino*[15] at 177.

Just because a TSO, upon uncovering a violation of federal law, must contact a law enforcement official to make the arrest, does not mean that the search itself was not intended to find violations of federal law. Just because a TSO may also be looking for items that are prohibited by federal law, even if the items are not contraband subjecting the person in possession to criminal penalties, from entering the secure area does not mean the "search" is not looking "for a violation of federal law." And, if Congress had intended "violations of Federal law," to be limited only to violations of federal *criminal* law, they have shown that they are more than able to make such a distinction. See 18 U.S.C. § 115(c)(1) ("any violation of Federal criminal law"); 5 U.S.C. § 8331(20) ("offenses against the criminal laws of the United States"). Congress here was simply trying to distinguish between those who are searching pursuant to *state* law versus those who are searching pursuant to *federal* law. TSOs are unquestionably the latter.

[15] After failing at this argument in *Pellegrino*, TSA opted not to make it in *Iverson*. See *Iverson* at 853, fn. 3. It is unclear why they have brought it back in this case, as no court of which the undersigned counsel is aware has ever accepted it.

CONCLUSION

When someone is injured in this country, they are entitled to be made whole in a court of law, and Congress passed the Federal Tort Claims Act to ensure that this is true even if the injury was caused by a federal employee. TSA screeners do not deserve special immunity, and Congress did not grant them special immunity. Instead, Congress provided that those who are empowered by law to conduct searches – regardless of whether those searches are criminal in nature – are to be liable for the types of torts likely to occur if that power is misused. *That* is the correct "context" to be considered.

There is not a reason in the world for the Court to insert words into a statute to immunize TSA screeners who *intentionally injure* the public. The judgment of the court below should be **reversed**.

Dated: Los Angeles, CA
May 18th, 2022

Respectfully submitted,

/s/Jonathan Corbett

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CERTIFICATE OF COMPLIANCE

This document complies with the type volume limit of Fed. R. App P. 27(d)(2)(A) because it contains approximately 5,000 words. This document complies with the type face and style requirements of Fed. R. App. P. 32(a)(5) and 32(a)(6) because it uses a 14-point proportionally spaced font.

Dated: Los Angeles, CA
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CERTIFICATE OF SERVICE

I, Jonathan Corbett, certify that on May 18th, 2022, I effected service of this brief upon all appellees by using the CM/ECF system.

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PAPER COPY CERTIFICATION

I, Jonathan Corbett, certify that this paper copy is identical to the electronically filed version.

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