UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CARLOS SEBASTIAN ZAPATA RIVERA,	)	
Plaintiff,	)	
v.	)	Civil Action No. 4:25-cv-13850
DAVID JACKSON,	)	
Defendant.	)	

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT DAVID JACKSON'S MOTION TO DISMISS

Date: June 18, 2026

Respectfully submitted,

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Plaintiff Carlos Sebastian Zapata Rivera claims he was subjected to excessive force in violation of the Fourth Amendment during a stop conducted by a U.S. Immigration and Customs Enforcement ("ICE") Fugitive Operations team, who sought to arrest Plaintiff's wife. Plaintiff asserts one claim, under *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), against ICE Acting Supervisory Detention & Deportation Officer David Jackson. Plaintiff, however, has no cause of action against Officer Jackson because Plaintiff's implied damages claim presents a new context and special factors counsel against recognition of Plaintiff's novel *Bivens* claim. Even if this court were to take the extraordinary step of creating a new implied damages remedy for Plaintiff, Officer Jackson is shielded from liability by virtue of qualified immunity. Plaintiff includes in his complaint stills that appear to be from a video and asserts those stills capture the very moment Officer Jackson employed deadly force against him, in the form of what Plaintiff labels a "carotid restraint." The actions Plaintiff ascribes to Officer Jackson and the objective facts this Court may consider on a motion to dismiss, however, do not support Plaintiff's assertions that Officer Jackson used a carotid restraint or unreasonable force under clearly established law. Accordingly, the Complaint should be dismissed.

FACTUAL BACKGROUND

Plaintiff alleges that he was born in Ecuador. He says he came to the United States and in February 2023, was arrested by Border Patrol and placed in removal proceedings. Am. Compl, ECF No. 21, at ¶¶ 8-9. Plaintiff has since applied for asylum. His removal proceedings are ongoing, and his asylum application is pending. *Id.* at ¶ 10.

On November 6, 2025, ICE officers stopped Plaintiff, who was driving his wife to work with their one-year-old daughter. *Id.* at ¶¶ 30-32. According to Plaintiff, an ICE Fugitive Operations team stopped the car to arrest his wife and place her in immigration custody. *Id.* at

¶ 32. Once stopped, Plaintiff's wife took their daughter from the back seat and positioned her between herself and Plaintiff in the front seat of the car. *Id.* at ¶ 36. Plaintiff alleges ICE officers approached the car and explained they intended to arrest Plaintiff's wife. *Id.* at ¶ 40. Plaintiff claims his wife "intended to comply," but he and his wife remained in the vehicle, sandwiching their infant child between them, "terrified that they would be permanently separated from" her. *Id.* at ¶¶ 41, 44. This led to ICE officers opening the front and rear driver's side doors of Plaintiff's car, climbing into the back seat behind Plaintiff, and standing next to the driver's side door. *Id.* at ¶ 45. Plaintiff alleges officers at various times grabbed him and his daughter. *Id.* at ¶¶ 43, 45. These attempts to separate Plaintiff and his daughter from his wife proved unsuccessful.

Members of the ICE Fugitive Operations team then contacted Officer Jackson, who traveled to the scene of the vehicle stop. *Id.* at ¶ 46. Sometime thereafter, as Plaintiff asserts, Officer Jackson decided to arrest Plaintiff too and climbed through Plaintiff's passenger side door, positioning himself over Plaintiff's wife and daughter. *Id.* at ¶¶ 48, 50. Plaintiff alleges Officer Jackson applied pressure forcefully with his thumbs on the sides of Plaintiff's neck and to Plaintiff's carotid arteries. *Id.* at ¶ 51. Plaintiff fails to describe what, if any, orders Officer Jackson gave to him and whether Plaintiff complied with those orders before Officer Jackson took those actions. Plaintiff includes in his complaint still images that depict, according to Plaintiff, Officer Jackson applying a carotid restraint on Plaintiff. *See id.* at 14, Fig. 6. Plaintiff contends that Officer Jackson's use of a carotid restraint caused Plaintiff to lose consciousness and experience seizure-like movements. *Id.* at ¶¶ 57, 58. Shortly after Officer Jackson released his hold, Plaintiff regained consciousness, was ordered out of his car, and detained while the Fugitive Operations team arrested his wife, who was taken to an immigration detention facility. *Id.* at ¶¶ 61-63, 65. Plaintiff was released from the scene with his daughter. *Id.* at ¶ 66.

Plaintiff sues Officer Jackson, asserting an excessive force claim based on Officer Jackson's purported use of a carotid restraint to separate Plaintiff from his wife so that she could be arrested. Plaintiff claims that Officer Jackson's conduct resulted in injuries, which include physical pain and psychological ailments that afflict Plaintiff to this day. *Id*. at ¶ 70.

STANDARD OF REVIEW

Dismissal is required under Federal Rule of Civil Procedure 12(b)(6) when a plaintiff fails to plead "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) (citation and internal quotation marks omitted). A claim is plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. Although the court must assume the truth of well-pleaded factual allegations in ruling on a motion to dismiss, "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions." *Id*. A court need not accept inferences drawn by plaintiffs if such inferences are unsupported by the facts set out in the complaint. *See Wescott v. Stanfill*, 171 F.4th 534, 540 (1st Cir. 2026) ("'Because only well-pleaded facts are taken as true,' . . . [a court] need not 'accept a complainant's unsupported conclusions or interpretations of law,' . . . nor must [a court] 'credit bald assertions' or 'subjective characterizations.'" (quoting *United States v. AVX Corp.*, 962 F.2d 108, 115 (1st Cir. 1992)). "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability," it has failed to state a claim. *Iqbal*, 556 U.S. at 678 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007)). Thus, if the facts presented by the plaintiff do not "permit the court to infer more than the mere possibility of misconduct, the complaint has alleged–but it has not 'show[n]'–'that the pleader is entitled to relief,'" and dismissal should be granted. *Id.* at 679 (citing Fed. R. Civ. P. 8(a)(2)).

ARGUMENT

I. The Court Should Refrain from Expanding Bivens.

Supreme Court precedent forecloses recognition of Plaintiff's novel *Bivens* claim. In *Bivens*, the Court "recognized for the first time an implied private action for damages against federal officers alleged to have violated a citizen's constitutional rights." *Iqbal*, 556 U.S. at 675. But a cause of action against a federal employee individually under the Constitution is "not an automatic entitlement," *Wilkie v. Robbins*, 551 U.S. 537, 550 (2007), and there are only three, decades-old cases in which the Court ever recognized such a remedy, see *Bivens*, 403 U.S. 388; *Davis v. Passman*, 442 U.S. 228 (1979); *Carlson v. Green*, 446 U.S. 14 (1980). Since "those decisions, however, the [Supreme] Court [has] changed course," rejecting requests to extend *Bivens* to new contexts or categories of defendants, and calling such extensions "a 'disfavored' judicial activity." *Hernandez v. Mesa*, 589 U.S. 93, 99, 101-02 (2020) (quoting *Ziglar v. Abbasi*, 582 U.S. 120, 135 (2017)). The Court "ha[s] come 'to appreciate more fully the tension between' judicially created causes of action and 'the Constitution's separation of legislative and judicial power,'' *Egbert v. Boule*, 596 U.S. 482, 491 (2022) (quoting *Hernandez*, 589 U.S. at 100). The Court recognized that a damages action in a new setting will "create substantial costs" and entail significant "time and administrative costs." *Abbasi*, 582 U.S. at 134. It explained, "Congress is far more competent than the Judiciary to weigh such policy considerations" and to decide whether to impose a new substantive legal liability. *Egbert*, 596 U.S. at 491.

To safeguard the constitutional separation of powers, the Supreme Court has established stringent criteria for assessing whether an implied damages remedy is available. "First, [courts must] ask whether the case presents 'a new *Bivens* context'—i.e., is it 'meaningful[ly]' different from the three cases in which the Court has implied a damages action." *Id.* at 492 (quoting *Abbasi*, 582 U.S. at 139). Even small differences suffice for a case to differ in a meaningful way.

Abbasi, 582 U.S. at 147, 149. And a court cannot extend *Bivens* to a new context based solely on "'parallel circumstances'" with the facts in the three recognized *Bivens* cases; a plaintiff must also "satisf[y] the 'analytic framework' prescribed by the last four decades of intervening case law." *Egbert*, 596 U.S. at 501 (quoting *Abbasi*, 582 U.S. at 139).

Second, courts must consider whether "special factors" counsel against implying a new *Bivens* remedy without "affirmative action by Congress." *Abbasi*, 582 U.S. at 136 (quotation marks omitted). The special factors analysis "concentrate[s] on whether the Judiciary is well suited, absent congressional action or instruction, to consider and weigh the costs and benefits of allowing a damages action to proceed." *Id*. To respect the legislative role, courts must refrain from creating a damages remedy if "there is any rational reason (even one) to think that Congress is better suited" to make that determination. *Egbert*, 596 U.S. at 496. Put another way, the question is not "whether a court can determine a damages amount" but "[r]ather, . . .whether 'there are sound reasons to think Congress might doubt the efficacy or necessity of a damages remedy' at all." *Id.* at 501 (quoting *Abbasi*, 582 U.S. at 137). And therefore, "[w]hen asked to imply a *Bivens* action, '[the Court's] watchword is caution,'" *id.* at 491 (quoting *Hernandez*, 589 U.S. at 101), "[b]ecause [the Court's] cases have made clear that, in all but the most unusual circumstances, prescribing a cause of action is a job for Congress, not the courts," *id.* at 486.

A. Plaintiff's Claim Presents a New Context.

Plaintiff's Fourth Amendment claim presents a new context for at least four reasons. At the outset, Plaintiff's claim is directed against a new category of defendant—an ICE officer. That, standing alone, "squarely place[s] the case into a new context." *Arias v. Herzon*, 150 F.4th 27, 38 (1st Cir. 2025); *see also id.* at 49 n.9 (emphasizing "that other excessive force claims may, in fact, present a new context" when, "for example, the plaintiff alleged claims against a new

category of defendants"); *Quinones-Pimentel v. Cannon*, 85 F.4th 63, 70 (1st Cir. 2023). *Bivens* involved a claim against officers of the Federal Bureau of Narcotics, but Plaintiff asks this Court to create a cause of action against an ICE officer, who is supervised and directed by a wholly distinct agency, the U.S. Department of Homeland Security ("DHS"). The Supreme Court has never approved of a *Bivens* remedy against ICE officers and has twice expressly declined extending *Bivens* to excessive force claims against DHS officers. *Hernandez*, 589 U.S. at 96-97; *Egbert*, 596 U.S. at 494. In *Egbert*, the Supreme Court recognized that the Ninth Circuit properly "conceded" that the claims there arose in a new context simply because Agent Egbert was a CBP agent. *Id.*; *see also Boule v. Egbert*, 998 F.3d 370, 387 (9th Cir. 2021). And circuit courts are uniform in holding that claims against ICE officers arise in a new context. *See, e.g.*, *Enriquez-Perdomo v. Newman*, 149 F.4th 623, 635 (6th Cir. 2025) (finding an ICE officer "a new defendant for purposes of *Bivens*"); *Hernandez v. Causey*, 124 F.4th 325, 333 (5th Cir. 2024) ("Unlike the Federal Bureau of Narcotics, which falls under the Department of the Treasury, both ICE and Border Patrol fall under the Department of Homeland Security—a 'new category of defendants.'"); *Tun-Cos v. Perrotte*, 922 F.3d 514, 525 (4th Cir. 2019) ("So it is in this case that the plaintiffs seek to extend *Bivens* liability to a new category of defendants—ICE agents, who are charged with the enforcement of the immigration laws."); *Barry v. Anderson*, No. 22-3098, 2023 U.S. App. LEXIS 32209, at *6 (3d Cir. Dec. 6, 2023) (same).

Second, although Plaintiff brings a claim under the Fourth Amendment, this case is nothing like *Bivens*. The claim here does not arise from a warrantless entry by narcotics officers who "manacled" a plaintiff and searched his home "from stem to stern." *Bivens*, 403 U.S. at 389. Instead, Plaintiff's claim stems from Officer Jackson's actions during a vehicle stop that an ICE Fugitive Operations team conducted on a public street for the purpose of placing Plaintiff's wife

in civil immigration custody.[1] In *Egbert*, the Court observed that the context of the plaintiff's claims against an immigration officer using force against a citizen on his own property was new even though the plaintiff's allegations were "similar" to the claims in *Bivens* itself and "arguably present[ed] almost parallel circumstances or a similar mechanism of injury." 596 U.S. at 495. Likewise, here: the contextual novelty of Plaintiff's *Bivens* claim is apparent; "[a]s these descriptions demonstrate, the differences are plenty," *Quinones-Pimentel*, 85 F.4th at 70-71.

Another meaningful difference is that Officer Jackson operated under a different "statutory or other legal mandate" than the officers in *Bivens*. *Abbasi*, 582 U.S. at 140. The immigration laws under which ICE officers operate and the legal mission of ICE undoubtedly establish that this case arises in a new context. *See Enriquez-Perdomo*, 149 F.4th at 634 ("Therefore, because [the plaintiff's] seizure took place in the context of immigration it must constitute a new *Bivens* context."); *Tun-Cos*, 922 F.3d at 523-24 (recognizing new context because of differences between enforcement of immigration and criminal law); *Barry*, 2023 U.S. App. LEXIS 32209, at *6-7 ("Because [the plaintiff's] case is also against an ICE agent (a new category of defendant) enforcing immigration law (a new statutory mandate), it arises in a new *Bivens* context."). Indeed, "[e]very other circuit (except the Ninth [in the decision *Egbert*

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[1] Although the Court of Appeals for the First Circuit has cast doubt, in the context of a Fourth Amendment excessive force claim, on whether an arrest conducted in "the parking lot of a privately owned shopping center" is meaningfully distinct from *Bivens*, the First Circuit has acknowledged "that the place where an alleged Fourth Amendment violation occurs can be a meaningful difference." *Arias*, 150 F.4th at 38. Here, Plaintiff's arrest occurred during an immigration stop on a public street. *See* Am. Compl. ¶ 33. The location and context of Plaintiff's alleged Fourth Amendment violation raises heightened concerns about officer safety, see *Arizona v. Johnson*, 555 U.S. 323, 330 (2009) (noting that traffic stops are "especially fraught with danger to police officers"), and do not implicate the special protections afforded to the home by the Fourth Amendment, see *Silverman v. United States*, 365 U.S. 505, 511 (1961) ("At the very core [of the Fourth Amendment] stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion."), which were at play in *Bivens*.

reversed]) faced with an invitation to expand *Bivens* to the border/immigration context has held firm." *Elhady v. Unidentified CBP Agents*, 18 F.4th 880, 886-87 (6th Cir. 2021) (collecting cases). Because Plaintiff's claim arises from the enforcement of immigration laws, it falls outside the context of *Bivens*.

Finally, Plaintiff's claim implicates "potential special factors that previous *Bivens* cases did not consider," which constitutes a "new context." *Egbert*, 596 U.S. at 492; *Arias*, 150 F.4th at 36 ("[T]he special factor that counsels against extending the *Bivens* remedy to a new context also may be a factor that in and of itself makes the context new."). As explained below, were the Court to create a cause of action for Plaintiff, it would pose a serious "risk of disruptive intrusion by the Judiciary into the functioning of other branches." *Abbasi*, 582 U.S. at 140. Courts have recognized that it is the responsibility of Congress to formulate the remedy that Plaintiff asks this Court to fashion. *See, e.g.*, *Enriquez-Perdomo*, 149 F.4th at 634-35; *Alvarez v. U.S. Immigr. & Customs Enf't*, 818 F.3d 1194, 1210 (11th Cir. 2016).

Because Plaintiff's claim constitutes a new context, this Court now "faces only one question: whether there is *any* rational reason (even one) to think that Congress is better suited to 'weigh the costs and benefits of allowing [Plaintiff's] damages action to proceed.'" *Egbert*, 596 U.S. at 496 (quoting *Abbasi*, 582 U.S. at 136); *see also Quinones-Pimentel*, 85 F.4th at 70 (observing that "an emphasis" of "the modern *Bivens* analysis" is "avoiding any extension of *Bivens* to meaningfully new factual circumstances").

B. Special Factors Preclude Judicial Creation of a Damages Action.

"Because recognizing a *Bivens* cause of action is an extraordinary act that places great stress on the separation of powers," courts "have a concomitant responsibility to evaluate any grounds that counsel against *Bivens* relief." *Egbert*, 596 U.S. at 497 n.3 (internal quotation marks

and citations omitted). Courts are tasked with evaluating whether there are reasons to think Congress is better positioned to authorize a damages action in the broad context or class of cases implicated by a plaintiff's claim. *See id.* at 496.

The Supreme Court has "not attempted to 'create an exhaustive list' of factors that may provide a reason not to extend *Bivens*, but [has] explained that 'central to [this] analysis' are 'separation-of-powers principles.'" *Hernandez*, 589 U.S. at 102. "[I]t is a significant step under separation-of-powers principles for a court to . . . create and enforce a cause of action for damages against federal officials." *Abbasi*, 582 U.S. at 133. "The question is 'who should decide' whether to provide for a damages remedy, Congress or the courts?" *Id*. at 135 (quoting *Bush v. Lucas*, 462 U.S. 367, 380 (1983)). "If there is a rational reason to think that the answer is 'Congress'—as it will be in most every case—no *Bivens* action may lie." *Egbert*, 596 U.S. at 492. Many special factors foreclose implying a damages remedy here.

Foremost, one "convincing reason" why this Court should not step into the shoes of Congress or the Executive Branch by creating a new *Bivens* remedy for Plaintiff is that the Government has already "provided alternative remedies for aggrieved parties in [Plaintiff's] position that independently foreclose a *Bivens* action here." *Egbert*, 596 U.S. at 497. In *Egbert*, the Court explicitly identified, as alternative remedies that foreclose a *Bivens* remedy, 8 U.S.C. § 1103(a)(2), which empowers the Secretary of Homeland Security to "control, direct[], and supervis[e] . . . all employees," as well as 8 C.F.R. §§ 287.10(a)-(b), which empowers the Department of Homeland Security to investigate "[a]lleged violations of the standards for enforcement activities" and accept grievances from "[a]ny persons wishing to lodge a complaint." *Id*. *Egbert* determined that these statutes and regulations afforded individuals complaining of excessive force by CBP officers an alternative "safeguard[]" that "secure[s]

adequate deterrence." *Id.*; *see also Hernandez*, 124 F.4th at 334 (citing 6 U.S.C. §§ 253-254) (observing that "Congress has authorized the Secretary of the Department of Homeland Security to investigate 'noncriminal allegations of misconduct' and 'impose disciplinary action on any employee of U.S. Immigration and Customs Enforcement'"). Officer Jackson is subject to the same DHS statute and regulations relied on by *Egbert*, and the same grievance procedure is available to Plaintiff. *See Enriquez-Perdomo*, 149 F.4th at 636-37. "So long as Congress or the Executive has created a remedial process that it finds sufficient to secure an adequate level of deterrence," this Court should not seek to "superimpos[e] a *Bivens* remedy" and, thereby, "second-guess th[e] calibration" of that process. *Egbert*, 596 U.S. at 498. This case is indistinguishable from *Egbert* on this front.

Likewise, if the Court were to create a cause of action for Plaintiff, it would pose a serious "risk of disruptive intrusion by the Judiciary into the functioning of other branches." *Abbasi*, 582 U.S. at 140; *Hernandez*, 589 U.S. at 102 (considering "the risk of interfering with the authority of the other branches."). When Congress (or the Executive) has plenary power over the subject matter for which an implied damages remedy is sought, courts have found that to be a factor weighing heavily against permitting a remedy. *See, e.g.*, *De La Paz v. Coy*, 786 F.3d 367, 379 (5th Cir. 2015) (finding that, "[p]articularly in the immigration context, a judicially created *Bivens* remedy is superimposed on the other branches' constitutional authority," which "counsel[s] or demand[s] hesitation by the judiciary in fostering litigation of this sort"); *see also Reno v. Flores*, 507 U.S. 292, 305 (1993) (noting that the government's relationship with alien visitors has been committed to Congress and "[o]ver no conceivable subject is the legislative power of Congress more complete"). Plaintiff invites the Court to intrude into the arena of immigration law, which is established by Congress and enforced by the Executive. The INA

itself, a complex and comprehensive statutory scheme, shows that Congress has made deliberate choices, exercising careful oversight and control over matters relating to immigration. *Tun-Cos*, 922 F.3d at 526; *Mirmehdi v. United States*, 689 F.3d 975, 982 (9th Cir. 2012).

Relatedly, the Supreme Court has counseled against permitting a *Bivens* remedy when doing so would be inconsistent with Congress' frequent exercise of its authority in the field. *Abbasi*, 582 U.S. at 136-37. Regarding the immigration enforcement context in particular, courts have observed that "Congress's failure to include monetary relief can hardly be said to be inadvertent, given that despite multiple changes to the structure of appellate review in the [INA], Congress never created such a remedy." *Mirmehdi*, 689 F.3d at 982; *Tun-Cos*, 922 F.3d at 526 (explaining "immigration enforcement is a context in which Congress has designed its regulatory authority in a guarded way, making it less likely that Congress would want the Judiciary to interfere"); *Alvarez*, 818 F.3d at 1209 (stating it was "satisfied that Congress has weighed the policy considerations in favor of and against providing damages" because analysis of the INA "confirms the conclusion that the congressional decision not to provide a private action for damages was deliberate"); *De La Paz*, 786 F.3d at 377 (concluding that "legislative developments pertaining to immigration leads ineluctably to the conclusion that Congress's failure to provide an individual damages remedy has not been inadvertent").

Finally, a *Bivens* remedy is unavailable where "judicial intrusion into a given field might be harmful or inappropriate" or even raises "the potential for such consequences." *Egbert*, 596 U.S. at 496 (quotation marks omitted). While it is difficult to "predict the 'systemwide' consequences of recognizing [Plaintiff's] cause of action under *Bivens,*" and "[t]hat uncertainty alone is a special factor that forecloses relief," *id.* at 493 (quoting *Abbasi*, 582 U.S. at 136), it is clear that the consequences of judicial usurpation of Congress' role in assessing whether Officer

Jackson should be held personally liable would extend beyond just the facts of this case. The Supreme Court has explained that a "court should not inquire whether *Bivens* relief is appropriate in light of the balance of circumstances in the 'particular case'"; instead, the "proper inquiry here is whether a court is competent to authorize a damages action not just against [one particular agent] but against Border Patrol agents generally. The answer, plainly, is no." *Id.* at 496. So, too, here. Questions of liability of ICE officers during a civil immigration enforcement operation require conducting a cost-benefit analysis that is better left to Congress. *Egbert*, 596 U.S. at 492; *Alvarez*, 818 F.3d at 1211 (noting the prospect of widespread litigation weighs against allowing a *Bivens* remedy in the immigration enforcement context); *De La Paz*, 786 F.3d at 379 ("[E]xtending *Bivens* suits to the immigration context could yield a tidal wave of litigation."). Instead, Congress, in the first instance, should balance the considerations and decide whether to devise such a class of damages claims. *Abbasi*, 582 U.S. at 136. Although each factor catalogued above counsels hesitation, in the aggregate they leave no doubt that any decision to craft a damages remedy for a claim like the one Plaintiff presses here lies with Congress, not the courts. Plaintiff's *Bivens* claim should be dismissed.

II. Officer Jackson Is Entitled to Qualified Immunity.

Even if the Court were to extend *Bivens* here, it should still dismiss Plaintiff's Complaint because Officer Jackson is entitled to qualified immunity. Qualified immunity shields public officials "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). To overcome qualified immunity, plaintiff must "plead[] facts showing (1) that the official violated a statutory or constitutional right, and (2) that the right was 'clearly established' at the time of the challenged conduct." *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011) (quoting *Harlow*, 457 U.S. at 818). Because the doctrine is not a "mere

defense to liability" but "an immunity from suit," early resolution carries special import. *Hunter v. Bryant*, 502 U.S. 224, 227 (1991) (quoting *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985)).

The Fourth Amendment prohibits force that is objectively unreasonable. *Graham v. Connor*, 490 U.S. 386, 388 (1989). To establish an excessive force claim, a plaintiff must allege "that the defendant employed force that was unreasonable under all the circumstances." *Morelli v. Webster*, 552 F.3d 12, 23 (1st Cir. 2009); *Gray v. Cummings*, 917 F.3d 1, 8 (1st Cir. 2019). "[P]roper application" of the reasonableness standard "requires careful attention to the facts and circumstances of each particular case." *Graham*, 490 U.S. at 396. Courts must judge the use of force "from the perspective of a reasonable officer on the scene." *Id*.

A. Plaintiff Fails to Plead Facts Showing a Fourth Amendment Violation.

The facts available for this Court to consider on a motion to dismiss do not amount to a Fourth Amendment violation, let alone a clearly established one. Critically, the facts fail to support Plaintiff's conclusory allegation that Officer Jackson used a carotid restraint. While Plaintiff is correct that the carotid hold is considered deadly force under DHS guidelines, see Am. Compl. ¶ 27.d., the actions Plaintiff describes and captured by stills do not demonstrate (nor do they lead to a reasonable inference that) Officer Jackson employed that technique.

The Supreme Court has detailed how a law enforcement officer performs a carotid hold:

> In the "carotid" hold, an officer positioned behind a subject places one arm around the subject's neck and holds the wrist of that arm with his other hand. The officer, by using his lower forearm and bicep muscle, applies pressure concentrating on the carotid arteries located on the sides of the subject's neck. The "carotid" hold is capable of rendering the subject unconscious by diminishing the flow of oxygenated blood to the brain.

Los Angeles v. Lyons, 461 U.S. 95, 97 n.1 (1983). The carotid hold requires an officer to use his lower arm and bicep to apply pressure to both sides of a subject's neck, i.e., bilateral pressure. *Id*. at 97 n.1*; see also Valenzuela v. City of Anaheim*, No. SACV 17-00278-CJC (DFMx), 2020 U.S.

Dist. LEXIS 257698, at *3-4 (C.D. Cal. Mar. 11, 2020) ("The carotid hold involves wrapping an officer's arm around a suspect's neck, and attempting to apply bilateral pressure only to the sides of the neck."). This is because, "[w]hen applied correctly, the [bilateral pressure of the] hold temporarily restricts blood flow from the carotid arteries to the brain." *Id.* at *4. The scientific literature Plaintiff cites in his complaint, see Am. Compl. at 5 n.3, aligns with the case law. *See* Jillian M. Berkman, MD, Joseph A. Rosenthal, MD, PhD, Altaf Saadi, MD, MSc, "Carotid Physiology and Neck Restraints in Law Enforcement: Why Neurologists Need to Make Their Voices Heard," 78 JAMA Neurology 267, 267 (2021) (describing carotid restraint as a "stranglehold" that "restrict[s] blood flow to the brain by applying pressure to both sides of the neck" and "involve[s] using an officer's arm to restrain someone's neck," before noting "there is no failsafe for *bilateral* loss of carotid artery blood flow") (emphasis added).

Plaintiff's description in the Complaint of Officer Jackson's actions—that he positioned his thumbs on the sides of Plaintiff's neck and applied pressure before continuing to apply pressure unilaterally with one hand, Am. Compl. ¶¶ 29, 59—bears no resemblance to a carotid restraint or carotid hold as described by the Supreme Court and lower courts. *See Lyons*, 461 U.S. at 97 n.1; *Valenzuela*, 2020 U.S. Dist. LEXIS 257698, at *3-4. Although, Plaintiff includes in his complaint still images that purportedly depict Officer Jackson "appl[ying] the carotid restraint to" Plaintiff, Am. Compl. at 14, Fig. 6, these stills undermine Plaintiff's characterization because they show the hands of an individual, allegedly Officer Jackson, whose thumbs are positioned on only the right side of Plaintiff's lower jawline and neck. The still images neither align with Plaintiff's allegations of Officer Jackson compressing both of Plaintiff's carotid arteries, Am. Compl. ¶ 51, nor the carotid hold technique described by courts, which requires bilateral—not unilateral—pressure to effectuate. *See Lyons*, 461 U.S. at 97 n.1. The Court should

disregard Plaintiff's conclusory (and incorrect) characterization of the technique Officer Jackson employed. *See Iqbal*, 556 U.S. at 678-79; *Turner v. Viviano*, No. 04-CV-70509-DT, 2005 U.S. Dist. LEXIS 35119, at *29 (E.D. Mich. July 15, 2005) (observing that "a lay witness's use of the phrase 'choke hold' to describe the action does no more than say that Plaintiff was held around the neck. It does not demonstrate that the officer was actually using the police technique known as 'choke-hold,' also called a 'carotid hold'").

Rather than relying on Plaintiff's characterization, the Court should focus on assessing the objective reasonableness of Jackson's actions given the totality of the circumstances. The Complaint establishes that Plaintiff, his wife, and infant child were enmeshed in the front seat of their vehicle, and that Plaintiff and his wife were effectively thwarting arrest through resistance. This is supported by the Complaint's allegations signifying Plaintiff's refusal to separate from his wife, the positioning of their daughter between them, and acknowledgement that "[a]t various times during the stop," ICE officers "physically grabbed" Plaintiff and his daughter, Am. Compl. ¶¶ 43, 45, to no avail. When Officer Jackson later arrived and decided to arrest Plaintiff, he allegedly "climbed in the front passenger's side door" and "positioned his body over [Plaintiff's wife] and [child] so that he was within reach of" Plaintiff. *Id*. at ¶¶ 48, 50.

In this context, Officer Jackson's use of his thumbs against one side of Plaintiff's neck to separate Plaintiff from his wife to permit arrest was not excessive. The facts alleged in the Complaint and the related stills are consistent with use of a pressure point technique—which DHS considers a "Soft Technique"—to gain Plaintiff's compliance and separate him from his wife to facilitate arrest. *See* "Use of Force and Restraints," ICE Performance Based National Detention Standards (Dec. 2016), at 203; Am. Compl. at 15, fig. 7; *see also Shreve v. Jessamine Cnty. Fiscal Ct.*, 453 F.3d 681, 687 (6th Cir. 2006) (upholding officers' use of force, including

the "use of pressure point submissions," because those measures "reasonably sought to motivate [the plaintiff] to produce her hands for cuffing"). In any event, "[i]n making an arrest, a police officer has 'the right to use some degree of physical coercion or threat thereof to effect it.'" *Jennings v. Jones*, 499 F.3d 2, 11 (1st Cir. 2007) (quoting *Graham*, 490 U.S. at 396). "And the law clearly allows officers to use reasonable force to effect a lawful detention, including force to overbear resistance" during vehicle stops. *Velez v. Eutzy*, 152 F.4th 292, 299, 301 (1st Cir. 2025) (motorist's resistance to efforts to remove him from his car and arrest him "justified some use of force"); *Tucker v. Boldo*, 165 F.4th 1154, 1157 (8th Cir. 2026) (concluding officer closing vehicle door on passenger leg reasonable because "reasonable officer" could have thought passenger would interfere with arrest of driver); *Helvie v. Jenkins*, 66 F.4th 1227, 1240 (10th Cir. 2023) (noting court previously upheld the degree of force against a noncompliant motorist, including pulling on driver, "using pressure points, and twisting his wrist and arm to get him out of the vehicle," after resisting arrest by bracing his legs against the floorboard and grabbing onto the steering wheel) (citing *Valencia v. De Luca*, 612 F. App'x 512, 518-19 (10th Cir. 2015)).

Furthermore, the First Circuit evaluates the reasonableness of force based, in part, on the immediacy of the force in relation to a plaintiff's resistance. *See, e.g.*, *Velez*, 152 F.4th at 301 (finding there was "no need" for an escalation of force to "multiple blows and tasing, all within less than a minute" of the officer instructing the plaintiff to exit his vehicle); *Raiche v. Pietroski*, 623 F.3d 30, 39 n.3 (1st Cir. 2010) (finding force unreasonable where plaintiff, tackled within seconds of officer arriving, "would not have had time to comply" with any lawful order). Although Plaintiff omits details about the duration of his encounter with the ICE officers and their commands, from the few facts he does include in his complaint, the Court reasonably can draw the inference that the stop was not brief. *See, e.g.*, Am. Compl. ¶ 45 (describing ICE

officers' conduct "[d]uring the course of the stop" and "at various times" to include opening Plaintiff's vehicle doors, climbing into Plaintiff's back seat, grabbing Plaintiff, using force against him, requiring the ICE team to call their supervisor, Jackson, to the scene); *Iqbal*, 556 U.S. at 664 (requiring the reviewing court to draw on its experience and common sense). Unlike in *Velez*, where the motorist's resistance "was passive and its resoluteness was untested by a conversation or the passing of even a few moments," 152 F.4th at 301, Jackson's actions only occurred after interactions between Plaintiff and other ICE officers, whose efforts to arrest Plaintiff's wife were thwarted. Jackson conferred with his team to ensure readiness before taking any action to "overbear [Plaintiff's] resistance" and facilitate arrest. *Velez*, 152 F.4th at 299. The facts in the Complaint support the reasonableness of Officer Jackson's conduct under "the totality of the circumstances," *Gray*, 917 F.3d at 8, and he is entitled to qualified immunity under the first prong of the immunity inquiry.

B. Video Reinforces the Reasonableness of Jackson's Conduct.

The stills Plaintiff embeds in his complaint appear to have been sourced from a video.[2] Because of Plaintiff's reliance on the embedded stills, under the incorporation-by-reference doctrine exception, this Court may consider the video without converting Jackson's motion into one for summary judgment. *See Watterson v. Page*, 987 F.2d 1, 3 (1st Cir. 1993); *Bowman v. Monteiro*, No. 24-CV-10850-AK, 2025 U.S. Dist. LEXIS 147091, at *7 (D. Mass. July 31, 2025)

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[2] Video of Plaintiff's encounter with ICE was published by The Boston Globe. *See* Giulia McDonnell Nieto del Rio, Laura Crimaldi & John Hilliard*, 'I Wasn't Letting Go of My Wife': Video Shows ICE Agents in Fitchburg Struggling with Man Having Apparent Seizure, Holding Toddler in Car*, Bos. Globe, Nov. 7, 2025, https://www.bostonglobe.com/2025/11/07/metro/fitchburg-video-seizure-immigration/. A shortened version was also published by ProPublica and is available at https://www.propublica.org/article/videos-ice-dhs-immigration-agents-using-chokeholds-citizens. Officer Jackson can provide a copy of either video upon request.

(applying incorporation-by-reference doctrine exception to video footage); *see also Ching ex rel. Jordan v. City of Minneapolis*, 73 F.4th 617, 620-21 (8th Cir. 2023) ("Videos of an incident are necessarily embraced by the pleadings" and thus may be considered when assessing a motion for judgment on the pleadings.). Beyond Plaintiff's apparent reliance on video of the incident in drafting his complaint, Jackson asserts qualified immunity, and courts have considered videos at the motion-to-dismiss stage in qualified-immunity cases. *See, e.g.*, *Bell v. City of S.field*, 37 F.4th 362, 364 (6th Cir. 2022) ("So when uncontroverted video evidence easily resolves a case, we honor qualified immunity's principles by considering the videos.").

The court need not credit Plaintiff's conclusory allegations about the use of a carotid hold when they are contradicted by video. *See Scott v. Harris*, 550 U.S. 372, 378-81 (2007) (refusing to adopt the plaintiff's version of facts where the videotape of the events "clearly contradicts" that version); *Baker v. City of Madison*, 67 F.4th 1268, 1277-78 (11th Cir. 2023) ("[W]here a video is clear and obviously contradicts the plaintiff's alleged facts, [courts] accept the video's depiction instead of the complaint's account and view the facts in the light depicted by the video." (citation omitted)). Properly considered, video refutes Plaintiff's characterization of the technique Officer Jackson purportedly employed, showing Plaintiff experiencing seizure-like movements as the thumbs of an individual contact one side of Plaintiff's lower jawline and neck. Plaintiff describes himself as having an almost instantaneous reaction to Officer Jackson's alleged carotid hold technique, Am. Comp. ¶¶ 57-58, but the video shows that, at the time of Plaintiff's seizure-like movements, the officer's thumbs unilaterally were touching Plaintiff's right lower jawline and neck. Put simply, video confirms a carotid restraint was not used here.

Video likewise reinforces the situation Officer Jackson confronted at the time he acted. In the video, ICE officers can be seen attempting to push and pull apart Plaintiff and his wife, who

were interlocked with each other and their infant child in the front seat of their vehicle. Footage shows Plaintiff's left hand firmly gripping and never releasing his wife's clothing, which becomes stretched by the diametric forces being exerted by Plaintiff and the ICE officers. An ICE officer, positioned at the front driver's door, can be seen attempting to pry open Plaintiff's grip before locking arms with Plaintiff to detach Plaintiff from his wife. Plaintiff's resistance and refusal to release his wife, who herself was steadfastly holding onto their daughter, created an untenable situation for the officers. Given Plaintiff's resistance to the arrest, reinforced by video, Officer Jackson's actions were reasonable under the circumstances. *Velez*, 152 F.4th at 301. Whether the Court relies on the Complaint alone or in conjunction with the video, Jackson is entitled to qualified immunity under the first prong of the immunity inquiry.

C. Officer Jackson Did Not Violate Clearly Established Law.

Plaintiff also fails to overcome the second prong of qualified immunity because he fails to establish that Officer Jackson violated his rights in a manner proscribed by "clearly established" law. *See Mitchell v. Miller*, 790 F.3d 73, 77 (1st Cir. 2015) ("The plaintiff bears the burden of demonstrating that the law was clearly established at the time of the alleged violation, and it is a heavy burden indeed."). Qualified immunity shields an officer "unless existing precedent squarely governs the specific facts at issue" and moves the case "beyond the otherwise hazy border between excessive and acceptable force." *Kisela v. Hughes*, 584 U.S. 100, 104-05 (2018) (per curiam). To be "clearly established," any precedent relied on by a plaintiff must have the requisite clarity to allow "every reasonable official" to understand "it to establish the particular rule the plaintiff seeks to apply." *Dist. of Columbia v. Wesby*, 583 U.S. 48, 63 (2018). It is insufficient to offer cases that merely stand for the general proposition that the Fourth Amendment bars the use of excessive force. *Velez*, 152 F.4th at 303. "In the Fourth Amendment

context, the '[s]pecificity' of the rule set forth in such precedent 'is especially important,' because it can be 'difficult for an officer to determine how the relevant legal doctrine,' such as excessive force, 'will apply to the factual situation the officer confronts.'" *Lachance v. Town of Charlton*, 990 F.3d 14, 21 (1st Cir. 2021) (quoting *City of Escondido v. Emmons*, 586 U.S. 38, 42 (2019)). "As such, 'relevant case law,' where 'an officer acting under similar circumstances . . . was held to have violated the Fourth Amendment,' is 'usually necessary' to overcome officers' qualified immunity." *Id.* (quoting *Wesby*, 583 U.S. at 64).

Plaintiff cannot meet this "demanding standard." *Wesby*, 583 U.S. at 63. In *Velez*, the Court determined an officer, whose use of force included "body blows, head blows, and double tasing" a passively resistant motorist, 152 F.4th at 301, found that the officer engaged in excessive force but held that qualified immunity shielded his conduct, which "reflect[ed] 'the type and kind of erroneous judgment that a reasonable police officer under the same or similar circumstances might have made,'" *id.* at 304 (quoting *Morelli v. Webster*, 552 F.3d 12, 24 (1st Cir. 2009)). Here, Officer Jackson did not strike or tase Plaintiff, and existing law confirmed he could use some degree of force to separate Plaintiff from his wife to effectuate arrest. *See id.* at 301. At a bare minimum, a reasonable officer would not have been on notice that the conduct here violated clearly established law. Officer Jackson's actions fall either below or in line with the actions of other officers that engaged resisting motorists and were shielded from liability because of qualified immunity. *See id.* at 303; *Helvie*, 66 F.4th at 1241; *Valencia*, 612 F. App'x at 518-19. He is entitled to qualified immunity under the second prong of the immunity inquiry.

CONCLUSION

For the foregoing reasons, the Court should dismiss Plaintiff's *Bivens* claim against Officer David Jackson.

CERTIFICATE OF SERVICE

I, Patrick B. Fenior, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

Date: June 18, 2026 By: *_/s/ Patrick B. Fenior_*

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