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***Via ECF***

Ms. Patricia S. Dodszuweit  
Clerk, United States Court of Appeals for the Third Circuit  
21400 U.S. Courthouse  
601 Market Street  
Philadelphia, PA 19106

**RE: *Xi v. United States of America*, No. 21-2798 (3d Cir.)**

Dear Ms. Dodszuweit:

Plaintiffs write in response to Defendants' letter, ECF No. 41, concerning the Supreme Court's decision in *Egbert v. Boule*, No. 21-147, 2022 WL 2056291 (June 8, 2022). For at least four reasons, *Egbert* has no bearing on Professor Xi's case.

First, unlike *Egbert*, the defendant in this case is a traditional criminal law enforcement officer with the FBI, not a Border Patrol agent. The *Egbert* analysis largely turned on the unique role of the Border Patrol. *See* Slip Op. 10–12.

Second, the similarities between this case and *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971), are more than “superficial.” *See* Letter 1 (quoting Slip Op. 10). Crucially, both cases arise in the criminal law enforcement search-and-seizure context. *Ziglar v. Abbasi*, 137 S. Ct. 1843 (2017), reaffirmed the importance of *Bivens* in that context, and *Egbert* does not purport to disturb any aspect of *Abbasi*. Furthermore, the specific details of Professor Xi's case closely resemble *Bivens*. For example, both cases involve a home raid unsupported by probable cause, law enforcement officers holding the plaintiff and his family at

gunpoint, a search of the home, and a strip-search of the plaintiff. Pl. Br. 42–43. These closely aligned details far exceed “superficial similarities.” Slip Op. 10. Because Professor Xi’s case does not present a new *Bivens* context, the special factors analysis undertaken in *Egbert* is not required here.

Third, even if a special factors analysis were necessary, this case does not present the national security concerns that counseled hesitation in *Egbert*. Like *Hernández v. Mesa*, 140 S. Ct. 735 (2020), *Egbert* involved a Border Patrol agent enforcing immigration law in close proximity to the border. Slip Op. 10–11. By contrast, Professor Xi’s case involves an FBI agent, nowhere near the border, engaged in a criminal investigation.

Finally, Haugen identifies no alternative remedy comparable to the Border Patrol grievance procedure that foreclosed a *Bivens* remedy in *Egbert*. See Letter 2 (citing Slip Op. 12–13).

For these reasons, *Egbert* does not alter the Court’s analysis of this case.

Sincerely,

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