No. 24-362

IN THE

Supreme Court of the United States

CURTRINA MARTIN, INDIVIDUALLY AND AS PARENT AND NEXT FRIEND OF G.W., A MINOR, ET AL.,

Petitioners,

v.

UNITED STATES OF AMERICA, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF OF AMICI CURIAE MEMBERS OF CONGRESS IN SUPPORT OF PETITIONERS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Cases (continued) **Page(s)**

Cases (continued) **Page(s)**

Cases (continued) **Page(s)**

Cases (continued) **Page(s)**

Cases (continued) **Page(s)**

Constitutional Provisions

Statutes

Other Authorities

Other Authorities (continued) **Page(s)**

Other Authorities (continued) **Page(s)**

INTEREST OF AMICI CURIAE*

Amici curiae are current Members of the United States Congress. As this Nation's federal lawmakers, amici have a vital interest in protecting the supremacy of federal laws that Congress has enacted pursuant to its constitutional authority. Amici also have an interest in the proper interpretation and application of federal law. That interest is especially significant for laws like the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b), 2671 *et seq.*, which Congress enacted specifically to safeguard individual liberties against government intrusion and to provide redress for amici's constituents and other Americans harmed by federal law enforcement officials.

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* Pursuant to this Court's Rule 37.2, amici provided timely notice to all parties of their intent to file this amicus brief. Pursuant to Supreme Court Rule 37.6, no counsel for a party authored this brief in whole or in part, and no person or entity other than amici or their counsel made a monetary contribution to this brief 's preparation.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Constitution's structural separation of powers and its Supremacy Clause both ensure that Congress's policy judgments take primacy on matters within its clearly established constitutional authority. The Eleventh Circuit's decision in this case flouts that fundamental tenet. Its entrenched approach to the FTCA's law-enforcement proviso, 28 U.S.C. § 2680(h), defies Congress's judgment by refusing to give effect to that proviso in the very circumstance that prompted its enactment. And the court of appeals' approach sets the Supremacy Clause at war with itself by refusing to give effect to a duly enacted federal statute out of supposed concern for the supremacy of federal law.

Half a century ago, Congress enacted the FTCA's law-enforcement proviso to authorize damages suits against the United States for intentional torts committed by federal law-enforcement officers. Discerning Congress's objectives in decades-old enactments is sometimes difficult, but the impetus for the law-enforcement proviso is clear: In April 1973, federal agents mistakenly stormed two homes in Collinsville, Illinois, terrifying innocent families and damaging their homes. Occurring at the height of President Nixon's War on Drugs, the Collinsville raids drew national outrage and spurred Congress to act. In adopting the law-enforcement proviso the following year, Congress sought to provide meaningful recourse for victims of wrong-house raids at the hands of federal law enforcement, like the Collinsville families. Whatever else the proviso encompasses, there is no question that wrong-house raids lie at its core.

That proviso was tailor-made for cases like this one. Petitioners are victims of a wrong-house raid that resulted from federal agents' execution of a search warrant—precisely the type of claims the law-enforcement proviso contemplated. Yet the Eleventh Circuit held that the proviso offers them no relief, concluding that the Constitution's Supremacy Clause foreclosed petitioners' claims covered by the proviso. That decision unravels Congress's work.

The decision below leaves the law-enforcement proviso a dead letter in the very type of law-enforcement abuse that drove the proviso's adoption. And the court of appeals' reasoning perversely treats a provision of the Constitution designed to ensure the supremacy of federal statutes as a basis to disregard Congress's will expressed in the U.S. Code. The Eleventh Circuit holds that the Supremacy Clause bars any claim under one federal statute (the FTCA) based on a federal officer's conduct if that conduct relates to performance of his official duties and violates no clearly established constitutional principle. That approach transmutes a limitation on *state* power into a limitation on *congressional* authority. Although Congress chose in the FTCA to borrow the substance of state law as the relevant rule of decision, FTCA claims arise under federal, not state, law. And nothing in the Constitution limits Congress's power to waive the federal government's sovereign immunity by incorporating state-law standards of liability. The Eleventh Circuit stands alone among the circuits in conjuring a limitation on the force of federal statutes from the Supremacy Clause, which exists to ensure that those statutes are given effect.

That error is critically important. In effect, the Eleventh Circuit deems the FTCA's law-enforcement proviso unconstitutional under the Supremacy Clause in its core applications. That rule leaves many Americans without redress for intentional wrongs committed by federal law-enforcement officers. This case—arising under the precise circumstances that motivated Congress to enact the law-enforcement proviso—presents that error in stark relief.

The Court should grant the petition.

ARGUMENT

I. THE ELEVENTH CIRCUIT'S DECISION DEFEATS CONGRESS'S CORE OBJECTIVE IN ENACTING THE FTCA'S LAW-ENFORCEMENT PROVISO

The decision below negates the law-enforcement proviso's intended effect on the very type of tort claim for which it was designed. In 1973, federal agents stormed two residences in Collinsville, Illinois, terrifying the residents within. But the agents invaded the wrong homes. Public outrage ensued.

Congress responded by enacting the FTCA's law-enforcement proviso. 28 U.S.C. § 2680(h). The proviso withdraws federal sovereign immunity from damages claims "with regard to acts or omissions of investigative or law enforcement officers of the United States Government" for "any claim arising * * * out of assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution." *Ibid.* The proviso's plain text provides—and it was enacted specifically to guarantee—that victims of wrong-house raids by federal agents like the Collinsville families

can seek redress from the United States over wrong-house raids.

Yet the Eleventh Circuit's decision nullifies the law-enforcement proviso in precisely that circumstance. Faced with FTCA claims alleging a wrong-house raid just like those that prompted the proviso's enactment, the court concluded that petitioners nevertheless have *no* remedy. Pet. App. 19a. That incongruous result is a red flag that the court of appeals' approach is off the mark. Faithful construction of federal statutes requires courts to read a law's text in light of its "structure, history, and purpose." *Abramski* v. *United States*, 573 U.S. 169, 179 (2014) (citation omitted). As this Court has long instructed, "determining the legislative intent" thus includes "look[ing] to," *inter alia*, "the mischief to be prevented" by the law. *Ash Sheep Co.* v. *United States*, 252 U.S. 159, 168 (1920); see, *e.g.*, *id.* at 169 (construing statute to encompass conduct that "[wa]s plainly within the mischief at which th[e] section aimed," in accord with the settled judicial and Executive Branch understanding); Samuel L. Bray, *The Mischief Rule*, 109 Geo. L.J. 967, 1000-1002 (2021). To be sure, a statute's plain language sometimes reaches *beyond* the immediate problem that prompted its enactment. *Oncale* v. *Sundowner Offshore Services, Inc.*, 523 U.S. 75, 79 (1998). But the fact that a judicial decision renders a statutory provision defunct in the exact scenario that it was enacted to address is a telltale sign that something is amiss.

That is the case here. That the Eleventh Circuit's ruling leaves the proviso a dead letter even in wrong-house-raid cases shows that its approach is off track.

A. The law-enforcement proviso's text and context make clear that Congress provided a damages remedy against the United States for victims of wrong-house raids by federal agents.

1. Before the FTCA's enactment, sovereign immunity barred a person injured by a federal employee from suing the United States for damages. *Brownback* v. *King*, 592 U.S. 209, 211 (2021). Instead, victims "would sue government officers and employees." James E. Pfander & Neil Aggarwal, Bivens*, the Judgment Bar, and the Perils of Dynamic Textualism*, 8 U. St. Thomas L.J. 417, 425 (2011) (Pfander & Aggarwal).

This system of individual-officer suits proved unwieldy. With many federal officers judgment-proof, "citizens injured by the torts of federal employees" often had "to ask Congress to enact private legislation affording them relief." Paul Figley, *Ethical Intersections & the Federal Tort Claims Act: An Approach for Government Attorneys*, 8 U. St. Thomas L.J. 347, 348 & n.7 (2011). But the resultant system of "private bills" proved laborious. *Brownback*, 592 U.S. at 211. "[B]y the 1940s, Congress was" inundated, "considering hundreds of such private bills each year." *Ibid.* For suits that did proceed against individual officers, Congress would often indemnify the officers upon the officers' submission of "applications for indemnity." Pfander & Aggarwal 425. But indemnity was far from guaranteed, and the procedure interposed additional hurdles to relief. See Gregory Sisk, *Recovering the Tort Remedy for Federal Official Wrongdoing*, 96 Notre Dame L. Rev. 1789, 1809 (2021) (describing "practical advantage" of "bypass[ing] the officer indemnity request"); James E. Pfander & Jonathan L.

Hunt, *Public Wrongs & Private Bills: Indemnification and Government Accountability in the Early Republic*, 85 N.Y.U. L. Rev. 1862, 1867 (2010).

Congress enacted the FTCA in 1946 to replace that unwieldy system and "to free Congress from the burden of passing on petitions for private relief." Pfander & Aggarwal 424. To that end, the FTCA generally "remove[d] the sovereign immunity of the United States from suits in tort." *Richards* v. *United States*, 369 U.S. 1, 6 (1962). The FTCA thus channeled determinations of sovereign immunity for torts by federal officials away from ad hoc determinations by Congress to courts applying statutory standards.

The FTCA's "broad waiver of sovereign immunity" is not absolute, however, but "subject to a number of exceptions." *Millbrook* v. *United States*, 569 U.S. 50, 52 (2013). One is the "intentional tort exception," *Sheridan* v. *United States*, 487 U.S. 392, 400 (1988), which preserves sovereign immunity (and thus bars claims) for certain intentional torts, 28 U.S.C. § 2680(h). For such claims, plaintiffs had only the unworkable pre-FTCA remedies of suing the individual officers or petitioning Congress for private legislation.

2. So things stood for nearly three decades. But two wrong-house raids in April 1973 in a small suburb in Illinois shined a national spotlight on misconduct by federal law enforcement, prompting Congress to revise the FTCA. On April 23, federal officers "mistakenly stormed the homes of two Collinsville, Illinois, families in an attempt to apprehend suspected cocaine dealers." Jack Boger *et al.*, *The Federal Tort Claims Act Intentional Torts Amendment: An Interpretative Analysis*, 54 N.C. L. Rev. 497, 500 (1976) (Boger). The

agents charged into Herbert and Evelyn Giglotto's home first. *Ibid.* The couple "awoke * * * to the sound of someone smashing down their door" and found "shabbily dressed men" in their home "[b]randishing pistols." *Ibid.* One of the intruding officers tied Mr. Giglotto's "hands behind his back," pointed a gun at his head, and threatened to kill him if he moved. *Ibid.* The officers detained Ms. Giglotto too, eventually "identif[ying] themselves as federal officers." *Ibid.* While "ransack[ing]" the house, the officers realized they had the wrong home. *Ibid.* So, "without apology, [they] untied the couple" and left. *Id.* at 500-501.

Thirty minutes later, other agents committed the same mistake, descending on the nearby home of the Askews. Mrs. Askew "screamed to her husband, who looked up to find two men standing at his kitchen door—one holding a sawed-off shotgun—and a third man standing at another door." Boger 501. This all proved too much for Mrs. Askew, who fainted from fright. *Ibid.* After gaining entry, the agents realized they also had the wrong home and left. *Ibid.*

The Collinsville raids quickly drew national attention. "Drug Raids Terrorize 2 Families—by Mistake," read the New York Times. Andrew H. Malcolm, *Drug Raids Terrorize 2 Families—by Mistake*, N.Y. Times (Apr. 29, 1973). On the Senate floor less than a month later, Senator Sam Ervin of North Carolina pointed to the Collinsville raids to assail a federal law authorizing officers to conduct no-knock raids. Boger 506.

The ensuing furor became the "impetus" for Congress to enact the FTCA's law-enforcement proviso to limit the intentional-tort exception. Eric Wang, *Tor-*

tious Constructions: Holding Federal Law Enforcement Accountable by Applying the FTCA's Law Enforcement Proviso Over the Discretionary Function Exception, 95 N.Y.U. L. Rev. 1943, 1954 (2020); see also Paul David Stern, *Tort Justice Reform*, 52 U. Mich. J.L. Reform 649, 665 (2019) (similar). As the Eleventh Circuit itself has long recognized, "Congress added the proviso" after the Collinsville raids "to ensure that future victims of these kinds of torts * * * would have a damages remedy against the United States." *Nguyen* v. *United States*, 556 F.3d 1244, 1255 (11th Cir. 2009). Operating as an exception to an exception to the FTCA's waiver of immunity, the law-enforcement proviso thus authorizes suits against the United States for specified intentional torts by "extend[ing] the waiver of sovereign immunity" to encompass claims that the intentional-tort exception had previously barred. *Millbrook*, 569 U.S. at 52-53.

The text Congress enacted unambiguously evinces its intent to encompass wrong-house raids: The proviso waives sovereign immunity for "any claim arising * * * out of assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution" based on the "acts or omissions of investigative or law enforcement officers of the United States." 28 U.S.C. § 2680(h). The proviso squarely targets the kind of "investigative or law enforcement officers" who perpetrated the Collinsville raids. *Ibid.* And it covers those intentional torts most likely to arise from such raids.

B. The law-enforcement proviso's history in Congress confirms that providing redress for victims of wrong-house raids by federal agents was central to the statutory design. Throughout the proviso's path

through Congress, its primary aim was repeatedly echoed. The Senate Committee on Government Operations, where the law-enforcement proviso originated, reported that "several incidents" had been brought to its "attention in which Federal narcotics agents engaged in abusive, illegal and unconstitutional 'no-knock' raids." S. Rep. No. 588, 93d Cong., 1st Sess. 2 (1973). The Committee criticized the lack of "effective legal remedy against the Federal Government for the actual physical damage, much less the pain, suffering and humiliation to which the Collinsville families have been subjected." *Ibid.* And it called out the "injustice" that "under the [FTCA] a Federal mail truck driver creates direct federal liability if he negligently runs down a citizen * * * but the Federal Government is held harmless if a[n] * * * agent intentionally assaults that same citizen in the course of an illegal 'no-knock' raid in Collinsville." *Id.* at 3.

To right these wrongs, the Committee proposed "a proviso at the end of the intentional torts exception" that would "deprive" the United States of sovereign immunity for certain intentional torts by law enforcement officers. S. Rep. No. 588, 93d Cong., 1st Sess. 3. That would ensure that "innocent individuals who are subjected to raids of the type conducted in Collinsville, Illinois, will have a cause of action against * * * the Federal Government." *Ibid.*

The Committee's report endorsed concerns expressed by its Subcommittee on Reorganization, Research, and International Organizations, which had decried the "terrorizing of innocent citizens in * * * mistaken raids across the Nation" as "a destruction of fundamental rights and basic safeguards." S. Rep. No. 469, 93d Cong., 1st Sess. 28 (1973). Against the

backdrop of the War on Drugs, the subcommittee cautioned that the pursuit "of a drug-free society must not sacrifice the right to the privacy of one's home and the due process of law which comprise the lifeblood of our free society." *Ibid.*

Contemporaneous explanations by the proviso's architects tell the same story. Senator Charles Percy, one of the proviso's chief proponents, urged that "it [wa]s now time to amend the [FTCA] so that victims of deliberate violence and terrorism at the hands of Federal agents can be better compensated, if only monetarily, for their losses." S. Rep. No. 469, 93d Cong., 1st Sess. 36 (individual views of Senator Charles H. Percy). The old regime—which left victims of federal torts to sue officers—was an "empty response" because "it is common knowledge that the government, the agents' employer, is in the best financial position to pay a proper judgment." *Ibid.*

The proviso's history thus confirms what any reasonable contemporaneous reader would have recognized: The proviso seeks to make whole victims of federal officers' torts, including misdirected federal raids like the ones in Collinsville, by enabling them to bring an action for damages against the United States.

C. The raid-gone-awry on petitioners' home in this case falls squarely in the proviso's heartland. In service of a wide-ranging FBI operation targeting a Georgia-based drug ring, federal agents executed "a no-knock search warrant" for gang member Joseph Riley, detonating a flashbang grenade and smashing in the front door of the wrong home. Pet. App. 3a (describing the raid as executing "a no-knock search warrant at" a "house which was not the address identified

in the warrant"). A "loud cannon-type bang" startled the Martins awake. Pet. App. 7a, 76a. When they realized that intruders had invaded their home, they bolted to a closet and hid. Pet. App. 3a. "A SWAT team member located Cliatt [Martin's cohabitant] and Martin in their bedroom closet, dragged Cliatt out of the closet[,] * * * and handcuffed him." Pet. App. 8a. "[A]nother * * * pointed a gun in [Martin's] face while yelling at her to keep her hands up." *Ibid.* When, however, the officers realized they had the wrong house, they left without "any explanation." Pet. App. 80a.

The parallels to the mistaken drug raids in Collinsville are striking. As the two Collinsville families testified before Congress, "they were terrorized by gun-wielding * * * intruders who shouted obscenities, destroyed property and threatened their very lives." S. Rep. No. 469, 93d Cong., 1st Sess. 21. Realizing their error, the agents "departed as suddenly as they had arrived without an explanation." *Id.* at 22. As in Collinsville, federal "[n]arcotics agents" here "have used stormtrooper tactics in making unannounced and unlawful entries into the dwellings of decent, law-abiding citizens." *Id.* at 32.

The Eleventh Circuit's holding—that petitioners' FTCA claims based on federal officers' wrong-house raid are not even cognizable—embodies the opposite of the policy that Congress codified in the law-enforcement proviso, which it enacted in response to precisely that kind of abuse. Whether and to what extent to waive federal sovereign immunity is a quintessential policy call that lies within Congress's exclusive province. See *United States* v. *Bormes*, 568 U.S. 6, 9-10 (2012). Congress's judgment to waive immunity for

tort claims like those here should be controlling. The Eleventh Circuit's disconcerting departure from that straightforward principle amply warrants this Court's review.

II. THE ELEVENTH CIRCUIT'S DISTORTION OF THE SUPREMACY CLAUSE UNDERMINES CONGRESS'S POWER AND CONFIRMS THE NEED FOR REVIEW

More concerning still, the Eleventh Circuit's rationale for depriving the law-enforcement proviso of effect in cases at its core rests on a fundamental misapprehension of bedrock constitutional principles. The court of appeals concluded that the Supremacy Clause, U.S. Const. Art. VI, § 2—which *preserves* the efficacy of valid Acts of Congress by making them "supreme" over any other, contrary laws—*prevents* Congress from providing relief to victims of wrong-house raids under certain circumstances. That ruling turns the Supremacy Clause on its ear, unduly constrains Congress's legislative authority, and puts the Eleventh Circuit at odds with its sister circuits.

A. The Supremacy Clause provides in relevant part that "[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof * * * shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. Art. VI, § 2. The Clause thus enshrines and safeguards Congress's legislative authority by depriving the States of any "power * * * to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government." *McCulloch*

v. *Maryland*, 17 U.S. (4 Wheat.) 316, 436 (1819). Any state law that conflicts with federal law is "without effect." *Maryland* v. *Louisiana*, 451 U.S. 725, 746 (1981).

The Supremacy Clause thus strikes a specific "federal-state balance," in which federal actions "supersede" inconsistent actions of the States in areas the Constitution assigns to the federal government's authority. *Hillsborough County* v. *Automated Medical Laboratories, Inc.*, 471 U.S. 707, 713, 717 (1985). Simply put, the Clause provides a rule of decision for resolving "federal-state conflict[s]." *Geier* v. *American Honda Motor Co.*, 529 U.S. 861, 874 (2000).

The Eleventh Circuit, however, has derived from that constitutional provision—one that serves to protect Congress's legislative authority from state interference—a prohibition on federal statutes that are perceived as unduly hindering the execution of other federal laws and functions. That inverted view of the Supremacy Clause has nothing to commend it.

1. The Eleventh Circuit's misadventure traces to *Denson* v. *United States*, 574 F.3d 1318 (11th Cir. 2009). The *Denson* court started from the premise that the Supremacy Clause bars any state-law claim that "would impede [a federal] officer from performing his duties." *Id.* at 1346-1347. But the Eleventh Circuit then swerved by construing the Clause to impose the same constraint to claims under *federal* law. Despite correctly recognizing that the Clause prescribes a constitutional standard for judging "whether the United States is amenable to liability under state law," the Eleventh Circuit extended that principle to hold that the Clause precludes any suit against a fed-

eral officer under the FTCA—a federal statute—for "executing his duties as prescribed by federal law." *Ibid.* The Eleventh Circuit later reaffirmed that rule in *Kordash* v. *United States*, 51 F.4th 1289 (11th Cir. 2022), and applied it to bar liability here, Pet. App. 18a-19a.

The Eleventh Circuit has matters backwards. The FTCA is indisputably an Act of Congress that the Supremacy Clause elevates above state law. It is an exercise of Congress's plenary "prerogative" to "waive the federal government's immunity." *Department of Agriculture* v. *Kirtz*, 601 U.S. 42, 48 (2024). Nothing in that Clause constrains Congress's policy judgment regarding whether or when to waive immunity. And because the FTCA is a federal statute, no possible "conflic[t] between state and federal law" exists that could implicate the Supremacy Clause. *PLIVA, Inc.* v. *Mensing*, 564 U.S. 604, 620 (2011).

The Eleventh Circuit appears to reason that, because Congress in the FTCA borrowed the substance of state law, 28 U.S.C. § 1346(b)(1), claims under the FTCA are therefore state-law claims subject to the Supremacy Clause. *Denson*, 574 F.3d at 1347. But that conclusion does not follow. In controversies "governed by federal law," federal law may "adopt state law" in substance, but federal law remains federal. *United States* v. *Kimbell Foods, Inc.*, 440 U.S. 715, 727-728 (1979). The standard set by "state law" is simply "incorporated as the *federal* rule of decision." *Ibid.* (emphasis added).

That is exactly what the FTCA does by allowing tort claims against the United States and "incorporat[ing] state tort law into federal law." *Denson*,

574 F.3d at 1352 (Carnes, J., concurring). That explains why it is well settled, for example, that an FTCA claim "aris[es] under" federal law for purposes of federal-question jurisdiction. 28 U.S.C. § 1331; see, *e.g.*, *Wilson* v. *United States*, 79 F.4th 312, 316 (3d Cir. 2023). In short, while the FTCA assigns liability by "reference to" state law, *Molzof* v. *United States*, 502 U.S. 301, 305 (1992), the FTCA itself acts as "the supreme Law of the Land" in this domain, U.S. Const., Art. VI, § 2.

The Supremacy Clause's only relevance in this setting is ensuring that state law does not frustrate the FTCA. In *Boyle* v. *United Technologies Corp.*, 487 U.S. 500 (1988), for example, the Court considered whether military contractors can be subject to design-defect suits under state tort law. *Id.* at 502. The Court observed that "the selection of the appropriate design for military equipment" falls within the FTCA's discretionary-function exception and concluded that state-law suits based on such conduct are largely "displaced" by the "federal policy" reflected in the FTCA. *Id.* at 511-512; see, *e.g.*, *Saleh* v. *Titan Corp.*, 580 F.3d 1, 7 (D.C. Cir. 2009) (holding that FTCA's exception for claims based on combatant activities, 28 U.S.C. § 2680(j), preempts state tort claims against military contractors relating to those activities); *Koohi* v. *United States*, 976 F.2d 1328, 1336-1337 (9th Cir. 1992) (same); *In re KBR, Inc., Burn Pit Litigation*, 744 F.3d 326, 351 (4th Cir. 2014) (similar).

2. The Eleventh Circuit's contrary rule undercuts the very primacy of federal law that the Supremacy Clause seeks to fortify. The Clause armors the federal government's sovereignty in the areas over which it has constitutional authority, by "protect[ing] against

* * * [any] 'obstacle[s] to the effective operation of a federal constitutional power.'" *Trump* v. *Vance*, 591 U.S. 786, 810 (2020) (quoting *United States* v. *Belmont*, 301 U.S. 324, 332 (1937)); accord *Rockford Life Insurance Co.* v. *Illinois Department of Revenue*, 482 U.S. 182, 190 (1987) (the Supremacy Clause protects "the Federal Government's authority").

Certainly nothing in the Supremacy Clause precludes Congress from choosing whether and when to waive the federal government's sovereign immunity or from borrowing state law in doing so. The Constitution gives Congress alone the choice whether to waive sovereign immunity. See *Mayo* v. *United States*, 319 U.S. 441, 446 (1943). And nothing in the Clause or any other provision of the Constitution forbids Congress from creating federal causes of action that incorporate state law, as it has done in the FTCA and a range of other statutes. See, *e.g.*, *Parker Drilling Management Services, Ltd.* v. *Newton*, 587 U.S. 601, 610 (2019) (Outer Continental Shelf Lands Act "borrows * * * certain state laws" "as surrogate federal law" (citation omitted)); *Tafflin* v. *Levitt*, 493 U.S. 455, 468 (1990) (White, J., concurring) (RICO). Those are Congress's unfettered prerogatives.

Simply put, "[t]he sovereign is sovereign over questions of sovereign immunity. And the sovereign's will in this area of the law has been expressed in the FTCA, which incorporates state tort law as a matter of federal law." *Denson*, 574 F.3d at 1352 (Carnes, J., concurring) (emphasis omitted). The Supremacy Clause should have led the Eleventh Circuit to respect Congress's judgment. By instead reading the Supremacy Clause as a constraint on Congress's authority, the Eleventh Circuit's rule subverts "the suprem-

acy of the government of the United States in the exercise of all the powers conferred upon it by the constitution." *In re Neagle*, 135 U.S. 1, 62 (1890).

3. The Eleventh Circuit's approach not only distorts the constitutional structure but also frustrates the FTCA itself. Ordinarily, state laws that impose liability based on federal officers' "discharg[e] [of their] duties under Federal authority" are preempted. *Ohio* v. *Thomas*, 173 U.S. 276, 283 (1899). But when Congress enacted the FTCA, it authorized a wide swath of federal claims that borrow state-law rules of decision for misconduct committed by a federal employee "while acting within the scope of his office or employment." 28 U.S.C. § 1346(b)(1). And Congress instructed that the United States would be liable "in the same manner and to the same extent as a private individual under like circumstances." *Id.* § 2674; see also *id.* § 1346(b)(1); *Feres* v. *United States*, 340 U.S. 135, 139-140 (1950) (noting Congress's desire to remedy "wrongs which would have been actionable if inflicted by an individual or a corporation but remediless solely because their perpetrator was an officer or employee of the Government"). The FTCA thus necessarily authorizes damages liability in many circumstances even for federal officers' "performance of 'uniquely governmental functions,'" because the FTCA "requires a court to look to the state-law liability of private entities, not to that of public entities, when assessing the Government's liability." *United States* v. *Olson*, 546 U.S. 43, 46 (2005) (quoting *Indian Towing Co.* v. *United States,* 350 U.S. 61, 64 (1955)).

Congress's considered judgment in enacting (and amending) the FTCA, in short, was to hold federal officers to the same standards as private citizens and

provide accountability for their misconduct—even misconduct stemming from their performance of their official duties—except as Congress itself specified. The Eleventh Circuit's approach countermands that judgment. It permits the government to avoid liability, as it did here, by invoking the tortfeasors' status as federal officers and asserting that they "acted within the scope of" their authority. Pet. App. 17a.

B. Unsurprisingly, the Eleventh Circuit's *Denson* rule is an outlier among the courts of appeals. The Sixth Circuit has expressly rejected it, reasoning that, "[b]ecause federal law incorporates state substantive law for the purposes of FTCA claims," applying state law to FTCA claims "does not run afoul of the Supremacy Clause." *Huddleston* v. *United States*, 485 F. App'x 744, 746 (6th Cir. 2012); see also *Eiswert* v. *United States*, 639 F. App'x 345, 347 (6th Cir. 2016) (citing *Huddleston* with approval); *Kennedy* v. *U.S. Veterans Administration*, 526 F. App'x 450, 454 (6th Cir. 2013) (same); *Pledger* v. *Lynch*, 5 F.4th 511, 532 n.6 (4th Cir. 2021) (Quattlebaum, J., concurring in part and dissenting in part) (suggesting that the Supremacy Clause is not implicated in FTCA cases).

And no other circuit follows the Eleventh Circuit's approach in FTCA cases like this one. To the contrary, courts of appeals regularly allow plaintiffs to pursue claims like petitioners' that would be barred under *Denson*. See Pet. 21; see also, *e.g.*, *Osmon* v. *United States*, 66 F.4th 144, 145 (4th Cir. 2023) (permitting claims under law-enforcement proviso to proceed); *Iverson* v. *United States*, 973 F.3d 843, 845 (8th Cir. 2020) (same); *Pellegrino* v. *TSA*, 937 F.3d 164, 168 (3d Cir. 2019) (en banc) (same).

As petitioners underscore, other circuits rightly understand that the Supremacy Clause has no role to play in limiting the reach of federal law. See Pet. 21 n.6; see also, *e.g.*, *Watts* v. *United Parcel Service, Inc.*, 701 F.3d 188, 191 (6th Cir. 2012); *Lupiani* v. *Wal-Mart Stores, Inc.*, 435 F.3d 842, 846 (8th Cir. 2006); *Tufariello* v. *Long Island Rail Road Co.*, 458 F.3d 80, 86 (2d Cir. 2006). In these circuits, it is well settled that the Clause "applies only to conflicts between federal provisions, on one hand, and state or local provisions, on the other hand." *Rhode Island* v. *Narragansett Indian Tribe*, 19 F.3d 685, 703 (1st Cir. 1994).

The Eleventh Circuit thus stands alone in misreading the Supremacy Clause to restrict Congress's power to legislate within its constitutional authority.

III. THE QUESTIONS PRESENTED ARE EXCEPTIONALLY IMPORTANT

This case offers a much-needed opportunity to clarify the scope of the FTCA's law-enforcement proviso and its interaction with the Supremacy Clause. When the proviso is unduly limited, those harmed by the intentional acts of federal law-enforcement officers are denied their only effective remedy, and Congress's solution to that longstanding quandary is thwarted.

The Eleventh Circuit's mistaken view of the Supremacy Clause as imposing a constraint on Congress's power to waive sovereign immunity presents a constitutional issue of "obvious importance." *Gonzales* v. *Raich*, 545 U.S. 1, 9 (2005). Applying that supposed constraint, the decision below effectively declared the FTCA unconstitutional in its core applications. This Court often grants review when a lower

court "exercise[s] * * * the grave power of annulling an Act of Congress," and it should follow that course here. *United States* v. *Gainey*, 380 U.S. 63, 65 (1965); see, *e.g.*, *United States* v. *Bajakajian*, 524 U.S. 321, 327 (1998) ("Because the Court of Appeals' holding * * * invalidated a portion of an Act of Congress, we granted certiorari.").

The import of the Eleventh Circuit's rule is unmistakable: It is *unconstitutional* for Congress to authorize a tort claim against a federal official whose actions "have some nexus with furthering federal policy and can reasonably be characterized as complying with the full range of [the Fourth Amendment]." Pet. App. 19a (citation omitted). That holding nullifies the FTCA in precisely the circumstances Congress most clearly intended it to apply. When federal officials raided the Giglottos' and Askews' homes, they were also arguably acting within the scope of their discretionary authority and seeking to advance the federal policy of enforcing the Nation's drug laws. If the officers here could "reasonably be characterized" as complying with the Fourth Amendment, *ibid.*, so too could the officers who raided the Giglottos' and the Askews' homes in April 1973.

More broadly, the Eleventh Circuit's sweeping rule renders a significant portion of the FTCA inoperable. It means, for example, that no claim for battery can be asserted in the Eleventh Circuit against a TSA agent who jerks a traveler from his crutches during an airport security search. Cf. *Iverson* v. *United States*, 973 F.3d 843, 846 (8th Cir. 2020). And it would bar an FTCA claim when officers injure an arrestee by yanking him around by the handcuffs in the course of an arrest. Cf. *Tekle* v. *United States*, 511 F.3d 839,

843 (9th Cir. 2007). Such acts bear some nexus to federal policy and do not violate any clearly established constitutional rule. Under the Eleventh Circuit's Supremacy Clause bar, nothing more is needed to foreclose FTCA liability. That contravenes Congress's explicit judgment in the FTCA that persons injured by specified intentional torts committed by federal law-enforcement officers may seek redress from the government in court. 28 U.S.C. § 2680(h). The Eleventh Circuit's rule undoes Congress's work and cleaves off a vital chunk of the FTCA.

The real-world import of that error is magnified by the narrowing of relief under *Bivens* v. *Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971). As the Court has recounted, "Congress views [the] FTCA and *Bivens* as parallel, complementary causes of action." *Carlson* v. *Green*, 446 U.S. 14, 20 (1980). Because "Congress decide[d] to enact a statutory remedy which it view[ed] as fully adequate only in combination with the *Bivens* remedy, *e.g.*, 28 U.S.C. § 2680(h)"—*i.e.*, the law-enforcement proviso—"that congressional decision should be given effect by the courts." *Id.* at 19 n.5.

In recent years, this Court has repeatedly recognized limitations on relief under *Bivens* based on "respect for the separation of powers." *Hernandez* v. *Mesa*, 589 U.S. 93, 113 (2020). As *Bivens* has been narrowed, federal plaintiffs have increasingly needed to turn to the FTCA. See *Egbert* v. *Boule*, 596 U.S. 482, 491 (2022); *Xi* v. *Haugen*, 68 F.4th 824, 832 (3d Cir. 2023). As a result, "[w]ith *Bivens* sharply limited, the stakes of clarifying" the FTCA "grow ever greater." *Xi*, 68 F.4th at 844 (Bibas, J., concurring). In many cases where courts have dismissed plaintiffs' *Bivens*

claims against federal officers, they have nevertheless allowed FTCA claims against the United States—including under the law-enforcement proviso—to proceed. *E.g.*, *Leuthauser* v. *United States*, 71 F.4th 1189, 1193 (9th Cir. 2023); *Pellegrino*, 937 F.3d at 169. But in the Eleventh Circuit, a court's conclusion that relief is unavailable under *Bivens* will likely often foreclose a claim under the FTCA as well: When federal defendants "compl[y] with the full range" of constitutional guarantees (defeating any *Bivens* claim), they *also* appear to trigger that court's Supremacy Clause bar to the FTCA. Pet. App. 19a (citation omitted); *Denson*, 574 F.3d at 1344-1345.

The Eleventh Circuit's narrowing of statutory relief under the FTCA is antithetical to the "respect for the separation of powers" that has driven recent decisions restricting the judge-made *Bivens* remedy. *Hernandez*, 589 U.S. at 113. Just as courts should not "step into [Congress's] shoes" when it has chosen "not to provide a judicial remedy," courts should not override the remedy Congress *has* provided. *Ibid.* Rather, courts must "defer to Congress," *Egbert*, 596 U.S. at 491 (citation omitted)—both because "Congress is best positioned to evaluate whether, and the extent to which, monetary and other liabilities should be imposed" on the federal government and its officers, *Hernandez*, 589 U.S. at 101 (internal quotation marks and citation omitted), and because whether the government should waive immunity and accept liability for actions of its officers is a policy call for Congress.

*****

Today, victims of wrong-home raids by federal officers in Collinsville, Illinois, may sue under the

FTCA, but victims of an identical raid in Collinsville, Georgia, could not. That asymmetry is untenable and contravenes Congress's deliberate decision 50 years ago to accept responsibility and provide redress to those harmed by federal law-enforcement officers' misdeeds. This Court should grant review to restore uniformity in this important area of federal law and ensure that Congress's policy judgment is given effect.

CONCLUSION

The petition should be granted.

Respectfully submitted.

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APPENDIX

Table of Contents

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