No. 23-1281

IN THE

Supreme Court of the United States

RYAN G. CARTER AND KATHLEEN E. COLE,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF WHISTLEBLOWER LAW FIRM, KHAWAM RIPKA, LLC AND THE TIM & NATALIE CASE FOUNDATION, BURN PITS 360, SENATOR MARKWAYNE MULLIN, AND REPRESENTATIVES DARRELL ISSA AND RICHARD HUDSON AS AMICI CURIAE IN SUPPORT OF PETITIONERS

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Representative Richard Hudson (R – NC 9th District)

The Whistleblower Law Firm was founded by Natalie Khawam Case in 2011. Attorney Khawam Case is a graduate of Georgetown University Law Center, and prior to her law degree she holds an MBA and an MS degree in healthcare. Natalie believes that veterans and their families are of the upmost importance with a mission to help protect the heroes who fought to protect American lives and our liberty. In addition to specializing in the False Claims Act (qui tams) and other federal laws, Attorney Khawam Case regularly advocates for servicemembers before Congress, to help our injured and disabled servicemembers, especially those unjustly effected by the *Feres* Doctrine.

Khawam Ripka, LLP is the only law firm solely dedicated to getting compensation for victims of Military Medical Malpractice. Their client, Master Sergeant Richard Stayskal, the namesake of the Sgt. First Class Richard Stayskal Military Medical

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[1] The parties were notified of the intention to file this brief per Rule 37.2. No counsel for a party authored the brief in whole or in part. No party, counsel for a party, or any person other than amici curiae and their counsel made a monetary contribution intended to fund the preparation or submission of the brief.

Accountability Act, retained Natalie to advocate for change, where they were successful with Congress passing legislation granting military members the unprecedented right to file administrative claims for medical malpractice for the first time in American history. Khawam Ripka, LLP represent cases like that of Mr. Carter, Master Sgt. Stayskal, and other injured active-duty service members, because of the drastic implications they could have on the rights of thousands of other wrongfully injured servicemembers. Khawam Ripka, LLP advocates on behalf of servicemembers to seek protections and relief to America's men and women in uniform.

The Tim & Natalie Case Foundation contributes to and helps support our military and veteran communities.

Burn Pits 360 is committed to ensuring that all veterans who have suffered from military toxic exposures receive the recognition, care, and benefits they deserve. The organization aims to eliminate systemic barriers to healthcare and benefits for affected veterans and their families while pushing for legislative changes to better protect current and future service members. We support efforts to amend or repeal the Feres Doctrine, aiming to allow service members and veterans to pursue legal claims for negligence, thereby increasing the accountability of the government and military contractors.

INTRODUCTION AND SUMMARY OF ARGUMENT

In 1950, the Supreme Court erroneously circumvented the Federal Tort Claims Act (FTCA) by holding in *Feres v. U.S.* that soldiers cannot sue the government for injuries incurred "incident to service." *Feres v. U. S.*, 340 U.S. 135, 146 (1950). In doing so, the court took the first step in a decades-long precedential march of denying suits by injured and deceased soldiers and their families. Over time, this precedent, known as the *Feres* Doctrine, has been used to justify nearly universal dismissal lawsuits by soldiers for negligence, medical malpractice, sexual assault, murder, and other intentional torts, at all levels of the judiciary and all branches of the military. *See e.g. id.*, *Doe v. U.S.*, 593 U.S. ___ (2021), *Shearer v. U.S.*, 473 U.S. 52 (1985), *Daniel v. United States*, 587 U.S. ___ (2019). Disturbingly, an inmate or illegal immigrant has the right to sue if they suffer medical malpractice while in federal custody, but our servicemembers do not. Our men and women in uniform are being punished for choosing to serve our country. They sacrifice for our freedom, and the *Feres* Doctrine repays them by stripping away even more of their rights without their consent or even knowledge.

The term "incident to service" was not adequately defined in the original *Feres* decision, and has subsequently been abused into denying servicemembers their otherwise mandated rights to recovery against the military under the FTCA. *Brooks v. U.S.*, 337 U.S. 49 (1949). This has frustrated legislators and judges alike, as injured and deceased

soldiers and their families sit helpless, unable to fight back against rape, murder, and other crimes for which civilians would immediately be able to sue. Megan Rohn, *Our Service Members Are Victims of Rape and Medical Negligence, but They Can't Sue the Government*, https://tinyurl.com/yewm69wz. This injustice will finally end if Staff Sgt. Carter's case is granted certiorari and ultimately reversed.

Just as a United States Army surgeon wrongfully injured Army Lt. Rudolph *Feres* in 1950 by leaving a towel inside his abdomen after his operation, once again a United States military surgeon has wrongfully injured Staff Sgt. Ryan Carter by leaving him paralyzed after a 2018 operation. Rose L. Thayer, *National Guard Airman Paralyzed at Walter Reed Petitions Supreme Court to Allow Him to Sue Military*, https://tinyurl.com/bdcjfv5a. Similarly, just as the Supreme Court wrongfully denied a remedy to the injured soldier in 1950, so too has the Fourth Circuit wrongfully denied a remedy to Staff Sgt. Carter. *See Carter v. U.S.*, 2024 WL 982282.

There is no rational explanation by which paralysis from a routine back surgery in a military hospital outside combat and off active duty can be considered "incident to service." The FTCA specifically carves out liability against the military for soldiers who are injured in two instances: during combat, or abroad. Federal Tort Claims Act, 28 U.S.C. 2680 (j-k). Neither of these apply to Staff Sgt. Carter. Therefore, Carter should be permitted to sue the military under the FTCA, as Congress intended when

it wrote the FTCA with such narrow exceptions for liability to servicemembers.

Moreover, Carter was not on duty at the time of his injury, but in fact was a member of the Maryland Air National Guard when his injury occurred. *See* Air National Guard Instruction (ANGI) 36-2001, *Management of Training and Operational Support Within the Air National Guard,* para. 1.3 (Apr. 30, 2019). At the time, he was merely a "Federal civilian employee," 10 U.S.C. § 10216(a)(1), so his injury could not be incident to service because he was not serving at the time.

Second, his injury was not incident to his service because it was completely unrelated to his service, and instead was caused by negligent military employees. Much like Navy Lt. Rebekah Daniel's fatal injury during childbirth in 2014, and much like injuries caused by the toxic water at Camp Lejeune from 1953 to 1987, Carter's injury was also caused by a government employee being negligent. *See Daniel v. United States*, 587 U.S. ___ (2019); Camp Lejeune Justice Act of 2022, Pub. L. No. 117-168, 136 Stat. 1759. The very purpose of the FTCA is to allow American citizens to recover for injuries caused by government negligence, and yet the *Feres* Doctrine has been used for over 70 years to deny that right to servicemembers, including Master Sgt. Stayskal, Lt. Daniel, Lt. *Feres*, and the thousands of Camp Lejeune victims. Staff Sgt. Carter could be next on that list, but his case provides the perfect opportunity to put an end to the seven decades of injustice that America's men and women in uniform have endured.

Amici agree with petitioners that the *Feres* Doctrine is ripe for reconsideration and potential abandonment, and that Mr. Carter's circumstances provide an opportune occasion to do so. It is time to hold military medical personnel to the same medical standards and liability as civilian doctors. It is time to let America's men and women in uniform exercise their rights to sue the government under the FTCA just like their civilian counterparts have been able to do for nearly a century. This is especially true given the grievousness of injuries and even deaths that have been wrought upon Carter and his fellow servicemembers.

This Court should therefore seize this opportunity to overturn the *Feres* Doctrine, a doctrine that has frustrated both Congress and the Judiciary (Part I.) The *Feres* Doctrine harms all soldiers, but it has caused especially disturbing injuries to women in instances of assault and childbirth (Part II). Although Congress has tried to provide alternative pathways to recovery to injured soldiers, those pathways are often unjustly blocked by the military, which the Court now has the ability to justify after it properly overturned the *Chevron* Doctrine (Part III.) Regardless of Supreme Court precedent, Congress itself created a starting point to dismantling the *Feres* Doctrine by passing the Lejeune Act in 2022, which allows soldiers injured at Camp Lejeune to sue the military instead of merely filing administrative claims, effectively narrowing part of the *Feres* Doctrine's scope (Part IV.) It is time for the Supreme Court to continue their spirit of righting the years of wrong, as

they did with *Chevron* Doctrine, and now overturn the *Feres* Doctrine for once and for all.

ARGUMENT

I. Both the Legislature and the Judiciary Have Expressed Disdain for the Wrongly Decided *Feres* Doctrine

In 2019, Justice Clarence Thomas himself reminded the Court and the nation that "*Feres* was wrongly decided and heartily deserves the widespread, almost universal criticism it has received." *Daniel v. United States*, 587 U.S. ___ (2019) (Thomas, J., dissenting) (internal quotation marks omitted). Justice Thomas' assessment is correct, and he is among the company of numerous other esteemed public officials who have deservedly derided and disparaged the *Feres* Doctrine. From both sides of the congressional aisle, to the highest court in the United States, both legislators and judges have criticized the *Feres* Doctrine on multiple occasions over the decades since its inception.

Congress has made it clear that it is tired of the *Feres* Doctrine, with attempts to narrow or overturn it in 1985, 1987, 1991, 2001, 2008, and 2009. See Melissa Feldmeier, *Note, At War with the Feres Doctrine: The Carmelo Rodriguez Military Medical Accountability Act of 2009*, 60 CATH. UNIV. L. REV. 145, 162-63 (2010); Carmelo Rodriguez Military Medical Accountability Act of 2009, H.R.1478, 111th Cong. (as reported by H. Comm. on the Judiciary, May 20, 2008). Better yet, in the 15 years since then,

Congress' view has changed, and members have coalesced in support of lawsuits for injured veterans not just once, but twice. Congress passed the Stayskal Act in 2019, and the Promise to Address Comprehensive Toxins Act (PACT Act) and its subsidiary Camp Lejeune Justice Act in 2022, all of which will be addressed later in this brief. *See* National Defense Authorization Act For Fiscal Year 2020, Pub. L. No. 116-92, 133 Stat. 1457 (Division A, Title VII, Subtitle C, Sec. 731; Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022, Pub. L. No. 117-168; Camp Lejeune Justice Act of 2022, Pub. L. No. 117-168, 136 Stat. 1759.

Both of those acts had bipartisan support, illustrating the fact that this is not a partisan issue. Specifically, the Stayskal Act was introduced and sponsored by former congresswoman Jackie Speier (D-CA), Senator Markwayne Mullin (R-OK), and Representatives Richard Hudson (R-NC), Jamie Raskin (D-MD), Guy Reschenthaler (R-PA), Ted Lieu (D-CA), and W. Gregory Steube (R-FL). National Defense Authorization Act For Fiscal Year 2020, Pub. L. No. 116-92, 133 Stat. 1457 (Division A, Title VII, Subtitle C, Sec. 731. Both Republican and Democrat members of Congress have spoken out against this pernicious doctrine and how it prevents American servicemembers from accessing the justice and remedies to which they are rightfully entitled.

That bipartisan support remains today, which is all the more reason for the Court to use Staff Sgt. Carter's case to bolster the will of Congress.

Specifically, Congressman Darell Issa (R-CA) introduced the Healthcare Equality and Rights for Our Heroes (HERO) Act in 2023, "to allow suit against the United States for injuries and deaths of members of the Armed Forces caused by improper medical care." *See* Healthcare Equality and Rights for Our Heroes (HERO) Act, H.R.4334, 118th Cong. (as reported by H. Comm. on the Judiciary, Jun. 23, 2023). This bill was introduced not only by Congressman Issa and fellow Republicans Richard Hudson (R-NC) and Michael Waltz (R-FL), but also by Democrat Jimmy Panetta (D-CA), demonstrating Congress' bipartisan drive to rethink the *Feres* Doctrine. *Id.*

Not only are America's elected officials frustrated at the way the *Feres* Doctrine hurts soldiers by preventing them from seeking compensation for their injuries, but courts specifically have struggled to interpret the meaning of "incident to service," resulting in circuit splits and disparate applications of *Feres* to soldiers in different parts of America. For instance, if a servicemember is injured by a fellow soldier in a car accident, they can recover if their injury occurs in the Eleventh Circuit, but not if the injury occurs in the Third Circuit. *See Richards v. U.S.*, 176 F.3d 652, 655 (3d Cir. 1999); *Pierce v. U.S.*, 813 F.2d 349, 352-53 (11th Cir. 1987). Additionally, soldiers who are survivors of sexual assault in the Ninth Circuit can sue the military as a result of *Spletstoser v. Hyten*, but soldiers who survive military sexual assault in the rest of the United States are not able to hold their attackers accountable

in this manner. *See Spletstoser v. Hyten*, 44 F.4th 938 (2022).

These are only two of many examples in which this unequal treatment for America's men and women in uniform is in and of itself a miscarriage of justice. It is not logical to give different legal remedies to soldiers who suffer the same injuries in different locations, merely due to the "geographic considerations over which [the soldiers] have no control," which the *Feres* court itself admitted. *Feres v. U.S.,* 340 U.S. 135 (1950).

This disparate interpretation becomes even more irrational upon reading the text of the FTCA. This is because the FTCA lists two, and only two, exceptions in which injured soldiers are not allowed to seek recompense under the FTCA: for injuries suffered abroad, and for injuries suffered during combat. Federal Tort Claims Act, 28 U.S.C. 2680 (j-k). Accordingly, Justice Scalia's dissent in *U.S. v. Johnson* illustrates that the Supreme Court ultimately never overturned *Brooks v. U.S.,* a case prior to *Feres* which allowed servicemembers to sue the military for injuries not incident to service. *See U.S. v. Johnson*, 481 U.S. 681, 693 (Scalia, J., dissenting); *Brooks v. U.S.,* 337 U.S. 49 (1949). Given those two plain exceptions, the *Brooks* court thought that "[i]t would be absurd to believe that Congress did not have the servicemen in mind" when it passed the FTCA and considered who might be able to file suit thereunder. *Brooks v. U.S.,* 337 U.S. 49, at 51.

In interpreting *Brooks*, it is clear that *Feres* was wrongly decided and Congress intended to include soldiers in the FTCA by using the "expresio unius est exclusion alterius" canon analysis. *See generally id*. This analysis means that if Congress intentionally creates a list of what is included in a statute, then Congress also intended to exclude anything not on that list from the statute. Therefore, the FTCA's list of two situations where servicemembers cannot sue the government must be an exclusive list. Thus, the only two types of injury for which soldiers cannot sue under the FTCA are injuries suffered abroad and injuries sustained during combat. If Congress had intended to create other exceptions, such as "injuries incident to service," congress would have done so.

But Congress did no such thing, leading to the correct outcome in *Brooks v. U.S.,* which is still valid law. *See generally Brooks v. U.S.*, 337 U.S. 49 (1949). Despite this, the unjust *Feres* Doctrine has expanded unchecked over the last seven decades, stripping soldiers and military families of their rights against Congressional and judicial intent. As Justice Scalia noted, *Feres* was poorly decided. *See U.S. v. Johnson* 481 U. S. 681 (1987) (Scalia, J., dissenting). The *Feres* Doctrine treats America's soldiers as separate *and* unequal citizens, and the Court must seize this opportunity to overrule it.

II. The Department of Defense Abuses the *Feres* Doctrine as Its Catch-all Defense, Especially with Non "Incident to Service" Injuries, Such as Sexual Assault, Death During Childbirth, and Being Stabbed and Set on Fire by a Coworker

It is impossible to count exactly how many injured American soldiers have had the courthouse doors shut in their face by the *Feres* Doctrine, but often the experiences of female soldiers cast the doctrine in a particularly heinous light. The devastating circumstances that four of these women in uniform had to endure underscore the dire need to hear Staff Sgt. Carters case and overturn *Feres* – for women and, for men serving our country.

In 2014, just hours after giving birth to her child, Navy Lt. Rebekah Daniel bled to death because of negligent medical staff at the Naval Hospital Bremerton in Washington State. JoNel Aleccia, *Widower Takes Ban on Military Injury Claims to Supreme Court*, https://tinyurl.com/2cys6hk2. After she gave birth, military doctors and nurses inexplicably failed to take routine steps to stop her bleeding until it was too late. *Id.* When her widower Walter tried to sue the military for this blatant medical malpractice, the courthouse door was shut in his face by the *Feres* Doctrine. *Id.* In denying certiorari, the Court's majority at the time effectively declared that death during childbirth is somehow "incident to service." *See Daniel v. United States*, 587 U.S. ___ (2019). This treatment would be inexcusable for any civilian parent to endure when bringing life

into the world. It is particularly disturbing when applied to expectant female soldiers, who deserve appreciation for their exemplary service, not punishment. Dying or watching a spouse die during childbirth is not a risk that any person should expect to take when they make the honorable decision to join the armed forces. Both Justice Thomas and Justice Ginsberg would have granted certiorari to hear this case, illustrating the support from both wings of the Court to have a long-overdue conversation about the unfair *Feres* Doctrine. *Id.*

In 2019, Captain Katie Blanchard was working at Munson Army Health Center when she was stabbed and set on fire by a male coworker. James Clark, *The Army Ignored Her Warnings About a Dangerous Colleague. Then He Set Her on Fire*, https://tinyurl.com/ysz8fv9c. Alarmingly, Blanchard had warned her chain of command that the coworker had threatened her before the attack, but they failed to take any steps to protect her. After the attacker was arrested, Blanchard tried to sue the government to hold them accountable for their negligence that lead to her attack, but her suit was denied because of the *Feres* Doctrine. Worse still, Army records themselves indicate "leadership negligence and poor judgment" by Blanchard's chain of command. Laura Geller, *An Army Nurse Warned An Employee Would Hurt Her, Then He Set Her On Fire. Now, She's Fighting For Accountability*, https://tinyurl.com/mr8fynwr. There is no civilian career in which being stabbed and set on fire by a coworker is "incident to service," but in the military,

it's just part of the job, according to the court who denied Blanchard's suit.

In 2010, a female West Point cadet was harassed and raped by one of her male classmates. Amy Howe, *Justices Turn Down Cadet's Attempt To Sue Government Over Sexual Assault*, https://tinyurl.com/4r3a6t6y. Doe attempted to sue the military for negligence for failing to protect her, but the Supreme Court's majority once again cited *Feres* and declined to hear her case or reconsider the doctrine. *Id.* Thankfully, Justice Thomas remained a staunch opponent of the *Feres* Doctrine and correctly advocated for its overturn, stating that it was "judicial legislating" and "demonstrably wrong." *See Doe v. U.S.*, 593 U.S. ___ (2021) (Thomas, J., dissenting). He correctly opined that rape should not be incident to service – a principle of common sense to which a majority of the Court has failed to adhere thus far. *Id.* It is time for the rest of the Court to follow his lead.

In 2020, yet another female servicemember was victimized – first by her assailant, and then by the *Feres* Doctrine. Spc. Vanessa Guillen was sexually harassed and ultimately murdered by a fellow soldier. Molli Mitchell, *Vanessa Guillen Sisters and Lawyer on I Am Vanessa Bill — 'Unbelievable,'* https://tinyurl.com/4fcfbs8z. Worse still, prior to her death, she had alerted her chain of command to harassment by the other soldier, but her warnings went unheeded just like Katie Blanchard's. *Id.* Her grieving family attempted to sue the military for negligently causing the circumstances in which her death occurred. Once again, the Department of

Defense inappropriately used the *Feres* Doctrine to prevent them from seeking justice. *Id.* In doing so, the implication is that when American citizens sign up to serve, they are signing away any accountability for harm they suffer on the job, even if that harm includes harassment and murder.

When civilians are sexually assaulted, or suffer medical malpractice, they have the unequivocal right to sue their attackers in a court of law. However, when soldiers are sexually assaulted or die during childbirth, the courthouse shuts its doors in their faces, leaving them voiceless and suffering with nowhere to turn. Rebekah Daniel, Katie Blanchard, Vanessa Guillen, and Jane Doe were denied their rights and were denied access to justice. This is an inexcusable and reprehensible way to treat any citizen who voluntarily joins the ranks of America's fighting forces. They should be treated with respect, not relegated to having fewer rights than prisoners and illegal immigrants. The *Feres* Doctrine is a detriment to every servicemember, and the harrowing experiences of these four servicewomen in particular emphasize the need to hear Staff Sgt. Carter's case and overturn this doctrine immediately.

III. In a Post-*Chevron* World, the Court Must Now Reign in the Department of Defense's Practice of Denying Pre-existing Recovery for Soldiers

As mentioned in Part I, Congress recently passed three significant statutory mechanisms to allow soldiers to recover for service-related injuries,

including the Stayskal Act in 2019 and the PACT Act in 2022. National Defense Authorization Act For Fiscal Year 2020, Pub. L. No. 116-92, 133 Stat. 1457 (Division A, Title VII, Subtitle C, Sec. 731; Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022, Pub. L. No. 117-168. Neither of these Acts are benefitting injured soldiers the way Congress intended them to because of the Department of Defense and the Veterans Administration, the respective agencies responsible for enforcing them. Now that *Chevron* has been overturned, *see Loper Bright*, 144 S.Ct. 2244 (2024), courts have the ability and the duty to interpret these statutes and change these agencies' behavior to support servicemembers the way Congress intended with these Acts.

First, Congress passed the Stayskal Act as Part of the 2020 NDAA. See National Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116-92, 133 Stat. 1457 (Division A, Title VII, Subtitle C, Sec. 731. The Act was passed in honor of Sgt. First Class Richard Stayskal, a former Green Beret who is now battling terminal lung cancer because military physicians misdiagnosed him on three separate occasions. The Act's purpose was to allow military medical malpractice victims to file administrative claims against the military to recover monetary damages. *Id.*

However, the Act has failed to achieve this purpose because the military is the judge and jury of the very claims filed against it. Roxana Tiron, *Solder Who Led Military Malpractice Fight Gets Claim Denied*, https://tinyurl.com/ysbxb8ab. As such, the

military has denied 144 of the 202 claims that injured soldiers have filed under it, including Stayskal's own claim, and has left many other claims undecided. *Id.* Congress' intent for the Act was for the military to accept and pay out injured soldiers' claims. *Id.* The fact that that payment has largely been denied illustrates how the military, a federal agency, refuses to follow the will of Congress.

Second, Congress passed the PACT Act as part of the National Defense Authorization Act (NDAA) in 2022. Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022, Pub. L. No. 117-168. Congress' intent for the PACT Act was to "expand VA health care and benefits for Veterans exposed to burn pits, Agent Orange, and other toxic substances." *See* Department of Veterans Affairs, *The PACT Act and Your Benefits,* https://tinyurl.com/5n8f8bvy. However, in practice, overworked VA claims processors have not been able to handle the massive influx of PACT Act claims. Melissa Chan, *Thousands of Workers Leave VA Amid a Flood of New Cases and Quota Demands*, https://tinyurl.com/mrwpbdyd. This influx has resulted in some claims processors seeking to deny claims quickly to get a result and meet their processing quota, rather than always taking the necessary time to look for reasons to accept the claim. *Id.* Although the VA is working to correct these unacceptable circumstances, the agency never should have let them arise in the first place, which is where the Court can step in.

Given the overturn of the *Chevron* Doctrine, *see Loper Bright v. Raimondo*, 144 S.Ct. 2244 (2024), this Court now has the ability to reign in both of these agencies' unacceptable behavior. The Court must interpret the Stayskal Act and PACT Act in the manner which Congress intended: by guiding agencies to more claims to America's injured men and women in uniform.

IV. The Lejeune Act Establishes That At Least Some Negligence is Not Incident to Service, Setting the Stage to Narrow the Scope of the *Feres* Doctrine.

The Camp Lejeune Justice Act has dealt a significant blow to the jurisdiction of the *Feres* Doctrine because it is the first legislation to allow soldiers to sue the military since caselaw from before *Feres* was decided. *See Brooks v. U.S.*, 337 U.S. 49, 51-52 (1949). This opens the door for the Court to re-examine the *Feres* Doctrine entirely, and Staff Sgt. Carter's case is the ideal opportunity to do so.

The Stayskal Act and the PACT Act as a whole only allow soldiers to file administrative, non-adversarial claims against the military. However, the Camp Lejeune Justice Act allowed military personnel and their families who were injured by toxic water at Camp Lejeune from 1953 to 1987 to file outright negligence claims and lawsuits against the military. See National Defense Authorization Act For Fiscal Year 2020, Pub. L. No. 116-92, 133 Stat. 1457 (Division A, Title VII, Subtitle C, Sec. 731; Sergeant First Class Heath Robinson Honoring our Promise to

Address Comprehensive Toxics Act of 2022, Pub. L. No. 117-168; Camp Lejeune Justice Act of 2022, Pub. L. No. 117-168, 136 Stat. 1759. While the *Feres* Doctrine has been used to bar servicemembers for medical malpractice, a type of military employee negligence, the Lejeune Act permitted soldiers to sue for injuries caused by the toxic water at Camp Lejeune, which was also caused by military employee negligence. Camp Lejeune Justice Act of 2022, Pub. L. No. 117-168, 136 Stat. 1759. Therefore, while limited in time frame and geographic area, the Lejeune Act allowed soldiers to sue the military for negligence under the FTCA.

This leads to a potentially fatal legal ramification for the *Feres* Doctrine. If one assumes exposure to toxic water on a military base is "incident to service," then the *Feres* Doctrine has been overturned by the Lejeune Act. This is because *Feres* holds that servicemembers cannot sue for injuries incurred incident to service, but they were allowed to sue for their injuries incident to service incurred at Camp Lejeune. This creates a logical paradox wherein the *Feres* Doctrine cannot stand.

In light of the theoretical paradox created by the Lejeune Act, along with the circuit split created by *Spletstoser*, it is imperative now more than ever that the Court grant certiorari to hear Staff Sgt. Carter's case. Justice for thousands of injured American soldiers and their families hangs in the balance. The time has come to overturn the abhorrent doctrine that has usurped the rights of our military and their families for too long. We pray that this same Court

that correctly resolved the injustices stemming from the longstanding *Chevron* Doctrine do the same with the *Feres* Doctrine so our service members can have the same rights that we all enjoy due to their patriotism and honorable service to our country.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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