No. 24-362

IN THE

Supreme Court of the United States

CURTRINA MARTIN, ET AL.,

Petitioners,

v.

UNITED STATES OF AMERICA, ET AL.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF OF CONSTITUTIONAL ACCOUNTABILITY CENTER AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

ELIZABETH B. WYDRA
BRIANNE J. GOROD*
MIRIAM BECKER-COHEN
NARGIS ASLAMI**
CONSTITUTIONAL ACCOUNTABILITY CENTER
1200 18th Street NW, Suite 501
Washington, D.C. 20036
(202) 296-6889
brianne@theusconstitution.org

Counsel for Amicus Curiae

March 14, 2025

* Counsel of Record
** Not admitted in D.C.; supervised by principals of the firm

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INTEREST OF *AMICUS CURIAE*[1]

Constitutional Accountability Center (CAC) is a think tank and public interest law firm dedicated to fulfilling the progressive promise of the Constitution's text and history. CAC works in our courts, through our government, and with legal scholars to improve understanding of the Constitution and preserve the rights and freedoms it guarantees. CAC has a strong interest in ensuring meaningful access to the courts, in accordance with constitutional text and history, and therefore has an interest in this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

In a brazen act of judicial overreach, the court below rewrote the Federal Tort Claims Act ("FTCA") to bar liability for the very acts for which the FTCA authorizes it. According to the Eleventh Circuit (and only that Circuit), if a federal employee's actions "have some nexus with furthering federal policy" and "can reasonably be characterized as complying with the full range of federal law," the Supremacy Clause overrides the FTCA's express waiver of sovereign immunity. Pet. App. 17a. This makes no sense. Application of a federal law—literally, the *Federal* Tort Claims Act—cannot possibly "impede or burden the execution of federal law." *Id.* at 16a. This Court should reject the attempt of the court below to "import immunity back into a statute designed to limit it." *Indian Towing Co. v. United States*, 350 U.S. 61, 69 (1955).

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[1] No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund its preparation or submission. No person other than *amicus* or its counsel made a monetary contribution to its preparation or submission.

The history of the Supremacy Clause shows just how fundamentally wrong the Eleventh Circuit's decision is. The Framers of our Constitution wrote the Supremacy Clause to correct a "fatal omission" in the dysfunctional Articles of Confederation, Jack N. Rakove, *Original Meanings: Politics and Ideas in the Making of the Constitution* 167 (1996)—namely, the failure to ensure the supremacy of federal law over conflicting state law and, in turn, secure the "effectual controul in the whole over its parts," 1 *The Records of the Federal Convention of 1787*, at 167 (Max Farrand ed., 1911) [hereinafter *Farrand's Records*]. The Convention records make clear that the Framers conceived of separate roles for Congress and the judiciary with respect to the Supremacy Clause: Congress would write federal laws, and courts would interpret and safeguard them. Specifically, in cases involving a conflict between state and federal law, the job of the courts would be to apply the Supremacy Clause as a "rule of decision." *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 324 (2015). Judicial review is thus critical to making real the promise of the Supremacy Clause, but the Clause does not give courts license to rewrite duly enacted federal statutes in the name of furthering or protecting some nebulous "federal policy." Pet. App. 17a. Federal statutes *are* the federal policy.

Application of the plain text of the FTCA, which provides that the United States can be held "liable [for] tort claims[] in the same manner and to the same extent as a private individual under like circumstances," 28 U.S.C. § 2674, thus does not—indeed cannot—violate the Supremacy Clause. Congress included thirteen explicit exceptions to the FTCA's waiver of sovereign immunity, none of which match the exception crafted by the Eleventh Circuit—as the court below acknowledged. Pet. App. 16a-17a. Congress even

amended the FTCA in the wake of two high-profile federal wrong-house raids like the one at issue here to make it exceptionally clear that claims like those brought in this case are authorized by the FTCA's express cause of action. There is simply no room for courts to write new exceptions into the text of the Act.

Wrong under any circumstances, this act of judicial legislation is especially troublesome in the context of a decision about whether to waive sovereign immunity. Given that the delicate policy considerations involved in the decision to waive sovereign immunity are squarely within Congress's "bailiwick," *Thacker v. Tenn. Valley Auth.*, 587 U.S. 218, 226 (2019), this Court has long recognized that only Congress, as the people's representative, has the power to make that decision. Time and again, this Court has explained that just as "we should not take it upon ourselves to extend [a] waiver [of sovereign immunity] beyond that which Congress intended[,] . . . [n]either, however, should we assume the authority to narrow the waiver that Congress intended." *United States v. Idaho ex rel. Dir., Idaho Dep't of Water Res.*, 508 U.S. 1, 7 (1993) (some alterations in original) (internal quotation marks omitted) (quoting *Smith v. United States*, 507 U.S. 197, 203 (1993)). That rule is especially salient in the context of the FTCA, which this Court has upheld as a model of clarity with respect to waivers of sovereign immunity. *E.g.*, *United States v. Yellow Cab Co.*, 340 U.S. 543, 548 & n.5 (1951).

Ignoring all this, the court below decided that because the FTCA incorporates by reference the "law of the place where the act or omission occurred," 28 U.S.C. § 1346(b)(1), the FTCA—a *federal* statute—must give way when a federal official acts in accordance with other federal laws or policies. That is wrong. The incorporation of state law as the source of

substantive liability does not dispossess the FTCA of its status as "the supreme Law of the Land." U.S. Const. art. VI, cl. 2. As this Court has put it, "laws of the States which . . . are adopted by Congress" are "as much the laws of the United States, and it has often been so held, as if they had been specially enacted by Congress." *Passenger Cases*, 48 U.S. (7 How.) 283, 402 (1849). Enforcement of the FTCA—an express federal cause of action over which federal courts have jurisdiction—is thus fundamentally different from the prosecution of federal officials under state criminal law, *i.e.*, the scenario in *In re Neagle*, 135 U.S. 1 (1890), on which the court below relied in large part for its novel rule. *See* Pet. App. 16a-17a (citing *Denson v. United States*, 574 F.3d 1318, 1336-37 (11th Cir. 2009), which in turn relied primarily on *Neagle*).

The Supremacy Clause thus does not license courts to rewrite the FTCA to exempt from liability federal actors who Congress chose *not* to exempt in the text of the statute. "If the Act is to be altered that is a function for the same body that adopted it." *Rayonier Inc., v. United States*, 352 U.S. 315, 320 (1957). This Court should reverse.

ARGUMENT

I. The Supremacy Clause Assigns Courts a Critical but Limited Role of Reviewing Conflicts Between State and Federal Law.

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; . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. art. IV, cl. 2. In this sweeping declaration of federal supremacy, the Framers provided that "conflicts between state and

federal law" would be "resolved by principled adjudication, rather than political will or force." Bradford R. Clark, *Separation of Powers as a Safeguard of Federalism*, 79 Tex. L. Rev. 1321, 1348 (2001). The Supremacy Clause thus assigns a critical—but limited—role to the judiciary: courts ensure that acts of Congress are treated as the supreme law of the land when they conflict with state law.

The Framers crafted the Supremacy Clause against the backdrop of numerous abuses of state authority under the Articles of Confederation, which established a single branch of the federal government, but contained no mechanism for ensuring federal supremacy. Under the dysfunctional structure of the Articles, the federal government could not enforce its laws, prompting Alexander Hamilton to observe that a "most palpable defect of the existing Confederation is the total want of a *sanction* to its laws." *The Federalist No. 21*, at 138 (Alexander Hamilton) (Clinton Rossiter ed., 1961). The result, James Madison lamented, is that acts of Congress "depend[] for their execution on the will of the state legislatures," making federal laws "nominally authoritative, [but] in fact recommendatory only." James Madison, *Vices of the Political System of the United States* (Apr. 1787), *reprinted in* 9 *The Papers of James Madison* 345, 352 (Robert A. Rutland & William M. E. Rachal eds., 1975). Without the Supremacy Clause, Madison argued, our system of government would be an "inversion of the fundamental principles of all government; it would have seen the authority of the whole society everywhere subordinate to the authority of the parts; it would have seen a monster, in which the head was under the direction of the members." *The Federalist No. 44*, *supra*, at 287 (James Madison).

The Framers gathered in Philadelphia in 1787 to correct these "vices" resulting from the lack of "effectual controul in the whole over its parts." 1 *Farrand's Records*, *supra*, at 167. During the Convention, they debated various means of ensuring the supremacy of federal law, including the use of force by the Executive, a congressional veto on state laws, and judicial review. Early in the Convention, Governor Edmund Randolph of Virginia proposed that the "National Legislature" be given the power "to negative all laws passed by the several States," as well as the power "to call forth the force of the Union" against a state "failing to fulfill its duty." *Id.* at 21. While James Madison supported the legislative "negative," he strongly disagreed with reliance upon military force to resolve conflicts between federal and state law: "The use of force agst. a State, would look more like a declaration of war, than an infliction of punishment, and would probably be considered by the party attacked as a dissolution of all previous compacts by which it might be bound." *Id.* at 54. Randolph was persuaded to change his position, agreeing that the use of force would be "impracticable, expensive, [and] cruel to individuals." *Id.* at 256 (emphasis omitted).

While Madison convinced his colleagues to relinquish the military option, he could not persuade them to embrace the use of congressional power to invalidate state laws. As Governor Morris argued, "[a] law that ought to be negatived will be set aside in the Judiciary department, and if that security should fail; may be repealed by a Nationl. law." 2 *Farrand's Records*, *supra*, at 28. The proposal that Congress nullify state laws was thus voted down. *Id.* In rejecting the congressional negative, "the Framers substituted judicial review of state laws for congressional control of state legislatures." *FERC v. Mississippi*, 456 U.S. 742,

795 (1982) (O'Connor, J., concurring in the judgment in part and dissenting in part).

Immediately after the defeat of the negative, Luther Martin of Maryland proposed an initial version of the Supremacy Clause, which provided that "the Legislative acts of the [United States] . . . shall be the supreme law of the respective States . . . [and] that the Judiciaries of the several States shall be bound thereby in their decisions, any thing in the respective laws of the individual States to the contrary notwithstanding." 2 *Farrand's Records, supra,* at 28-29. The Convention unanimously adopted this provision. Assigning the judiciary the task of enforcing the Supremacy Clause naturally fit within its already established role as "expositor[] of the Laws," *id.* at 73, and would ensure principled decisions free from localized influences, *The Federalist No. 80*, *supra*, at 478-79 (Alexander Hamilton); *see also The Federalist No. 78*, *supra*, at 470-71 (Alexander Hamilton) (judicial review as a means of enforcing the Supremacy Clause would ensure the uniformity of laws through the courts' "inflexible and uniform adherence to the rights of the Constitution").

Significantly, this decision was made amidst the larger debates over the extent to which the judiciary would play a role—if any—in law-making, specifically as part of a council of revision through which the judiciary and the executive would have jointly shared the power to veto laws proposed by the legislature. *See* James T. Barry III, *The Council of Revision and the Limits of Judicial Power*, 56 U. Chi. L. Rev. 235, 248 (1989). Those in favor of the proposed council argued, in part, that limiting the courts' role to judicial review would allow the enactment of "improper law[s]," which the courts might not have a chance to expound upon, or which the courts would be bound to uphold if not

unconstitutional. 2 *Farrand's Records*, *supra*, at 78; *see also id.* at 73. The opponents, on the other hand, viewed the proposed council as "an improper mixture of powers," 1 *Farrand's Records*, *supra*, at 140, that would "mak[e] the Expositors of the Laws[] the Legislators[,] which ought never to be done," 2 *Farrand's Records*, *supra*, at 75. A key concern was that the people's confidence in the judiciary "will soon be lost, if they are employed in the task of remonstrating agst. popular measures of the Legislature." *Id.* at 76-77. This concern won out, and the Framers adhered to the role of the judiciary as an arbiter of disputes—vested with the authority of *applying* the law rather than creating it. 1 *Farrand's Records*, *supra*, at 140; 2 *Farrand's Records*, *supra*, at 80; *id.* at 298.

To effectuate these fundamental separation-of-powers principles, this Court has emphasized that "it is important to read the Supremacy Clause in the context of the Constitution as a whole," including Article I, which vests the legislative power in Congress. *Armstrong*, 575 U.S. at 325. The Supremacy Clause does not alter or redelegate that power; rather, it "creates a rule of decision: Courts 'shall' regard the 'Constitution,' and all laws 'made in Pursuance thereof,' as 'the supreme Law of the Land.'" *Id.* at 324; *cf. The Federalist No. 78*, *supra*, at 469 (Alexander Hamilton) (If "the courts of justice are to be considered as the bulwarks of a limited Constitution against legislative encroachments," they "must declare the sense of the law; and if they should be disposed to exercise will instead of judgment, the consequence would equally be the substitution of their pleasure to that of the legislative body."). In other words, the role of the courts with respect to the Supremacy Clause is to construe the text of the laws that Congress enacted—not to alter that

text—and ensure that no state laws violate congressional mandates.

In short, the Framers wrote the Supremacy Clause to ensure that federal laws would reign supreme over conflicting state laws. Adherence to a most basic principle of our constitutional system—"the legislature makes, the executive executes, and the judiciary construes the law"—is paramount to actualizing the Supremacy Clause as a rule of law. *Wayman v. Southard*, 23 U.S. (10 Wheat.) 1, 46 (1825). The roles of the judicial and legislative branches under the Clause are clear: Congress passes laws, and courts ensure that those laws are given effect even in the face of conflicting state laws. Courts cannot, however, rewrite federal statutes under the guise of ensuring federal supremacy. The Supremacy Clause does not authorize such legislation from the bench, and the separation of powers prohibits it.

II. The Court Below Overstepped Its Boundaries by Crafting, Under the Guise of the Supremacy Clause, a New Exception to the FTCA's Waiver of Sovereign Immunity that Does Not Appear in the Text of the Statute.

A. The FTCA Is a Sweeping Waiver of Sovereign Immunity, and It Contains No Exception for Acts that "Have Some Nexus with Furthering Federal Policy" and "Can Reasonably Be Characterized as Complying with the Full Range of Federal Law."

Because the Supremacy Clause does not give courts the authority to rewrite federal statutes, or pick and choose between federal policies enshrined in federal law, the court below erred in crafting a new

exception to the FTCA's creation of liability for federal actors—an exception never legislated by Congress.

The text of the Federal Tort Claims Act is entirely unambiguous in its waiver of sovereign immunity: "The United States *shall be liable* . . . in the same manner and to the same extent as a private individual under like circumstances." 28 U.S.C § 2674 (emphasis added); *see Yellow Cab Co.*, 340 U.S. at 547 ("The Federal Tort Claims Act waives the Government's immunity from suit in sweeping language. It unquestionably waives it in favor of an injured person." (footnote omitted)); *Indian Towing Co.*, 350 U.S. at 65 ("The Federal Tort Claims Act cuts the ground from under" "the basic historical doctrine of sovereign immunity."). The law was enacted in 1946 by Congress to rectify the burdensome and unjust private-bill system, which served as the only means by which private individuals could seek remedies for wrongs committed by the federal government. S. Rep. No. 79-1400, at 30 (1946); *accord* H.R. Rep. No. 79-1287, at 1-2 (1946).

As part of a "general trend toward increasing the scope of the waiver by the United States of its sovereign immunity from suit," *Yellow Cab Co.*, 340 U.S. at 550, the FTCA "establish[ed] novel and unprecedented governmental liability," *Rayonier,* 352 U.S. at 319. Although liability was initially limited to certain negligent acts, Congress responded to a series of abusive and illegal wrong-house raids conducted by federal law enforcement officers by adding a "law enforcement proviso" in 1973 in order "to deprive the Federal Government of the defense of sovereign immunity in cases in which Federal law enforcement agents, acting within the scope of their employment, or under color of Federal law," commit certain intentional torts. S. Rep. No. 93-588, at 3 (1973).

In defining the scope of the FTCA's waiver of sovereign immunity, Congress was careful to balance competing interests, as evidenced by the many express statutory exceptions limiting the United States's liability. *See, e.g.*, 28 U.S.C. § 2674 (restricting available damages and retaining defenses); *id.* § 2680 (listing thirteen express exceptions to liability); Federal Employees Liability Reform and Tort Compensation Act of 1988, Pub. L. No. 100-694, 100th Cong. § 2 (restoring immunity for federal employees from personal liability for common law torts in response to *Westfall v. Erwin*, 484 U.S. 292 (1988)). As this Court has explained, the FTCA "was the product of nearly thirty years of congressional consideration and was drawn with numerous substantive limitations and administrative safeguards." *Indian Towing Co.*, 350 U.S. at 68.

None of the FTCA's express exceptions eliminate liability for federal employees' actions that "have some nexus with furthering federal policy" and "can reasonably be characterized as complying with the full range of federal law." Pet. App. 17a. To the contrary, the text of the FTCA's jurisdictional provision seems to expressly contemplate that the federal government will be liable under such circumstances—after all, most federal employees "acting within the scope of [their] office or employment," 28 U.S.C. § 1346(b)(1), could be said to be engaging in the furtherance of federal policy. Thus, by crafting an unwritten exception to the FTCA under the guise of the Supremacy Clause, the court below "abandon[ed] [its] role as [an] interpreter[] of statutes," *Bostock v. Clayton Cnty.*, 590 U.S. 644, 677 (2020), instead engaging in an unconstitutional "act of judicial legislation," *Carter v. United States*, 145 S. Ct. 519, 523 (2025) (Thomas, J., dissenting from denial of writ of certiorari); *see Simmons v. Himmelreich*, 578

U.S. 621, 631 (2016) ("declin[ing] to ignore the text of the [FTCA] to achieve . . . imprudently restrictive results" when the plain text is clear).

B. Waiving Sovereign Immunity Is Uniquely Within the Purview of Congress.

Wrong under any circumstances, this judicial usurpation of the congressional role is especially troublesome in the context of sovereign immunity. Indeed, since the earliest invocations of the sovereign immunity doctrine, this Court has consistently maintained that Congress, as the people's representative, has the power to decide whether or not to waive the United States' sovereign immunity. *See, e.g.*, *The Siren*, 74 U.S. (7 Wall.) 152, 154 (1868) (explaining that any person who brings suit against the United States "must bring his case within the authority of some act of Congress"); *Carr v. United States*, 98 U.S. (8 Otto) 433, 437 (1878) ("We consider it to be a fundamental principle that the government cannot be sued except by its own consent," and "that without an act of Congress[,] no direct proceeding can be instituted against the government or its property."); *Dep't of Agric. Rural Dev. Rural Hous. Serv. v. Kirtz*, 601 U.S. 42, 48 (2024) ("the power to waive the federal government's immunity is Congress's prerogative").

As the history of the FTCA makes clear, waivers of sovereign immunity necessarily require a determination of "the appropriate balance between protecting government policymaking and providing remedies to those injured by government actions." John Copeland Nagle, *Waiving Sovereign Immunity in an Age of Clear Statement Rules*, 1995 Wis. L. Rev. 771, 818 (1995). Decisions involving such matters, according to this Court, are squarely within Congress's "bailiwick," and

thus Congress is "[t]he right governmental actor" to determine whether "to waive immunity." *Thacker*, 587 U.S. at 226; *see* Harold J. Krent, *Reconceptualizing Sovereign Immunity*, 45 Vand. L. Rev. 1529, 1531 (1992) ("The dominant justification for sovereign immunity must be that we trust Congress, unlike any other entity, to set the rules of the game."); *cf. Egbert v. Boule*, 596 U.S. 482, 491 (2022) (creation of causes of action involves policy considerations that "Congress is 'far more competent than the Judiciary' to weigh" (quoting *Schweiker v. Chilicky*, 487 U.S. 412, 423 (1988))).

Because the decision whether to waive sovereign immunity belongs to Congress, and Congress alone, this Court has been clear that the courts should not second-guess Congress's decision to waive immunity. *See, e.g.*, *United States v. Muniz*, 374 U.S. 150, 165-66 (1963) ("We should not . . . narrow the remedies provided by Congress."). Thus, "once Congress has acted to permit the claim of the aggrieved against the sovereign to be pursued in a judicial forum," "courts should not frustrate the legislative promise of relief by reconstructing a broader scope of immunity through a hostile and narrow construction of the statute." Gregory C. Sisk, *Twilight for the Strict Construction of Waivers of Federal Sovereign Immunity*, 92 N.C. L. Rev. 1245, 1252 (2014).

Indeed, because of the FTCA's textual clarity, cases brought pursuant to that statute "do[] not [even] implicate the general rule that 'a waiver of the Government's sovereign immunity will be strictly construed, in terms of its scope, in favor of the sovereign.'" *Dolan v. U.S. Postal Service*, 546 U.S. 481, 491-92 (2006) (quoting *Lane v. Peña*, 518 U.S. 187, 192 (1996)); *see also Yellow Cab Co.*, 340 U.S. at 548 n.5

("Where a statute contains a clear and sweeping waiver of immunity from suit on all claims with certain well defined exceptions, resort to that rule (of strict construction) cannot be had in order to enlarge the exceptions." (quoting *Emps.' Fire Ins. Co. v. United States*, 167 F.2d 655, 657 (9th Cir. 1948))). That is because the plain text of the FTCA reflects "the balance struck by Congress in the context of tort claims against the Government." *United States v. Kubrick*, 444 U.S. 111, 117 (1979). Courts "are not free to construe [the FTCA] so as to defeat its obvious purpose." *Id.*; *see also United States v. Nordic Vill. Inc.*, 503 U.S. 30, 34 (1992) ("We have on occasion narrowly construed exceptions to waivers of sovereign immunity where that was consistent with Congress' clear intent, as in the context of the 'sweeping language' of the Federal Tort Claims Act." (quoting *Yellow Cab Co.*, 340 U.S. at 547)).

Therefore, the only "proper objective of a court attempting to construe [the FTCA] is to identify 'those circumstances which are within the words and reason of the exception'—no less and no more." *Kosak v. United States*, 465 U.S. 848, 853 n.9 (1984) (quoting *Dalehite v. United States*, 346 U.S. 15, 31 (1953)). No provision of the Constitution authorizes courts to "usurp[] the functions of a legislator, and desert[] those of an expounder of the law." 1 Joseph Story, *Commentaries on the Constitution of the United States* § 426, at 410 (1st ed. 1833). That is critically important in the context of the Supremacy Clause, given that the Framers specifically chose judicial review as the means of enforcing the supremacy of federal law while leaving it to Congress to actually *write* those laws that would reign supreme.

C. The FTCA Is a Federal Law, so Application of Its Text, as Written by Congress, Cannot Possibly Run Afoul of the Supremacy Clause.

The court below erred in two fundamental respects when it claimed the Supremacy Clause mandated a judicial rewriting of the FTCA. First, the court misunderstood that as a constitutional act of Congress, the FTCA *is* the supreme law of the land. The fact that Congress chose to incorporate state law as the source of substantive liability does not change that fact. Second, it relied on pre-FTCA case law that did not involve an express waiver of sovereign immunity or a federal cause of action.

1. Again, the FTCA makes "the United States[] [liable] for money damages, . . . for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with *the law of the place where the act or omission occurred*." 28 U.S.C. § 1346(b)(1) (emphasis added). The court below held that because the FTCA incorporates state tort law, using it to hold federal actors accountable when they act in compliance with *other* federal laws and policies would amount to the domination of state tort law over federal law.

This is wrong. Congress has the authority to incorporate state law as the source of liability within federal law. *See, e.g.*, Seth P. Waxman & Trevor W. Morrison, *What Kind of Immunity? Federal Officers, State Criminal Law, and the Supremacy Clause*, 112 Yale L.J. 2195, 2242-43 (2003) ("the extent to which state

law may constrain federal officers is ultimately up to Congress"). As this Court has recognized, "[a]lthough Congress cannot enable a State to legislate, Congress may adopt the provisions of a State on any subject." *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 80 (1824); *see also United States v. Sharpnack*, 355 U.S. 286, 293 (1958) (noting Congress's "power to assimilate the state laws"). In fact, this Court has explicitly recognized the FTCA as an "[e]xample[] of uses made by Congress of . . . state legislative action in connection with the exercise of federal legislative power." *Sharpnack*, 355 U.S. at 294-95.

Moreover, when a federal statute incorporating state law is enforced, the result is "not to enforce the laws of the state, . . . but to enforce the federal law, the details of which, instead of being recited, are adopted by reference." *People of Puerto Rico v. Shell Co.*, 302 U.S. 253, 266 (1937); *see also* Waxman & Morrison, *supra*, at 2253 ("If Congress were expressly to provide that a federal officer is subject to state criminal law when discharging his federal duties, then he would lack the federal authority to engage in acts that violate state law," even if that conduct "would otherwise fall within the scope of his federal authority."); Henry M. Hart, Jr., *The Relations Between State and Federal Law*, 54 Colum. L. Rev. 489, 529 (1954) ("the state law has been absorbed, as it were, as the governing federal rule," "ultimately attributable to the Constitution, treaties or statutes of the United States" (quoting *Bd. of Comm'rs of Jackson Cnty. v. United States*, 308 U.S. 343, 349-50, 351-52 (1939))). This makes sense—after all, plaintiffs would not even be able to file suits of this nature against federal defendants if not for the FTCA. And certainly, federal courts would not have jurisdiction over FTCA claims if those claims strictly involved

the enforcement of state law. *See* 28 U.S.C. § 1346(b)(1).

To put it simply: the FTCA is a federal statute through-and-through, notwithstanding its incorporation of "the law of the place where the act or omission occurred." *Id.* Because it is a federal statute, the FTCA's application cannot possibly violate the Supremacy Clause. By concluding otherwise, and then treating the Supremacy Clause as a license to rewrite a federal statute, the court below disregarded centuries of this Court's precedent.

2. The court below also erred in relying on a series of this Court's Supremacy Clause immunity cases from the 1800s. Pet. App. 16a-19a (citing *Denson*, 574 F.3d at 1336-37, 1348, and *Kordash v. United States*, 51 F.4th 1289, 1293-94 (2022)); *see Denson*, 574 F.3d at 1346 (citing in turn *Tennessee v. Davis*, 100 U.S. 257, 262-63 (1880); *Neagle*, 135 U.S. at 57, 60-61, 75, ; *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 363 (1816)). None of these cases supports the radical rule adopted by the court below. *Davis* and *Neagle* involved the distinct question whether, and to what extent, federal officers could be criminally prosecuted for murder in state courts when the officer was acting in self-defense and while carrying out his federal duties. And *Hunter's Lessee* is even more inapposite; it merely established the supremacy of the federal judiciary's authority in deciding questions of federal law—an issue that is not relevant here.

The Eleventh Circuit relied most heavily on *Neagle*, which it explained "stands for the proposition that an officer of the United States cannot be held in violation of state law while simultaneously executing his duties as prescribed by federal law." *Denson*, 574 F.3d at 1347. That is certainly true with respect to

protecting federal officers from *state* criminal prosecution in the exercise of their duties—the scenario at issue in *Neagle*. *See* 135 U.S. at 75 ("if the prisoner is held in the state court to answer for an act which he was authorized to do by the law of the United States, . . . [and] he did no more than what was necessary and proper for him to do, he cannot be guilty of a crime under the law of the state of California"); *see also* Leslie A. Gardner & Justin C. Van Orsdol, *Solidifying Supremacy Clause Immunity*, 30 Wm. & Mary Bill Rts. J. 567, 569 (2022) ("Supremacy Clause immunity protects federal officers from 'allegedly criminal conduct undertaken in [the] discharge of [their] federal duties,' if the officer was: (1) authorized by federal law and (2) 'did no more than what was necessary and proper' in discharging his or her duties." (footnote omitted) (quoting Waxman & Morrison, *supra*, at 2197; *Neagle*, 135 U.S. at 75)); Waxman & Morrison, *supra*, at 2252 ("[F]ederal officers may not be subject to state criminal prosecution for conduct they reasonably believe to be necessary and proper to the discharge of their federal functions.").

Yet that proposition does not apply with respect to the FTCA. First, as noted earlier, suits filed pursuant to the FTCA do not enforce state law. The FTCA *incorporates* state law as a substantive source of liability, but that state law effectively becomes federal law when invoked under an FTCA cause of action. Second, this Court granted Supremacy Clause immunity in *Neagle* in large part due to its concerns about the sovereignty of the United States. *See, e.g.*, 135 U.S. at 61 ("Without the concurrent sovereignty referred to, the national government would be nothing but an advisory government."); *id.* at 62 ("While it is limited in the number of its powers, so far as its sovereignty extends,

it is supreme."). Yet in the context of the FTCA, courts are not deputized to weigh sovereignty interests; rather, Congress has already done so itself through the FTCA's carefully crafted, explicit exceptions.

* * *

In sum, the decision below reflects a fundamental misunderstanding of the Supremacy Clause, the FTCA, and the role of the court as an interpreter of the law rather than a law-maker. Congress expressly waived sovereign immunity for tort claims arising out of wrong-house raids like the one at issue here. Neither the Supremacy Clause, nor any other constitutional provision, gave the court below license to narrow that waiver. To the contrary, fundamental separation of powers principles prohibited it from doing so.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted,

ELIZABETH B. WYDRA
BRIANNE J. GOROD*
MIRIAM BECKER-COHEN
NARGIS ASLAMI**
CONSTITUTIONAL
ACCOUNTABILITY CENTER
1200 18th Street NW, Suite 501
Washington, D.C. 20036
(202) 296-6889
brianne@theusconstitution.org

Counsel for Amicus Curiae

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* Counsel of Record
** Not admitted in D.C.; supervised by principals of the firm