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 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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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

* 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.

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.

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 constitutional authority. Congress made its judgments clear when it enacted the FTCA's law-enforcement proviso, 28 U.S.C. § 2680(h), to provide relief for victims of deliberate misconduct by federal law-enforcement officers. The Eleventh Circuit's decision in this case flouts the Constitution's design and defies Congress's judgment by refusing to give effect to that proviso in the very circumstance that prompted its enactment.

Half a century ago, Congress enacted the 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 adopt-

ing 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 plaintiffs the 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 and leaves the proviso a dead letter for 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 as expressed in the U.S. Code. On the Eleventh Circuit's telling, the Supremacy Clause bars any claim under a 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 government declines to defend the Eleventh Circuit's misguided Supremacy Clause rule and instead attempts to defend the judgment by invoking the FTCA's discretionary-function exception, 28 U.S.C. § 2680(a). That provision bars relief for claims based on a government employee's exercise of (or failure to exercise) "a discretionary function or duty." *Ibid.* But the FTCA's text makes clear that the discretionary-function exception is categorically inapplicable to law-enforcement proviso claims. Congress enacted the proviso specifically to remove the government's immunity from suit in cases like this one. The government's invocation of the discretionary-function exception's general terms to narrow the proviso's specific, later-enacted protections distorts the statute and would defeat Congress's principal aim in enacting the proviso. The government's position, no less than the Eleventh Circuit's decision, would leave the proviso a dead letter in (among many other circumstances) the very scenario Congress enacted it to address.

Neither the Supremacy Clause nor the discretionary-function exception bars valid claims under the law-enforcement proviso. The Court should reverse.

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 for the specified torts.

The decision below 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 Eleventh Circuit concluded that petitioners nevertheless have *no* remedy. Pet. App. 19a. That the Eleventh Circuit's ruling leaves the proviso a dead letter even in wrong-house-raid cases shows that its Supremacy Clause approach is off track.

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 ordinarily a telltale sign that something is amiss. That is the case here.

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 and 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 cumbersome 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" was not absolute, however, but "subject to a number of exceptions." *Millbrook* v. *United States*, 569 U.S. 50, 52 (2013). One was the "intentional tort exception," *Sheridan* v. *United States*, 487 U.S. 392, 400 (1988), which preserved 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 Mrs. Giglotto too, eventually "identif[ying] themselves as federal officers." *Ibid.* While "ransack[ing]" the house, the officers realized they had the wrong home. *Ibid.* "[W]ithout apology, [they] untied the couple" and left. *Id.* at 500-501.

Thirty minutes later, "the same Justice Department agents" descended on the nearby home of the Askews. S. Rep. No. 588, 93d Cong., 1st Sess. 2 (1973). 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 again 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. Eric Wang, *Tortious 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 the exceptions to the FTCA's waiver of immunity, the law-enforcement proviso thus authorized suits against the United States for specified intentional torts by "extend[ing] the waiver of sovereign immunity" to encompass claims based on law-enforcement officers' acts or omissions that the intentional-tort and other exceptions 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 imprison-

ment, 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. Echoes of the proviso's primary aim arose repeatedly along its path through Congress. 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. 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 fed-

eral officers' torts, including misdirected federal raids like the ones in Collinsville, by enabling them to bring actions 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 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 "used stormtrooper tactics in making [an] unan-

nounced and unlawful entr[y] into the dwellin[g] 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 cognizable—contravenes Congress's policy in passing the law-enforcement proviso, which Congress 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.

II. THE ELEVENTH CIRCUIT'S DISTORTION OF THE SUPREMACY CLAUSE UNDERMINES CONGRESS'S POWER

The Eleventh Circuit's Supremacy Clause rationale for depriving the law-enforcement proviso of effect rests on a misapprehension of bedrock constitutional principles. The Supremacy Clause, U.S. Const. Art. VI, § 2, *preserves* the efficacy of valid Acts of Congress by making them "supreme" over any other, contrary laws. Yet the Eleventh Circuit construed the Clause to *prevent* Congress from providing relief to victims of wrong-house raids under certain circumstances. That ruling turns the Supremacy Clause on its ear and unduly constrains Congress's legislative authority.

In relevant part, the Supremacy Clause provides 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 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 protects 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.

A. 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 Cir-

cuit then swerved by construing the Clause to impose the same constraint on 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 federal 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 *is* "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).

B. The Eleventh Circuit's 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 supremacy 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).

C. 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"). Accordingly, the FTCA 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.

The Eleventh Circuit is wrong to misread the Supremacy Clause to restrict Congress's power to legislate within its constitutional authority, and this Court should reverse.

III. THE DISCRETIONARY-FUNCTION EXCEPTION DOES NOT OVERRIDE THE LAW-ENFORCEMENT PROVISO

Eschewing the Eleventh Circuit's misguided Supremacy Clause approach, the United States instead defends the judgment on the ground that the FTCA's discretionary-function exception cabins claims under the law-enforcement proviso. See Br. in Opp. 14-21. As petitioners explain, however, the discretionary-function exception, properly understood, shields from suit officials' policy judgments, not day-to-day or even split-second tactical decisions in connection with intentional torts covered by the law-enforcement proviso—even if such decisions involve some modicum

of discretion. See Pet. Br. 22-40. But even if the discretionary-function exception and the proviso conflict, the proviso controls. The Eleventh Circuit has this point right: Where the law-enforcement proviso "applies to waive sovereign immunity," the discretionary-function exception "is of no effect." *Nguyen*, 556 F.3d at 1256-1257, 1260. Only that interpretation honors the FTCA's plain text. And only that view preserves Congress's legislative intent to afford relief to victims of wrong-house raids and other intentional torts by federal law enforcement. The government's position, on the other hand, guts the proviso and nullifies Congress's legislative solution.

A. The FTCA waives the government's sovereign immunity from tort suits based on injuries "caused by the negligent or wrongful act[s] or omission[s]" of government employees. 28 U.S.C. §§ 1346(b)(1), 2674. It then limits that waiver through various exceptions set forth in Section 2680. That section provides that "[t]he provisions of this chapter"—and of 28 U.S.C. § 1346(b), which vests district courts with jurisdiction over FTCA claims—"shall not apply to" the prescribed categories of claims. For torts that fall within one of the exceptions, there is thus no waiver of immunity.

By adding the law-enforcement proviso, however, Congress re-attached the FTCA's waiver of immunity for claims alleging certain intentional torts committed by law-enforcement officers. 28 U.S.C. § 2680(h). Congress did so in unmistakable terms, using language that directly mirrors the language it used to establish the exceptions. Section 2680's preamble negates the FTCA's immunity waiver by providing that "[t]he provisions of this chapter and section 1346(b) of this title *shall not* apply" to the enumerated exceptions,

id. § 2680 (emphasis added); the law-enforcement proviso restores that waiver by providing that "the provisions of this chapter and section 1346(b) of this title *shall* apply" to the specific intentional-tort claims encompassed by the proviso, *id.* § 2680(h) (emphasis added).

Unable to dispute that the proviso revives claims otherwise barred by the FTCA's intentional-tort exception, the government contends that *another* of the FTCA's exceptions—the discretionary-function exception, 28 U.S.C. § 2680(a)—overrides the law-enforcement proviso when they conflict. The discretionary-function exception covers "[a]ny claim * * * based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty * * * , whether or not the discretion involved be abused." *Ibid.* It thus exempts from liability "acts that are discretionary in nature"—*i.e.*, those that "'involv[e] an element of judgment or choice.'" *United States* v. *Gaubert*, 499 U.S. 315, 322 (1991) (quoting *Berkovitz* v. *United States*, 486 U.S. 531, 536 (1988)). The exemption serves "to prevent judicial 'second-guessing' of legislative and administrative decisions grounded in social, economic, and political policy through the medium of an action in tort." *United States* v. *S.A. Empresa de Viacao Aerea Rio Grandense (Varig Airlines)*, 467 U.S. 797, 814 (1984).

As petitioners explain, the discretionary-function exception is best construed to apply only to regulatory policy decisions. Pet. Br. 22-31. The exception thus does not cover the on-the-spot judgment calls from which law-enforcement proviso claims typically arise. *Id.* at 31-34. Because the discretionary-function exception and the law-enforcement proviso are "capable

of co-existence," it is "the duty of the courts * * * to regard each as effective." *Radzanower* v. *Touche Ross & Co.*, 426 U.S. 148, 155 (1976) (citation omitted). In finding conflict where none exists, lower courts have simply overread the discretionary-function exception.

B. The government also misreads the discretionary-function exception to create needless conflict and contends that it supersedes the law-enforcement proviso. That misreading undercuts Congress's work no less than the Eleventh Circuit's mistaken Supremacy Clause holding. If the Court adopts or assumes the government's view of the discretionary-function exception's scope, it should hold that the proviso prevails to the extent of any conflict. That conclusion follows from the FTCA's text, structure, and purpose.

1. The language of the law-enforcement proviso is unequivocal: For "*any* claim" within its ambit, the FTCA's waiver of immunity "*shall* apply." 28 U.S.C. § 2680(h) (emphases added). Those terms permit no exceptions. See *Patel* v. *Garland*, 596 U.S. 328, 338 (2022) ("any" "has an expansive meaning," capturing "one or some indiscriminately of whatever kind" (citations and internal quotation marks omitted)); *Murphy* v. *Smith*, 583 U.S. 220, 223 (2018) ("the word 'shall' usually creates a mandate"); see also *Bufkin* v. *Collins*, No. 23-713 (U.S. Mar. 5, 2025), slip op. 8 ("'Shall' means 'must.'"). And nothing in the text of the proviso suggests that it is limited by the discretionary-function exception.

To be sure, the discretionary-function exception similarly purports to reach "[a]ny claim" involving a discretionary function. 28 U.S.C. § 2680(a); see *Nguyen*, 556 F.3d at 1252 (noting that the "any" in the excep-

tion "battles" the "any" in the proviso). For at least four reasons, however, the law-enforcement proviso's categorical terms limit the discretionary-function exception, not the other way around.

First, only the proviso contains language suggesting that it qualifies other parts of Section 2680: "*Provided*, That, * * * the provisions of this chapter and section 1346(b) of this title shall apply" to certain acts or omissions by federal law enforcement. 28 U.S.C. § 2680(h). The phrase "Provided, That" introduces a "condition" or an "exception." Antonin Scalia & Bryan A. Garner, *Reading Law* 154 (2012) (Scalia & Garner). Thus, while the discretionary-function exception turns off the FTCA's waiver of sovereign immunity for certain claims, the law-enforcement proviso expressly "condition[s]" that rule when it applies, *ibid.*, and turns the waiver back on for claims within its ambit.

Second, the proviso's more specific requirements should be "construed as an exception to" the discretionary-function exception's "general" rule. *RadLAX Gateway Hotel, LLC* v. *Amalgamated Bank*, 566 U.S. 639, 645 (2012); accord Scalia & Garner 183. The discretionary-function exception applies generally "to claims arising from discretionary functions or duties of federal agencies or employees." *Nguyen*, 556 F.3d at 1253. The law-enforcement proviso, on the other hand, applies only to "six specified claims arising from acts of two specified types of government officers." *Ibid.* Thus, while the discretionary-function exception operates as a "general prohibition" on suits against the United States based on officials' discretionary acts, the law-enforcement proviso acts as a "specific permission" for a subset of intentional-tort claims against a limited set of officials. Scalia & Garner 183.

This is the "most common example of irreconcilable conflict—and the easiest to deal with," *ibid.*: The "specific provision controls over one of more general application," *Gozlon-Peretz* v. *United States*, 498 U.S. 395, 407 (1991). The "general/specific canon" is a "strong indication of statutory meaning" and helps "avoi[d] * * * the superfluity of a specific provision that is swallowed by the general one." *RadLAX*, 566 U.S. at 645-646. That rationale applies squarely here: The government's reading of the discretionary-function exception would render the law-enforcement proviso largely superfluous and nullify it in its core application. See *infra* pp. 25-26.

To be sure, not *all* intentional torts necessarily "implicate discretionary functions." Br. in Opp. 18. But the general-specific canon is not "confined to situations in which *the entirety* of the specific provision is a 'subset' of the general one." *RadLAX*, 566 U.S. at 648 (emphasis added). "When *the conduct at issue* falls within the scope of both provisions, the specific presumptively governs, whether or not the specific provision also applies to some conduct that falls outside the general." *Ibid.* (emphasis altered). That rule reflects a presumption that Congress "targeted specific problems with specific solutions." *Id.* at 645 (citation omitted). And it applies with special force where, as here, the putatively conflicting provisions "are interrelated and closely positioned, both in fact being parts of" the same statutory section. *HCSC-Laundry* v. *United States*, 450 U.S. 1, 6-7 (1981). There can be no serious dispute that the law-enforcement proviso—not the discretionary-function exception—embodies the more specific policy judgment Congress made for the particular problem of wrong-

house raids. Thus, to the extent the discretionary-function exception conflicts with the proviso, "the proviso wins." *Nguyen*, 556 F.3d at 1253.

Third, Congress enacted the law-enforcement proviso after the discretionary-function exception. An older statute "may be altered by the implications of a later statute," even if the newer statute has not "expressly amended" the earlier provision. *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 143 (2000) (citations omitted). And courts must give effect to "the plain import of a later statute" when it "directly conflicts with an earlier statute." *Dorsey* v. *United States*, 567 U.S. 260, 274 (2012) (citation omitted); accord Scalia & Garner 185 ("[A] later-enacted statute that contradicts an earlier one effectively repeals it" to the extent they conflict.). That is "particularly so where the scope of the earlier statute is broad but the subsequent statut[e] more specifically address[es] the topic at hand." *Brown & Williamson*, 529 U.S. at 143. The proviso was added to the FTCA in 1974—nearly thirty years after the discretionary-function exception was enacted as part of the original FTCA in 1946. *Nguyen*, 556 F.3d at 1253. Thus, the proviso is best read to "control [the] construction of" the discretionary-function exception. *Brown & Williamson*, 529 U.S. at 143 (citation omitted).

Fourth, and perhaps most fundamentally, applying the discretionary-function exception to cabin the law-enforcement proviso would nullify its effect in its heartland case. The "presumption against ineffectiveness," however, "weighs against interpretations of a statute that would 'rende[r] the law in a great measure nugatory.'" *Garland* v. *Cargill*, 602 U.S. 406, 427 (2024) (brackets in original; citation omitted). As ex-

plained above, Congress enacted the proviso in response to the Collinsville raids and to address the lack of an "effective legal remedy against the Federal Government for the actual physical damage, much less the pain, suffering and humiliation to which the Collinsville families [were] subjected." S. Rep. No. 588, 93d Cong., 1st Sess. 2.

That central purpose would be frustrated entirely if the discretionary-function exception supersedes the law-enforcement proviso. If the exception covers any action involving "an element of judgment or choice," Br. in Opp. 9 (citation omitted), it is hard to "conceive of a circumstance in which the conduct of the agents in * * * Collinsville would not involve discretionary functions," *Sutton* v. *United States*, 819 F.2d 1289, 1297 (5th Cir. 1987). On the government's view, therefore, an earlier-enacted provision of a statute renders nugatory a separate, later-enacted provision of the same statute in the core case it was enacted to address. Indeed, law-enforcement officers committing *any* of the torts specified in the law-enforcement proviso—*e.g.*, assault, battery, malicious prosecution, and false arrest—will likely often assert that in doing so they exercised tactical discretion and on-the-spot judgment. The government's view that the discretionary-function exception takes precedence over the law-enforcement proviso thus threatens to swallow much of the proviso even beyond wrong-house raid cases.

2. In its brief in opposition to certiorari, the government sought to narrow the law-enforcement proviso's text by invoking a purported "'presumption'" that a proviso "refer[s] only to things covered by the preceding clause." Br. in Opp. 15 (quoting *United States* v. *Morrow*, 266 U.S. 531, 535 (1925); citing

Scalia & Garner 154). But the government's own cited authority recognizes that any such presumption "has become a feeble" one because it no longer accurately reflects how Congress and other authors actually write. Scalia & Garner 154. "One now often finds *provided that* introducing not a condition to an authorization or imposition, but an exception to it," and "the authorization or imposition that it modifies is often found not immediately before but several clauses earlier." *Ibid.*

This Court has made the same point. A "proviso is not always limited in its effect to the part of the enactment with which it is immediately associated; it may apply generally to all cases within the meaning of the language used." *Alaska* v. *United States*, 545 U.S. 75, 106 (2005) (citation omitted); see also *Republic of Iraq* v. *Beaty*, 556 U.S. 848, 858 (2009) ("Use of a proviso 'to state a general, independent rule' * * * is hardly a novelty." (citation omitted)). That is the case here. The law-enforcement proviso's text speaks broadly, stating the general rule that "the provisions of this chapter" shall apply to "any claim" covered by its terms. 28 U.S.C. § 2680(h). And as petitioners explain, if the proviso *did* modify only the intentional-tort exception, that would merely evince Congress's view that the discretionary-function exception does not apply at all to claims arising from intentional torts by law-enforcement officers. See Pet. Br. 22.

The government has identified no other plausible textual basis for elevating the discretionary-function exception over the proviso. It contends (Br. in Opp. 16), for example, that the proviso is "link[ed]" exclusively to the intentional-tort exception because Section 2680(h) defines the phrase "investigative or law

enforcement officer" only "[f]or the purpose of this subsection," 28 U.S.C. § 2680(h). But the definition merely explains the meaning of a term used in the proviso. It has no bearing on how the proviso interacts with other statutory subsections.

The government's other textual arguments fare no better. It adds that, by referring to "the provisions of Chapter 171," the law enforcement proviso makes the entire FTCA—including its exceptions—applicable to claims covered by the proviso. Br. in Opp. 16. But that illogical reading ignores the rest of Section 2680's text, which makes clear that the proviso's reference to "the provisions of this chapter" means the *other* provisions of the FTCA (28 U.S.C. §§ 2671 *et seq.*) that Section 2680's exceptions render inapplicable, not Section 2680's exceptions *themselves*.

Section 2680 prefaces its exceptions by stating that "[t]he provisions of this chapter"—most prominently, the FTCA's waiver of immunity, 28 U.S.C. § 2674—"shall *not* apply" to the enumerated exceptions. *Id.* § 2680 (emphasis added). The law-enforcement proviso negates those exceptions for claims within the proviso's scope by stating that the "provisions of this chapter * * * *shall* apply." *Id.* § 2680(h) (emphasis added). That obvious symmetry in close proximity shows that the prefatory language and the proviso both refer to the same suite of other FTCA provisions, not the exceptions themselves. The government's contrary reading, by contrast, imputes to Congress the improbable intent to incorporate the FTCA's *exceptions* to its waiver of immunity in a proviso crafted to restore that very waiver and would require the phrase "provisions of this chapter" to take two different meanings in the same statutory section. See

Gustafson v. *Alloyd Co.*, 513 U.S. 561, 568 (1995) ("[W]e adopt the premise that [a] term should be construed, if possible, to give it a consistent meaning throughout the Act."). That cannot be right.

Finally, contrary to the government's contention, petitioners' view of the law-enforcement proviso would not undercut the FTCA's other exceptions. Br. in Opp. 16. The only example the government offered at the petition stage (*ibid.*)—the FTCA's exception for claims arising in a foreign country, 28 U.S.C. § 2680(k)—presents no problem of intractable conflict with the law-enforcement proviso. Given the strong presumption against extraterritoriality, any conflict with the foreign-country exception would likely be resolved in favor of that exception in any event. Whereas the foreign-country exception plainly applies to foreign torts, the proviso's "silence" as to "extraterritorial application" means that it has none. *Morrison* v. *National Australia Bank Ltd.*, 561 U.S. 247, 261 (2010).

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The FTCA's text is clear: The law-enforcement proviso reinstates the waiver of immunity for claims it covers irrespective of the discretionary-function exception. And the mischief that prompted Congress to enact the proviso renders that conclusion clearer still. If the victims of a wrong-house raid *just like* the ones in Collinsville cannot obtain relief, little remains of the law-enforcement proviso. This Court should not "lightly assume that Congress's mighty labors brought forth such a mouse." *United Federation of Postal Clerks, AFL-CIO* v. *Watson*, 409 F.2d 462, 468 (D.C. Cir. 1969).

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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APPENDIX

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