No. 24-683

IN THE

Supreme Court of the United States

ENERGETIC TANK, INC.,

Petitioner,

v.

UNITED STATES OF AMERICA, ET AL.,

Respondent.

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

BRIEF OF THE TIM & NATALIE CASE FOUNDATION, BURN PITS 360, AND THE I AM VANESSA GUILLEN FOUNDATION AS AMICI CURIAE IN SUPPORT OF PETITIONERS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules and Regulations

Other Authorities

INTEREST OF AMICI CURIAE[1]

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

Her law firm, 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 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

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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.

represent cases like that of Ryan G. Carter, Master Sgt. Stayskal, Vanessa Guillen, 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. Attorney Khawam advocates on behalf of servicemembers to seek protections and relief to America's men and women in uniform.

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.

The I Am Vanessa Guillen Foundation is a non-profit organization for military sexual violence survivors. The Foundation was established in 2021 after the disappearance and murder of U.S Army Specialist Vanessa Guillen. Sexual violence in the armed forces is a permissive problem that affected Vanessa Guillen and countless others. The Foundation aims to give survivors a voice and people the ear to listen. Its goal is for further action to be taken in military reforms, such as the I am Vanessa Guillen Act, which was passed under the 2022 NDAA.

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). Now, if the Second Circuit verdict is upheld, the *Feres* Doctrine will be extended to claims brought under federal statutes *other* than the FTCA—something this Court has never permitted or endorsed.

Disturbingly, an inmate or illegal immigrant has the right to sue under the FTCA 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. This harms all men and women in uniform, and there

is no reason to expand this punishment to statutes other than the FTCA.

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. Given that legislators and judges are frustrated at applying this ill-defined term to soldiers, who *chose* to join the military, one can only imagine how far afoul of congressional intent it would run to apply this term to private entities who sued for contribution under a statute *other than* the FTCA and who only interacted with the military due to an accident that the military caused.

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 the United States military has wrongfully injured several soldiers and a private vessel in an accident for which the Navy has been deemed 80% responsible. *Matter of Energetic Tank, Inc.*, 110 F.4th 131, 139. Similarly, just as the Supreme Court wrongfully denied a remedy to the injured soldier in

1950, so too has the Second Circuit wrongfully denied a remedy to these injured soldiers and the nearly blameless vessel. *Id.* at 160.

There is no rational explanation by which *Feres*—a statutory interpretation of the FTCA—should be extended to bar claims brought under different statutes like the Public Vessels Act and the Suits in Admiralty Act, which specifically permit civil admiralty liability claims against the United States from private or non-military vessels who are injured by military or government vessels. *See Pub. L. 109–304, §6(c), Oct. 6, 2006, 120 Stat. 1521; Pub. L. 109–304, §6(c), Oct. 6, 2006, 120 Stat. 1517*. Both of these statutes protect Energetic Tank and implicate the Navy by stripping it of its wrongly-asserted sovereign immunity in scenarios such as these.

Moreover, the Public Vessels Act also permits individuals injured while working on government vessels to sue the United States for those claims, which should apply to the sailors and soldiers who were tragically injured in this accident. As such, this statute flies in the face of the Feres Doctrine, and at the very least, prevents its expansion into admiralty law when *Feres* itself was only an interpretation of the FTCA. Therefore, Energetic Tank should be permitted to seek contribution from the military under the Public Vessels Act and the Suits in Admiralty Act as Congress intended when it enacted those statutes.

Energetic Tank is seeking contribution from the U.S. Navy for injuries caused to its sailors 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, the sailor's injuries were 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. Energetic Tank, a private company, could be next on that list even though it is not suing under the FTCA, and its case provides the perfect opportunity to prevent the expansion of 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, *not* extension, and that at the very least, Energetic Tank's circumstances provide an opportune occasion to define clear borders of *Feres* in that it does not apply to statutes other than the FTCA. This is no time to allow military personnel to operate at lower standards and liability than civilians, especially when the military is 80% responsible for the negligence. We must protect sailors' and private vessels' rights to sue the government under the Public Vessels Act and Suits in Admiralty Act, just as Congress intended when it passed those laws, and just like normal civilians have been able to do under the FTCA for

nearly a century. This is especially true given the grievousness of injuries that have been wrought upon the servicemembers harmed in this accident, and all incidents that implicate the Feres Doctrine.

This Court should therefore seize this opportunity to overturn or at least prevent the growth of the *Feres* Doctrine, a doctrine that has frustrated both Congress and the Judiciary (Part I.) The *Feres* Doctrine harms all soldiers bringing claims under the FTCA, and there is no logical reason for it to be extended to claims brought under other statutes as well (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, indicating that this is the absolute worst time to consider expanding the Feres Doctrine (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 prevent the propagation of this pernicious doctrine as the lower courts have been prone to do.

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 Energetic Tank'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. Lower courts have extended it even further, prohibiting suits brought under statutes other than the FTCA and thus allowing the military to abuse sovereign immunity in the ways Petitioner explains in its brief.

Specifically, in the case at hand, the Second Circuit seeks to expand the *Feres* Doctrine to bar suits under the Public Vessels Act and the Suits in Admiralty Act. This expansion has no basis in logic because both of those acts limit sovereign immunity and explicitly allow suits to be filed against the government, just like the FTCA does. However, while *Feres* has been wrongly used to broaden sovereign immunity and prevent lawsuits under the FTCA, there is no such precedent for *Feres* to prevent those

claims under the Public Vessels Act or the Suits in Admiralty Act.

The tragic facts of this case exemplify why such a precedent of porting *Feres* to statutes other than the FTCA must be avoided, not upheld. As Justice Scalia noted, *Feres* was wrongly 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. The Court must seize this opportunity to prevent that mistreatment from expanding to claims brought under statutes other than the FTCA.

II. The Department of Defense Abuses the *Feres* Doctrine as Its Catch-all Defense, A Practice Which Must be Curtailed, and Certainly Not Expanded

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 Energetic Tank's 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 Ginsburg 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. It would be a disgrace for the sailors injured by Respondent's negligence to join those women and the ranks of other suffering soldiers. 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 Energetic Tank's case and prevent the expansion of this doctrine immediately.

III. In a Post-*Chevron* World, it is Crucial For the Court to Reign in the Department of Defense's Agency Overreach Rather than Permitting That Overreach to Expand as Circuit Courts Have Done

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.* The VA never should have let these circumstances 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.

Similarly, the Public Vessels Act and Suits in Admiralty Act anticipate Congress' trend toward narrowing Feres and correcting agency overreach, indicating that legislators want to increase, not decrease, the ability to file lawsuits against the military. Upholding the Second Circuit's ruling would be directly averse to that congressional intent. As such, the Court must use the Stayskal Act and PACT Act as guiding beacons for how to apply the Public Vessels Act and Suits in Admiralty Act in this case. Those statutes must be applied as impenetrable limits on the Feres Doctrine, protecting the permissibility of suits injured Americans, whether they are private companies or our men and women in uniform.

IV. The Lejeune Act Recently Set the Stage to Narrow the Scope of the *Feres* Doctrine, Further Illustrating the Danger and Utter Lack of Logical Basis for Expanding the 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 at the very least, signals that the Court should not use Energetic Tank's case to expand this reprehensible doctrine.

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 prevent the Feres Doctrine from expanding further while its very essence is in jeopardy. This Court has never permitted the Feres Doctrine to bar suits brought under statutes other than the FTCA, and to do so would result in injustice on an even greater scale than what already occurs. The abhorrent Feres Doctrine has usurped the rights of our military and their families for too long, and there is no logical reason to expand it to statutes beyond the one that *Feres* itself interpreted. If anything, now is the time to curtail *Feres*. 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 these companies, and ideally our service members, can have the same rights that we all enjoy as civilians.

CONCLUSION

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

Respectfully submitted,

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