No. 24-97

In the
Supreme Court of the United States

MARK RANDALL MEADOWS,

Petitioner,

v.

THE STATE OF GEORGIA,

Respondent.

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

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF

The decision below embraces the concededly novel view that former federal officers are not entitled to a federal forum to litigate their federal immunity defenses. And it ratchets up the removal standard even for current officers by clinging to a "causal-nexus" test that courts have repeatedly recognized Congress abrogated more than a decade ago. That decision is egregiously and dangerously wrong, and it threatens to usher in a host of politically motivated prosecutions that former and current federal officers will be forced to litigate in what Congress has long recognized may well be "hostile state courts." *Willingham v. Morgan*, 395 U.S. 402, 405 (1969).

With little to say in defense of the court's first holding, Georgia insists that there is no "urgency" to correct it and matters should be allowed to "percolat[e]." BIO.1. But even a majority of the panel below disagreed, urging not percolation but immediate congressional intervention to prevent "a rogue state's weaponization of the prosecution power to go unchecked and fester." Pet.App.36-37. And Georgia defends the court's second holding only by trying to rewrite it. In reality, the court plainly demanded the very "causal nexus" that Congress abandoned—a mistake all the more glaring after *Trump v. United States*, 144 S.Ct. 2312 (2024), made clear that federal immunity protects against using official conduct to prove the prosecution's case and thus requires ongoing sensitive determinations of the scope of federal duties. That inquiry needs to occur in federal court. The Court should grant review, or at the very least vacate and remand in light of *Trump*.

I. The Eleventh Circuit's Unprecedented Holding That Former Officers Cannot Remove Is Egregiously Wrong.

1. The decision below is unprecedented. As the court itself underscored, "in the 190-year history of the federal-officer removal statute, no court has ruled that former officers are excluded from removal." Pet.App.17. Georgia counters that few courts have squarely considered the question. BIO.9. But, as it acknowledges, BIO.9, that is not for lack of former officers trying to remove. It is because it has not even occurred to previous plaintiffs to question a former officer's ability to remove. Indeed, it did not occur to Georgia (or the district court) either. The Eleventh Circuit injected the issue into the case *sua sponte* via a supplemental briefing request.

Against that backdrop, Georgia's pleas for percolation fall flat. This is not a case where one circuit happened to be first on the scene of an interpretive dispute under a new statute. The Eleventh Circuit has *sua sponte* upended the long-settled understanding of a statute almost as old as the Republic. And even a majority of the panel did not think the proper response to the novel decision they wrought was percolation to see how it works out in practice. Two judges were sure enough about the decision's baleful consequences to urge Congress to promptly remedy the "nightmare scenario[s]" the decision portends. Pet.App.37.

Moreover, Georgia fails to identify any reason why former officers in the Eleventh Circuit should be deprived of the removal rights that others throughout the country share. Instead, Georgia just blithely

assures the Court that it need not worry about depriving *petitioner* of a federal forum because "state courts are 'equipped to evaluate federal immunities,'" and Georgia is confident he will get a fair shake on its home turf. BIO.13 (quoting Pet.App.20) (brackets omitted). Of course, it is a bedrock assumption of our federalist system that state courts are always equipped to resolve federal questions, and it is the rare state that doubts the impartiality of its home courts. But Congress has long perceived a need "to protect federal officers from interference by hostile state courts" nevertheless. *Willingham*, 395 U.S. at 405.

2. When Georgia finally gets around to trying to defend the Eleventh Circuit's decision, it has little to offer. Indeed, the decision is so egregiously wrong that another state recently declined to make the formers-may-not-remove argument even while invoking *other* aspects of the decision—presumably out of concern that the argument could not withstand appeal. *See* Dkt.7 at 8, *Arizona v. Meadows*, 2024 WL 4198384 (D. Ariz. Sept. 16, 2024) (No. 24-cv-02063).

Georgia notes that "[t]he panel's interpretation of the ordinary meaning of 'officer' followed from the Eleventh Circuit's recent en banc decision in *United States v. Pate*, 84 F.4th 1196 (11th Cir. 2023)." BIO.14. That may help explain why the panel raised the issue, but it does nothing to explain why its resolution was correct. The statute in *Pate* is distinguishable and has no comparable pedigree. And *Pate* precipitated multiple dissents persuasively arguing that the ordinary meaning of "officer" does *not* exclude former officers. *See* 84 F.4th at 1213 (Grant, J. dissenting), *id.* at 1217 (Lagoa, J., dissenting).

The state next tries to defend the panel's "whole text" analysis. BIO.15. But it conspicuously ignores the most relevant parts of the whole text—namely, that it, unlike the statute in *Pate*, extends to any "person acting under that officer." 28 U.S.C. §1442(a)(1). Georgia has no response to the reality that the Eleventh Circuit's reading would virtually eliminate removal rights for private parties who were acting under federal officers only "at the time of the incidents," not of subsequent lawsuits. *Mesa v. California*, 489 U.S. 121, 123 (1989).

Instead, like the Eleventh Circuit, Georgia shifts the focus to a different provision, emphasizing that §1442(b) "expressly provides for the removal of actions commenced against a former officer." BIO.15. But §1442(a)(1) and §1442(b) were enacted 40 years apart, rendering any claim that one should inform how to read the other unfounded. *See Gutierrez v. Ada*, 528 U.S. 250, 257-58 (2000). Even more important, the two have multiple differences in wording that explain the express inclusion of former officers in §1442(b): Because §1442(b) focuses on the officer—not the actions taken "under color of [federal] office" as in §1442(a)(1)—it would unambiguously *exclude* former officers without the inclusion of "or at the time the alleged action accrued was." That Congress expressly included former officers when forced to confront the question due to the unique wording of §1442(b) underscores the illogic of excluding them from a removal statute.

Finally, Georgia accuses the petition of "mischaracteriz[ing] the Eleventh Circuit's evaluation of the statute's purpose." BIO.18. But the decision

speaks for itself, and it makes no mention of "[o]ne of the primary purposes of the removal statute"—namely, "to have the validity of the defense of official immunity tried in a federal court." *Willingham*, 395 U.S. at 407. The state nowhere explains how it serves that purpose to force former officers to litigate their federal immunity defenses in state court. Indeed, that does not even serve the Eleventh Circuit's preferred "purpose of protecting the operations of federal government." Pet.App.19. Along with death and taxes, it is a certainty that every current federal officer will be a former federal officer someday, and the prospect of being dragged into state court as a retirement present will surely skew on-the-job decision-making. That is why, as this Court just reiterated, providing immunity defenses to former officers is necessary to protect "against the chilling effect [later legal] exposure might have on the carrying out of" an officer's duties. *Trump*, 144 S.Ct. at 2325.

The state tries to dismiss *Trump* as a case about "immunity," not "removal," BIO.13 n.5, but that misses the point. A federal immunity defense for former federal officers available only in state court would be a toothless immunity and an inexplicable anomaly. The whole point of §1442(a)(1) is to avoid such anomalies by ensuring that federal immunity defenses can be litigated in federal court.

II. The Eleventh Circuit's "Causal-Nexus" Test Conflicts With Statutory Text, This Court's Cases, And Decisions From Other Circuits.

By Georgia's own telling, this prosecution arises out of actions taken by the Chief of Staff at the behest of the President of the United States, mostly from the

West Wing. And a core dispute is whether those alleged actions were part of the Chief of Staff's official duties or were extracurricular meddling in state affairs. It is difficult to imagine a case more in need of a federal forum to resolve distinctly federal questions. That is even clearer after *Trump*, which clarified that federal immunity law impacts not just the conduct for which a federal officer may be tried, but also what conduct the prosecution may use to try to make its case. Thus, even if some aspect of the charged conduct could proceed to trial, whichever court tries the case would be under a continuing obligation to make evidentiary rulings calling for difficult judgments about the scope of the official duties of both the Chief of Staff and the President. It is beyond obvious that that court should be a federal one. The Eleventh Circuit concluded otherwise only by insisting on a "causal nexus" between the "gravamen" of the charges and the officer's federal duties. *See* Pet.App.21-25.

Georgia acknowledges that the causal-nexus test has been rejected by most circuits and appears to agree that it is no longer good law after the 2011 amendment to the federal-officer removal statute. BIO.24. Georgia just insists that the decision below cannot really have meant what it clearly said in its text because the court cited an earlier Eleventh Circuit decision that has a footnote acknowledging that the 2011 amendment "was intended to broaden the scope of acts that allow a federal officer to remove a case to federal court," *Caver v. Cent. Ala. Elec. Coop.*, 845 F.3d 1135, 1144 n.8 (11th Cir. 2017). *See* BIO.20-23.

Caver (an "acting under" case) is at best ambiguous. While other circuits have treated the 2011 amendments as a game-changer that required abandonment of the causal-next test, *see, e.g.*, *Latiolais v. Huntington Ingalls, Inc.*, 951 F.3d 286 (5th Cir. 2020), *Caver* tried to minimize the break with pre-2011 precedent and insisted that there still must be "a causal connection between Plaintiff Caver's claims and an act of Defendant CAEC that forms the basis of those claims." 845 F.3d at 1144. Indeed, another circuit has cited *Caver* as evidence that "the Eleventh Circuit ha[s] stopped short of abandoning the 'causal connection' test." *Baker v. Atl. Richfield Co.*, 962 F.3d 937, 944 (7th Cir. 2020). And the decision below invoked *Caver* to buttress its demand for a "causal connection"—in a section titled "The Causal Nexus." Pet.App.31. But whatever is true of *Caver*, there was no ambiguity in the decision below, which expressly applied the pre-amendment causal-nexus test. *See, e.g.*, Pet.App.21 ("The officer must establish a 'causal connection between the charged conduct and asserted official authority.'" (quoting *Jefferson Cnty. v. Acker*, 527 U.S. 423, 431 (1999))).

That is underscored by the decision's mistaken focus. Under the express terms of §1442(a)(1), what the court should have been asking is whether this prosecution is "for *or relating to* any act under color of [federal] office." 28 U.S.C. §1442(a)(1) (emphasis added). But the court never asked or answered that textually relevant question. Indeed, it expressly rejected the proposition that the case could be removed "if any *single* allegation in the indictment related to his official duties," while invoking pre-amendment causal-nexus precedent requiring a

greater connection for removal. Pet.App.24. In the court's view, it must "look[] to the 'heart' of Meadows's conspiracy-related activity." Pet.App.22. By focusing only on the "heart" or "gravamen" of the charged conspiracy, the court narrowed federal-officer removal to cases where official conduct is at the epicenter of the charged conduct and read the "relating to" language right out of the statute, effectively foreclosing the possibility that a prosecution might *relate* to official acts even if it is not *for* them.

One need look no further than *Trump* to appreciate the problems with eliding that distinction. As *Trump* explained, federal immunity guards not only against prosecution *for* official conduct, but also against the use of official conduct "to help secure [a] conviction … based only on … *un*official conduct." 144 S.Ct. at 2341 (emphasis added). By covering prosecutions both "for" and "relating to" official acts, §1442(a)(1) ensures that a federal officer (current or former) will have a federal forum in which to litigate each of those distinct (and distinctly federal) defenses. The Eleventh Circuit's approach, by contrast, effectively eliminates a federal forum for litigating the highly sensitive question of what conduct taken under color of federal office a state can use to try to prove its case.

That error is particularly pronounced here given the nature of the charges. While federal prosecutors notably did not charge Meadows or name him as a co-conspirator in any election-related case, Georgia did. And as Georgia emphasizes, " the 'culpable act' for which Petitioner is being prosecuted is not any individual '*actus reus* in furtherance' but 'his

agreement to join the conspiracy.'" BIO.26 (quoting Pet.App.23). Georgia seeks to prove that agreement (which Meadows steadfastly denies) by pointing to a series of acts that Meadows is alleged to have taken at the President's behest. *See* Pet.6-7. Yet the Eleventh Circuit did not ask whether, e.g., joining an Oval Office meeting with federal and state officials to discuss potential election fraud, or arranging calls between the President and state officials could colorably fall within the scope of the Chief of Staff's official duties. *Id.* It instead credited the state's theory that all of those communications were undertaken as part of an "enterprise to overturn the election," and so required Meadows to prove that his official "authority" as Chief of Staff "extend[ed] to an alleged conspiracy to overturn valid election results." Pet.App.22, 24.

That approach was doubly flawed. First, it ignores the singular role of the Chief of Staff, whose unique responsibilities mean that he may be engaged in official conduct even when the President is not. A Chief of Staff who procures contact information for the President's personal friend, or attends a campaign event so he can brief him on official developments, is engaged in official acts even if the President is off the official clock.

Second, it cannot be reconciled with the rule that "[t]he officer need not win his case before he can have it removed." *Willingham*, 395 U.S. at 407. It is black-letter law that a defendant does not have to prove "a clearly sustainable [federal] defense" just to remove, as that would defeat the goal of ensuring that such disputes can be "litigated in the federal courts." *Id.* at

407. Yet by the Eleventh Circuit's telling, a state can defeat removal simply be characterizing acts taken on the job as having been taken for an impermissible purpose. Georgia doubles down on that erroneous approach, insisting that Meadows is not entitled to a federal forum because his "authority did not extend to electioneering or interference with state administration of elections." BIO.28. But courts assessing removal must "credit the [officer's] theory of the case," *Acker*, 527 U.S. at 432, not the state's, as who has the better view of the facts and law on an immunity defense is the very dispute the defendant is entitled to litigate in federal court. *See Puerto Rico v. Express Scripts, Inc.*, 2024 WL 4524075, at *1 (1st Cir. Oct. 18, 2024). By losing sight of that, the Eleventh Circuit set the bar for federal-office removal far higher than Congress did.

III. The Questions Presented Are Exceptionally Important, And They Arise Here In An Exceptionally Important Context.

Georgia does not deny the importance of the decision below. Nor could it. Two of the three judges who joined the opinion lamented that it portends "nightmare scenario[s]," as "prosecutions of former federal employees for undertaking locally unpopular actions … can cripple government operations, discourage federal officers from faithfully performing their duties, and dissuade talented people from entering public service" in the first place. Pet.App.36-37 (Rosenbaum, J., concurring). Georgia also does not (and cannot) deny that the decision would apply equally to the removal rights of "officer[s] of either House of Congress" and "officer[s] of the courts of the

United States," 28 U.S.C. §1442(a)(3)-(4). *See* Pet.32. And the stakes are only heightened by the court's crabbed view of what makes a prosecution "for or relating to any act under color of [federal] office." 28 U.S.C. §1442(a)(1).

The state instead just assures the court that it should not worry about the implications of the decision in *this* case. BIO.31. That is a remarkable claim given the nature of *this* prosecution. But it also misses the point. Like federal immunity itself, federal-officer removal exists "to protect against the chilling effect [legal] exposure might have on the carrying out of" *future* federal officers' duties. *Trump*, 144 S.Ct. at 2325. That safeguard is particularly critical when it comes to "potential criminal liability, and the peculiar public opprobrium that attaches to criminal proceedings." *Id.* at 2331. And it is acutely important now, as the country is on the eve of an election that will lead to an administration change no matter how it comes out. Those who have served in the most recent administration should not face the prospect of politically charged prosecutions brought in "hostile state courts," *Willingham*, 395 U.S. at 405, perhaps designed to even the score for this very prosecution and give the gander a taste of what the goose has endured. While it is possible to hope that future federal prosecutors will show restraint in targeting former federal officials, it is impossible to expect literally thousands of state and local officials—many of whom are elected and may have their eyes on higher office—to show similar restraint. That is the *raison d'etre* for the federal-officer removal provision.

At a minimum, the Court should vacate and remand so the Eleventh Circuit can consider the critical guidance *Trump* provides on both questions presented. But the better course is to grant certiorari, restore removal protection to former officers, and ensure that Meadows is not the first White House Chief of Staff in history to be deprived of a federal forum in which to defend against criminal charges arising out of actions taken in the West Wing.

CONCLUSION

This Court should grant the petition.

Respectfully submitted,

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