(ORDER LIST: 604 U.S.)

MONDAY, FEBRUARY 24, 2025

CERTIORARI -- SUMMARY DISPOSITIONS

24-434 ESTATE OF HERNDON, ET AL. V. NETFLIX, INC.

The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Ninth Circuit for further consideration in light of *Royal Canin U.S.A., Inc.* v. *Wullschleger*, 604 U. S. 22 (2025).

24-5997 WHITAKER, TORRENCE D. V. UNITED STATES

24-6107 RAMBO, MARCUS A. V. UNITED STATES

The motions of petitioners for leave to proceed *in forma pauperis* and the petitions for writs of certiorari are granted. The judgments are vacated, and the cases are remanded to the United States Court of Appeals for the Eleventh Circuit for further consideration in light of *United States* v. *Rahimi*, 602 U. S. 680 (2024).

ORDERS IN PENDING CASES

24M55 CARDENAS, AMADO V. UNITED STATES

The motion for leave to file a petition for a writ of certiorari under seal with redacted copies for the public record is granted.

24M56 ANDERSON, ANDREW D. V. NORTH CAROLINA, ET AL.

The motion for leave to proceed as a veteran is denied.

24M57 HOPPING, STEPHANIE, ET AL. V. SCHELL, LORIN EDWARD, ET AL.

The motion to direct the Clerk to file a petition for a writ

of certiorari out of time is denied. Justice Alito took no part in the consideration or decision of this motion.

24M58 WATERMAN, RON J. V. WATERMAN, ROBYN B.

The motion for leave to proceed as a veteran is denied.

24M59 CLEVELAND, GEORGE, ET AL. V. SC DEPT. OF SOCIAL SERVICES

24M60 DIXON, KERBET V. NEW YORK

The motions for leave to file petitions for writs of certiorari with the supplemental appendices under seal are granted.

23-1067) OKLAHOMA, ET AL. V. EPA, ET AL.
)
23-1068) PACIFICORP, ET AL. V. EPA, ET AL.

The motion of petitioners for divided argument is granted. Justice Alito took no part in the consideration or decision of this motion.

23-1229 EPA V. CALUMET SHREVEPORT RFG., ET AL.

The motion of respondents in support of petitioner for divided argument is granted.

24-109) LOUISIANA V. CALLAIS, PHILLIP, ET AL.
)
24-110) ROBINSON, PRESS, ET AL. V. CALLAIS, PHILLIP, ET AL.

The motion of appellants for divided argument is granted.

24-275 PARRISH, DONTE V. UNITED STATES

The motion of petitioner to dispense with printing the joint appendix is granted.

24-354) FCC, ET AL. V. CONSUMERS' RESEARCH, ET AL.
)
24-422) SHLB COALITION, ET AL. V. CONSUMERS' RESEARCH, ET AL.

The motion of the Acting Solicitor General for divided argument is granted.

24-416 CIR V. ZUCH, JENNIFER

The motion of petitioner to dispense with printing the joint appendix is granted.

24-5666 ORREGO, LIDIA M. V. PASTERNACK LLP, ET AL.

The motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* is denied.

24-6206 BOWDEN, ANTHONY V. OPM

24-6222 PORTER, DONAT C. V. NORTH CAROLINA

The motions of petitioners for leave to proceed *in forma pauperis* are denied. Petitioners are allowed until March 17, 2025, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

CERTIORARI DENIED

23-1271 VITAMIN SHOPPE INDUSTRIES LLC V. RINCON, WENDY, ET AL.

23-1272 VITAMIN SHOPPE INDUSTRIES LLC V. WHITT, JESSICA R., ET AL.

23-7393 MERCER, GREGORY S. V. VIRGINIA, ET AL.

24-216 ADVANCE COLORADO, ET AL. V. GRISWOLD, CO SEC. OF STATE

24-411 THOMAS, JEFFREY G. V. STATE BAR OF NV

24-464 DART, SHERIFF, ET AL. V. SCOTT, QUINTIN

24-470 GILBANK, MICHELLE R. V. WOOD CTY. HUMAN SERVICES, ET AL.

24-484 MICHIGAN V. LUCYNSKI, DAVID A.

24-487 COLLINS, JAMES G. V. MONTEREY COUNTY, CA

24-503 UPSTATE JOBS PARTY, ET AL. V. KOSINSKI, PETER S., ET AL.

24-506 WHITE, J. M., ET AL. V. DAVIS, LINDSAY, ET AL.

24-511 BRENT ELECTRIC CO., INC. V. INT'L. BROTHERHOOD

24-512 KORBAN, GHASSAN V. WATSON MEMORIAL SPIRITUAL TEMPLE

24-513 CARTER, DARRYL, ET AL. V. STEWART, JAMES E.

24-530 BETHESDA UNIV., ET AL. V. CHO, SEUNGJE, ET AL.

24-564 QYK BRANDS LLC V. FTC

24-593 KAETZ, WILLIAM F. V. UNITED STATES, ET AL.

24-597 BRUNSON, JONATHAN E. V. STEIN, ATT'Y GEN. OF NC, ET AL.

24-599 U.S., EX REL. LESNIK, ET AL. V. ISM VUZEM, D.O.O., ET AL.

24-606 ARAKELIAN, CHRISTINE A. V. POLLARD, ASHLEY, ET AL.

24-607 WU, ZHI, ET AL. V. SUPERIOR COURT OF CA, ET AL.

24-609 MARTIN, JAMES L. V. NIXON, DAVID H.

24-611 ZOU, BO V. LINDE ENG'G NORTH AM., INC.

24-618 WADE, ERIN, ET AL. V. HOUSTON, TX, ET AL.

24-619 LUKASHIN, IGOR V. USCA 9

24-632 OSUAGWU, CHINONYEREM O. V. OSUAGWU, LEATICIA C.

24-633 McCURLEY, MATTHEW V. WELLS FARGO BANK, N.A., ET AL.

24-634 RUTSTEIN, BINYOMIN V. COMPULIFE SOFTWARE, INC., ET AL.

24-640 ALLEN, PATRICIA A. V. BESSENT, SEC. OF TREASURY

24-642 JEFFERY, LAMEL, ET AL. V. NEW YORK, NY, ET AL.

24-644 WILLIAMS, DARRELL E. V. ALLEGHENY CTY., PA, ET AL.

24-646 KENNEDY, ROBERT F. V. CARTWRIGHT, CAROLINE, ET AL.

24-649 GUN RANGE, LLC V. PHILADELPHIA, PA, ET AL.

24-650 WEBB, ROBERT L. V. VIRGINIA

24-659 SWANSON, BRIAN D. V. CIR

24-660 BAYNUN, MISOP V. HILTUNEN, BRUCE, ET AL.

24-661 RYNN, RICHARD V. FIRST TRANSIT INC., ET AL.

24-662 RYNN, RICHARD V. McKAY, GREGORY A., ET AL.

24-663 RUED, JOSEPH V. RUED, CATRINA

24-664 RUED, JOSEPH V. RUED, CATRINA

24-665 FINK, JOHN W. V. STANZIONE, KAYDON A., ET AL.

24-666 WICKS, FONDA V. METRO. LIFE INS. CO.

24-667 BROWN, BELINDA P. V. LOUISIANA

24-671 HOLLIDAY, MARK V. CREDIT SUISSE SEC., ET AL.

24-673 HALL, RANDAL M. V. TROCHESSETT, TRAVIS, ET AL.

24-674 KOVAC, ADIS, ET AL. V. PATEL, DIR., FBI, ET AL.

24-676 FRIENDS OF GEORGE'S, INC. V. MULROY, DIST. ATT'Y. GEN. OF TN

24-681 BITZAS, KONSTADIN V. NEW JERSEY

24-682 POLITELLA, DARIO, ET AL. V. WINDHAM SCH. DIST., ET AL.

24-687 LEIPART, MATTHEW P. V. UNITED STATES

24-688 PROPERTY MATTERS USA, LLC V. AFFORDABLE AERIAL PHOTOGRAPHY

24-690 CARR, LESLIE E., ET VIR V. NY DIV. OF HOUSING, ET AL.

24-698 KIMBLE-DAVIS, ROSE A. V. OPM

24-704 YANG, XENGXAI V. UNITED STATES

24-705 CONYERS, BUD V. UNITED STATES

24-710 BASILE, DANIEL D. V. ILLINOIS

24-712 PETERSON, DANIEL V. MINERVA SURGICAL, INC.

24-715 SHANDS, THOMAS V. CIR

24-720 KORCHEVSKY, VITALY V. UNITED STATES

24-723 PROVISUR TECHNOLOGIES, INC. V. WEBER, INC.

24-725 HYTERA COMMUNICATIONS CORP. V. MOTOROLA SOLUTIONS, INC., ET AL.

24-726 DISH NETWORK L.L.C. V. DRAGON INTELLECTUAL, ET AL.

24-734 STRATEGIC TECHNOLOGY INST. V. MGMTL, L.L.C.

24-736 VILLAGE COMMUNITIES, LLC, ET AL. V. SAN DIEGO COUNTY, CA, ET AL.

24-739 KENDHAMMER, TODD A. V. WISCONSIN

24-740 GUIHAMA, JONEL H. V. UNITED STATES

24-741 GOLDFARB, LEVI, ET AL. V. RELIANCE STANDARD LIFE INS.

24-743 DUPREE, NEIL V. YOUNGER, KEVIN

24-744 IRLAND, MARK V. MARENGO HOSPITAL, ET AL.

24-748 PORTILLO, JOHN X. V. UNITED STATES

24-760 THORNTON, RYAN T. V. CIRCUIT COURT OF WI

24-766 MILLSAP, MARCUS O. V. UNITED STATES

24-774 CLARK, REGINALD K. V. COLORADO

24-779 BRADFORD, ROGER P. V. UNITED STATES

24-788 HUTCHINSON, JEREMY Y. V. UNITED STATES

24-793 SANDWICH ISLES COMMUNICATIONS V. HAWAIIAN TELCOM INC., ET AL.

24-5594 CARPENTER, SELDRICK V. UNITED STATES

24-5608 SMITH, JASON V. UNITED STATES

24-5615 SIMPSON, MERL V. UNITED STATES

24-5679 SEVIER, CHRISTOPHER M. V. UNITED STATES

24-5697 DEVILLE, FRANK V. PENSION BENEFIT GUAR. CORP.

24-5717 DEVANEY, DAVID V. UNITED STATES

24-5794 SIERRA-JIMENEZ, JUAN D. V. UNITED STATES

24-5802 FREDERICK, BURFORD E. V. COLLINS, SEC. OF VA

24-5837 AGUILERA, RUBEN V. UNITED STATES

24-5910 FRAZIER, ROBERT W. V. CALIFORNIA

24-5943 STRADFORD, TRAVYRUS J. V. UNITED STATES

24-5944 REYES, NATHAN V. UNITED STATES

24-6042 WOOD, DAVID L. V. TEXAS

24-6054 STOCKTON, JOSHUA M. V. PAYNE, DIR., AR DOC, ET AL.

24-6070 LETTIERI, DAVID C. V. AURICCHIO, JAMES Q.

24-6073 SAMUEL, EARLANDO V. HOUSING AUTH., ET AL.

24-6074 ROGERS, COREY V. DIXON, SEC., FL DOC

24-6085 TYSON, TANYA V. WINNINGHAM, MADELYN, ET AL.

24-6087 PEREZ, MAGDALENA M. V. DEPT. OF EMPLOY. SEC., ET AL.

24-6088 MERKLE, CARL N. V. THOMAS, JOHNNY W.

24-6091 FUENTES, PEDRO P. V. HARPE, DIR., OK DOC

24-6092 GRIMES, RUSSELL M. V. DELAWARE, ET AL.

24-6095 LEMATTY, WILLIAM V. GEORGIA

24-6102 WILSON, CLEATE V. UNITED STATES

24-6110 LUMUMBA, ASKARI D. V. KISER, JEFFREY

24-6113 HAMMETT, LAURA V. PORTFOLIO RECOVERY, ET AL.

24-6115 PERALEZ, HECTOR M. V. TEXAS

24-6117 PENNINGTON, MICHAEL E. V. TEXAS

24-6118 DELGADO, EZEKIEL I. V. McDOWELL, WARDEN

24-6119 SMITH, LOGAN V. LOUISIANA

24-6122 REID, FRANK E. V. CORIZON HEALTH SERVICES, ET AL.

24-6123 SENN, MICHAEL R. V. GUERRERO, DIR., TX DCJ

24-6124 DORMAN, BRADLEY V. DIXON, SEC., FL DOC, ET AL.

24-6133 WOLFE, KYLE V. KROWINSKI, JILL

24-6136 COUGHLIN, ZACHARY B. V. CALIFORNIA

24-6137 EPPS, ALICIA V. POAH COMM., LLC

24-6138 LOVE, ANDRE T. V. ROBERTSON, J. M.

24-6139 CARBERRY BENSON, ALEXIS, ET AL. V. LANCASTER SCH. DIST., ET AL.

24-6140 LAVOLL, TERRANCE L. V. HOWELL, JERRY, ET AL.

24-6142 WEISMAN, WARREN L. V. CLARK, CHARLES E.

24-6144 FULLER, MICHAEL R. V. DOTSON, DIR., VA DOC

24-6145 CAMPBELL, JERMAINE J. V. GITTERE, WARDEN, ET AL.

24-6147 MOHAMUD, MOHAMED O. V. UNITED STATES

24-6152 POMPEY, JOSH V. ADM'R, NJ STATE PRISON, ET AL.

24-6153 MALENA, DONALD R. V. GUERRERO, DIR., TX DCJ

24-6157 TYSON, JUSTIN M. V. GAY, LIEUTENANT, ET AL.

24-6160 ESCOBEDO, BENJAMIN V. GUERRERO, DIR., TX DCJ

24-6162 TOLLIVER, GREGORY A. V. MOODY, ATT'Y GEN. OF FL, ET AL.

24-6163 LILLARD, LONNIE E., ET AL. V. HENDRIX, WARDEN

24-6165 DRUMGO, DESHAWN V. KUSCHEL, SGT.

24-6166 CAMPOS, HECTOR A. V. TEXAS

24-6167 LASS, RODNEY J. V. BUESGEN, WARDEN

24-6169 JOHNSON, DEANDRE V. DOTSON, DIR., VA DOC

24-6171 ELLIS, DEMAJIO J. V. CARPER, LINDA, ET AL.

24-6172 JOHNSON, TYRONE T. V. FLORIDA

24-6173 LANGE, JAMES L. V. TEXAS

24-6174 LETTIERI, DAVID C. V. FEDERAL MARSHALS

24-6175 JOHNSON, ALFRED A. V. PALMER, WARDEN

24-6176 GONZALES, MARTIN V. NEW MEXICO, ET AL.

24-6180 HUBBARD, CARL V. TANNER, WARDEN

24-6182 CONAHAN, DANIEL O. V. DIXON, SEC., FL DOC, ET AL.

24-6184 WASHINGTON, LISA V. WASHINGTON, JOSEPH L.

24-6195 McCRAY, OYD V. TANNER, WARDEN

24-6205 BRUCE, NELSON V. WSFS, ET AL.

24-6208 MOLINA RIOS, LUCIANO V. WASHINGTON

24-6209 SANTIAGOMAZARIEGOS, EDVIN V. DIXON, SEC., FL DOC, ET AL.

24-6214 CAMBEL, JESSY A. V. CHARLESTON, IL, ET AL.

24-6216 CRAIN, DURELL T. V. NEAL, WARDEN

24-6218 McCARARY, ANTHONY V. UNITED STATES

24-6219 COWAN, CARLA V. FURLOW, JAMES

24-6223 EDWARDS, ERNEST V. MISSISSIPPI

24-6224 MENA-RODRIGUEZ, ARMANDO V. UNITED STATES

24-6226 CABEZAS, ANDRES F. V. UNITED STATES

24-6228 LI, FUHAI V. UNITED STATES

24-6229 ARMSTRONG, TERRELL J. V. UNITED STATES

24-6231 TOTAYE, EMMANUEL Z. V. IOWA

24-6233 SMITH, DEARICK V. UNITED STATES

24-6235 LUSK, JOSEPH F. V. UNITED STATES

24-6237 HARRIS, CHARLES E. V. GASS, WHITNEY, ET AL.

24-6240 BORDEAUX, JARRELL R. V. UNITED STATES

24-6241 BUEHLER, JUSTIN M. V. UNITED STATES

24-6242 BOOHER, KENT V. UNITED STATES

24-6244 SMITH, DARRELL V. UNITED STATES

24-6245 SMITH, BRAD A. V. UNITED STATES

24-6247 BECKMAN, CHRISTOPHER S. V. ARNOLD, COMM'R, IN DOC

24-6251 KIDDEY, DARYL B. V. TSA

24-6252 WU, REBECCA V. CARREON, GINA, ET AL.

24-6253 CLAYTON, VICTOR V. UNITED STATES

24-6254 VANDYCK, RYAN G. V. UNITED STATES

24-6258 IHEME, MICHAEL C. V. MINNESOTA

24-6259 GILMORE, KENNETH W. V. UNITED STATES

24-6260 WALKER, CHRIS V. UNITED STATES

24-6261 CULPEPPER, THADDEUS J. V. UNITED STATES

24-6262 MULL, DARRIS L. V. UNITED STATES

24-6264 MUNSHANI, SURESH V. UNITED STATES

24-6265 FLEMING, RYAN A. V. UNITED STATES

24-6267 MOORE, ROBERT V. NEW YORK

24-6271 PEREZ, JAVIER F. V. UNITED STATES

24-6274 RIAZ, SAMREEN V. ALTURA CENTERS FOR HEALTH

24-6277 MORALES-HUERTA, JOSE L. V. UNITED STATES

24-6279 ETIENNE, DICKENS V. EDMARK, WARDEN

24-6281 AZUCENAS, ZODIAC V. UNITED STATES

24-6282 DRAKE, DOMINIQUE K. V. UNITED STATES

24-6283 JOHNSON, COREY S. V. UNITED STATES

24-6284 DUNCAN, CHRISTOPHER V. UNITED STATES

24-6286 JAMES, FRANK V. UNITED STATES

24-6287 TRAHAN, SEAN J. V. UNITED STATES

24-6288 ESTRADA-AGUIRRE, JOSE V. UNITED STATES

24-6290 HOWARD, BRENT V. UNITED STATES

24-6291 GARDUNO, JONATHAN V. UNITED STATES

24-6292 COTTON, SHANNON L. V. UNITED STATES

24-6294 BURNELL, CHRISTOPHER L. V. UNITED STATES

24-6295 PERKINS, RASHAWN T. V. UNITED STATES

24-6298 ESPINOZA, REYES V. UNITED STATES

24-6299 FISHER, ANTHONY V. UNITED STATES

24-6301 HESTER, DEION S. V. UNITED STATES

24-6304 PAREDES-HINOJOSA, RAFAEL V. UNITED STATES

24-6305 VILLANUEVA, FRANCISCO V. UNITED STATES

24-6306 CALIXTE, WILLEMS V. UNITED STATES

24-6309 DeFOGGI, TIMOTHY V. UNITED STATES

24-6311 BUTLER, SHARIFF, ET AL. V. HARRY, SEC., PA DOC, ET AL.

24-6317 GRAY, JAMES A. V. KENTUCKY

24-6322 BECKER, TODD E. V. UNITED STATES

24-6323 GREEN, ERNEST V. UNITED STATES

24-6326 HAYDEN, MARK A. V. UNITED STATES

24-6329 IVORY, GEORGE V. UNITED STATES

24-6330 CAPPS, MICHAEL R. V. UNITED STATES

24-6331 GAMEZ-REYES, GERARDO V. UNITED STATES

24-6333 CLOUD, STEVEN L. V. UNITED STATES

24-6334 FREDENBURGH, JOHN V. UNITED STATES

24-6335 FARMER, MARCREASE DELANCE V. UNITED STATES

24-6337 SIRHAN, SIRHAN B. V. CALIFORNIA

24-6340 ALEXANDER, BRUCE E. V. UNITED STATES

24-6341 ELLISON, ZONTA T. V. UNITED STATES

24-6343 SWEET, ALEXANDER N. V. UNITED STATES

24-6344 ABDULLAH, TAMIR V. UNITED STATES

24-6345 JONES, MARK V. UNITED STATES

24-6348 HOWARD, CHRISTOPHER V. UNITED STATES

24-6352 MURIA-PALACIOS, JUAN A. V. UNITED STATES

24-6353 NASSAR, JONATHAN T. V. UNITED STATES

24-6357 SNUGGS, MONTRESE A. V. UNITED STATES

24-6362 JONES, DANA E. V. UNITED STATES

24-6363 CORTORREAL, EDWIN V. UNITED STATES

24-6371 GIST-HOLDEN, HAILEY V. UNITED STATES

24-6372 ROMERO-CORONA, ISIDRO V. UNITED STATES

24-6374 GOODWIN, JAMES C. V. UNITED STATES

24-6381 GRAHAM, GARY E. V. UNITED STATES

24-6390 LOGSDON, WILLIAM V. UNITED STATES

24-6392 McCOY, JOSEPH R. V. GONZALES, ANGEL, ET AL.

24-6395 DEAR, ROBERT L. V. UNITED STATES

24-6398 CORONA-GALINDO, FILEMON V. UNITED STATES

24-6400 TRAN, TAC V. UNITED STATES

24-6404 MOLINA VILLATORO, DEGNY O. V. UNITED STATES

24-6407 CRITTENDEN, SAMUEL T. V. UNITED STATES

24-6408 FOLKES, CLINTON V. SOUTH CAROLINA, ET AL.

24-6409 GOODALL, ERIC J. V. UNITED STATES

24-6412 BRUNSON, JOEY L. V. UNITED STATES

24-6414 PINEDO, ALBERT V. UNITED STATES

24-6416 MEEKS, CARLOS J. V. UNITED STATES

24-6421 STRONG, RICHARD L. V. ARKANSAS

24-6433 GONZALEZ, JESUS V. CROMWELL, WARDEN

The petitions for writs of certiorari are denied.

23-1189 TURCO, JERYL V. ENGLEWOOD, NJ

The petition for a writ of certiorari is denied. Justice Thomas and Justice Alito would grant the petition for a writ of certiorari.

24-473 JIMERSON, KAREN, ET AL. V. LEWIS, MIKE

The petition for a writ of certiorari is denied. Justice Sotomayor and Justice Jackson would grant the petition for a writ of certiorari.

24-5642 AHMED, NAWAZ V. COOL, WARDEN

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of certiorari is dismissed. See Rule 39.8.

24-6183 JOOST, ROBERT M. V. MA BD. OF BAR EXAMINERS

The petition for a writ of certiorari is denied. Justice Kagan took no part in the consideration or decision of this petition. See 28 U. S. C. §455(b)(3) and Code of Conduct for Justices of the Supreme Court of the United States, Canon 3B(2)(e) (prior government employment).

24-6319 CHENG, SHENG-WEN V. UNITED STATES

24-6377 GIBSON, MARLAND H. V. UNITED STATES

The petitions for writs of certiorari before judgment are denied.

HABEAS CORPUS DENIED

24-6100 IN RE TRACEY R. GODFREY

24-6272 IN RE BENJAMIN SHIPLEY

24-6422 IN RE TERRY L. JACKSON

24-6482 IN RE PETERA M. CARLTON

The petitions for writs of habeas corpus are denied.

MANDAMUS DENIED

24-658 IN RE SECURUS TECHNOLOGIES, ET AL.

24-6106 IN RE FREEMAN W. STANTON

24-6116 IN RE FRANK E. PATE

24-6129 IN RE JASON CLARK

24-6307 IN RE BRYAN L. GREGORY

The petitions for writs of mandamus are denied.

24-5641 IN RE NAWAZ AHMED

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of mandamus and/or prohibition is dismissed. See Rule 39.8.

REHEARINGS DENIED

23-7412 ROONEY, JOHN T. V. GEORGIA

23-7428 PANN, ROBERT V. ULMER, JULIAN

23-7586 BROWN, CHRISTOPHER E. V. KERN, ASHLEY

23-7639 BOUIE, LOUIS C. V. PA DOC

23-7769 IN RE JOHNNY SMITH

24-161 NY TELECOMMUNICATIONS, ET AL. V. JAMES, ATT'Y GEN. OF NY

24-184 HE, XUEJIE V. UNITED STATES, ET AL.

24-263 IN RE JOYCE BEGGS, ET VIR

24-305 SAVAGE, JUSTIN V. GA ADMINISTRATIVE HEARINGS

24-364 FUTIA, ANTHONY V. UNITED STATES

24-399 ALLEN, HELEN V. FORD MOTOR CO.

24-5251 DAVIS, KEITH V. V. CLOSE, SUPT., HOUTZDALE

24-5287 BENDER, JOHN P. V. TEXAS

24-5374 RAILBACK, LATRESSA V. DES MOINES, IA, ET AL.

24-5425 ANDERSON, SHYNE V. V. DAVIS, WARDEN

24-5427 STAPLETON, MICHAEL V. UNITED STATES

24-5582 MOSSERI, CLEMENT V. 7 WEST 21 LI LLC

24-5622 MICKMAN, ELAINE V. SUPERIOR COURT OF PA

24-5632 BALDWIN, LAURA M. V. DEVINE, JOSHUA, ET AL.

24-5635 BOWERS, KIM V. PAYSON, UT

24-5655 CRUZADO LAUREANO, JUAN M. V. POPULAR DEMOCRATIC PARTY

24-5669 PETERSON, BECKY M. V. NEBRASKA

24-5682 NGUYEN, LAN T. V. LUEBCKE, KATHRYN, ET AL.

24-5703 BOCHRA, MARK V. DEPT. OF EDUCATION, ET AL.

24-5742 OLIVER, JASMINE V. AMAZON.COM SERVICES LLC

24-5781 ROBINSON, MARQUICE D. V. HOLMAN, MICHAEL, ET AL.

24-5798 COOPER, GENE T. V. LANGDON, WARDEN

24-5809 FIGARO, SEAN V. UNITED STATES

24-5817 AFOLABI, LASSISSI V. WARDEN, FCI FORT DIX

24-5834 HERNANDEZ, GEOVANI V. UNITED STATES

24-6037 MURPHY, SHAR I. V. COLLINS, SEC. OF VA, ET AL.

24-6043 HACKETT, PATRICK M. V. IOWA

The petitions for rehearing are denied.

SUPREME COURT OF THE UNITED STATES

RYAN G. CARTER, ET AL. *v.* UNITED STATES

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

No. 23–1281. Decided February 24, 2025

The petition for a writ of certiorari is denied.

JUSTICE THOMAS, dissenting from the denial of certiorari.

The Federal Tort Claims Act (FTCA or Act) makes the Federal Government liable for tort claims to the same extent as private individuals, subject to certain enumerated exceptions. 28 U. S. C. §§2674, 2680. In *Feres* v. *United States*, 340 U. S. 135 (1950), this Court created an additional, atextual exception for claims based on "injuries incident to military service." *Id.*, at 144. The Court has never articulated a coherent justification for this exception, and the lower courts for decades have struggled to apply it. The result is that courts arbitrarily deprive injured servicemembers and their families of a remedy that Congress provided them.

As I have said before, we should fix the mess that we have made. See *Clendening* v. *United States*, 598 U. S. ___ (2022) (opinion dissenting from denial of certiorari); *Doe* v. *United States*, 593 U. S. ___ (2021) (same); *Daniel* v. *United States*, 587 U. S. 1020 (2019) (same); *Lanus* v. *United States*, 570 U. S. 932 (2013) (same). Because this case cleanly presents an opportunity to overrule, or at least limit, *Feres*, I would grant the petition for certiorari.

I

The FTCA generally makes the United States liable for suits in tort "in the same manner and to the same extent as a private individual under like circumstances." §2674. It contains a number of enumerated exceptions, several of which preclude liability for sensitive military decisions. In

particular, the Act bars claims based on "combatant activities . . . during time of war," claims "arising in a foreign country," and claims based on an employee's "execution of a statute or regulation" or performance of "a discretionary function." §§2680(a), (j), (k). But, it contains no general exception for claims by military personnel.

In its first encounter with an FTCA claim by a servicemember, this Court applied the Act as written. Two brothers in the Army were driving together while on furlough when an Army truck collided with their car, injuring one and killing the other. *Brooks* v. *United States*, 337 U. S. 49, 50 (1949). When the surviving brother and the deceased brother's estate sued the United States for negligence, the Government asserted sovereign immunity, arguing that the brothers' status as servicemen took them outside the FTCA. *Ibid*. This Court disagreed, holding that the text of the FTCA was "clear," and that none of the Act's enumerated exceptions excluded petitioners' claims. *Id*., at 51. The Court explained that it would be "absurd" to read in an implicit exception for servicemembers, because "[t]he overseas and combatant activities exceptions make . . . plain" that "Congress . . . ha[d] the servicemen in mind . . . when this statute was passed." *Ibid*. The brothers' claims could therefore proceed. *Id*., at 54.

The following year in *Feres*, however, this Court carved out a broad new exception. The decision concerned two medical-malpractice claims regarding soldiers harmed by Army surgeons, and one negligence claim by the widow of a soldier killed during a barracks fire. 340 U. S., at 136–137. This time, the Court held that sovereign immunity barred the claims because the soldiers' "injuries" were "incident to military service." *Id*., at 144. This fact, in the Court's view, marked a "vital distinction" from *Brooks*, where the soldiers' "injury . . . did not arise out of or in the course of military duty" because they were "on furlough." *Feres*, 340 U. S., at 146.

The Court gave three rationales for its new rule. *First*, it explained that the FTCA permits suits against the Government only to the extent that a "'private individual'" would be liable "'under like circumstances.'" *Id.*, at 141 (quoting §2674). In the military context, the Court reasoned, no such individual exists, because "no private individual has power to conscript or mobilize a private army." 340 U. S, at 141. *Second*, state law generally governs FTCA suits, and it would be irrational to subject the "'distinctively federal'" "relationship between the Government and members of its armed forces" to variations in state law. *Id.*, at 143. *Third*, servicemembers do not need a remedy under the FTCA because veterans' benefits statutes (consolidated in the present day in the Veterans' Benefits Act (VBA), 38 U. S. C. §101 *et seq*.) provides compensation for servicemembers injured while performing their duties. 340 U. S., at 144–145.

The Court abandoned each of these rationales in short order. It rejected the first rationale by holding that civilians could sue when injured by the military, even when the military is engaged in activity that no private individual is authorized to perform. *Indian Towing Co.* v. *United States*, 350 U. S. 61, 64–69 (1955). It rejected the second rationale by holding that federal prisoners could sue under the FTCA, even though doing so would subject the federal prison system to "variations in state law." *United States* v. *Muniz*, 374 U. S. 150, 161–162 (1963). And, it rejected the third rationale by holding that servicemembers not otherwise barred by *Feres* can sue under the FTCA despite being entitled to VBA benefits because "Congress ha[s] given no indication that it made the right to compensation" under the VBA a servicemember's "exclusive remedy." *United States* v. *Brown*, 348 U. S. 110, 113 (1954).

But, the Court did not abandon *Feres* itself. Instead, later decisions adopted a new rationale for its judge-created exception: that permitting suits for injuries arising out of mil-

itary service "would involve the judiciary in sensitive military affairs at the expense of military discipline and effectiveness." *United States* v. *Shearer*, 473 U. S. 52, 59 (1985); accord, *Stencel Aero Engineering Corp.* v. *United States*, 431 U. S. 666, 671–672 (1977); *Muniz*, 374 U. S., at 162; *Brown*, 348 U. S., at 112. Thus, when determining whether *Feres* bars a suit, the key consideration is "whether the suit requires the civilian court to second-guess military decisions, and whether the suit might impair essential military discipline." *Shearer*, 473 U. S., at 57 (citation omitted). In making this shift, the Court forthrightly acknowledged that *Feres*'s original rationales were "no longer controlling." 473 U. S., at 58, n. 4.

This modified approach, focused solely on protecting "essential military discipline," *id.*, at 57, did not last either. In *United States* v. *Johnson*, 481 U. S. 681 (1987), the Court confronted whether *Feres* barred the suit of a widow of a Coast Guard pilot allegedly killed by the negligence of *civilian* air traffic controllers. 481 U. S., at 682–683. Under *Shearer*, the answer would seem to be no; the widow's suit would not call into question any *military* decisionmaking. See *Johnson*, 481 U. S., at 683–685. But, rather than accept this conclusion, the Court resurrected two of the *Feres* rationales it had previously discarded. Specifically, the Court claimed that the *Feres* doctrine rests on "*three* broad rationales": *Shearer*'s protection of military discipline, and the earlier justifications about the irrationality of subjecting the military to variations in state law and the adequacy of VBA benefits, 481 U. S., at 688–691 (emphasis added). The Court deemed these considerations, viewed together, sufficient to bar suit. *Id.*, at 691–692.

For now, *Johnson* remains this Court's last word on *Feres*.

II

This Court should overrule *Feres*. The *Feres* doctrine has

no basis in the text of the FTCA, and its policy-based justifications make little sense. It has been almost universally condemned by judges and scholars. And, it is difficult for lower courts to apply, leading to several splits in the Courts of Appeals. At minimum, the Court should impose clear limitations on the *Feres* doctrine's scope.

A

Feres is indefensible as a matter of law, and senseless as a matter of policy. Under the plain terms of the FTCA, there is no broad exception for injuries incident to military service. See 28 U. S. C. §2680. The only "rationales" currently propping the doctrine up—avoiding varying state-law standards, the adequacy of VBA benefits, and preventing judicial interference in military affairs—are naked policy considerations. *Johnson*, 481 U. S., at 688–691. Of course, "[a]s this Court has explained, 'even the most formidable' policy arguments cannot 'overcome' a clear statutory directive." *BP p.l.c.* v. *Mayor and City Council of Baltimore*, 593 U. S. 230, 245 (2021); see also *Rayonier Inc.* v. *United States*, 352 U. S. 315, 320 (1957) (holding that courts may not "read exemptions into the Act beyond those provided by Congress"). But, *Feres*'s policy rationales are hardly formidable, depriving injured servicemembers and their families of a remedy for no good reason at all.

Feres's concern about avoiding variations in state law proves too much. See *Muniz*, 374 U. S., at 161–162. The Federal Government comprises many "'distinctively federal'" entities beyond the military, such as the Census Bureau and Immigration and Customs Enforcement, that are subject to a patchwork of state-law tort standards under the FTCA. *Stencel Aero*, 431 U. S., at 674–675 (Marshall, J., dissenting). If consistently applied, the uniformity rationale would thus exempt much of the Federal Government from liability, contrary to the manifest purpose of the FTCA. This Court has recognized as much, refusing to rely

on this rationale outside of claims made by servicemembers. See *Muniz*, 374 U. S., at 161–162.

Nor does the *Feres* doctrine even succeed in subjecting the military to a uniform standard of law. If military negligence injures a civilian, veteran, or servicemember outside the course of military duty, *Feres* does not bar recovery under the FTCA. See *Indian Towing*, 350 U. S., at 62, 69; *Brown*, 348 U. S., at 113; *Brooks*, 337 U. S., at 54. If the military wishes to avoid liability, it has no choice but to conform to local tort law.

Similarly, the availability of VBA benefits cannot justify *Feres*. As this Court has already recognized, nothing in the VBA or FTCA indicates that Congress meant to make VBA benefits the exclusive remedy for injured servicemembers. *Brown*, 348 U. S., at 113; *Brooks*, 337 U. S., at 53. Nor can VBA benefits make sense of the line *Feres* drew, because "the VBA compensates servicemen without regard to whether their injuries occur 'incident to service' as *Feres* defines that term." *Johnson*, 481 U. S., at 698 (Scalia, J., dissenting) (citing 38 U. S. C. §105); see, *e.g.*, *Brooks*, 337 U. S., at 53 (permitting soldiers injured on furlough to receive VBA benefits *and* recover under the FTCA). And, VBA benefits are not a reliable substitute for tort liability, since they are often "a fraction of the recovery [the servicemember] might otherwise have received." *Johnson*, 481 U. S., at 703 (Scalia, J., dissenting); see, *e.g.*, *Siddiqui* v. *United States*, 783 Fed. Appx. 484, 489 (CA6 2019) (observing that the family of the deceased servicemember received $500,000 in benefits when they could reasonably have expected a $2 million to $3 million wrongful death award); J. Wells, Comment, Providing Relief to the Victims of Military Medicine: A New Challenge to the Application of the *Feres* Doctrine in Military Medical Malpractice Cases, 32 Duquesne L. Rev. 109, 123 (1993) (Wells) ("[N]o one would seriously contend that the provisions for veterans disability payments have kept pace with the medical malpractice

award explosion").

Nor can the Court justify *Feres* on the theory that it would cause civilian courts to disrupt military discipline and decisionmaking. Through its choice of enumerated exceptions, Congress already determined which military activities are too sensitive to permit the intrusion of tort liability. See 28 U. S. C. §§2680(a), (j), (k); *supra*, at 1–2. There is no need for an additional exception to insulate military decisionmaking from judicial interference.

In any event, the *Feres* doctrine is not a rational way of protecting military discipline and decisionmaking. Whether a suit requires questioning military orders or decisionmaking usually turns on "the government's control of the *tortfeasor* rather than the victim." *Taber* v. *Maine*, 67 F. 3d 1029, 1042 (CA2 1995) (emphasis added). In other words, when a lawsuit challenges the legality of an officer's orders, the court must second-guess those orders regardless of whether the plaintiff is a soldier or a civilian. Yet, *Feres* turns on the status of the victim, barring suits by servicemembers when a "civilian" would be allowed to challenge "the same acts, by the same injurer, in the same disciplinary relationship to the government." *Taber*, 67 F. 3d, at 1042.

Moreover, "servicemen 'routinely sue their government and bring military decision-making and decision-makers into court' seeking injunctive relief." *Clendening*, 598 U. S., at ___ (opinion of THOMAS, J.) (slip op., at 4); see, *e.g.*, *Austin* v. *U. S. Navy Seals*, 595 U. S. ___ (2022) (partially leaving in place an injunction precluding the Navy from taking adverse personnel actions based on the plaintiff soldiers' "vaccination status"); *National Coalition for Men* v. *Selective Serv. System*, 593 U. S. ___ (2021) (statement of SOTOMAYOR, J., joined by Breyer and KAVANAUGH, JJ., respecting denial of certiorari) (suggesting that it may be appropriate to enjoin enforcement of the all-male draft should Congress refuse to eliminate it); *Singh* v. *Berger*, 56 F. 4th

88, 97–98, 110 (CADC 2022) (enjoining boot-camp grooming requirements that the Marine Corps deemed essential for unit cohesion because they likely violated the Religious Freedom Restoration Act). Tort suits seeking compensation for noncombat, nondiscretionary acts committed domestically are far less intrusive than many of the claims courts already entertain.

The *Feres* doctrine is an undisguised act of judicial legislation, and a poor one at that. Its purported rationales have no basis in the text or logic of the FTCA. Instead, the doctrine unjustifiably deprives the injured servicemember of a tort remedy simply "because [he] devoted his life to serving in his country's Armed Forces." *Johnson*, 481 U. S., at 703 (Scalia, J., dissenting).

B

I am not the first to offer these critiques. The *Feres* doctrine has received "'widespread, almost universal criticism.'" *Johnson*, 481 U. S., at 700 (Scalia, J., dissenting). Concern about *Feres* has come from Members of this Court across the jurisprudential spectrum. See *Daniel*, 587 U. S. 1020 (noting vote of Ginsburg, J., to grant certiorari to limit or overrule *Feres*); *Bork* v. *Carroll*, 449 Fed. Appx. 719, 721 (CA10 2011) (majority opinion of Gorsuch, J.) (observing that *Feres* created a bar to relief "despite the FTCA's language suggesting a waiver of immunity"); *Johnson*, 481 U. S., at 703 (Scalia, J., joined by Brennan, Marshall, and Stevens, JJ., dissenting) (*Feres* is a "clearly wrong decision" that "has bred" much "unfairness and irrationality"); *Lombard* v. *United States*, 690 F. 2d 215, 233 (CADC 1982) (Ginsburg, J., concurring in part and dissenting in part) (*Feres* is "a problematic court precedent" that imposed a "limitation . . . upon remedial legislation ordered by Congress"); *Stencel Aero*, 431 U. S., at 674 (Marshall, J., dissenting) (deeming *Feres* a "judicially created exception to the waiver of sovereign immunity contained in the [FTCA]"

that should "be strictly limited"); *Peluso* v. *United States*, 414 U. S. 879 (1973) (noting votes of Douglas, Brennan, and Blackmun, JJ., to grant certiorari to consider whether to overrule *Feres*).

Lower courts and academic commentators have been equally unsparing. Since Justice Scalia in 1987 collected a long list of Circuit decisions and law-review articles attacking *Feres*, see *Johnson*, 481 U. S., at 701, n. (dissenting opinion), the criticism has continued apace. Lower courts have reiterated that *Feres*'s "reading of the FTCA was exceedingly willful, and flew directly in the face of a relatively recent statute's language." *Taber*, 67 F. 3d, at 1038. And, academic commentators have said that, "[a]t a minimum, *Feres* represented a total departure from principles of judicial restraint and deference to the political branches." J. Turley, *Pax Militaris*: The *Feres* Doctrine and the Retention of Sovereign Immunity in the Military System of Governance, 71 Geo. Wash. L. Rev. 1, 68 (2003).

When "forced to apply the *Feres* doctrine," lower courts have "frequently do[ne] so with . . . regret." *Ortiz* v. *United States ex rel. Evans Army Community Hosp.,* 786 F. 3d 817, 822–823 (CA10 2015) (collecting cases); accord, *Bowers* v. *United States*, 904 F. 2d 450, 452 (CA8 1990) (applying *Feres* as "obligated" and "with a pronounced lack of enthusiasm"). Courts have called the results "harsh," "inequitable," "counter-intuitive," "curious," "unjust," and "far removed from the doctrine's original purposes." See *Clendening* v. *United States*, 19 F. 4th 421, 431 (CA4 2021); *Costo* v. *United States*, 248 F. 3d 863, 869 (CA9 2001); *Richards* v. *United States*, 176 F. 3d 652, 657 (CA3 1999); *Cutshall* v. *United States*, 75 F. 3d 426, 429 (CA8 1996).[1] There

[1] For additional Circuit decisions and academic articles leveling and noting criticism of *Feres* v. *United States*, 340 U. S. 135 (1950), after *United States* v. *Johnson* 481 U. S. 681 (1987), see, *e.g.*, *In re Energetic Tank, Inc.*, 110 F. 4th 131, 160 (CA2 2024); *Jackson* v. *Modly*, 949 F. 3d 763, 775 (CADC 2020); *Daniel* v. *United States*, 889 F. 3d 978, 982 (CA9

is near-universal consensus that the *Feres* doctrine is wrong on the law, incoherent in justification, and unjust in practice.

C

Compounding the problem, lower courts have struggled to apply *Feres* in a consistent manner. Our case law provides "no clear-cut answer as to when a serviceman's death, injury, or loss is 'incident to service.'" L. Jayson & R. Longstreth, Handling Federal Tort Claims: Administrative and Judicial Remedies §5A.02, p. 5A–6 (2024). As a result, lower courts "have consistently wrestled with the mechanics of [the *Feres* doctrine's] application to particular facts." *Ortiz*, 786 F. 3d, at 821; see also *Costo*, 248 F. 3d, at 867 ("[W]e have reached the unhappy conclusion that the cases applying the *Feres* doctrine are irreconcilable"); *Taber*, 67 F. 3d, at 1032 ("[W]e would be less than candid if we did not admit that the *Feres* doctrine has gone off in so many different directions that it is difficult to know precisely what the doctrine means today"). Faced with almost four decades of silence from this Court on the *Feres* doctrine, lower courts have developed an array of tests for determining when it is triggered, leading to inconsistent results on similar facts.

2018); *Ritchie* v. *United States*, 733 F. 3d 871, 874 (CA9 2013); *Purcell* v. *United States*, 656 F. 3d 463, 465–466 (CA7 2011); *Regan* v. *Starcraft Marine, LLC*, 524 F. 3d 627, 633 (CA5 2008); *McConnell* v. *United States*, 478 F. 3d 1092, 1098 (CA9 2007); *Mackey* v. *United States*, 226 F. 3d 773, 777 (CA6 2000); *Day* v. *Massachusetts Air Nat. Guard*, 167 F. 3d 678, 683 (CA1 1999); *O'Neill* v. *United States*, 140 F. 3d 564, 566 (CA3 1998) (Becker, C. J., statement sur denial of petition for rehearing); *Selbe* v. *United States*, 130 F. 3d 1265, 1266 (CA7 1997); *Uhl* v. *Swanstrom*, 79 F. 3d 751, 755 (CA8 1996); *Persons* v. *United States*, 925 F. 2d 292, 299 (CA9 1991); *Appelhans* v. *United States*, 877 F. 2d 309, 313 (CA4 1989); *Loughney* v. *United States*, 839 F. 2d 186, 187, and n. 2 (CA3 1988); D. Brou, Alternatives to the Judicially Promulgated *Feres* Doctrine, 192 Mil. L. Rev. 1, 4–5 (2007); Wells 120–128; J. Tomes, *Feres* to *Chappell* to *Stanley*: Three Strikes and Servicemembers Are Out, 25 U. Rich. L. Rev. 93, 133–134 (1990).

The Courts of Appeals are split on whether and how to take into account the three policy justifications—avoiding varying state-law standards, the adequacy of VBA benefits, and preventing judicial interference in military affairs—that this Court articulated in *Johnson*. Circuit decisions have taken many different paths. Some continue to focus primarily on judicial interference, framing the inquiry as whether the "'particular sui[t] would call into question military discipline and decisionmaking.'" *Clendening*, 19 F. 4th, at 427 (CA4); see also *Ritchie* v. *United States*, 733 F. 3d 811, 874–875 (CA9 2013). Others insist that the court must examine all "three *Feres* rationales, putting no special weight on whether resolution would involve the judiciary in sensitive military affairs." *Beck* v. *United States*, 125 F. 4th 887, 891 (CA8 2025); see also *Lovely* v. *United States*, 570 F. 3d 778, 783 (CA6 2009). Still others do not consider "the presence or absence of the [three] *Feres* rationales" *at all*. *Tootle* v. *USDB Commandant*, 390 F. 3d 1280, 1282 (CA10 2004). Of those, some decisions simply ask whether the alleged injuries arose incident to service, while others have developed their own set of factors to guide that inquiry.[2] Some decisions use a hybrid standard, drawing in part on *Johnson*'s policy rationales and in part on other considerations.[3] Finally, some decisions despair of identifying a governing standard, concluding that the "'most appropriate'"

---

[2] Compare *Tootle*, 390 F. 3d, at 1282 (CA10) (framing "the relevant question" as simply "whether [the plaintiff]'s alleged injuries arose 'incident to service'"), with *Regan*, 524 F. 3d, at 637 (CA5) ("This Circuit uses a three-factor analysis for whether a service member's injury was incident to military service: (1) duty status, (2) site of injury, and (3) activity being performed").

[3] See, *e.g.*, *McConnell*, 478 F. 3d, at 1095 (CA9) (considering "four factors"—the three factors articulated in *Regan*, see n. 2, *supra*, *and* "the benefits accruing to the plaintiff because of the plaintiff's status as a service member"); *Taber* v. *Maine*, 67 F. 3d 1029, 1050 (CA2 1995) (holding that *Feres* is triggered if the plaintiff was "engaged in activities that fell within the scope of the plaintiff's military employment" *or* there were

method is simply to "'"compar[e]"'" the present case to the "'"fact patterns"'" of previous cases. *Daniel*, 889 F. 3d, at 982 (CA9); *Costo*, 248 F. 3d, at 867 (CA9).

These differing approaches have led to divergent outcomes in factually similar cases. For example, the Circuits have split on:

- whether a sexual assault by another soldier is incident to military service, compare *Doe* v. *Hagenbeck*, 870 F. 3d 36, 49–50 (CA2 2017) (yes), with *Spletstoser* v. *Hyten*, 44 F. 4th 938, 958–959 (CA9 2022) (no);
- whether injuries arising during recreational activities with military-owned equipment are incident to service, compare *Costo*, 248 F. 3d, at 864 (CA9) (yes), with *Regan*, 524 F. 3d, at 645–646 (CA5) (no);
- whether the children of servicewomen can sue for injuries sustained *in utero* from negligent prenatal care, compare *Del Rio* v. *United States*, 833 F. 2d 282, 287–288 (CA11 1987) (yes), with *Ortiz*, 786 F. 3d, at 832–833 (CA10) (no);
- whether exposure to toxic chemicals in one's on-base home is an injury incident to service, compare *Gros* v. *United States*, 232 Fed. Appx. 417, 418–419 (CA5 2007) (*per curiam*) (yes), with *Elliott* v. *United States*, 13 F. 3d 1555, 1556, 1563 (CA11 1994) (no); and
- whether the *Feres* doctrine extends to dual-status technicians, *i.e.*, civilian employees of the military required as a condition of employment to maintain membership in the military reserves, compare *Zuress* v. *Donley*, 606 F. 3d 1249, 1253–1254 (CA9 2010) (yes), with *Jentoft* v. *United States*, 450 F. 3d 1342, 1348–1349 (CA Fed. 2006) (no).

"unusual circumstances that would call into play the *Feres* discipline rationale").

So long as this Court refuses to revisit *Feres*, these divergences are bound to continue. At minimum, this Court should articulate some clear limiting principles on the doctrine to minimize its absurdity and allow courts to apply it in a consistent and predictable way. "Because we caused this chaos, it is our job to fix it." *Clendening*, 598 U. S., at ___ (opinion of THOMAS, J.) (slip op., at 5).

III

The facts of this case illustrate the problems with the *Feres* doctrine. Petitioner Ryan Carter was a dual-status military technician and inactive-duty Staff Sergeant in the Air National Guard reserves. Carter suffered from a degenerative neck condition. To alleviate chronic pain caused by this condition, he underwent elective surgery at a military hospital in 2018. During surgery, Carter sustained an injury to his spinal cord that left him permanently disabled and paralyzed in all four limbs.

Following the surgery, Carter and his wife sued the United States under the FTCA, alleging that the Government is vicariously liable for its medical staff's negligence and failure to obtain informed consent. But, the Fourth Circuit held that *Feres* barred their suit because Carter "was a member of the military" being treated at a military hospital "by military doctors" at the time of his injury. 2024 WL 982282, *1 (Mar. 7, 2024).

Carter's suit should be allowed to proceed. None of the FTCA's enumerated exceptions bars an ordinary medical-malpractice suit for treatment received at a domestic hospital. See §2680. In fact, had Carter been a veteran rather than an inactive-duty reservist, he unquestionably could have filed suit for the same injuries arising from the same treatment by the same military staff at the same military hospital. See *Brown*, 348 U. S., at 112 (holding that *Feres* did not apply to a veteran suing for negligent treatment at a military hospital "after his discharge"). No command of

the FTCA—and no unique military interest—is honored by treating Carter's claim differently.

At the very least, Carter's case shows why this Court should clarify the scope of the *Feres* doctrine. Because Carter was a dual-status technician rather than a full-time soldier at the time of his injury, his case could have proceeded had it been heard in the Federal Circuit. *Jentoft*, 450 F. 3d, at 1348–1349. And, given that Carter was on inactive duty at the time of his surgery, perhaps his case also could have proceeded in a circuit that places weight on a plaintiff's duty status. See, *e.g., Regan*, 524 F. 3d, at 637 (including "duty status" as one of three factors relevant to determining "whether a service member's injury was incident to military service"). It is hard to see why an inactive-duty reservist should be treated so differently from a soldier on furlough or a veteran. Even if the Court wants to keep *Feres* in some form, I cannot see why claims with such a tenuous connection to military activity should fall within its reach.

* * *

I hope that this Court will one day overrule *Feres*. Until then, I offer this advice to lower courts: Do not look for a principled explanation for our *Feres* case law; there is nothing to find. Instead, simply ask whether a controlling decision has held that the *Feres* doctrine barred suit under materially indistinguishable circumstances. If not, allow the suit to proceed. See *Lombard*, 690 F. 2d, at 233 (opinion of Ginsburg, J.) ("While lower courts are bound by the Supreme Court's decision in *Feres*, they are hardly obliged to extend the limitation *Feres* placed upon remedial legislation ordered by Congress").

As for this Court, we should realign our case law with the text of the FTCA. I respectfully dissent from the denial of certiorari.

SUPREME COURT OF THE UNITED STATES

MICHAEL BASSEM RIMLAWI
24–23 *v.*
UNITED STATES

MRUGESHKUMAR KUMAR SHAH
24–25 *v.*
UNITED STATES

JACKSON JACOB
24–5032 *v.*
UNITED STATES

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Nos. 24–23, 24–25 and 24–5032. Decided February 24, 2025

The petitions for writs of certiorari are denied.

JUSTICE GORSUCH, dissenting from the denial of certiorari.

The Fifth Circuit held that a judge may order restitution in a criminal case based on his own factual findings, without the aid of a jury. 95 F. 4th 328, 389 (2024). About that, I have my doubts. See *Hester* v. *United States*, 586 U. S. 1104, 1106–1107 (2019) (GORSUCH, J., dissenting from denial of certiorari).

Consistent with the Sixth Amendment's promise of a trial by jury, this Court has held that "[o]nly a jury may find 'facts that increase the prescribed range of penalties to which a criminal defendant is exposed.'" *Erlinger* v. *United States*, 602 U. S. 821, 833 (2024) (quoting *Apprendi* v. *New Jersey*, 530 U. S. 466, 490 (2000)). That means a jury must find both those facts that increase a criminal defendant's exposure to imprisonment and any facts that increase his

exposure to monetary fines. See *Southern Union Co.* v. *United States*, 567 U. S. 343 (2012). If all that is true, it is difficult to see how a judge's factual findings might suffice to increase a criminal defendant's exposure to a restitution award. As this Court has recognized, "the scope of the constitutional jury right must be informed by the historical role of the jury at common law." *Id.*, at 353 (internal quotation marks omitted). And more than a little evidence suggests that, at the time of the founding, juries found the facts needed to justify criminal restitution awards. See *Hester*, 586 U. S., at 1107 (opinion of GORSUCH, J.); see also *Apprendi*, 530 U. S., at 502 (THOMAS, J., concurring); Pet. for Cert. 10–12.

I would have granted review in this case to resolve whether the Fifth Circuit's decision comports with this Court's precedents and the Constitution's original meaning. In the absence of this Court's review, I can only hope that federal and state courts will continue to consider carefully the Sixth Amendment's application to criminal restitution orders. Cf. *State* v. *Davison*, 973 N. W. 2d 276, 279 (Iowa 2022) ("restitution must be based on jury findings"). The right to trial by jury should mean no less today than it did at the Nation's founding. See *Hester*, 586 U. S., at 1107 (opinion of GORSUCH, J.).

SUPREME COURT OF THE UNITED STATES

COALITION LIFE *v.* CITY OF CARBONDALE, ILLINOIS

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

No. 24–57. Decided February 24, 2025

The petition for a writ of certiorari is denied. JUSTICE ALITO would grant the petition for a writ of certiorari.

JUSTICE THOMAS, dissenting from the denial of certiorari.

In *Hill* v. *Colorado*, 530 U. S. 703 (2000), this Court upheld a state law restricting peaceful speech within 100 feet of abortion clinics. It was clear at the time that *Hill*'s reasoning "contradict[ed] more than a half century of well-established First Amendment principles." *Id.*, at 765 (Kennedy, J., dissenting); see also *id.*, at 742 (Scalia, J., joined by THOMAS, J., dissenting). A number of us have since described the decision as an "absurd," "defunct," "erroneous," and "long-discredited" "aberration" from the rest of our First Amendment jurisprudence. See *City of Austin* v. *Reagan Nat. Advertising of Austin, LLC*, 596 U. S. 61, 86–87, 92, 103–104 (2022) (THOMAS, J., joined by GORSUCH and BARRETT, JJ., dissenting) (internal quotation marks omitted). We have long stopped applying *Hill*. See, *e.g.*, *City of Austin*, 596 U. S., at 76. And, a majority of this Court recently acknowledged that *Hill* "distorted [our] First Amendment doctrines." *Dobbs* v. *Jackson Women's Health Organization*, 597 U. S. 215, 287, and n. 65 (2022). Following our repudiation in *Dobbs*, I do not see what is left of *Hill*. Yet, lower courts continue to feel bound by it. The Court today declines an invitation to set the record straight on *Hill*'s defunct status. I respectfully dissent.

I

Hill involved a 1993 Colorado statute that established

"buffer zones" around abortion clinics. The law made it a crime for any person, within 100 feet of any "health-care facility" entrance, to "knowingly approach" within 8 feet of another person, without that person's consent, "for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education, or counseling with such other person." Colo. Rev. Stat. §18–9–122(3) (2024). Put another way, Colorado's law—still in effect today—prohibits unconsented "sidewalk counseling" within 100 feet of abortion clinics.

Shortly after the law's enactment, a group of self-described sidewalk counselors who sought to peacefully "educate" and "counsel" "passersby about abortion and abortion alternatives" challenged the law under the First Amendment. *Hill*, 530 U. S., at 708, 710 (internal quotation marks omitted). This Court upheld the law as a content-neutral time, place, and manner restriction. *Id.*, at 725.

Hill's errors were numerous. Whether Colorado's law applies to a given speaker undeniably turns on "*what he intends to say*." *Id.*, at 742 (Scalia, J., dissenting) (emphasis in original). "A speaker wishing to approach another for the purpose of communicating *any* message except one of protest, education, or counseling may do so without first securing the other's consent." *Ibid.* Nevertheless, the Court deemed the law content neutral on the theory that it does not prohibit a particular viewpoint or a particular subject matter. *Id.*, at 723. But, this Court had never—and since *Hill*, has never—taken such a narrow view of content-based speech restrictions. Buffer zones like the one at issue in *Hill* are "obviously and undeniably content based." *Id.*, at 742 (Scalia, J., dissenting); accord, *id.*, at 767 (Kennedy, J., dissenting).

As a result of this error, the Court purported to subject the Colorado law to so-called "intermediate scrutiny," a standard far more lenient than the "strict scrutiny" we apply to content-based restrictions. And, the Court applied an

unusually flexible version of intermediate scrutiny. Ordinarily, any content-neutral burden on protected speech must be narrowly tailored to serve a significant state interest, and it must leave open ample alternative means of communication. See *id.*, at 749 (Scalia, J., dissenting). The *Hill* majority first minimized the burden imposed on First Amendment rights by demoting the right to speak in public forums to a mere "interest." *Id.*, at 714. The Court then declared that Colorado had a substantial interest in protecting its citizens' "right to avoid unwelcome speech." *Id.*, at 717. But, as Justice Scalia explained, the State had expressly disclaimed that interest in its briefs before the Court. *Id.*, at 750 (dissenting opinion). And with good reason, because "[w]e have consistently held that 'the Constitution does not *permit* government to decide which types of otherwise protected speech are sufficiently offensive to require protection *for the unwilling listener or viewer*.'" *Id.*, at 751 (quoting *Erznoznik* v. *Jacksonville*, 422 U. S. 205, 210 (1975); emphasis in original). Nevertheless, that expressly disclaimed state interest became the "linchpin" of the Court's analysis. *Hill*, 530 U. S., at 750 (Scalia, J., dissenting).

Justice Scalia could identify only one explanation for the majority's anomalous decision: "[T]he jurisprudence of this Court has a way of changing when abortion is involved." *Id.*, at 742. *Hill* reflects "the 'ad hoc nullification machine'" that this Court "set[s] in motion to push aside whatever doctrines" happen to "stand in the way" of abortion. *Id.*, at 741.

Hill's abortion exceptionalism turned the First Amendment upside down. As *Hill*'s author once explained, the First Amendment reflects a "'profound national commitment' to the principle that 'debate on public issues should be uninhibited, robust, and wide-open.'" *NAACP* v. *Claiborne Hardware Co.*, 458 U. S. 886, 913 (1982) (majority opinion of Stevens, J.). That principle applies with per-

haps its greatest force to speech that society finds "offensive" or "disagreeable." *Texas* v. *Johnson*, 491 U. S. 397, 414 (1989). Yet, *Hill* manipulated this Court's First Amendment jurisprudence precisely to disfavor "opponents of abortion" and their "right to persuade women contemplating abortion that what they are doing is wrong." 530 U. S., at 741–742 (Scalia, J., dissenting).

II

It is unclear what, if anything, is left of *Hill*. As lower courts have aptly observed, *Hill* is "incompatible" with our more recent First Amendment precedents. *Price* v. *Chicago*, 915 F. 3d 1107, 1117 (CA7 2019) (opinion of Sykes, J., joined by Barrett, J.).

Start with *McCullen* v. *Coakley*, 573 U. S. 464 (2014). There, this Court unanimously held unconstitutional a Massachusetts law that prohibited anyone from entering a 35-foot buffer zone around an abortion facility. *Id.*, at 471–472, 497. In doing so, the Court determined that the law was content neutral because—rather than targeting certain kinds of speech such as protest, education, and counseling—the law prohibited virtually any speech within the buffer zone. *Id.*, at 479. The Court made clear, however, that the law "*would* be content based if it required 'enforcement authorities' to 'examine the content of the message'" to determine whether the law applied. *Ibid.* That position is irreconcilable with *Hill*, which the Court did not even bother to cite.

Hill is likewise at odds with *Reed* v. *Town of Gilbert*, 576 U. S. 155 (2015). *Reed* involved a First Amendment challenge to a town's sign code that regulated various categories of signs based on "the type of information they convey." *Id.*, at 159. Relying on *Hill*, the Ninth Circuit concluded that the sign code was content neutral, reasoning that the town "'did not adopt its regulation of speech because it disagreed

with the message conveyed'" and its "'interests in regulat[ing] temporary signs are unrelated to the content of the sign.'" 576 U. S., at 162. That court then applied a lower level of scrutiny and upheld the code. *Ibid.* We reversed, holding that a speech regulation is content based—and thus "presumptively unconstitutional"—if it "draws distinctions based on the message a speaker conveys." *Id.*, at 163.

McCullen and *Reed* "establish that strict scrutiny is the proper standard of review when a law targets a 'specific subject matter . . . even if it does not discriminate among viewpoints within that subject matter.'" *Bruni* v. *Pittsburgh*, 592 U. S. ___ (2021) (THOMAS, J., statement respecting denial of certiorari). That proposition presents "glaring tension" with *Hill*. 592 U. S., at ___; see also *Price*, 915 F. 3d, at 1118 ("In the wake of *McCullen* and *Reed*, it's not too strong to say that what *Hill* explicitly rejected is now prevailing law").

Our post-*Reed* decisions have firmly established *Hill*'s diminished status. In *City of Austin*, for example, the majority ran as far as it could from *Hill*, even though *Hill* was the one "case that could possibly validate the majority's aberrant analysis" on the constitutionality of restrictions on billboard advertising. 596 U. S., at 86, 102 (opinion of THOMAS, J.). The majority nonetheless insisted that any alleged similarity was "a straw man," rejecting the notion that its opinion had "'resuscitat[ed]'" *Hill*, and reminding readers that it did "not cite" the decision at all. 596 U. S., at 76.

Our latest word on *Hill*—expressed in a majority opinion joined by five Members of this Court—is that the decision "distorted [our] First Amendment doctrines." *Dobbs*, 597 U. S., at 287, and n. 65. If *Hill*'s foundation was "deeply shaken" before *Dobbs*, see *Price*, 915 F. 3d, at 1119, the *Dobbs* decision razed it.

This trajectory calls to mind the story of *Lemon* v. *Kurtzman*, 403 U. S. 602 (1971), which had created a three-part test to determine whether a law violated the Establishment

Clause. While this Court had not by any one statement overruled *Lemon*, for many years it either "expressly declined to apply the test" or "simply ignored it." *American Legion* v. *American Humanist Assn.*, 588 U. S. 29, 49 (2019) (plurality opinion) (collecting cases). We were never shy about *Lemon*'s "shortcomings" and "daunting problems." 588 U. S., at 49, 51. And, we eventually faulted lower courts for failing to notice that the "'shortcomings' associated with th[e] 'ambitiou[s],' abstract, and ahistorical" *Lemon* test had "bec[o]me so 'apparent' that this Court long ago abandoned" it. *Kennedy* v. *Bremerton School Dist.*, 597 U. S. 507, 534 (2022) (second alteration in original). In other words, we explained, *Lemon* had long been dismantled by our precedents, and lower courts should have recognized its demise. Given that prior to *Kennedy*, a decision of the Court had never outright condemned *Lemon* as a "distort[ion]," *Dobbs*, 597 U. S., at 287, and n. 65, *Hill*'s abandonment is arguably even clearer than *Lemon*'s.

To be sure, this Court has not uttered the phrase "we overrule *Hill*." For that reason, some lower courts have felt compelled to uphold *Hill*-like buffer zones around abortion clinics. See, *e.g.*, *Vitagliano* v. *County of Westchester*, 71 F. 4th 130, 141 (CA2 2023). This case is another prime example of that trend, and "[o]ne can hardly blame [lower courts] for misunderstanding" when "[w]e [have] created . . . confusion." *Gee* v. *Planned Parenthood of Gulf Coast, Inc.*, 586 U. S. 1057, 1059 (2018) (THOMAS, J., dissenting from denial of certiorari). We are responsible for resolving that confusion, and we should have done so here.

III

Six months after this Court decided *Dobbs*, the city council of Carbondale, Illinois, passed Ordinance No. 2023–03, a buffer-zone restriction that copied nearly verbatim the Colorado law at issue in *Hill*. See Carbondale, Ill., City Code §14–4–2(H) (2023). The city council explicitly invoked

Hill as a justification for enacting the ordinance. See *Coalition for Life St. Louis* v. *Carbondale*, No. 3:23–cv–1651 (SD Ill.), Doc. 1–1, p. 3.

Petitioner Coalition Life is a Missouri nonprofit that organizes sidewalk counselors to counsel, educate, pray, display signs, and distribute literature outside abortion clinics. Their goal is to engage in "one-on-one conversation in a calm, intimate manner," as they find that approach most effective. Complaint in No. 3:23–cv–1651, p. 3, ¶10. The organization prohibits its counselors from engaging in intimidating or threatening behavior.

Until the passage of Ordinance No. 2023–03, Coalition Life counselors engaged in sidewalk counseling outside abortion facilities in Carbondale. But, the new ordinance "severely hinder[ed]" their ability to do so. *Id.*, at 11, ¶48. The newly enacted 100-foot buffer zone meant that Coalition Life counselors were forced to stand far away from those with whom they wished to speak. In some cases, sidewalk counselors had nowhere to stand but in the middle of busy roads, rendering intimate counseling activities effectively impossible.

Coalition Life sued the city of Carbondale, alleging, among other things, that the ordinance violates the First Amendment. When Carbondale moved to dismiss the suit under *Hill*, Coalition Life responded that over the years *Hill* has been eroded, but it nevertheless conceded that its claims were foreclosed insofar as *Hill* remains good law. The District Court dismissed the suit on the ground that *Hill* and binding Seventh Circuit precedent controlled. *Coalition for Life St. Louis* v. *Carbondale*, 2023 WL 4681685, *1 (SD Ill., July 6, 2023). The Seventh Circuit affirmed on the same ground, acknowledging the plaintiffs' assertion that Carbondale's buffer zone was "'modeled after and nearly identical'" to the one upheld in *Hill*. 2024 WL 1008591, *1 (Mar. 8, 2024). Because *Hill* was the exclusive basis for both decisions below, this case clearly and cleanly

presents the question of *Hill*'s viability.*

This Court has received a number of invitations to make clear that *Hill* lacks continuing force. Some of those invitations have arisen in cases with thorny preliminary issues or other obstacles to our review. See, *e.g.*, *Bruni*, 592 U. S. ___ (opinion of THOMAS, J.). But, no such obstacles are present here. It is undisputed that Carbondale's ordinance is identical to Colorado's law in all material respects. It is likewise undisputed that both the District Court and the Seventh Circuit dismissed Coalition Life's suit exclusively on the ground that those courts felt bound by *Hill*. This case would have allowed us to provide needed clarity to lower courts.

* * *

Hill has been seriously undermined, if not completely eroded, and our refusal to provide clarity is an abdication of our judicial duty. "We are responsible for the confusion among the lower courts, and it is our job to fix it." *Gee*, 586 U. S., at 1059 (opinion of THOMAS, J.). I would have taken this opportunity to explicitly overrule *Hill*. For now, we leave lower courts to sort out what, if anything, is left of *Hill*'s reasoning, all while constitutional rights hang in the balance. I respectfully dissent.

---

*Carbondale repealed Ordinance 2023–03 in the summer of 2024. See An Ordinance Repealing Ordinance No. 2023–03, Carbondale, Ill., Ordinance No. 2024–__ (July 13, 2024). But, this fact is not fatal to petitioner's claims. The ordinance was in effect for over a year and a half, and Coalition Life sought nominal damages for the infringement of First Amendment rights. A plaintiff's request for nominal damages can satisfy the redressability requirement for Article III standing and keep an otherwise moot case alive. See *Uzuegbunam* v. *Preczewski*, 592 U. S. 279, 293 (2021).

SUPREME COURT OF THE UNITED STATES

MICHAEL PINA *v.* ESTATE OF JACOB DOMINGUEZ

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

No. 24–152. Decided February 24, 2025

The petition for a writ of certiorari is denied.

JUSTICE ALITO, with whom JUSTICE THOMAS joins, dissenting from the denial of certiorari.

To overcome qualified immunity, a party must show that an official violated a federal right that "was 'clearly established' at the time of [the] alleged misconduct." *Pearson* v. *Callahan*, 555 U. S. 223, 232 (2009). This requirement ensures that officials are not subject to the burdens of litigation or held liable for conduct without notice that such conduct is unlawful. See *Kisela* v. *Hughes*, 584 U. S. 100, 104 (2018) (*per curiam*); *Hope* v. *Pelzer*, 536 U. S. 730, 739 (2002). Needless to say, a judicial decision postdating an official's alleged misconduct is of no use in determining what was "clearly established" at the time. The courts below badly fumbled this basic tenet of our qualified-immunity doctrine by treating a later-in-time Circuit precedent as a basis for the existence of "clearly established law." I would grant the petitioner's request for summary reversal to correct this flagrant error.

In 2017, officers of the San Jose Police Department procured an arrest warrant for Jacob Dominguez, a suspect in an armed robbery of a gas station. Based on information from a confidential informant, officers believed Dominguez was armed with a revolver. Once the officers had found Dominguez in his vehicle, Officer Michael Pina ordered him to put his hands up. Dominguez complied, but he then "'quickly dropped his hands'" out of sight and "'moved forward.'" App. to Pet. for Cert. 43a. That led Officer Pina to

believe Dominguez was reaching for a firearm. And when Dominguez quickly leaned back, Officer Pina shot and killed him. The whole encounter lasted less than one minute.

Dominguez's estate sued Officer Pina under Rev. Stat. §1979, 42 U. S. C. §1983, and a jury found Officer Pina liable for excessive force in violation of the Fourth Amendment. The jury also returned a special interrogatory, answering "yes" to the question, "Did decedent Jacob Dominguez drop his hands and lean forward before Michael Pina fired his weapon?" App. to Pet. for Cert. 58a. Following trial, Officer Pina moved for judgment as a matter of law on qualified-immunity grounds, but the District Court denied his motion, anchoring its clearly-established-law inquiry in *Peck* v. *Montoya*, 51 F. 4th 877 (CA9 2022). See App. to Pet. for Cert. 47a–49a.

The Ninth Circuit affirmed in an unpublished decision. Like the District Court, the Ninth Circuit relied on its decision in *Peck*. It viewed that decision as providing sufficient evidence that Officer Pina "violated Dominguez's Fourth Amendment right under clearly established law" and was thus "not entitled to qualified immunity." App. to Pet. for Cert. 7a.

The lower courts made a serious misstep in their analysis. Even if it is assumed that controlling Circuit precedent may constitute clearly established law, *Peck*, a 2022 decision, was not the law in the Ninth Circuit when the events of this case unfolded in 2017. As such, *Peck*, "decided after the shooting at issue, is of no use in the clearly established inquiry." *City of Tahlequah* v. *Bond*, 595 U. S. 9, 13 (2021).

Perhaps realizing that reliance on *Peck* was anachronistic, the lower courts tried to backpedal. The District Court acknowledged that "*Peck* was decided after the events that occurred in our case," but it asserted that "*Peck* looked to *Cruz* v. *City of Anaheim*," a 2014 decision. App. to Pet. for Cert. 47a–48a (citing 765 F. 3d 1076 (CA9 2014)). And the

Ninth Circuit sneaked into a footnote of its unpublished decision the same suggestion that *Peck* merely identified "the law that *Cruz* clearly established." App. to Pet. for Cert. 7a, n. 1.

Those ham-fisted rescue efforts rest on a misreading of *Cruz*. If *Cruz* itself could serve as the basis for clearly established law, then the Ninth Circuit presumably could have cited it directly instead of shunting it to a footnote. But unsurprisingly, *Cruz* alone does not suffice. In that case, officers stopped an allegedly armed suspect in his vehicle and used deadly force when the suspect reached for his waistband. There, the Ninth Circuit held that "[i]t would be unquestionably reasonable for police to shoot a suspect . . . if he reaches for a gun in his waistband, or even if he reaches there for some other reason." 765 F. 3d, at 1078. In the lower courts' view, *Peck* simply restated *Cruz*'s conclusion "that officers may not fire at a suspect . . . absent some reason to believe that the suspect will soon access or use [a] weapon." 51 F. 4th, at 888. But that is not a mere gloss on *Cruz*. Rather, *Peck* narrowed *Cruz*'s holding by eliminating the suggestion that an officer's use of force may be reasonable if a suspect "reaches" for his waistband "for some other reason." *Cruz*, 765 F. 3d, at 1078. That alteration may very well have made a difference here.* Read in its proper light, *Peck* is not a restatement of the law set forth in *Cruz*. If *Peck* is removed from the picture, the lower courts would have failed to identify any clearly established law that Officer Pina allegedly violated.

---

*Although the courts below did not directly rely on it as a basis of clearly established law, *Cruz* lends support to Officer Pina's use of force. To start, I am skeptical that the Ninth Circuit gave adequate weight to the jury's special interrogatory that Dominguez dropped his hands and leaned forward. Even assuming Dominguez was not reaching for a firearm as the Ninth Circuit assumed, App. to Pet. for Cert. 4a, the fact that he was reaching down "for some other reason" could certainly constitute the sort of furtive movement that justifies the use of force in a fast-moving police encounter, *Cruz* v. *Anaheim*, 765 F. 3d 1076, 1078 (2014).

* * *

The decisions below made more than a trifling mistake. In the Fourth Amendment context, the clearly-established-law requirement provides essential notice at the "'hazy border between excessive and acceptable force.'" *Kisela*, 584 U. S., at 105 (quoting *Mullenix* v. *Luna*, 577 U. S. 7, 18 (2015) (*per curiam*)). But by holding an officer liable based on a judicial precedent issued after the events in question, the courts below ran roughshod over this key notice-bearing feature of our qualified-immunity jurisprudence.

I would summarily reverse the judgment below and reiterate a point that this Court has made time and again: a judicial decision can serve as a basis for clearly established law only if it predates the allegedly unlawful conduct. See *Bond*, 595 U. S., at 13; *Brosseau* v. *Haugen*, 543 U. S. 194, 198, 200, n. 4 (2004) (*per curiam*); *Kisela*, 584 U. S., at 104; *Ashcroft* v. *al-Kidd*, 563 U. S. 731, 741 (2011). The Court unfortunately fails to take that step, so I must respectfully dissent.

SUPREME COURT OF THE UNITED STATES

JOHN KEVIN WOODWARD *v.* CALIFORNIA, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, SIXTH APPELLATE DISTRICT

No. 24–227. Decided February 24, 2025

The petition for a writ of certiorari is denied.

Statement of JUSTICE SOTOMAYOR respecting the denial of certiorari.

The Double Jeopardy Clause of the Fifth Amendment provides that "[n]o person shall . . . be subject for the same offence to be twice put in jeopardy of life or limb." "[A]ny ruling that the prosecution's proof is insufficient to establish criminal liability for an offense" is therefore "a bar to a subsequent prosecution for the same offense." *McElrath* v. *Georgia*, 601 U. S. 87, 94 (2024) (internal quotation marks omitted). This case raises an important question about whether California's approach to construing trial court dismissals under Cal. Penal Code Ann. §1385(a) (Cum. Supp. 2025) as acquittals comports with the Double Jeopardy Clause. I nevertheless concur in the Court's denial of certiorari today because the California Supreme Court should first address this question in light of this Court's more recent double jeopardy precedent.

I

In 1992, California charged Kevin Woodward with the murder of Laurie Houts. At the time, Woodward lived with Houts's boyfriend, Brent Fulmer. In support of the murder charge, the State alleged that Woodward displayed possessive behavior toward his roommate and that he became jealous when Fulmer began spending time with Houts. The State's physical evidence tying Woodward to the crime included two latent fingerprints on the outside of Houts's car and fibers resembling Woodward's sweatpants, collected

from the rope used to strangle Houts.

The State tried Woodward twice for Houts's murder. Each time, a majority of jurors (8 of 12 in the first trial, and 7 of 12 in the second) voted to acquit. After discharging the second deadlocked jury in August 1996, the trial court dismissed in open court the murder charge pursuant to Cal. Penal Code Ann. §1385(a). That provision allows a trial judge, "of his or her own motion or upon the application of the prosecuting attorney, and in furtherance of justice," to "order an action to be dismissed." App. to Pet. for Cert. 72a (quoting Cal. Penal Code Ann. §1385(a) (West 1996)).* The minute order memorializing the hearing states that, "'[i]n open court at 9:49 [a.m.] with above-named counsel and defendant present,'" "'the court rea[d] the written decision into the record dismissing this case pursuant to Penal Code [s]ection 1385 based on insufficient evidence.'" *People* v. *Superior Ct. of Santa Clara Cty.*, 100 Cal. App. 5th 679, 688, 319 Cal. Rptr. 3d 488, 494 (2024) (alterations in original).

The trial court's written decision, filed that same day, recounted that "the prosecution has been given two opportunities to convict the defendant and serve the public interest," but "[b]oth trials have resulted in hung juries, with the majority of jurors voting for acquittal." App. to Pet. for Cert. 74a. The court observed, moreover, that "the vast majority of the evidence does not point to the defendant's guilt" and concluded that, "absent new evidence," the prosecution would be "unable" to meet its burden of proof "in subsequent trials." *Id.*, at 75a–76a. Dismissing the charge at this point would further the interests of justice, the court explained, because "[r]epeated prosecution would create a risk of conviction through sheer government perseverance" and "risk convicting an innocent citizen by wearing down the defendant through repeated trials while it perfects its

---

*California Penal Code Ann. §1385(a) (Cum. Supp. 2025) has since been amended, but the quoted language remains the same.

case." *Id.*, at 76a (citing *Tibbs* v. *Florida*, 457 U. S. 31, 41–42 (1982)).

In the end, the court summarized its ruling as follows:

> "A dismissal of this case is not meant to criticize the work done by the prosecution or deprive the victim's family of an opportunity to see their daughter's killer brought to justice. There is simply a lack of evidence on which to convict the defendant. Without new evidence, the result of this case will be the same at each successive trial. Due to the lack of evidence in this case, a jury will never be able to reach a unanimous verdict of guilty. It appears that justice would best be served if the charges were dismissed." App. to Pet. for Cert. 76a–77a.

Twenty-six years later, the State filed another indictment against Woodward, alleging that newly tested DNA evidence supported a finding of Woodward's guilt. Woodward moved to dismiss, arguing that the 1996 dismissal functioned as an acquittal and that the Double Jeopardy Clause therefore barred his retrial.

The trial court agreed and dismissed the charge. The court recognized that, under the California Supreme Court's decision in *People* v. *Hatch*, 22 Cal. 4th 260, 991 P. 2d 165 (2000), "'Section 1385 dismissals should not be construed as an acquittal for legal insufficiency unless the record clearly indicates the trial court applied the substantial evidence standard.'" App. to Pet. for Cert. 59a. The trial court reasoned that the earlier dismissal satisfied the requirements of *Hatch* because it was "due to the 'insufficiency of the evidence,'" and "'[i]nsufficient evidence' is a term of art" that, absent contrary indication, "'means the evidence was insufficient to support a conviction as a matter of law.'" *Id.*, at 61a. "Further," the court observed, "the trial court's written order repeatedly referred to the lack of evidence to convict" Woodward. *Id.*, at 65a.

The California Court of Appeal vacated the trial court's dismissal, reasoning that, under *Hatch*, a dismissal does not meet the standard for acquittal merely because it cites "'insufficiency of the evidence'" as the basis for dismissal. 100 Cal. App. 5th, at 704, 319 Cal. Rptr. 3d, at 507. Instead, the Court of Appeal held that *Hatch* requires courts to assume a dismissal is not an acquittal unless the dismissing court clearly applies the substantial evidence standard. *Ibid.* (citing *Hatch*, 22 Cal. 4th, at 273, 991 P. 2d, at 174). The dismissal here did not qualify, the Court of Appeal explained, because the record did not "'clearly indicate[]'" that the trial court had "conclude[d] the evidence was insufficient as a matter of law to support a conviction" or that it had "'viewed the evidence in the light most favorable to the prosecution.'" 100 Cal. App. 5th, at 704, 319 Cal. Rptr. 3d, at 508.

Justice Lie concurred to explain her concern that decisions of this Court "have eroded the analytical foundations of the rule announced in *Hatch*" and to urge the California Supreme Court to reexamine that rule's continuing vitality. *Id.,* at 710, 715, 319 Cal. Rptr. 3d, at 513, 517. In her view, the Court of Appeal's application of *Hatch* was "a determination that the trial court's dismissal[,] expressly based on the 'insufficiency of the evidence[,]' failed to conform to a state-law standard even though it is an acquittal as defined by the United States Supreme Court." 100 Cal. App. 5th, at 716, 319 Cal. Rptr. 3d, at 516. The California Supreme Court declined review. App. to Pet. for Cert. 1a.

II

This Court has "defined an acquittal" for purposes of double jeopardy to include not only "'a ruling by the court that the evidence is insufficient to convict,'" but also a "'factual finding [that] necessarily establish[es] the criminal defendant's lack of criminal culpability,' and any other 'rulin[g]

which relate[s] to the ultimate question of guilt or innocence.'" *Evans* v. *Michigan*, 568 U. S. 313, 318–319 (2013) (quoting *United States* v. *Scott*, 437 U. S. 82, 91, 98, and n. 11 (1978); alterations in original). "[W]hether an acquittal has occurred for purposes of the Double Jeopardy Clause is a question of federal, not state, law." *McElrath*, 601 U. S., at 96. Thus, state-law labels "'do not control'" the double jeopardy analysis, nor is it "dispositive whether a factfinder 'incanted the word "acquit."'" *Ibid.* (quoting *Evans*, 568 U. S., at 322, 325). Instead, "an acquittal has occurred if the factfinder 'acted on its view that the prosecution had failed to prove its case,'" regardless of how it characterizes that ruling. *McElrath,* 601 U. S., at 96 (quoting *Evans*, 568 U. S., at 325); see also *Smalis* v. *Pennsylvania*, 476 U. S. 140, 144, n. 5 (1986).

There is reason to think that California's *Hatch* rule, at least as applied in this case, conflicts with this Court's double jeopardy precedents. In the 1996 dismissal order, the trial court stated that the dismissal was "for insufficiency of the evidence" and that "[t]here is simply a lack of evidence on which to convict the defendant." App. to Pet. for Cert. 76a–77a. Yet, under *Hatch*, California courts apparently must assume that dismissals like this one are not acquittals unless the trial court makes unmistakably clear, in its order, that it has drawn all inferences in favor of the prosecution and concluded that no reasonable trier of fact could find guilt beyond a reasonable doubt. See 22 Cal. 4th, at 273, 991 P. 2d, at 174. This Court has not defined an acquittal in this way. See *Evans*, 568 U. S., at 318–319.

Nor has this Court demanded, in evaluating whether a dismissal constituted an acquittal, proof that the acquitting court applied the sufficiency of the evidence standard by construing the evidence in the light most favorable to the prosecution. To the contrary, this Court has stated that the Double Jeopardy Clause "bars retrial following a court-de-

creed acquittal, even if the acquittal is 'based upon an egregiously erroneous foundation.'" *Id.*, at 318 (quoting *Fong Foo* v. *United States*, 369 U. S. 141, 143 (1962) (*per curiam*)).

The State defends *Hatch* as no more than the California Supreme Court's approach to "interpreting ambiguous Section 1385 dismissals," Brief in Opposition 18, emphasizing that "'the meaning attached to an ambiguous prior reversal is a matter of state law,'" *id.*, at 17–18 (quoting *Tibbs*, 457 U. S., at 47, n. 24). That may well be the case. There is a fine line, however, between a rule of judicial interpretation designed to help courts ascertain whether a dismissal relates to guilt or innocence and the state court's imposition of a different standard for acquittals under the Double Jeopardy Clause. The latter is impermissible: "[W]hether an acquittal has occurred for purposes of the Double Jeopardy Clause is a question of federal, not state, law." *McElrath*, 601 U. S., at 96. To the extent the California Supreme Court adopted a different standard in order to "properly balanc[e] the competing interests embodied in the constitutional prohibitions against double jeopardy," *Hatch*, 22 Cal. 4th, at 273, 991 P. 2d, at 174, it had no discretion to do so.

The Court of Appeal's application of *Hatch* to Woodward's 1996 dismissal order suggests that the *Hatch* rule is, at least as applied here, more than an instruction to trial courts to "make their [§1385] rulings clear" so that reviewing courts may later determine whether such dismissals were, in fact, related to guilt or innocence. *Ibid.* The trial court's 1996 dismissal predated *Hatch* by four years, so to the extent that *Hatch* imposed such a clear-statement rule, the trial court would not have been aware of it.

All that said, Woodward's assertion that *Hatch* conflicts with this Court's double jeopardy precedents was not presented to the Court of Appeal before it issued the opinion on review. It was not until he filed his petition for review

in the California Supreme Court that Woodward pressed this point. Woodward is hardly to blame for that litigation choice, as *Hatch* itself left open the question whether a dismissal order that (like his) included the phrase "insufficient evidence" sufficed to establish "that the dismissal was equivalent to an acquittal." *Id.,* at 276, 991 P. 2d, at 176. The California Supreme Court should assess, in the first instance, how to reconcile *Hatch* with this Court's intervening decisions in *McElrath* and *Evans*, among others. For that reason, I concur in the Court's denial of certiorari and encourage the California Supreme Court to address this question.

SUPREME COURT OF THE UNITED STATES

VICTOR JAVIER GRANDIA GONZALEZ *v.* UNITED STATES

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

No. 24–5577. Decided February 24, 2025

The petition for a writ of certiorari is denied.

Statement of JUSTICE SOTOMAYOR, with whom JUSTICE GORSUCH joins, respecting the denial of certiorari.

Founding-era common law gave officers no authority to make an "arrest without a warrant, for a mere misdemeanor not committed in [their] presence." *Bad Elk* v. *United States,* 177 U. S. 529, 534–535 (1900) (collecting sources). This petition asks the Court to decide whether the Fourth Amendment incorporates that "in-the-presence" limitation on warrantless misdemeanor arrests. There is reason to think it might. After all, the in-the-presence requirement existed in some form at the founding. *Ibid.* This Court has often held, moreover, that the Fourth Amendment "'must provide *at a minimum* the degree of protection'" the common law afforded at the time of its adoption. *Lange* v. *California*, 594 U. S. 295, 309 (2021) (quoting *United States* v. *Jones*, 565 U. S. 400, 411 (2012)).

Important questions about the in-the-presence rule and its scope remain, and in this case they impede the Court's review of the question presented. In an appropriate case, however, the Court should grant review to consider whether and to what extent the Fourth Amendment incorporates the in-the-presence rule.

I

On an early July morning, around 5 o'clock, two Miami Dade police officers encountered petitioner Victor Gonzalez

"'walking in the middle of the street'" in a residential neighborhood. 107 F. 4th 1304, 1306 (CA11 2024). The officers, who had received a 911 call reporting a "'white male casing the area,'" *ibid.*, engaged Gonzalez in brief conversation and arrested him for the Florida misdemeanor of "loitering and prowling," *id.*, at 1307; see Fla. Stat. Ann. §856.021 (2014). They performed a search incident to the arrest, which revealed several pieces of mail addressed to neighborhood residents. 107 F.4th, at 1307. A grand jury thereafter charged Gonzalez with possessing stolen mail, a federal felony. See 18 U. S. C. §1708.

Gonzalez moved to suppress the evidence against him, appealing to the in-the-presence rule. Because he did not commit any misdemeanor in the officers' presence, he argued, they lacked probable cause to arrest him, and thus to conduct the search. When the District Court rejected that argument, Gonzalez pleaded guilty but reserved his right to appeal.

The Eleventh Circuit affirmed. It acknowledged that the common law permitted warrantless arrests for misdemeanors "in narrower circumstances than warrantless arrests for felonies," because, unlike in the case of misdemeanors, "an officer [could] conduct warrantless arrests for felonies committed outside of their presence." 107 F. 4th, at 1308 (citing 1 M. Hale, History of the Pleas of the Crown 587–590 (1736); 2 *id.*, at 86–90; 4 W. Blackstone, Commentaries on the Laws of England 288–292 (1772)). The court nonetheless held that "the Fourth Amendment does not require a misdemeanor to occur in an officer's presence to conduct a warrantless arrest." 107 F. 4th, at 1310. As the Eleventh Circuit saw things, the Fourth Amendment does not incorporate the in-the-presence rule because (1) the rule was subject to exceptions at common law, (2) "the technicalities of distinguishing between misdemeanors and felonies appears impracticable in today's legal environment," and (3)

the Fourth Amendment is "properly protect[ive]" even "absent a presence criterion." *Ibid.*

II

A

"By the common law of England, neither a civil officer nor a private citizen had the right, without a warrant, to make an arrest for a crime not committed in his presence, except in the case of felony." *Kurtz* v. *Moffitt*, 115 U. S. 487, 498–499 (1885) (collecting authorities); see also *Bad Elk*, 177 U. S., at 534 (same). Instead, as Sir Matthew Hale summarized the rule, a warrantless arrest could be made only "[i]f an affray be made in the presence of a justice of peace, or if a felon be in his presence," and was prohibited "if there be only an affray . . . not in view of the constable." 1 History of the Pleas of the Crown, at 587; see also 4 Blackstone, Commentaries, at 289 (justice of the peace could arrest felons "upon probable suspicion," but could arrest for breach of the peace only if committed "in his presence"); W. Schroeder, Warrantless Misdemeanor Arrests and the Fourth Amendment, 58 Mo. L. Rev. 771, 787–789 (1993) (reviewing English jurisprudence establishing the in-the-presence rule).*

After the founding, American States continued to abide by the in-the-presence rule almost without exception. See, *e.g.*, *id.*, at 847–848; 1 J. Archbold & T. Waterman, Criminal Procedure, Pleading and Evidence, in Indictable Cases 103–104 (7th ed. 1860) (summarizing state of the English common law and the law in the American States). Indeed, during the 19th and 20th centuries, state courts repeatedly

---

*Some of these authorities can be read more narrowly as authorizing warrantless misdemeanor arrests only for breaches of the peace, but this Court declined to adopt that more limiting reading in *Atwater* v. *Lago Vista*, 532 U. S. 318 (2001) because of disagreement among common-law authorities.

reaffirmed the rule's continued vitality in the face of attempts to expand warrantless arrest powers. See, *e.g.*, *Commonwealth* v. *Carey*, 66 Mass. 246 (1853) ("A constable cannot, without a warrant, arrest a person guilty of a past offence, unless such offence amounts to a felony"); *In re Way*, 41 Mich. 299, 304, 1. N. W. 1021, 1024 (1879) ("An arrest without warrant has never been lawful except . . . in felony and in breaches of the peace committed in presence of the officer"); *In re Kellam*, 55 Kan. 700, 41 P. 960 (1895) (invalidating as unconstitutional a law permitting warrantless arrest on mere suspicion of misdemeanor); *Ex parte Rhodes*, 202 Ala. 68, 73, 79 So. 462, 467 (1918) ("[N]o municipal ordinance could authorize . . . or make . . . reasonable" warrantless arrest for a misdemeanor not committed in the presence); *Hughes* v. *State*, 145 Tenn. 544, 569, 238 S. W. 588, 595 (1922) ("An officer cannot lawfully arrest a person without a warrant . . . where the facts constituting the offense are incapable of being observed or are not observed by the officer"); *Orick* v. *State*, 140 Miss. 184, 200, 105 So. 465, 469 (1925) ("[T]he statement that an officer at common law could not arrest a person for a misdemeanor not committed in his presence without a warrant is sustained by the overwhelming weight of authority"). Today, most States continue to "hold to the view that a warrantless misdemeanor arrest may be made only for an offense committed 'in the presence'" of the arresting officer. 3 W. LaFave, Search and Seizure §5.1(c) (6th ed. 2024).

Florida, too, retains an in-the-presence rule. See Fla. Stat. Ann. §901.15(1) ("A law enforcement officer may arrest a person without a warrant when . . . [t]he person has committed a felony or misdemeanor or violated [an ordinance] in the presence of an officer"). Its loitering and prowling statute, however, provides that officers "may arrest any suspected loiterer or prowler without a warrant in case delay in procuring one would probably enable [the loi-

terer] to escape arrest." §856.031. That provision apparently allowed the officers here to arrest Gonzalez as a "suspected loiterer or prowler," *ibid.*, despite the fact that "all [they] saw was a man walking down a neighborhood street in the early morning," 107 F. 4th, at 1312.

B

The Eleventh Circuit thought Gonzalez's arrest permissible because, in its view, the Fourth Amendment does not incorporate the in-the-presence rule in any form. There is a serious question about whether that categorical holding is consistent with this Court's precedent. To be sure, this Court left open "whether the Fourth Amendment entails an 'in the presence' requirement for purposes of misdemeanor arrests" in *Atwater* v. *Lago Vista*, 532 U. S. 318, 340, n. 11 (2001), where that question was not presented. Since then, however, the Court has several times said that the Fourth Amendment "'must provide *at a minimum* the degree of protection it afforded when it was adopted.'" *Lange*, 594 U. S., at 309 (quoting *Jones*, 565 U. S., at 441); *Torres* v. *Madrid*, 592 U. S. 306, 316–317 (2021) ("[o]ur precedent protects 'that degree of privacy against government that existed when the Fourth Amendment was adopted'") (quoting *Kyllo* v. *United States*, 533 U. S. 27, 34 (2001))); *Virginia* v. *Moore*, 553 U. S 164, 168 (2008) ("We look to the statutes and common law of the founding era to determine the norms that the Fourth Amendment was meant to preserve"). Precedent and historical evidence suggest, moreover, that the common law included at least some form of in-the-presence requirement for warrantless misdemeanor arrests. See *supra*, at 3–4. If that is right, it follows that the Fourth Amendment likely does as well. *Lange*, 594 U. S., at 309.

The federal and state courts have reached diverging conclusions about the continued vitality of the in-the-presence rule. As explained earlier, most States continue to abide by

the in-the-presence rule, see *supra*, at 4, and several state courts have continued to accord it constitutional weight. See, *e.g.*, *State* v. *Barton*, 669 S. W. 3d 661, 665 (Mo. 2023) (this Court's precedent leaves "no doubt" that the Fourth Amendment incorporates the in-the-presence requirement for warrantless misdemeanor arrests); *Pacheco* v. *State*, 465 Md. 311, 330–331, 214 A. 3d 505, 516–517 (2019) (reaffirming in-the-presence rule); *Ewing* v. *State*, 300 So. 2d 916, 919 (Miss. 1974) (similar); see also *State* v. *Ochoa*, 2008–NMSC–023, 143 N. M. 749, 182 P. 3d 130 (discussing scope of in-the-presence rule). By contrast, "every circuit to face [the] issue has held that the Fourth Amendment does not include an in-the-presence requirement for warrantless misdemeanor arrests." 107 F. 4th, at 1309 (internal quotation marks omitted).

As the Eleventh Circuit recognized, each Circuit to have considered the issue relied on *Street* v. *Surdyka*, 492 F. 2d 368 (1974), a case out of the Fourth Circuit that rejected the in-the-presence rule as "impractical and illogical." *Id.*, at 371–373. *Surdyka*, however, crucially rested on the premise that this Court had not given "constitutional force" to the common-law rule. *Id.*, at 371. That may have been true at the time. This Court's intervening decisions in *Kyllo*, *Madrid*, *Jones*, *Moore*, and *Lange* all say, however, that the Fourth Amendment must protect at minimum those rights recognized by the founding-era common law. Because the Fourth Circuit did not consider that possibility in *Surdyka*, it is unclear whether that decision remains good law today.

The Eleventh Circuit decision, too, failed adequately to address this Court's recent Fourth Amendment precedents. Two of its three reasons for rejecting Gonzalez's arguments relied on its independent assessment of reasonableness and practicality. 107 F. 4th, at 1310. For example, the Court simply asserted that "Fourth Amendment rights are properly protected absent a presence criterion." *Ibid.* Yet Fourth Amendment questions cannot be resolved simply by

asking whether, in the courts' view, a criterion is necessary to protect one's privacy interests. To be sure, courts today may have to confront questions about "how to apply the Fourth Amendment to a new phenomenon." *Carpenter* v. *United States*, 585 U. S. 296, 309 (2018). As explained, however, this Court has said that the Fourth Amendment must at minimum provide those protections that the common law guaranteed. *Lange*, 594 U. S., at 309.

In rejecting the in-the-presence rule altogether, the Eleventh Circuit also remarked that the misdemeanor-felony distinction has shifted dramatically since the founding. 107 F. 4th, at 1310. That is true, but it cuts in favor of Gonzalez, not against him. Even very serious crimes that are now felonies were misdemeanors at common law. "For example, all attempt crimes were only misdemeanors . . . as were assaults, batteries, woundings, and even kidnappings." T. Davies, Recovering the Original Fourth Amendment, 98 Mich. L. Rev. 547, 630, n. 220 (1999) (citing 4 W. Blackstone, Commentaries on the Laws of England 216 (1769)). In light of the modern expansion of the class of felony crimes, even a categorical in-the-presence rule would be substantially less protective than it was at the founding. That a majority of States retain the in-the-presence requirement for misdemeanor arrests, moreover, is in tension with the Eleventh Circuit's concern that "[i]ncorporating a presence requirement for misdemeanor arrests would likely muddy the waters more than it would protect any additional privacy interests." 107 F. 4th, at 1310.

C

The Eleventh Circuit correctly recognized that the in-the-presence requirement does not appear to have been absolute. *Ibid.* Most notably, "[f]rom the enactment of the Statute of Winchester in 1285, through its various readoptions and until its repeal in 1827, night watchmen were author-

ized and charged" to arrest suspicious "'nightwalkers.'" *Atwater*, 532 U. S., at 333 (footnote omitted).

The degree to which that exception made it to the early American States is unclear, and it complicates Gonzalez's case. After all, the Florida statute at issue here arguably resembles the old nightwalker statutes. It makes it a misdemeanor for:

> "any person to loiter or prowl in a place, at a time or in a manner not usual for law-abiding individuals, under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity." Fla. Stat. Ann. §856.021(1).

Whether a warrantless arrest under such a provision is consistent with a historical "nightwalker" exception, and whether founding-era common law incorporated that exception, are difficult questions. On the one hand, English law permitted the arrest of "'any suspicious night-walker'" who could be detained "'till he give good account of himself.'" *Atwater*, 532 U. S., at 333. On the other, by the 19th century some American state courts had rejected as unlawful warrantless arrests even under circumstances where the nightwalker statutes might have permitted them. See, *e.g.*, *In re Way*, 41 Mich., at 301, 1 N. W., at 1021 (granting habeas relief to one arrested on suspicion of "loitering and rambling about . . . and not giving a good account of herself"); *In re Kellam*, 55 Kan., at 701, 41 P., at 961 (invalidating statute authorizing arrest of "'persons found under suspicious circumstances, who cannot give a good account of themselves'"); *Pinkerton* v. *Verberg*, 78 Mich. 573, 584–585, 44 N. W. 579, 583 (1889) (invalidating nighttime arrest of a woman found under circumstances raising a suspicion of prostitution who "failed to take account of herself").

Because it is an open question whether Gonzalez's arrest

falls within a historical exception to the in-the-presence requirement, this is an unsuitable case to consider the general rule. This case is complicated for another reason, too: the police may have had probable cause to arrest Gonzalez for felony trespass, and all agree that the in-the-presence rule does not apply to felonies. The petition nonetheless illustrates the need for percolation on the in-the-presence rule's scope. As some of the courts of appeal have recognized, it remains an open question whether and to what extent the Fourth Amendment incorporates the in-the-presence rule. See, *e.g.*, *Graves* v. *Mahoning*, 821 F. 3d 772, 780 (CA6 2016); *Gilmore* v. *City of Minneapolis*, 837 F. 3d 827, 834 (CA8 2016). This Court would benefit from further consideration of that question by the lower courts. In considering the issue, courts should give due regard to the full scope of the common-law rights now secured by the Fourth Amendment.