No. _____

In The
Supreme Court of the United States

KARI BECK, PERSONAL REPRESENTATIVE OF THE ESTATE OF CAMERON GAYLE BECK, ET AL.,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In *Brooks v. United States*, 337 U.S. 49 (1949), the Court held that servicemembers traveling in their vehicle on personal business could bring a claim under the Federal Tort Claims Act (FTCA) for injuries they suffered because of a governmental employee's negligent driving. A year later, in *Feres v. United States*, 340 U.S. 135 (1950), the Court held that servicemembers could not bring claims "where the injuries arise out of or are in the course of activity incident to service."

The Court has left unresolved the legal test for determining what is "incident to service" and the dividing line between *Brooks* and *Feres*. The circuits are in open conflict over this question. Here, the Eighth Circuit held that an active-duty servicemember who was killed by a negligent government employee while riding his motorcycle home for lunch was nonetheless injured incident to service and, thus, his family's claim was barred. Other circuits have allowed servicemembers' claims under similar facts. This conflict about the test for "incident to service" has barred servicemembers from bringing tort claims for injuries with no material connection to their military duties or military service.

The Questions Presented are:

1. Whether the *Feres* doctrine's bar against a servicemember's ability to bring tort claims "incident to service" is only triggered when the injury was directly caused by the servicemember's military duties or orders.

2. Whether the Court should limit or overrule *Feres* because its limitation on servicemembers has no basis in the FTCA's text and is unworkable.

PARTIES TO THE PROCEEDING

Petitioners are Kari Beck, Personal Representative of the Estate of Cameron Gayle Beck; C.B., a minor; and Estate of Cameron Gayle Beck, by and through his Personal Representative, Kari Beck.

Respondent is the United States of America.

RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii):

- *Kari Beck, Personal Representative of the Estate of Cameron Gayle Beck, et al. v. United States of America*, No. 24-1332 (8th Cir.), judgment entered on January 13, 2025 (125 F.4th 887).
- *Kari Beck, et al. v. United States of America*, No. 4:23-cv-00255-BCW (W.D. Mo.), judgment entered on February 1, 2024.

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PETITION FOR WRIT OF CERTIORARI

Midday on April 15, 2021, Air Force Staff Sergeant Cameron Beck left his office to go get lunch—the same thing most of us do every day. But Beck never made it home for lunch. He died when he was hit by a van driven by a civilian government employee who was distracted by her cell phone. Beck was trained and ready to fight and die for his country, yet there was nothing service-related about his death. Beck was not doing a military activity, and it was the type of accident that could happen to anyone, anywhere. But because Beck was in the Air Force and the accident happened on a military base, the Eighth Circuit held that his death was "incident to service" and that his family was barred by the *Feres* doctrine from seeking compensation.

This Court has not addressed *Feres*'s scope in nearly four decades. With *Feres* left unattended, the Eighth Circuit's decision here vividly shows the Frankenstein that it has become in the circuits. None of this Court's *Feres* cases involved barring claims like Petitioners. To the contrary, Petitioners' claims are like those in *Brooks* that the Court unambiguously allowed. But over the years, many circuits have "interpreted" the trajectory of this Court's precedents to result in a near total bar on active duty servicemembers bringing claims for injuries that had nothing to do with their service.

The decision below presents a clear example of how *Feres* has been stretched too far. It bars servicemembers and their families from seeking the very relief that Congress intended when enacting the

FTCA. Whether by clarifying *Feres*'s limits or overruling it altogether, this Court should grant review.

OPINIONS BELOW

The Eighth Circuit's opinion is reported at 125 F.4th 887 and reproduced at App.1-8. The district court's opinion is unreported and reproduced at App.9-20.

JURISDICTION

The Eighth Circuit issued its opinion on January 13, 2025. This Court has jurisdiction under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

Relevant provisions of the Federal Tort Claims Act are reproduced at App.23-30.

STATEMENT OF THE CASE

A. Legal Framework

The Federal Tort Claims Act (FTCA) states that "[t]he United States shall be liable … in the same manner and to the same extent as a private individual under like circumstances … ." 28 U.S.C. §2674. To that end, the FTCA waives sovereign immunity and grants district courts exclusive jurisdiction over "civil actions on claims against the United States, for money damages … for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or

employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." 28 U.S.C. §1346(b)(1).

Within this framework, the FTCA includes 13 statutory exceptions where immunity is not waived. 28 U.S.C. §2680. In *Feres v. United States*, the Court added an additional exception "for injuries to servicemen where the injuries arise out of or are in the course of activity incident to service." 340 U.S. 135, 146 (1950). Servicemembers may assert claims for "injuries not caused by their service." *United States v. Brooks*, 337 U.S. 49, 52 (1949).

B. Factual Background

Shortly before noon on April 15, 2021, Air Force Staff Sergeant Cameron Beck left work to head home for lunch with his wife and then seven-year-old son. CA8.App.004, 36, 62.[1] As Beck rode his motorcycle southbound on Whiteman Air Force Base, Blanca Mitchell, a civilian government employee, was driving in a government-issued van northbound. CA8.App.004. Mitchell had just repaired a credit card machine at the bowling alley and was headed to the youth center. CA8.App.005, 169. Mitchell became distracted by her cell phone and turned in front of Beck without looking. CA8.App.5, 169. Beck died at the scene of the accident. CA8.App.027, 069.

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[1] "CA8.App." refers to the appendix filed with the Eighth Circuit.

The United States Attorney for the Western District of Missouri charged Mitchell under the Assimilated Crimes Act with violating Missouri law by "operating a motor vehicle in a careless and imprudent manner, involving an accident on Whiteman Air Force Base." CA8.App.040-41. On September 7, 2021, Mitchell pleaded guilty and stipulated to the following facts:

> On or about April 15, 2021, in the Western District of Missouri, the defendant, BLANCA MITCHELL, on Whiteman Air Force Base, Missouri, which is land acquired for the use of the United States and under the exclusive jurisdiction thereof, did knowingly operate a motor vehicle on a roadway in a careless and imprudent manner by making a left turn from Spirit Boulevard onto Ellsworth Lane while failing to yield to an oncoming vehicle causing an accident that resulted in the death of C.B.

CA8.App.041-42. Consistent with her plea, Mitchell later admitted in deposition in this case that the accident was "100 percent" her fault. CA8.App.169.

C. Proceedings Below

1. Petitioners are Beck's wife Kari Beck, their son C.B., and Beck's estate. CA8.App.001. On April 14, 2023, Petitioners filed suit in the Western District of Missouri under the FTCA, 28 U.S.C. §§2671-2680, alleging that Cameron Beck died as a result of the crash caused by the negligence of Blanca Mitchell, a

civilian employee of the United States, while she was acting within the scope of her agency and employment driving a government van. CA8.App.002-003.

The government moved to dismiss Petitioners' complaint on the basis that Petitioners' injuries "arose out of or were in the course of activity incident to [Beck's] military service in the United States Air Force" and therefore barred under the *Feres* doctrine. CA8.App.056.

On February 1, 2024, the district court granted the government's motion to dismiss. Although the district court acknowledged that "the claim at issue does not directly implicate military management or otherwise intrude upon sensitive military affairs," it nonetheless stated "that does not mean that *Feres* does not otherwise bar [Petitioners'] claim." App.15. The district court indicated that the Eighth Circuit's *en banc* decision in *Miller v. United States*, 643 F.2d 481, 483 (8th Cir. 1980) was "particularly instructive" and concluded that *Feres* barred Petitioners' claims. App.16. The court acknowledged that "Staff Sergeant Beck was not conducting actual military duties at the time of his death," but, relying on *Miller*, concluded his "active duty status at the time of the Accident tends toward application of the *Feres* doctrine." App.17. The court further observed that "although Staff Sergeant Beck was on his lunch break at the time of the Accident, it is undisputed he remained subject to immediate recall for mission essential purposes, and thus subject to military control." App.17.

Going further, the district court stated that "though the act of taking a lunch break is not in and of itself a privilege relating to or dependent upon military status, the location of the Accident"—"the fact that the Accident occurred on Whiteman Air Force Base—tends toward application of the *Feres* doctrine." App.17. "Specifically, but for his status as an active duty serviceman, he would not have been traveling on Whiteman Air Force base to his home that was also located on base at all." App.17. Finally, the court stated that "[n]otwithstanding that the Accident was caused by a civilian federal employee, Staff Sergeant Beck's 'peculiar and special relationship to his military superiors[]' had not been formally severed by a formal leave, furlough, or pass," leaving the court "satisfied that the *Feres* doctrine bars [Petitioners'] claim." App.18 (citing *Miller*, 643 F.2d at 494).

2. The Eighth Circuit affirmed. App.8. The Eighth Circuit "agree[d] … that [its] en banc decision in *Miller* is controlling and bars [Petitioners'] FTCA claim," and proceeded by listing the similarities of Petitioners' case with *Miller*:

> Like Miller, Beck was injured on-Base, while on active duty, and subject to immediate recall. Both Miller and Beck were killed during off-duty hours, and both deaths arose out of non-military activities—Miller was working on a home and Beck was driving his vehicle. Like Miller's survivors, Plaintiffs were entitled

to military benefits.

App.5. Referencing *Miller*, the Eighth Circuit summarized the breadth of its interpretation of the *Feres* doctrine: "'*Feres* is not limited to cases of negligent orders given or negligent acts committed in the course of actual duty.'" App.5-6 (quoting *Miller*, 643 F.2d at 492).

This petition follows.

REASONS FOR GRANTING THE PETITION

This petition readily meets the traditional criteria for review. Indeed, the Eighth Circuit's conception of "incident to service" treats *Brooks* as a dead letter and expands *Feres* far beyond any scope this Court has set to effectively bar any claim an active-duty servicemember may have. In doing so, the Eighth Circuit cements a conflict among the courts of appeals on how far *Feres* extends to cut off the rights of servicemembers under the FTCA. This petition squarely presents whether the Eighth Circuit and other courts of appeals have been right to expand *Feres*, or whether this decision shows *Feres* is unsustainable and should be overruled. Certiorari is warranted.

I. The Eighth Circuit's Incident to Service Test Conflicts with this Court's Decisions Including *Brooks* and *Feres*.

The Eighth Circuit held that Petitioners were barred from bringing a tort claim for Beck's death because it was "incident to service," even though Beck was killed while engaged in a "non-military activit[y]."

App.5. But this "incident to service" test—which bars claims even for "non-military activities"—clearly conflicts with this Court's decisions in *Brooks* and *Feres* and the Court's subsequent cases applying those decisions.

Brooks involved two brothers—Arthur and Welker—serving in the Army. 337 U.S. at 50. While Welker and Arthur, along with their father, were driving in an automobile in North Carolina, they were struck by a United States Army truck driven by an Army civilian employee. *Id.* Arthur was killed, and Welker was badly injured. *Id.* After a bench trial, the district court found that the truck driver was negligent and awarded damages to the Brooks. *Id.* But the Fourth Circuit reversed, adopting the government's argument that "the Federal Tort Claims Act does not apply to claims by soldiers in the United States Army, even when those claims arise out of injuries or death which, as here, are not service-caused." *United States v. Brooks*, 169 F.2d 840, 846 (4th Cir. 1948).

This Court disagreed with the Fourth Circuit's interpretation of the FTCA and reversed. The Court held that "members of the United States armed forces can recover under [the FTCA] for injuries not incident to their service." *Brooks*, 337 U.S. at 50. The Court observed that it was "dealing with an accident which had nothing to do with the Brooks' army careers, injuries not caused by their service except in the sense that all human events depend upon what has already transpired." *Id.* at 52. Applying "the plain meaning

of the statute," *United States v. Johnson*, 481 U.S. 681, 693 (1987) (Scalia, J., dissenting), the Court said it was "not persuaded that 'any claim'" in the FTCA "means 'any claim but that of servicemen.'" *Brooks*, 337 U.S. at 51. The Court noted that although the FTCA included twelve exceptions limiting waiver of sovereign immunity, including for claims arising overseas or out of combatant activities, none of these statutory exceptions excluded the Brooks' claims, and the Court concluded that "[i]t would be absurd to believe that Congress did not have the servicemen in mind in 1946, when [the FTCA] was passed. The overseas and combatant activities exceptions make this plain." *Id.* But "[w]ere the accident incident to the Brooks' service, a wholly different case would be presented." *Id.*

That "wholly different case" came the very next year in *Feres*, 340 U.S. at 138. *Feres* involved three cases. In one case, a servicemember died in a barracks fire, and his estate alleged "[n]egligence … in quartering him in barracks known or which should have been known to be unsafe because of a defective heating plant, and in failing to maintain an adequate fire watch." *Id.* at 137. In the other two cases, the servicemembers were injured or died from negligent medical treatment by Army surgeons. *Id.*

The Court ruled these claims were excluded from the FTCA and "conclude[d] that the Government is not liable under the Federal Tort Claims Act for injuries to servicemen where the injuries arise out of or are in the course of activity incident to service." *Id.*

at 146. The Court distinguished *Brooks* from the *Feres* cases on the basis that "[t]he injury to Brooks did not arise out of or in the course of military duty" because "Brooks was on furlough, driving along the highway, under compulsion of no orders or duty and on no military mission." *Id.*

The Court's subsequent decision in *United States v. Brown* maintained the distinction "between injuries that did and injuries that did not arise out of or in the course of military duty." 348 U.S. 110, 113 (1954). In *Brown*, the claim was for negligent medical treatment alleged by a veteran injured in a VA hospital in an operation to treat an injury he had received while on active duty. *Id.* at 110. The Court held the claim could proceed, explaining that *Brooks* "held that servicemen were covered by the Tort Claims Act where the injury was not incident to or caused by their military service," and that "[t]he *Feres* decision did not disapprove of the *Brooks* case." *Id.* at 111-12. The Court observed that the FTCA made the United States liable for tort claims "in the same manner and to the same extent as a private individual under like circumstances" and compared it with "the liability of the owners of automobiles" as a claim "which might be cognizable under local law, if the defendant were a private party." *Id.* at 113.

Feres's description of the *Brooks* brothers as being "on furlough" and driving on a public highway was evidence that the Brooks' accident was not incident to service. Here, the Eighth Circuit turned it into the test for incident to service, focusing solely on

Beck being "injured on-Base, while on active duty" as the basis for concluding *Feres* barred Petitioners' claims, without examining the connection of the injury to any military mission or orders. App.5. Contrary to the Eighth Circuit's holding, it is not sufficient to make Beck's injury "incident to service" because he was injured in service. In *Brown*, the veteran "was there, of course, because he had been in the service and because he had received an injury in the service." *Brown*, 348 U.S. at 112.

This Court has never based "incident to service" on a soldier's leave status or location. To the contrary, the Court has explained that duty status and the situs of the injury are "not nearly as important as whether the suit requires the civilian court to second-guess military decisions … and whether the suit might impair essential military discipline." *United States v. Shearer*, 473 U.S. 52, 57 (1985). Shearer, for instance, "was off duty and way from the base when he was murdered," *id.*, and yet his claim was barred. "*Feres*," the Court has said, "seems best explained by the 'peculiar and special relationship of the soldier to his superiors, the effects of the maintenance of such suits on discipline, and the extreme results that might obtain if suits … were allowed for negligent orders given or negligent acts committed in the course of military duty.'" *United States v. Muniz*, 374 U.S. 150, 162 (1963) (quoting *Brown*, 348 U.S. at 112).

In fact, in every application where this Court has applied *Feres*—including *Feres* itself—the negligence claim concerned an injury that either arose during a

military mission or was based on a military decision. *See Feres*, 340 U.S. at 137 (alleging negligence in the decision to quarter a soldier in unsafe barracks and surgeries by Army doctors in military hospitals); *Stencel Aero Engineering Corp. v. United States*, 431 U.S. 666, 668 (1977) (alleging negligence in an emergency ejection system for a fighter aircraft); *Shearer*, 473 U.S. at 54 (alleging negligence by the Army in failing to control or warn about a dangerous soldier); *Johnson*, 481 U.S. at 683 (alleging negligence of FAA flight controllers during a Coast Guard rescue mission); *United States v. Stanley*, 483 U.S. 669 (1987) (barring a *Bivens* claim based on the Army's secret administration of LSD).

By contrast, Petitioners' claims do not fit within the Court's surviving rationales for the *Feres* doctrine. They are not "the *type* of claims that, if generally permitted, would involve the judiciary in sensitive military affairs at the expense of military discipline and effectiveness." *Shearer*, 473 U.S. at 59. Beck's death "arose out of non-military activit[y]"—he "was driving his vehicle" going home for lunch.[2] App.5.

Indeed, Air Force regulations make clear that "[d]riving to and from lunch is not considered on-

[2] *Feres* also listed as rationales the "distinctly federal" relationship between servicemembers and the government and existence of statutory disability and death benefits. 340 U.S. at 140-143. But the Brooks brothers were also servicemembers who received disability and death benefits. *Brooks*, 337 U.S. at 53-54. And subsequent cases have indicated these rationales are no longer controlling. *See Brown*, 348 U.S. at 113; *Shearer*, 473 U.S. at 58 n.4.

duty." Department of the Air Force Instruction 91-204 (March 10, 2021), *Safety Investigations and Reports*, at §1.9.1.1.7. Other service regulations state the same. *See* OPNAV M-5102.1 (September 27, 2021), *Navy and Marine Corps Safety Investigation and Reporting Manual*, at 2-12 ("Driving to and from lunch is not considered on-duty"); Army Regulation 385-10 (February 24, 2017), *The Army Safety Program*, at 144 ("Army personnel are off-duty when they—…d. Are traveling before and after official duties, such as driving to and from work. … g. Are on lunch or other rest break engaged in activities unrelated to eating or resting.").

Nor do Petitioners' claims "involve second-guessing military orders" or "require members of the Armed Services to testify in court as to each other's decisions and actions." *Stencel*, 431 U.S. at 673. Ms. Mitchell was a civilian and the government's actions relating to this accident confirm no intrusion here: the government charged and convicted Blanca Mitchell of criminal negligence.

Just like the automobile accident in *Brooks*, Beck's accident "had nothing to do with" his Air Force career. *Brooks*, 337 U.S. at 52. The Court has distinguished claims like Petitioners' alleging "negligence … in the operation of a vehicle" as being "[u]nlike" a claim that goes to "basic choices about the discipline, supervision, and control of a serviceman" and "would require Army officers 'to testify in court as to each other's decisions and actions.'" *Shearer*, 473 U.S. at 58 (quoting *Stencel*, 431 U.S. at 673).

Although the inherent flaws and universal criticism of *Feres* warrants this Court's review of the *Feres* doctrine in toto, *see infra*, the outcome here is plainly wrong even under *Feres* as it exists today under this Court's precedent. The Court has never interpreted the *Feres* doctrine to bar all tort suits by servicemembers. And Beck, like the Brooks brothers, would just as easily "have been injured had [he] never worn a uniform at all." *Brown*, 348 U.S. at 114 (Black, J., dissenting).

II. The Eighth Circuit's Holding Entrenches a Circuit Split and Implicates Deeper Confusion over the Scope of *Feres*.

The Eighth Circuit's decision further crystalizes a split in the courts of appeals on the meaning of *Feres*'s "incident to service" bar—particularly in the context of ordinary vehicle accident claims.

1. The decision below concluded *Feres* barred Petitioners' suit even though it acknowledged Beck was "killed during off-duty hours" and his "death[] arose out of non-military activit[y]"—he was "driving his vehicle" home for lunch. App.5. The Eighth Circuit panel concluded that this case was controlled by the circuit's *en banc* decision in *Miller*, in which the Eighth Circuit stated that it "give[s] *Feres* a rather broad construction." *Miller*, 643 F.2d at 491. According to that broad construction, *Feres* bars all claims relating to any activities performed while subject to call for active duty and when the "peculiar and special relationship" between a soldier and his military superiors "has not been severed formally by

furlough, leave, or pass." *Id.* at 494. The Eighth Circuit has repeatedly relied primarily or solely on duty status to bar tort claims under *Feres*. *See* App.5, *Miller*, 643 F.2d at 494; *Bruenig ex rel. Bruenig v. United States*, 735 F.2d 306, 307 (8th Cir. 1984); *Anderson v. United States*, 724 F.2d 608, 610 (8th Cir. 1983).

Like the Eighth Circuit, the Sixth Circuit also applies a broad construction of *Feres* to bar claims based on a servicemember's status without regard to whether the servicemember was engaged in a military activity when injured. For instance, in *Major v. United States*, the Sixth Circuit concluded that *Feres* barred the tort claims of two servicemembers who were off-duty and sitting on a motorcycle when they were struck by a vehicle driven by an intoxicated servicemember. 835 F.2d 641, 642 (6th Cir. 1987). Even though neither servicemember was performing any military mission when hit, the Sixth Circuit thought it enough to conclude that they were injured "incident to service" because they "were on active duty status and neither were on a pass or furlough." *Id.* at 642. The Sixth Circuit believed this outcome was dictated by this Court's *Feres* doctrine cases:

> Review of these Supreme Court precedents makes it clear that in recent years the Court has embarked on a course dedicated to broadening the *Feres* doctrine to encompass, at a minimum, *all* injuries suffered by military personnel that are even remotely related to the individual's

> *status* as a member of the military, without regard to the location of the event, the status (military or civilian) of the tortfeasor, or any nexus between the injury-producing event and the essential defense/combat purpose of the military activity from which it arose.

Id. at 644-45 (emphasis original).[3] The Sixth Circuit went so far as to conclude that *Brooks* has been effectively overruled, even though this Court has never said as much. *Id.* at 645 n.2 ("[I]t is obvious that, contrary to the Court's assertion in *Brooks*, it has now been 'persuaded' that the phrase 'any claim' contained in the FTCA *does* mean 'any claim but that of servicemen.'").

The Third Circuit too has held that *Feres* bars a servicemember's suit for injuries suffered in a vehicle accident that occurred while the servicemember was on active duty and on the military base, without

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[3] A later Sixth Circuit panel characterized this statement in *Major* as dicta, which further highlights the confusion over "incident to service." *Fleming v. U.S. Postal Service*, 186 F.3d 697, 701 (6th Cir. 1999). In *Fleming*, the Sixth Circuit concluded that an active-duty servicemember could bring a claim for a vehicle accident caused by a postal worker because at the time of the accident he was on his way to breakfast *before* going to work at the military base. 186 F.3d at 700 ("Fleming was injured on his own time, miles from the base, during an activity—driving to get something to eat at a Louisville-area restaurant—that had no relationship to his military service."). In *Fleming*, the Sixth Circuit reasoned that "in analyzing [the government's] assertion of the *Feres* doctrine, a court must consider the nature of the injury-producing activity in the case." *Id.* at 701.

considering the fact that the accident occurred when the servicemember was driving home to attend to his pregnant wife. *Richards v. United States*, 176 F.3d 652, 655 (3d Cir. 1999).

The Fourth Circuit and Tenth Circuits have echoed the Sixth Circuit's broad characterization of *Feres*, adopting the view that *Feres* bars "'*all* injuries … that are even remotely related to the individual's status as a member of the military.'" *Stewart v. United States*, 90 F.3d 102, 105 (4th Cir. 1996) (quoting *Major*, 835 F.2d at 644); *accord Shaw v. United States*, 854 F.2d 360, 364 (10th Cir. 1988). In *Stewart*, for instance, the servicemember was injured in a vehicle accident when he was on his way home "to shower and change clothes" before reporting to work. 90 F.3d at 104. The Fourth Circuit thought it enough to trigger *Feres* that Stewart was "on active duty status at the time of the accident" and was engaged "in activity directly related to the performance of military obligations" because he had to go home to change before going to his next duty assignment. *Id.* at 104-05. But under that logic, any causal connection can be made between a personal errand and performance of military duty. More recently, the Fourth Circuit concluded *Feres* barred the claim of a servicemember who was hit in a crosswalk while walking to the gym by a vehicle driven by another servicemember on his way to get a birthday cake. *Frankel v. United States*, 810 F. App'x 176, 177 (4th Cir. 2020). According to the court, the servicemember's "limited off-duty status and presence on a military base by virtue of his military status" was

enough to make his injury incident to service. *Id.* at 181.

2. The construction of *Feres* by the Eighth Circuit along with the Third, Fourth, Sixth and Tenth Circuits sharply contrasts with how *Brooks* and *Feres* are applied in the Second, Fifth, Ninth, and Eleventh Circuits even for similar claims involving vehicle accidents.

In *Pierce v. United States*, a servicemember had left the base during regular hours to run personal errands, including eating lunch, and was riding his motorcycle back to base to unpack in his barracks when he was hit by a vehicle driven by a Navy recruiter. 813 F.2d 349, 350-51, 353 (11th Cir. 1987). The Eleventh Circuit rejected the government's arguments that Pierce's activities—eating lunch, pawning a camera, riding his motorcycle, or unpacking his belongings—were "incident to service" because they were "part of the life of a soldier": "To accept the government's contention would be to construe any conceivable personal activity as 'incident to service' because that activity happened to be performed by a member of the armed forces." *Id.* at 354. The Eleventh Circuit concluded that Pierce's claims were "governed by *Brooks*, and not by *Feres*" and could proceed. *Id.*

In *Parker v. United States*, Parker was killed on his way home from work when another servicemember driving a military vehicle crossed the center line and collided with him on a road inside Fort Hood, Texas. 611 F.2d 1007, 1008 (5th Cir. 1980).

"Because the collision did not occur off the base," the Fifth Circuit concluded that it had to "look[] to the function Parker was performing at the time of his death, which was not related to his military service." *Id.* at 1015. The court determined Parkers' family could proceed with a claim because "Parker [was] closer to *Brooks*" than *Feres*: "Parker was not acting incident to his service at the time of his death." *Id.*

In *Taber v. Maine*, the Second Circuit concluded that the *Feres* doctrine did not bar the claim of a servicemember injured in a vehicle accident caused by another servicemember's drunk driving. 67 F.3d 1029, 1032 (2d Cir. 1995). The Second Circuit held that the claim could proceed because it was more like *Brooks* than *Feres* and that "*Feres* neither overruled *Brooks*, nor limited *Brooks* to its immediate facts." *Id.* at 1039. The court explained that the accident "had 'nothing to do with' Taber's military career and was 'not caused by service except in the sense that all human events depend upon what has already transpired.'" *Id.* at 1050 (quoting *Brooks*, 337 U.S. at 52).

In *Schoenfeld v. Quamme*, Schoenfeld was on Camp Pendleton and heading off-base for the weekend when the car he was riding in struck a damaged guardrail on a base road, resulting in his right leg being severed in the accident. 492 F.3d 1016, 1017-18 (9th Cir. 2007). Schoenfeld sued the United States, alleging that the government knew about the damaged guardrail but negligently failed to repair or warn of the condition. *Id.* at 1018. Although the

district court dismissed this claim as barred by *Feres*, the Ninth Circuit reversed. *Id.* at 1026. The Ninth Circuit "d[id] not attach great weight to the fact that the negligent act occurred on base" and stated that Schoenfeld's duty status was "at best marginally relevant to the *Feres* analysis." *Id.* at 1023. Instead, the Ninth Circuit allowed Schoenfeld's claim to proceed because it considers whether the servicemember "was … engaged in military activity when he was injured" as the key factor in determining whether *Feres* applies. *Id.* at 1023, 1025; *see also Johnson v. United States*, 704 F.2d 1431, 1438 (9th Cir. 1983) ("The important question is whether the service member on active duty status was engaging in an activity that is related in some relevant way to his military duties"); *Mills v. Tucker*, 499 F.2d 866, 867-68 (9th Cir. 1974) (holding that *Feres* did not bar a claim by a servicemember who was killed while riding his motorcycle back to his on-base quarters on a road maintained by the Navy).

3. Beyond the specific context here of vehicle accidents, the circuits are divided in determining what is "incident to service" in other areas too. *See Carter v. United States*, 145 S. Ct. 519, 525 (2025) (Thomas, J., dissenting from the denial of certiorari) (listing examples where the circuits' "differing approaches have led to divergent outcomes in factually similar cases"). As just one example, the Ninth Circuit has concluded that *Feres* bars claims for the negligence of civilians running a military-sponsored rafting trip because the servicemembers were "on active duty" at the time of the accident and

"the rafting trip was provided as a benefit of military service." *Costo v. United States*, 248 F.3d 863, 867 (9th Cir. 2001); *see McConnell v. United States*, 478 F.3d 1092, 1098 (9th Cir. 2007) ("[I]n light of the Supreme Court's failure to address the expansion of the *Feres* doctrine … we remain constrained to follow our 'well-worn path' of interpreting the *Feres* doctrine 'to include military-sponsored recreational programs.'"). But the Fifth Circuit rejected the Ninth Circuit's holding as going "further than the Supreme Court has indicated is necessary" under *Feres* and allowed similar claims of negligence by military sponsored recreational boating to proceed. *Regan v. Starcraft Marine, LLC*, 524 F.3d 627, 629-30, 645 (5th Cir. 2008).

III. If *Feres* Tolerates the Eighth Circuit's Holding, Then the Court Should Limit or Overrule *Feres*.

The Eighth Circuit's decision is plainly wrong under *Feres* because the accident that caused Beck's death was not "incident to service" under any reasonable application of this Court's precedents involving that judicial exception to the FTCA. But should *Feres* be viewed as tolerating the result below, then the Court should overrule *Feres* or at minimum clarify that the "incident to service" exception does not mean a bar on all claims in the ordinary life of servicemembers, contrary to the decisions of the Eighth Circuit and others. *See* App.4 ("We noted the 'weight of authority' was that *Feres* bars all suits by on-base, active duty service members."); *Major*, 835

F.2d at 644 (interpreting the Court's *Feres* precedents "to encompass, at a minimum, *all* injuries suffered by military personnel that are even remotely related to the individual's *status* as a member of the military); *Stewart*, 90 F.3d 102 (same); *Shaw*, 854 F.2d at 364 (same).

The traditional justifications for overruling precedent are present here. *Kimble v. Marvel Ent., LLC*, 576 U.S. 446 458 (2015). *Feres* was never based on a textual interpretation of the FTCA, and the policy rationales serving as its foundation have all since crumbled. And "[e]xperience has also shown" that *Feres* "is unworkable," *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 407 (2024), as evidenced by the chorus of judges across the country pleading for the Court to fix it. *See, e.g.*, *Richards*, 176 F.3d at 657 ("It is because *Feres* too often produces such curious results that members of this court repeatedly have expressed misgivings about it.").

To start, *Feres*'s "doctrinal underpinnings have … eroded over time." *Kimble*, 576 U.S. at 458. *Feres*'s original three rationales have been abandoned over time by this Court's subsequent cases. *See Johnson*, 481 U.S. at 694-696 (Scalia, J., dissenting) (citing *Rayonier, Inc. v. United States*, 352 U.S. 315, 319 (1957); *Indian Towing Co. v. United States*, 350 U.S. 61, 66-69 (1955); *Shearer*, 473 U.S. at 58 n.4). The later added fourth rationale—that tort suits would "require the civilian court to second-guess military decisions" and "might impair essential military discipline," *Shearer*, 473 U.S. at 57—is also hollow.

"[S]ervicemen routinely sue their government and bring military decision-making and decision makers into court seeking injunctive relief." *Carter*, 145 S. Ct. at 523 (Thomas, J., dissenting); *see, e.g.*, *Austin v. U. S. Navy Seals*, 142 S. Ct. 1301 (2022) (suit over consideration of vaccination status); *Singh v. Berger*, 56 F.4th 88, 110 (D.C. Cir. 2022) (enjoining Marine Corps' uniform and grooming requirements as likely violating the Religious Freedom Restoration Act). Indeed, military personnel can still sue in civilian courts "for constitutional wrongs suffered in the course of military service." *Chappell v. Wallace*, 462 U.S. 296, 304 (1983); *see Goldman v. Weinberger*, 475 U.S. 503, 506-07 (1986); *Parker v. Levy*, 417 U.S. 733, 758-60 (1974); *Frontiero v. Richardson*, 411 U.S. 677, 679 (1973).

Likewise, *Feres* distinguished *Brooks* based on Brooks being "on furlough," driving off base, and "under compulsion of no orders or duty and on no military mission." 340 U.S. at 146. Lower courts, including the Eighth Circuit here, have repeatedly seized on the leave distinction as the primary basis for determining incident to service. App.4; *Stewart*, 90 F.3d at 104; *Major*, 835 F.2d at 642. But this Court has explained that leave status, active orders, or a servicemember's location have no bearing on whether a servicemember is subject to military discipline. There is no "service-connection" test to whether a servicemember is subject to military discipline because a servicemember is always subject to military jurisdiction as long as he is "a member of the Armed Services." *Solorio v. United States*, 483 U.S. 435, 450-

51 (1987). That encompasses anyone with "a formal relationship with the military that includes a duty to obey military orders," including reservists and furloughed soldiers not yet fully discharged. *Larrabee v. Del Toro*, 45 F.4th 81, 101 (D.C. Cir. 2022). It also includes military retirees, who "unquestionably remain in the service and are subject to restrictions and recall," *Barker v. Kansas*, 503 U.S. 594, 599 (1992), as well as the Uniform Code of Military Justice, *McCarty v. McCarty*, 453 U.S. 201, 222 (1981). The focus on whether a servicemember is on leave, pass, or furlough, or whether the negligent act occurred on or off base draws distinctions that do not make sense in the military. A servicemember is always on call and subject to orders by his or her military superiors—no matter whether on furlough, leave, or pass, or just at lunch.

More broadly, this Court has long since abandoned interpreting the FTCA to effectuate the policy rationales underpinning *Feres*. In *Indian Towing Co. v. United States*, the Court rejected the government's argument that FTCA claims alleging negligence of the Coast Guard in operation of a lighthouse could not proceed because the Coast Guard was performing a "uniquely governmental" function. 350 U.S. at 62, 64. In *Rayonier, Inc. v. United States*, it allowed an FTCA claim to proceed alleging negligence of Forest Service firefighters, stating that while "[i]t may be that it is 'novel and unprecedented' to hold the United States accountable" for such negligence, "the very purpose of the Tort Claims Act was to waive the Government's traditional all-

encompassing immunity from tort actions and to establish novel and unprecedented governmental liability." 352 U.S. at 377. And in *United States v. Muniz*, the Court rejected the argument that federal prisoners should be excluded from bringing FTCA claims because "variations in state law" would apply. 374 U.S. at 161-62. "There is no justification for this Court to read exemptions into the Act beyond those provided by Congress." *Rayonier*, 352 U.S. at 320.

In addition, *Feres* "has proved unworkable." *Kimble*, 576 U.S. at 459. The *Feres* doctrine lacks any governing principle, a fact this Court has recognized when cautioning that "[t]he *Feres* doctrine cannot be reduced to a few bright-line rules" and that "each case must be examined in light of the statute as it has been construed in *Feres* and subsequent cases." *Shearer*, 473 U.S. at 57. Justice Thomas warned lower courts just weeks ago to "not look for a principled explanation for our *Feres* case law; there is nothing to find." *Carter*, 145 S. Ct. at 526.

Members of this Court have long recognized that "*Feres* was wrongly decided and heartily deserves the widespread, almost universal criticism it has received." *Johnson*, 481 U.S. at 701 (Scalia, J., dissenting); *see Carter*, 145 S. Ct. at 519 (Thomas, J., dissenting from the denial of certiorari) ("As I have said before, we should fix the mess that we have made."); *Daniel v. United States*, 587 U.S. 1020 (2019) ("Justice Ginsburg would grant the petition for a writ of certiorari."); *Bork v. Carroll*, 449 F. App'x 719, 721 (10th Cir. 2011) (Gorsuch, J.) ("*Feres* proceeded to

hold—despite the FTCA's language suggesting a waiver of immunity—that FTCA suits for injuries 'aris[ing] out of or ... in the course of activity incident to service'" are barred); *Lombard v. United States*, 690 F.2d 215, 229 n.7 (D.C. Cir. 1982) (Ginsburg, J., dissenting) ("[T]he soundness of the *Feres* Court's interpretation of the FTCA continues to be questioned.").

Moreover, as this case illustrates, "[t]he lower courts' attempts to apply *Feres*' 'incident to military service' standard are marked by incoherence." *Clendening v. United States*, 143 S. Ct. 11, 12 (2022) (Thomas, J., dissenting from the denial of certiorari); *see Taber*, 67 F.3d at 1033, 1038 (noting the "tangle of inconsistent rulings and rationales known as the *Feres* doctrine" that "has gone off in so many different directions that it is difficult to know precisely what the doctrine means today" and "an extremely confused and confusing area of law"); *Costo*, 248 F.3d at 867 ("we have reached the unhappy conclusion that the cases applying the *Feres* doctrine are irreconcilable"); *McConnell*, 478 F.3d at 1095 ("the various cases applying the *Feres* doctrine may defy reconciliation").

Courts applying what the *Feres* doctrine has become have lamented "the disconnect that has come to exist between the philosophy behind *Feres* and its application" and feel compelled to reach results that "do[] not actually advance the philosophy behind *Feres*." *Richards*, 176 F.3d at 656, 658; *see also Daniel v. United States*, 889 F.3d 978, 982 (9th Cir. 2018) ("If ever there were a case to carve out an exception to the

Feres doctrine, this is it. But only the Supreme Court has the tools to do so."); *Ortiz v. United States*, 786 F.3d 817, 818 (10th Cir. 2015) ("[T]he facts here exemplify the overbreadth (and unfairness) of the doctrine, but *Feres* is not ours to overrule."); *Ruggiero v. United States*, 162 F. App'x 140, 143 (3d Cir. 2006) ("We have no choice but to apply *Feres* to the instant case, despite the harshness of the result and our concern about the doctrine's analytical foundations."); *Taber*, 67 F.3d at 1039 ("*Feres* quickly lurched toward incoherence."). Even so, *Feres* "remains on the books. So litigants must continue to wrestle with it, and lower courts … understandably continue to apply it." *Loper Bright*, 603 U.S. at 406.

Much of the confusion of the *Feres* doctrine is caused in large part because it is built around a concept—whether an injury is "incident to service"—that has no basis in tort law principles and that the Court has never defined. *See Clendening v. United States*, 19 F.4th 421, 427 (4th Cir. 2021) ("incident to service" is "broad and amorphous"); *Parker*, 611 F.2d at 1009 ("The Supreme Court cases under the *Feres* doctrine … do not provide many clear signposts to the parameters of 'incident to service.'"). Elsewhere, the Court has stated that the FTCA is to be interpreted consistent with "traditional common law." *Molzof v. United States*, 502 U.S. 301, 306 (1992); *see Staub v. Proctor Hosp.*, 562 U.S. 411, 417 (2011) ("[W]e start from the premise that when Congress creates a federal tort it adopts the background of general tort law."). If *Feres* were at least grounded in traditional common law, it might have directed courts to look at

whether a servicemember's injury was proximately caused by military service or military orders. *See CSX Transp., Inc. v. McBride*, 564 U.S. 685, 701 (2011) ("[T]he phrase 'proximate cause' is shorthand for the policy-based judgment that not all factual causes contributing to an injury should be legally cognizable causes."); *Holmes v. Sec. Inv. Prot. Corp.*, 503 U.S. 258, 268 (1992) (Proximate cause is "a demand for some direct relation between the injury asserted and the injurious conduct alleged."). But lower courts have interpreted this Court's divergent explanations for and determinations of "incident to service" to encompass much more than whether the conduct "that proximately caused the harm" actually arose out of military mission or orders. *Klay v. Panetta*, 758 F.3d 369, 375 (D.C. Cir. 2014). That has led some circuits, including the Eighth, to apply a "but-for" form of causation rejected by basic tort law—that an injury is "incident to service" if the servicemember was on the military base only because he was in the military. *See* App.17 ("Specifically, but for his status as an active duty serviceman, [Beck] would not have been traveling on Whiteman Airforce base to his home that was also located on base at all."); *Chambers v. United States*, 357 F.2d 224, 229 (8th Cir. 1966) ("Airman Chambers' use of the pool, which was a part of the base, was related to and dependent upon his military service; otherwise, he would not have been privileged to use it."); *Miller*, 643 F.2d at 497 (Healey, J., dissenting) ("The majority's analysis approaches that of a 'but for' test."); *Frankel*, 810 F. App'x at 181 ("Under our precedent, these facts—limited off-duty

status and presence on a military base by virtue of his military status—easily establish a connection between Frankel's injuries and his status as a member of the Navy."). Other circuits have disagreed and rejected this but for causation approach. *See Whitley v. United States*, 170 F.3d 1061, 1070 (11th Cir. 1999) ("More analysis than 'a purely causal' relationship with the military is required; that is, 'one cannot merely state that but for the individual's military service, the injury would not have occurred.'" (quoting *Parker*, 611 F.2d at 1011)); *Pierce*, 813 F.2d at 354 (allowing a claim to proceed because "the activities involved were not proximately related to military service"); *Regan*, 524 F.3d at 643 (allowing a claim to proceed even though "[a]s a matter of simple causation, [the servicemember] was at Toledo Bend, and on this particular boat, because he was a soldier.").

In the absence of guidance from this Court, the circuits have struggled to develop their own tests for "incident to service" and what weight to place even on the same factors. Some courts have said that the servicemember's duty status is the most important factor. *See*, *e.g.*, App.5 (holding Petitioners' claims barred because Beck was "injured on base[] while on active duty" even though his death "arose out of [a] non-military activit[y]"); *Schoemer v. United States*, 59 F.3d 26, 28-29 (5th Cir. 1995) ("We often treat the serviceman's duty status as the most important factor."). Others have said that the activity resulting in the injury is the most important factor. *See, e.g.*, *Schoenfeld*, 492 F.3d at 1020; *Wake v. United States*,

89 F.3d 53, 61 (2d Cir. 1996) ("It is clear that the nature of the activity, and not the official duty status of the serviceperson, may be determinative of whether or not an activity is 'incident to service.'"). The Fourth Circuit does not adhere to any factors but instead applies a results-based analysis that looks to whether the suit "would call into question military discipline and decisionmaking" to determine whether it is incident to service. *Clendening*, 19 F.4th at 427.

The circuit courts' application of *Feres*'s "incident to service" test has resulted in the very harm that *Feres* purportedly sought to prevent: leaving servicemembers "dependent upon geographic considerations over which they have no control." *Feres*, 340 U.S. at 143; *see* Major Deirdre G. Brou, *Alternatives to the Judicially Promulgated Feres Doctrine*, 192 Mil. L. Rev. 1, 32 (2007) ("Although the Supreme Court thought the Federal Tort Claims Act's 'geographically varied recovery' was unfair to service members, its incident to service test has resulted in recovery that varies."). Such is the case here: Petitioners' claim, barred in the Eighth Circuit, could have gone forward in Second, Fifth, Ninth, and Eleventh Circuits. *See* 28 U.S.C. §1402(b) (allowing FTCA claims can be brought either in districts where the plaintiff resides or where the negligent act occurred). As a result, whether servicemembers can proceed with claims depends entirely on the happenstance of circuit precedent where they reside or were injured. *See, e.g.*, *Taber*, 67 F.3d at 1029 (Second Circuit addressing whether a claim could proceed for an accident that occurred in Guam).

Feres was "a bald act of policymaking." *Cf. Kimble*, 576 U.S. at 466 (Alito, J. dissenting). It made no pretense of being based on interpreting statutory language, but rather on what the Court thought Congress must have intended. *Feres*, 340 U.S. at 146. But as the Court has admonished, "[i]t is Congress's job to craft policy and [the Court's] to interpret the words that codify it." *Lackey v. Stinnie*, 145 S. Ct. 659, 669-70 (2025) (quoting *Rotkiske v. Klemm*, 589 U.S. 8, 14 (2019)).

"[T]here is no warrant for assuming that Congress was unaware of established tort definitions when it enacted the Tort Claims Act in 1946, after spending some twenty-eight years of congressional drafting and redrafting, amendment and counter-amendment." *Molzof*, 502 U.S. at 308 (quotation marks omitted). In *Brooks*, the Court observed that leading up to the FTCA Congress had repeatedly considered tort claims bills that would have broadly excluded servicemembers, but the enacted bill dropped that exclusion. 337 U.S. at 51-52. In addition, the FTCA repealed the Military Personnel Claims Act of July 3, 1943, which had authorized the Secretary of War to pay injury or death claims of servicemembers up to certain amounts, but restricted payments for injuries that occurred incident to service. 57 Stat. 372, 373, 31 U.S.C. § 223b (1946), *repealed by* 60 Stat. 846, 847 (1946); *see* Asher Brogin, *Rights of Servicemen Under the Federal Torts Claims Act*, 1 Syracuse L. Rev. 87, 93-94 (1949). With this background, "'[a]textual judicial supplementation is particularly inappropriate when ... Congress has

shown that it knows how to adopt the omitted language or provision.'" *Lackey*, 145 S. Ct. at 669-70 (quoting *Rotkiske*, 589 U.S. at 14). "Congress has primary responsibility for the delicate task of balancing the rights of servicemen against the needs of the military." *Solorio*, 483 U.S. at 447. *Feres* usurped Congress's balancing decision.

Finally, revising *Feres* "would not upset expectations." *Pearson v. Callahan*, 555 U.S. 223, 233 (2009). "Private reliance interests on a decision that precludes tort recoveries by military personnel are nonexistent." *Lanus v. United States*, 570 U.S. 932 (2013) (Thomas, J., dissenting from the denial of certiorari). The federal government is not hiring negligent drivers or negligent surgeons on the basis that it will escape liability for their actions against servicemembers. The government remains liable to civilians for negligence of military personnel. *See Sheridan v. United States*, 487 U.S. 392, 394, 400-01 (1988) (permitting claims alleging negligence of military personnel in allowing a drunk servicemember to leave a military hospital with a loaded rifle); *Indian Towing Co.*, 350 U.S. at 69 (permitting claims alleging negligence of the Coast Guard in operating a lighthouse). Further, to the extent *stare decisis* is supposed to "foster[] reliance on judicial decisions" and "reduce[] incentives for challenging settled precedents," *Kimble*, 576 U.S. at 455, adherence to *Feres* has done the opposite, as attested to by the constant drumbeat of pleas for the Court to revisit that decision. *See Carter*, 145 S. Ct. at 519, 523 (detailing prior criticisms). And because

the *Feres* doctrine lacks any consistent and coherent application, litigants will continue to press its boundaries.

IV. This Case Is an Ideal Vehicle to Resolve Exceptionally Important Issues Regarding the *Feres* Doctrine.

This case provides an ideal vehicle to resolve exceptionally important issues regarding scope of "incident to service" in the *Feres* doctrine or whether *Feres* should be overruled as inconsistent with the plain language of the FTCA.

To start, no relevant facts are in dispute. Beck was on active duty and heading home on his motorcycle for lunch when he was killed. His death "arose out of [a] non-military activit[y]." App.5. He was not on a military mission, *see Johnson*, 481 U.S. at 691, when injured.

Likewise, it is beyond dispute that a civilian government employee's negligence caused Beck's death because the government charged and convicted her of negligent driving resulting in Beck's death. CA8.App.41-42. Thus, it is unnecessary to probe into military matters regarding negligence. The sole issue is whether Beck's active-duty status and the accident location alone are enough to make the accident "incident to service" and barred by *Feres*.

Although other petitions have asked the Court to clarify *Feres*, those cases typically arose in the context of negligence of military medical providers. The government has opposed those petitions in part

because two of the consolidated cases in *Feres* arose from the context of medical negligence of military doctors. *See Carter v. United States*, No. 23-1281, Brief in Opposition at 6 ("Since its inception, *Feres* has applied to claims for medical malpractice."). But the Court has never concluded that a servicemember's involvement in a vehicle accident is incident to service merely because the servicemember was on active duty at the time of the accident. To the contrary, the Court has stated unequivocally that the FTCA "draftsmen did not intend it to relieve the Government from liability for such common-law torts as an automobile collision caused by the negligence of an employee." *Dalehite v. United States*, 346 U.S. 15, 34 (1953); *see also id*. at 28 and n.20 (noting the repeated legislative proposals making the United States liable for negligent operation of vehicles). Therefore, this case presents whether *Feres* goes so far as to exclude servicemembers from bringing the very type of tort claim Congress had in mind when enacting the FTCA.

This case provides a clean opportunity for the Court to clarify the test for "incident to service" and the line between *Brooks* and *Feres*. *Brooks* said nothing about the Brooks brothers' leave status; what mattered was that the injuries were "not caused by their service." 337 U.S. at 52. *Feres* later noted that the Brooks were "on furlough" as one of several facts that showed their injury "did not arise out of or in the course of military duty." 340 U.S. at 146. But the circuit courts, including the Eighth Circuit here, have turned leave status from a fact that can shed light on "incident to service" to a condition on a

servicemember's right to bring a claim. Here, the Court can "clear up some mixed messages" that lower courts have received. *Kisor v. Wilkie*, 588 U.S. 558, 574 (2019).

Finally, this case exposes the inherent flaws in the *Feres* doctrine and provides the Court the opportunity to correct a doctrine created by this Court that has worked injustice on servicemembers for decades. Whether a servicemember can bring a tort claim for a vehicle accident should not turn on when or where he or she chose to go for lunch. Yet, under how *Feres* is being applied, it does.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for certiorari.

Respectfully submitted,

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