

IN THE SUPREME COURT OF THE UNITED STATES

No. 24-362

CURTRINA MARTIN, INDIVIDUALLY AND AS PARENT AND
NEXT FRIEND OF G.W., A MINOR, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

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

MOTION OF RESPONDENTS FOR DIVIDED ARGUMENT

Pursuant to Rules 28.4 and 28.7 of this Court, the Solicitor General, on behalf of respondents, respectfully moves for divided argument in this case. We request the following division of argument time: 30 minutes for petitioners, 15 minutes for respondents, and 15 minutes for the Court-appointed amicus curiae, who is supporting the judgment below. We also request that respondents be allowed to argue before the Court-appointed amicus curiae, so as to mirror the presentation of issues in the parties' briefs. The Court-appointed amicus curiae agrees to this motion.

The Federal Tort Claims Act (FTCA), 28 U.S.C. 1346(b), 2671 et seq., waives the United States' sovereign immunity for certain tort claims. That waiver is subject to 13 separate exceptions, one set forth in each subsection of 28 U.S.C. 2680. As relevant here, the discretionary function exception in subsection (a) preserves the United States' immunity for claims challenging judgments made in the exercise of discretion. 28 U.S.C. 2680(a). And the intentional tort exception in subsection (h) preserves the United States' immunity for claims arising out of assault, battery, and other specified torts. 28 U.S.C. 2680(h).

In 1974, Congress added a proviso to subsection (h). Act of Mar. 16, 1974, Pub. L. No. 93-253, § 2, 88 Stat. 50. That proviso is known as the law enforcement proviso, and it covers certain claims arising out of the wrongful conduct of federal investigative or law enforcement officers. 28 U.S.C. 2680(h). Under Eleventh Circuit precedent, the law enforcement proviso removes those claims not only from the scope of the intentional tort exception in subsection (h), but also from the scope of the FTCA's 12 other exceptions, including the discretionary function exception in subsection (a). See Nguyen v. United States, 556 F.3d 1244, 1256 (2009).

Petitioners brought suit against respondents, seeking damages against the United States under the FTCA. The district court dismissed petitioners' FTCA claims, Pet. App. 21a-32a, 34a-68a, and the Eleventh Circuit affirmed, id. at 2a-19a. Relying on

circuit precedent, the lower courts determined that because petitioners' FTCA claims alleging assault, battery, and false imprisonment fell within the law enforcement proviso in subsection (h), the discretionary function exception in subsection (a) was categorically inapplicable and did not preserve the United States' immunity for those claims. Id. at 59a-60a. The lower courts nevertheless held that the Supremacy Clause barred those claims. Id. at 18a-19a, 24a-27a.

Respondents opposed petitioners' petition for a writ of certiorari, but argued that if this Court were to grant review of whether the Supremacy Clause barred petitioners' claims, it should also direct the parties to address "[w]hether the discretionary function exception is categorically inapplicable to claims arising under the law enforcement proviso to the intentional torts exception." Br. in Opp. 21. The Court granted certiorari limited to the Supremacy Clause issue and the "threshold" statutory question that respondents had identified. Ibid.; see 2025 WL 301915, at *1. The Court also appointed an amicus curiae to brief and argue the case in support of the judgment below as to the Supremacy Clause issue. 2025 WL 311282, at *1.

Dividing the argument time between respondents and the Court-appointed amicus curiae would be of material assistance to this Court. Respondents are the defendants in this case, and they have a substantial interest in whether, and to what extent, petitioners' FTCA claims may proceed. Respondents also have a substantial

interest in the proper interpretation of the FTCA and the Supremacy Clause. Accordingly, respondents have filed a brief addressing both questions presented in this case. That brief argues that the law enforcement proviso in subsection (h) does not modify the FTCA's discretionary function exception in subsection (a) and that the exception therefore preserves the United States' immunity for petitioners' claims. Respondents' brief also argues that, if the Court reaches the issue, it should reject the lower courts' view that the Supremacy Clause bars those claims.

The amicus curiae appointed by this Court to defend the judgment below has filed a brief addressing the Supremacy Clause issue. That brief argues that the Eleventh Circuit correctly held that the Supremacy Clause may displace state tort law liability under the FTCA. Thus, although respondents and the Court-appointed amicus curiae both argue that the judgment below should be affirmed, they support affirmance on different grounds. Given respondents' and the Court-appointed amicus curiae's distinct views, division of argument time would materially assist the Court in its consideration of this case.

Respectfully submitted.

D. JOHN SAUER
Solicitor General
Counsel of Record

APRIL 2025