NO. _____

IN THE

Supreme Court of the United States

SANDHILLS MEDICAL FOUNDATION, INC.,
Petitioner,

v.

JOANN FORD, on behalf of herself and all others similarly situated
Respondent,

and

UNITED STATES,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

42 U.S.C. § 233(a) provides Public Health Service officers and employees—and those deemed equivalent via § 233(g)—comprehensive immunity from suit by making the Federal Tort Claims Act a plaintiff's exclusive remedy in "any . . . civil action or proceeding . . . resulting from the performance of medical, surgical, dental, or related functions" undertaken within their scope of employment.

The question presented is:

Does "related functions" in 42 U.S.C. § 233(a)'s recitation of immunized conduct mean functions related to medical, surgical, or dental functions—as the Ninth Circuit concluded in *Friedenberg v. Lane County*, 68 F.4th 1113 (9th Cir. 2023)—or, as the Fourth Circuit concluded, mean activity in "a field of health care outside of medicine, surgery, or dentistry," App. 18a, such that § 233(a) immunizes only the "performance of the provision of health care." App. 20a.

PARTIES TO THE PROCEEDING

All parties are listed in the caption. Petitioner Sandhills Medical Foundation, Inc. was a defendant in the United States District Court for the District of South Carolina and an appellee in the United States Court of Appeals for the Fourth Circuit. Respondent Joann Ford was the plaintiff and putative class representative in the district court and appellant in the court of appeals. Respondent United States was a defendant in the district court following its substitution in place of Petitioner. In the appeals court, the United States was an appellee but realigned with Respondent Ford by motion for purposes of briefing.

CORPORATE DISCLOSURE STATEMENT

Petitioner has no parent corporation and no shareholders own ten percent or more of its stock.

RELATED PROCEEDINGS

This case arises from the following proceedings:

- *Ford v. Sandhills Medical Foundation, Inc.*, No. 2021-cp-13-0039 (S.C. Ct. C.P., filed June 18, 2021) (removed to federal district court July 26, 2021)

- *Ford v. Sandhills Med. Found., Inc.*, No. 4:21-cv-02307 (D.S.C. June 2, 2022) (ordering substitution of the United States

in place of defendant Sandhills Medical Foundation, Inc.)

- *Ford v. Sandhills Med. Found., Inc.*, No. 22-2268 (4th Cir. Mar. 29, 2024) (vacating substitution order and remanding for further proceedings)

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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Petitioner Sandhills Medical Foundation, Inc. (Sandhills) respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The Fourth Circuit's decision is reported at 97 F.4th 252 and reproduced at App. 3a–25a. The district

court's order substituting the United States in place of Petitioner Sandhills pursuant to 42 U.S.C. § 233(a) is unreported. It is available at 2022 WL 1810614 and included at App. 26a–46a.

JURISDICTION

The Fourth Circuit entered judgment on March 29, 2024, and denied a timely petition for panel and *en banc* rehearing on May 28, 2024. On August 6, 2024, Chief Justice John Roberts extended the time within which to file a petition for a writ of certiorari through October 25, 2024. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions—42 U.S.C. § 233 and 42 U.S.C. § 254b—are reproduced in the Appendix at 49a–68a and 69a–116a, respectively.

STATEMENT

This case arises from a federally-supported health center's alleged failure to safeguard its patients' confidential information, and a resulting dispute as to the proper defendant to answer for plaintiff's claims.

Plaintiff Joann Ford, a patient of Petitioner Sandhills, filed suit in Pennsylvania's Chesterfield County Court of Common Pleas in 2021, alleging Sandhills failed to safeguard personally identifiable and protected health information it had collected from her as a condition, and in the course, of providing her

health care. App. 5a, 8a.[1] Plaintiff's information was disclosed when Sandhills's data storage platform was breached by third-party threat actors. App. 6a–7a.

Sandhills is a community-based "health center" funded in part under 42 U.S.C. § 254b and deemed by the Secretary of the United States Department of Health and Human Services (HHS) to be a Public Health Service (PHS) employee under 42 U.S.C. § 233(g) and (h). App. 6a, 27a. Deemed equivalent to a PHS employee, Sandhills is entitled to the protections of the Emergency Health Personnel Act of 1970, Pub. L. No. 91-623, 84 Stat. 1868 (Dec. 31, 1970), *codified at* 42 U.S.C. § 233(a) *et seq.*, which immunizes PHS employees from civil actions "arising out of the performance of medical or related functions within the scope of their employment by barring all actions against them for such conduct." *Hui v. Castaneda*, 559 U.S. 799, 806 (2010); *accord Friedenberg v. Lane County*, 68 F.4th 1113, 1125 (9th Cir. 2023). Considering the breadth of § 233(a), this Court previously held, unanimously, that PHS Act immunity is sufficiently "comprehensive" to cover "both known and unknown causes of action." *Hui*, 559 U.S. at 806, 810.

Sandhills's status as a "deemed" PHS employee is authorized by the Federally Supported Health Centers Assistance Act (FSHCAA) of 1992, as amended, which extends to § 254b health centers—and their officers, board members, employees, and

[1] Plaintiff styled her complaint as a proposed nationwide class action. App. 8a. The complaint defines the putative class as including current and former Sandhills patients "whose PII or PHI was exposed to an unauthorized party." *Id.*

certain contractors—the same absolute immunity 42 U.S.C. § 233(a) has afforded to PHS employees since 1970. 42 U.S.C. § 233(g)(1)(A); *see* Pub. L. No. 102-501, 106 Stat. 3268 (Oct. 24, 1992) (enacting three-year demonstration project); Pub. L. No. 104-73, 109 Stat. 777 (Dec. 26, 1995) (making program permanent and adding procedural protections for benefit of health centers and their personnel). The FSHCAA was passed after Congress determined: (1) private malpractice insurance expenses constituted one of health centers' most significant expenses; (2) over $50 million had been spent on insurance premiums for Fiscal Year 1989; and (3) less than ten percent of money spent on premiums had been "paid out in actual claims payments and related costs." H.R. Rep. No. 104-398 at 4–6 (1995), *reprinted in* 1995 U.S.C.C.A.N. 767, 769. As amended, the statute provides for a prospective application-and-approval process through which health centers request and receive "final and binding" confirmation from HHS that they are deemed to be PHS employees for a specified period. 42 U.S.C. § 233(g)(1)(A)–(D); *see also* H.R. Rep. No. 104-398, at 3–4.

Based on its deemed federal status, Sandhills removed Plaintiff's suit to the United States District Court for the District of South Carolina, pursuant to 42 U.S.C. § 233(*l*)(2) and 28 U.S.C. § 1442(a)(1), and moved to substitute the United States in its place to vindicate its § 233(a) immunity. App. 5a, 9a–10a. The district court granted the motion, concluding Sandhills was "entitled to absolute immunity," App. 35a, because Plaintiff's claims, based on "the alleged data breach . . . arose out of Sandhills's performance of medical or related functions within the scope of its

employment as a deemed PHS employee." App. 37a (citing *Cuoco v. Moritsugu*, 222 F.3d 99, 107 (2d Cir. 2000)). Noting its construction of § 233(a) aligned with that of courts across the country, the district court determined that Congress's inclusion of "related functions" in the provision's recitation of immunized conduct covers PHS employee "job functions . . . 'interwoven' with providing medical care." App. 38a (collecting cases). In the district court's estimation, Sandhills's activity in protecting patient information fulfilled a function "interwoven" with its medical functions, in part based on Sandhills's statutory obligations to maintain patient confidentiality, a factor other courts had found helpful in assessing the connection between medical and other functions. App. 38a–40a.

After substituting the United States in Sandhills's place, the district court dismissed the action because Plaintiff had failed to exhaust her administrative remedies under the Federal Tort Claims Act (FTCA). App. 11a–12a. Plaintiff's appeal to the Fourth Circuit challenged only the district court's substitution order. App. 12a.

The Fourth Circuit reversed. App. 25a. In its view, Sandhills's safeguarding of patient information "is too removed from the provision of health care to amount to a 'related' function," App. 12a, which it construed to mean "a field of health care outside of medicine, surgery, or dentistry," App. 18a. Applying that construction, the Fourth Circuit concluded that Sandhills was not immune from suit because its failure to protect its patients' information did not occur "because of Sandhills'[s] performance of the

provision of health care." App. 20a. The Fourth Circuit's interpretation of "related functions" is a result of its expressed desire to find a "limiting principle" to curtail the scope of § 233(a) immunity. *See* App. 21a. In reaching its holding, the court cited, but did not examine, this Court's decisions in *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 114–15 (2001) and *Yates v. United States*, 574 U.S. 528, 544 (2015) (plurality opinion). App. 17a.

The Fourth Circuit did not acknowledge the conflict between its decision and *Friedenberg v. Lane County*, 68 F.4th 1113 (9th Cir. 2023), which rejected the position that § 233(a) "limits protection for deemed PHS employees to claims where the tortious conduct occurs during services provided to patients," *id.* at 1125 (quotation marks omitted). The Fourth Circuit likewise did not address the conflict its holding creates with the decisions *Friedenberg* endorsed.

REASONS FOR GRANTING THE PETITION

I. The Fourth Circuit's Restriction of § 233(a) Immunity to Torts Occurring During the Provision of Medical Care Creates a Conflict in the Lower Courts

The Fourth Circuit's significant narrowing of § 233(a) immunity—as applying only to PHS employees' "performance of the provision of health care," App. 20a—creates an untenable conflict with the Ninth Circuit's decision in *Friedenberg v. Lane County*, 68 F.4th 1113 (9th Cir. 2023), and the Second Circuit's decision in *Cuoco v. Moritsugu*, 222 F.3d 99

(2d Cir. 2000). The Fourth Circuit's unnatural construction reduces Congress's provision of "comprehensive" immunity to nothing more than garden-variety medical malpractice coverage, permitting its application only where a plaintiff is "injured by any health care provided by [a PHS employee]." *Compare* App. 22a *with Hui*, 559 U.S. at 806, 810 (recognizing "broad" language in § 233(a) confers a "comprehensive immunity" right). In contrast, *Friedenberg* and *Cuoco* read the statute in alignment with the maxim that to avoid rendering Congress's chosen words superfluous—thereby undermining statutory purpose—courts consider both "specific context" and "the broader context of the statute as a whole" and "must 'give effect, if possible, to every clause and word of [the] statute.'" *Fischer v. United States*, 144 S. Ct. 2176, 2183 (2024) (alteration in original) (quoting *Williams v. Taylor*, 529 U.S. 362, 404 (2000), and *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997)).

In *Friedenberg*, the Ninth Circuit concluded that Congress, in "plain text," provided an immunity right to PHS employees that "plainly encompasses damages stemming from the performance of medical and 'related' functions." *Friedenberg*, 68 F.4th at 1128 (reversing district court denial of immunity from suit alleging health center personnel failed to report psychiatric patient's noncompliance with court-ordered treatment). Considering the meaning of "related functions" as an issue "of first impression in [that] circuit," the Ninth Circuit held the relevant "statutory language clearly shows that immunity is not tied to whether the tort transpired in caring for the patient," *id.* at 1127, and, consistent with this

Court's holding in *Hui*, 559 U.S. at 801–02, "does not depend on whether the [plaintiff's] claim is framed as one of medical malpractice." *Friedenberg*, 68 F.4th 1127–28 (collecting decisions of courts in First, Second, Fourth, Ninth, and Tenth circuits in accord).

Although the meaning and scope of the statute's inclusion of "related functions" within its expression of immunized conduct had not been subject to the Ninth Circuit's construction prior to *Friedenberg*, the court did not work on a blank slate. Critical to the lower court conflict at issue here is the Ninth Circuit's endorsement in *Friedenberg* of the Second Circuit's decision in *Cuoco*, 222 F.3d at 108. There, more than twenty years prior, the Second Circuit had likewise examined the "plain meaning" of § 233(a) and rejected the notion that its immunity is limited to medical malpractice claims, finding "nothing in the language of § 233(a) to support that conclusion" and observing that—unlike in § 233(a)—"[w]hen Congress has sought to limit immunity to medical malpractice claims it has done so explicitly." *Cuoco*, 222 F.3d at 108; *see also Brignac v. United States*, 239 F. Supp. 3d 1367, 1376 (N.D. Ga. 2017) (explaining *Cuoco* rejected "proposition that § 233(a) applies *only* to medical malpractice suits or that immunity in turn only extends to medical employees in malpractice cases" (internal quotations and citations omitted)).[2]

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[2] *Cuoco* involved the constitutional claims of a preoperative transgendered individual who sought to receive estrogen treatments while detained in a federal prison facility. 222 F.3d at 103. The diagnosis and treatment allegations at issue in *Cuoco*—which the Second Circuit viewed as "the heartland of

The Fourth Circuit reached the opposite conclusion. Purporting to apply a plain language approach, the Fourth Circuit opined:

> As a matter of plain meaning, medical, surgical, and dental care all fit into one category – they are adjectives that describe various fields of health care. Staying true to Congress'[s] intent, we read a "related" function as fitting within that category, or in other words, a field of health care outside of medicine, surgery, or dentistry.

App. 17a–18a (footnote omitted). The Fourth Circuit's unnaturally cramped reading stems from its perception that there was "no limiting principle to Sandhills'[s] position." App. 21a. But as the Ninth Circuit had concluded in *Friedenberg*, the very reading on which the Fourth Circuit landed "would render the 'related functions' language in the statute superfluous." *Friedenberg*, 68 F.4th at 1128 (endorsing holding expressed in *Pomeroy v. United States*, 2018 WL 1093501, at *2 (D. Mass. Feb. 27, 2018), that "statute must cover a broader scope of activity than the delineated categories alone, or else 'related functions' would be mere superfluity"). Reading "related functions" out of the statute exposes

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medical functions"—made it a straightforward case. *Krandle v. Refuah Health Ctr., Inc.*, No. 22-cv-4977, 2024 WL 1075359, at *4 (S.D.N.Y. Mar. 12, 2024). This was so even though defendant "Moritsugu's alleged misdeeds related only to his decision, as the principal medical official for the Bureau of Prisons, not to authorize a particular medical treatment for Cuoco." *Id.* (quoting *Cuoco*, 222 F.3d at 109).

health centers (in the Fourth Circuit in particular) to lawsuits and liability resulting from official conduct numerous courts have recognized as immunized. *Id.* at 1129 n.9. The Fourth Circuit's decision eliminates immunity from actions resulting from a range of administrative and operational duties related to medical care, *e.g.*, hiring, physician credentialing, and supervision decisions; providers' obligations to report suspected abuse and foreseeable risks to both patients and third parties; and the provision of required support services such as nutrition, residential monitoring, care plan adherence, and case management.

Although the *Ford* court cited *Friedenberg* for the truism that the FSHCAA extends PHS Act immunity to federally-supported health centers, App. 13a, the court did not reconcile its decision with the Ninth Circuit's clearly contrary holding. As to *Cuoco*, the Fourth Circuit incorrectly implied the Second Circuit's holding limited immunity to actions based on conduct undertaken "in [a health center's] capacity as a doctor responsible for, [or] in the course of rendering medical treatment." App. 20a (second alteration in original). *Cuoco* in no way suggested that § 233(a) immunity is limited to "doctor[s] responsible for treatment" or to actions arising from "rendering medical treatment." *Krandle v. Refuah Health Ctr., Inc.*, No. 22-cv-5039, 2024 WL 1075359, at *4 (S.D.N.Y. March 12, 2024) (publication forthcoming).

It is not the job of the courts to "reimagine Congress's handiwork." *Health and Hosp. Corp. of Marion Cnty. v. Talevski*, 599 U.S. 166, 178 (2023). In assessing the reach of § 233(a) immunity, the Ninth

Circuit's decision "implement[s] Congress's choices rather than remake[s] them." *Id.*; *see Friedenberg*, 68 F.4th at 1127–28. The Court should grant certiorari to correct the Fourth Circuit's construction of § 233(a) as meaning much less than what Congress, in plain language, expressed.

II. The Fourth Circuit's Construction of § 233(a) Conflicts with this Court's Statutory Interpretation Precedent

Review of the Fourth Circuit's decision is warranted for a second reason. The decision's atextual result stems from the lower court's formalistic application of two familiar and closely related canons of construction—*noscitur a sociis* and *ejusdem generis*—in a manner that conflicts with this Court's established statutory interpretation precedent. The Fourth Circuit cited two decisions of this Court—*Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001) and *Yates v. United States*, 574 U.S. 528 (2015) (plurality opinion)—as the basis for its construction of "related functions" to mean "various fields of health care," having concluded that "the language 'related functions' acts as a general catchall for . . . the performance of medical, surgical, [or] dental' functions." App. 17a (alteration in original). The decision cannot be reconciled with the precedent it purports to follow.

The Court uses *noscitur a sociis* to "avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words, thus giving unintended breadth to the Acts of Congress." *Yates*, 574 U.S. 528, at 543 (quoting *Gustafson v.*

Alloyd Co., 513 U.S. 561, 575 (1995)). It "typically use[s] *ejusdem generis* to ensure that a general word will not render specific words meaningless," *CSX Transp., Inc. v. Ala. Dept. of Revenue*, 562 U.S. 277, 295 (2011), proceeding on the inference that Congress, in supplying a list of specific items followed by a "catchall" phrase, was "focused on [a] common attribute when it used the catchall phrase." *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 224–25 (2008) (citing *United States v. Aguilar*, 515 U.S. 593, 615 (1995) (Scalia, J., concurring in part and dissenting in part)).

The Court has long and clearly instructed that however well established, any interpretive canon is, at most, "only an instrumentality for ascertaining the correct meaning of words when there is uncertainty." *United States v. Powell*, 423 U.S. 87, 91, (1975) (quoting *Gooch v. United States*, 297 U.S. 124, 128 (1936)). After all, "[r]esolution of the pros and cons of whether a statute should sweep broadly or narrowly is for Congress." *United States v. Rodgers*, 466 U.S. 475, 484 (1984). Accordingly, lower courts are cautioned against "woodenly apply[ing] limiting principles every time Congress includes a specific example along with a general phrase." *Ali*, 552 U.S. at 227 (citation omitted). Congress did not draft the relevant portion of § 233(a) in a manner inviting application of limiting canons to ascertain uncertain meaning. The Fourth Circuit's error in nonetheless applying the canons is well summed up in its own acknowledgement that after both "employing the canons of construction and considering the plain meaning of the words in § 233(a), we discern no ambiguity in the phrase 'related functions.'" App. 19a. Aside from having a "plain meaning," App. 17a, 19a,

§ 233(a)'s key phrase does not follow the syntactic format the canons aid in interpreting: a list of specific nouns followed by a catchall noun that includes the specific items and others of like kind. *Cf. Southwest Airlines Co. v. Saxon*, 596 U.S. 450, 454, 463 (2022) (construing statute's exemption of "seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce"); *Powell*, 423 U.S. at 318, n.3 (analyzing statute proscribing mailing of "pistols, revolvers, and other firearms capable of being concealed on the person"). Rather than following that familiar format, § 233(a) provides a disjunctive list of four categorical adjectives—"medical, surgical, dental, or related"—each of which modifies the broad, general noun—"functions"—that follows. The fourth adjective, "related," does some extra work: it both conveys a fourth category of functions for which PHS employees are immunized and defines itself by relation to the three preceding categories of functions. Each type of function is expressed in "sweeping" language, defying the Fourth Circuit's narrow construction. *Cf. Rodgers*, 466 U.S. at 480 (rejecting "narrow, technical definition" of statutory term when it "clashes strongly" with "sweeping" language in same sentence).

The Fourth Circuit's decision produces a "result that the English language tells us not to expect." *Carachuri-Rosendo v. Holder*, 560 U.S. 563, 575 (2010) (noting Court is "very wary" of such results) (internal citations and quotation marks omitted). "Related," the Court has observed, is "context specific," referring to "a relationship or nexus of some kind," the "nature and strength [of which] will be informed by context." *Dubin v. United States*, 599

U.S. 110, 119 (2023) (internal citations omitted). In its search for a limiting principle, the Fourth Circuit looked past the key limit Congress did place on "related functions" in § 233(a)—that such functions must *relate* to "medical, surgical, [or] dental . . . functions." § 233(a). "Related functions" is not a catchall phrase. It is, instead, a broad category of functions onto itself, like the three general categories that precede it. A medical function, in other words, is not a "related" function any more than a medical function is a surgical function or a dental function. Tellingly, the Fourth Circuit makes no effort to identify what might constitute a "related" function if such functions really mean functions within fields of health care that are not medical, surgical, or dental.

In contrast, both *Circuit City* and *Yates* concerned statutes in which Congress did provide a list of specific nouns (seamen and railroad employees; records and documents) followed by a more general noun (class of workers; tangible object). In each, the general noun can fairly be construed to include the preceding, specific nouns: seamen and railroad employees are classes of workers; documents and records are, of course, tangible objects. *Cir. City*, 532 U.S. at 138; *Yates*, 574 U.S. at 550. The Court limited the general nouns to something narrower than *all* classes of workers and *all* tangible objects, respectively, because a literal reading would have resulted in superfluity and conflicted with purpose.

In *Circuit City*, the Court construed a general phrase exempting from enforced arbitration the employment contracts of "any other class of workers engaged in foreign or interstate commerce" to a

narrower subset than virtually all such contracts, because a literal reading would have "failed to give independent effect to the statute's enumeration of the specific categories of workers which precedes it." *Id.* at 111, 112. Statutory purpose also played a role: sweeping a broad swath of contracts out of the Act's scope would have significantly undermined the enforcement of arbitration agreements in federal courts under a law enacted in "response to hostility of American courts to the enforcement of arbitration agreements." *Id.* at 111, 118–19.

In *Yates*, the plurality construed "tangible object" with reference to nearby text setting forth the actions Congress criminalized when done to documents, records, and tangible objects: altering, destroying, mutilating, concealing, covering up, falsifying, or making a false entry in. *Yates*, 574 U.S. at 550–52. The Court concluded that the final two verbs, "'falsif[y]' and 'mak[e] a false entry in,' typically take as grammatical objects records, documents, or things used to record or preserve information, such as logbooks or hard drives." *Id.* at 529; *see also id.* at 551 ("[F]ocusing on the verbs, the category of nouns appears to be filekeeping.") (Alito, J., concurring). Bolstering this construction was the fact that reading "tangible object" in § 1519 of that Act to mean "any and every physical object" would make another distinct section of Sarbanes-Oxley entirely surplus. *Id.* at 542.

The Fourth Circuit's wooden application of a limiting principle does violence to the statute's plain language to solve a superfluity problem that doesn't exist. As the Court recognized in *Hui*, Congress

employed broad language in § 233(a) to provide PHS employees a comprehensive immunity right. *Hui*, 559 U.S. at 806, 810.[3] Congress conferred the immunity right to further public health, while, in the same provision, protecting the federal fisc by limiting the remedy for covered PHS employee conduct to only that available under the FTCA. The FTCA, rather than the PHS Act, imposes the limiting principle the Fourth Circuit sought: it is a carefully tailored, limited waiver of sovereign immunity that excludes, for example, most intentional torts and all class action suits. 28 U.S.C. § 2675(a) (requiring satisfaction of administrative prerequisites to suit); *In re Agent Orange Prod. Liab. Litig.*, 818 F.2d 194, 198 (2d Cir. 1987) (holding district court lacked jurisdiction over FTCA class action where "administrative prerequisites of suit have not been satisfied by or on behalf of each individual claimant") (collecting cases); *see also Founding Church of Scientology of Wash., D.C., Inc. v. Fed. Bureau of Investigation*, 459 F. Supp. 748, 754 (D.D.C. 1978) ("All the courts that have considered this issue have concluded that every member of a class must exhaust his administrative remedies.") (collecting circuit court authority).

[3] The *Hui* Court noted "[t]he breadth of the words 'exclusive' and 'any'" and "the provision's inclusive reference to all civil proceedings arising out of 'the same subject-matter'" as indicative of Congress's intent to "bar all actions against" PHS employees "actions arising out of the performance of medical or related functions within the scope of their employment." *Hui*, 559 U.S. at 806.

III. The Fourth Circuit's Decision Must be Corrected

The question presented in this petition is both important and recurring, calling for prompt resolution and a uniform national rule. Congress's provision of official immunity to PHS personnel, and its extension of that immunity to the legislatively-created health center program, furthers public health and makes good economic sense. *See Three Lower Cnties. Cmty. Health Servs., Inc. v. Maryland*, 498 F.3d 294, 303 (4th Cir. 2007) (health centers serve "vital function in delivering healthcare to underserved populations" nationwide); H.R. Rep. No. 104-398 at 6 (recognizing "significant savings . . . redirected to patient care" through FSHCAA enactment). The Fourth Circuit's decision threatens both objectives.

The impact of the Fourth Circuit's decision is not limited to Sandhills. Its reduction of PHS Act immunity alters the scope of official immunity for not only federally-funded health centers like Sandhills—which collectively serve tens of millions of patients each year—but also commissioned officers and employees of the PHS.[4] The immunity § 233(a)

[4] The health center program consists of more than 1,300 federally-funded, safety-net health care providers that collectively served more than 30 million individuals in the most recent year for which data is available. *See* A. Pillai, Kaiser Family Foundation, *Recent Trends in Community Health Center Patients, Services, and Financing* (Apr. 19, 2024), https://www.kff.org/medicaid/issue-brief/recent-trends-in-community-health-center-patients-services-and-financing/. The PHS Commissioned Corps, a uniformed service, includes

confers on actual and deemed PHS personnel is, by design, "the same," § 233(g)(1)(A), because, as the main source of care for low-income individuals and families nationwide, health centers "perform[] a job that . . . the federal government would have had to perform itself: assist[ing] and help[ing] to carry out the duties of the federal government to provide medical care to the indigent." *Agyin v. Razmzan*, 986 F.3d 168, 177 (2d Cir. 2021).[5]

If the issue presented is not resolved, the overarching purpose of § 233(a) immunity—to advance public health—will be frustrated. Congress used broad—but clear—language to shield actual and deemed PHS employees from all liability arising out of their official conduct, so they can confidently and fully devote themselves to the performance of their "health and health-related functions" as Congress intended. 42 U.S.C. § 233(h)(1); H.R. Rep. No. 104-398

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approximately 6,000 officers stationed at more than 800 duty stations throughout the United States who are subject to both national and international deployment in response to public health emergencies. U.S. PHS *Doctrine* at 2, 4, 11 (Jan. 2021), https://dcp.psc.gov/ccmis/PDF_docs/USPHS%20Commissioned%20Corps%20Doctrine.pdf

[5] In some communities, "these centers may be the only primary care providers available to certain vulnerable populations." Gov't Accountability Office, G.A.O. 19-496, *Health Centers: Trends in Revenue and Grants Supported by the Community Health Center Fund* at 1 (2019), https://www.gao.gov/products/gao-19-496. *See also generally*, Nat'l Ass'n of Cmty. Health Ctrs. *Community Health Center Chartbook 2024* (Jan. 2022), https://www.nachc.org/resource/community-health-center-chartbook/ (hereinafter NACHC Chartbook).

at 5–7 (noting 1995 FSHCAA legislation was enacted to resolve "uncertainty over the scope of FTCA coverage under the program"). Under the Fourth Circuit's interpretation, health centers will be forced to do precisely what Congress sought to prevent: spend their scarce resources on costly liability insurance to cover their official, day-to-day activities.[6]

No purpose is served by allowing this purely legal issue to further percolate in the lower courts. The Ninth and Second Circuits have correctly decided the question in keeping with the statute's language and its cost-effective, public health purpose, following this Court's longstanding statutory construction precedent. Geographic divergence and uncertainty as to the extent of official immunity in a nationwide, federally-funded program is destructive, particularly for the many health centers that operate across state lines and Circuit boundaries.

Finally, the question presented is recurring, and delay in correcting the Fourth Circuit's error and

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[6] Congress enacted FSHCAA to allows health centers "to reallocate desperately needed health care dollars from the coffers of private medical malpractice insurance companies to direct services for hundreds of thousands more poor and rural Americans." 141 Cong. Rec. H14273–07, 1995 WL 733808 (daily ed. Dec. 12, 1995) (statement of Rep. Wyden); *see also, e.g., id.* (statement of Rep. Bilirakis) (FSHCAA's original purpose "was to relieve health centers of the burdensome costs of private malpractice insurance by extending [FTCA] coverage to health center employees"). That said, "[w]hile Congress's concerns regarding malpractice insurance premiums were the driving force behind the legislation, Congress did not limit § 233 immunity to 'only' malpractice claims when it could have." *Friedenberg*, 68 F.4th at 1128; *see id.* at 1127 n.7.

definitively resolving the issue will irreparably harm health centers and their patients.[7] Permitting further

[7] The proliferation of class action lawsuits against deemed PHS employee health centers arising out of data-breach and cybersecurity incidents confirms the unending nature of the "related functions" issue absent a definitive rule. The following class actions, grouped by circuit, are illustrative:

Second Circuit: *Krandle v. Refuah Health Cntr., Inc.,* No. 22-cv-4977, 2024 WL 1075359, at *3, *9–10 (S.D.N.Y. Mar. 12, 2024) (holding, in putative class action, that "[deemed health center]'s alleged duty to safeguard PII and PHI is a 'medical . . . or related function'"); *Marshall v. Lamoille Health Partners, Inc.*, No. 22-cv-166, 2023 WL 2931823, at *4–5 (D. Vt. Apr. 13, 2023) (holding "protection from cyberattack" is not a "related function" within the meaning of § 233(a)).

Third Circuit: *Lyston v. Cmty. Health Care, Inc.*, No. 24-cv-00097 (D.N.J. filed Jan. 5, 2024), ECF No. 18 (consolidating five separate putative class actions against deemed health center).

Fourth Circuit: *Mixon v. CareSouth Carolina, Inc.*, No. 22-cv-269, 2022 WL 1810615, at *7 (D.S.C. June 2, 2022) (substituting U.S. in deemed health center's place in data-breach class action).

Fifth Circuit: *Lockhart v. El Centro Del Barrio*, No. 5:23-cv-01156 (W.D. Tex. filed Sept. 18, 2023), ECF No. 19 (consolidating four separate putative class actions against deemed health center); *Marin v. El Centro Del Barrio*, No. 5:24-cv-00571 (W.D. Tex. filed May 24, 2024); *Gonzalez v. El Centro Del Barrio*, No. 5:24-cv-00852 (W.D. Tex. filed Aug. 2, 2024); *Delagarza v. El Centro Del Barrio,* No. 24-cv-00613 (W.D. Tex. filed June 4, 2024).

Eighth Circuit: *Hale v. ARcare, Inc.*, No. 3:22-cv-00117, 2024 WL 1016361, at *3 (E.D. Ark. Mar. 8, 2024) (denying deemed health center defendant's claim to § 233(a) immunity from putative class action arising out of data-breach incident), *appeal filed*, No. 24-1726 (8th Cir. Apr. 8, 2024).

litigation in the lower courts erodes the absolute immunity at issue, which, more than a "mere defense to liability" is a right not to be a party to litigation. *See Mitchell v. Forsyth*, 472 U.S. 511, 525–27 (1985) (concluding absolute immunity "is effectively lost if a case is erroneously permitted to go to trial"). Curtailing official immunity, in turn, diverts resources, time, and attention away from scores of vulnerable health center patients: approximately one in eleven people in the United States, one in three people living in poverty, one in nine children, one in

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Ninth Circuit: *Doe v. Neighborhood Healthcare,* No. 21-cv-1587, 2022 WL 17663520, at *1, *8 (S.D. Cal. Sept. 8, 2022) (affording deemed health center § 233(a) immunity for an "alleged data breach" by substituting United States in its place, over U.S.'s objection); *Johnson v. Petaluma Health Ctr., Inc*., No. 3:23-cv-03777 (N.D. Cal. filed July 28, 2023); *Gerson v. Petaluma Health Ctr., Inc*., No. 3:23-cv-03870 (N.D. Cal. filed Aug. 2, 2023); *Margolies v. Lifelong Med. Care*, No. 3:24-cv-00340 (N.D. Cal. filed Jan. 19, 2024); *Bradford v. Asian Health Servs.*, No. 24-cv-01060, 2024 WL 2883672 (N.D. Cal. June 7, 2024), *appeal filed*, No. 24-3702 (9th Cir. June 13, 2024); *L.V. v. AltaMed Health Serv. Corp.*, No. 2:23-cv-09658 (C.D. Cal. filed Nov. 14, 2023); *Aleuta v. Cmty. Clinic of Maui, Inc.*, No. 1:24-cv-00431 (D. Haw. filed Oct. 2, 2024); *Kaiwi v. Cmty. Clinic of Maui, Inc.*, No. 1:24-cv-00440 (D. Haw. filed Oct. 8, 2024); *Johnson v. Cmty. Clinic of Maui, Inc.*, No. 1:24-cv-00443 (D. Haw. filed Oct. 11, 2024); *Barnes v. Sea Mar Cmty. Health Ctrs.* No. 2:22-cv-181, 2022 WL 1541927, at *3 (W.D. Wash. Apr. 27, 2022), *rep. and rec. adopted*, 2022 WL 1540462 (May 16, 2022).

Eleventh Circuit: *Orr v. Fla. Cmty. Health Ctrs., Inc*., No. 9:24-cv-81032 (S.D. Fla. filed Aug. 26, 2024); *Capellan v. Fla. Cmty. Health Ctrs., Inc.*, No. 9:24-cv-81037 (S.D. Fla. filed Aug. 26, 2024); *Sparnicht v. Fla. Cmty. Health Ctrs., Inc.*, No. 9:24-cv-81034 (S.D. Fla. filed Aug. 26, 2024); *Fulton v. Fla. Cmty. Health Ctrs., Inc.*, No. 9:24-cv-81033 (S.D. Fla. filed Aug. 26, 2024); *Simmons v. Fla. Cmty. Health Ctrs., Inc.*, No. 9:24-cv-81036 (S.D. Fla. filed Aug. 26, 2024).

four people of a racial or ethnic minority, one in five uninsured persons, and one in six Medicaid beneficiaries. NACHC *Chartbook*, Fig. 2-1.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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