No. 24-483

In the Supreme Court of the United States

SANDHILLS MEDICAL FOUNDATION, INC., PETITIONER

v.

JOANN FORD, ET AL.

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly determined that the claims brought against a health center arising from a data breach at a third-party vendor were not claims "for personal injury, including death, resulting from the performance of medical, surgical, dental, or related functions" under 42 U.S.C. 233(a).

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 3a-25a) is reported at 97 F.4th 252. The order of the district court (Pet. App. 26a-46a) is not published in the Federal Supplement but is available at 2022 WL 1810614.

JURISDICTION

The judgment of the court of appeals was entered on March 29, 2024. A petition for rehearing and rehearing en banc was denied on May 28, 2024 (Pet. App. 47a-48a). On August 6, 2024, the Chief Justice extended the time to file a petition for a writ of certiorari to and including October 25, 2024, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Under 42 U.S.C. 233(a), officers and employees of the federal Public Health Service are protected from

liability for certain damages claims arising from the performance of their jobs. Section 233(a) provides that a suit against the United States under the Federal Tort Claims Act (FTCA), 28 U.S.C. 1346(b), is the "exclusive" remedy "for damage for personal injury, including death, resulting from the performance of medical, surgical, dental or related functions" by an officer or employee of the federal Public Health Service "acting within the scope of his office or employment."

Section 233(g) provides that, in certain circumstances, the same protection is extended to health centers that receive funding under the Public Health Service Act, 42 U.S.C. 254b. Section 233(g) provides that, when various conditions are met, a federally-funded health center "shall be deemed an employee of the Public Health Service," 42 U.S.C. 233(g), such that the health center and its employees are protected from suit under Section 233(a).

If the Attorney General is notified that a suit has been filed in state court against a health center that may be entitled to coverage under Section 233, the Attorney General is required to make an appearance in the state court within 15 days to "advise such court as to whether" the government has determined that the health center is "deemed to be an employee of the Public Health Service for purposes of this section with respect to the actions or omissions that are the subject of [the] civil action." *Ibid.* "If the Attorney General fails to appear in State court" within 15 days, then the "civil action or proceeding shall be removed to the appropriate United States district court" so that the federal court can "make[] a determination" as to whether the United States should be substituted as the defendant. 42 U.S.C. 233(*l*)(2). If the district court determines that a case

removed under Section 233 "is one in which a remedy by suit within the meaning of [Section 233(a)] is not available against the United States, the case shall be remanded to the State Court." 42 U.S.C. 233(c).

2. Petitioner Sandhills Medical Foundation, Inc. is a nonprofit health center that receives federal funding under the Public Health Service Act. Pet. 6a. In late 2020, hackers breached the system of the third-party vendor that petitioner had contracted with to store patient data. Pet. App. 5a-7a; C.A. App. 33-34 (Compl. ¶ 23). Petitioner subsequently notified its patients of the breach, informing them that it had "determined that patient medical records, lab results, medications, credit card numbers, and bank account numbers were NOT affected." Pet. App. 7a (quoting C.A. App. 34). Instead, the breach exposed patient's personally identifying information such as names, birthdates, addresses, driver's licenses, and social security numbers. *Ibid.*

Respondent Joann Ford is a former patient of petitioner whose information was exposed during the hack. Pet. App. 6a-7a. She alleges that an unknown and unauthorized individual applied for a $500 loan using her information. *Id.* at 7a. She further asserts that she spent time dealing with this fraud and remains concerned about future improper uses of her stolen data. *Ibid.* And she claims that she suffered "'imminent and impending injury arising from the substantially increased risk of fraud, identity theft, and misuse' resulting from the unauthorized persons possessing her" data. *Ibid.* (quoting C.A. App. 41).

Ford filed a putative class-action against petitioner in the Court of Common Pleas in Chesterfield County, South Carolina on behalf of current and former patients "whose [personal data] was exposed to an unauthorized

party." Pet. App. 8a (quoting C.A. App. 42). She asserted state law claims for negligence, breach of implied contract, invasion of privacy, and breach of confidentiality based on petitioner's alleged failure to (1) protect its data, (2) warn current and former patients of its inadequate data-protection practices, and (3) avoid sharing the data without adequate safeguards. *Ibid.*

Petitioner notified the Attorney General of the suit, pursuant to 42 U.S.C. 233(*l*)(1), asserting that it was "entitled to absolute immunity" because the suit "resulted from [petitioner's] performance of medical or related functions." Pet. App. 8a (quoting C.A. App. 65). After 15 days elapsed and the government did not appear, petitioner removed the case to the United States District Court for the District of South Carolina, citing (as relevant) 42 U.S.C. 233(*l*)(2). Pet. App. 9a.

3. Before the federal district court, petitioner filed a motion for the United States to substitute itself as a defendant. Pet. App. 10a. The United States filed a responsive statement of interest explaining that substitution was inappropriate for several reasons, including that Ford's claims did not result from "the performance of medical, surgical, dental or related functions," as Section 233(a) requires. C.A. App. 149-152 (internal quotation marks omitted).

The district court disagreed, concluding that the third-party data breach "arose out of [petitioner's] performance of medical or related functions within the scope of its employment as a deemed [Public Health Service] employee." Pet. App. 37a. The court took the view that storing identification data at a third-party vendor constitutes the performance of "medical, surgical, dental, or related functions" because data storage is "interwoven with providing medical care," in that

individuals are required to provide their identifying information "'as a condition of being patients.'" *Id.* at 36a (emphasis omitted) (quoting C.A. App. 53 (Compl. ¶ 113)).

Following substitution, the United States moved to dismiss Ford's complaint for lack of subject matter jurisdiction on the ground that Ford had not exhausted her administrative remedies as required under the FTCA. Pet. App. 11a; see 28 U.S.C. 2401(b), 2675(a). In response, Ford conceded that the district court lacked subject matter jurisdiction in light of the substitution of the United States, but insisted that the United States was not the proper defendant because the suit does not fall within Section 233(a)'s coverage. Pet. App. 12a. The court dismissed the suit.

4. The court of appeals vacated and remanded the order substituting the United States as the defendant. Pet. App. 6a. The court agreed with Ford and the United States that the health center's data storage and security practices were not "medical, surgical, dental, or related function[s]" under Section 233(a). *Id.* at 15a (quoting 42 U.S.C. 233(a)).

The court of appeals explained that, because data storage and protection is plainly not a "medical, surgical, or dental function," it may fit within the statute only if it qualifies as a "related function[]." Pet. App. 15a (quoting 42 U.S.C. 233). The court concluded that the term "related functions" could not extend so far as to cover the data security practices here because the text demonstrates that a "related function" must involve the "provision of health care"; it cannot merely be a function performed by a health care provider. *Id.* at 19a. In support, the court observed that "related function[]" appears as a "catchall" at the end of a list of terms—

medical, surgical, and dental—that all "describe various fields of health care." *Id.* at 17a. The court found that the scope of "related function" should be understood in light of this health care focus of the terms that precede it. *Ibid.* (citing *Circuit City Stores, Inc.* v. *Adams*, 532 U.S. 105, 114-115 (2001)).

The court of appeals also observed that the text of Section 233(a) expressly identifies, "medical, surgical, dental, or related functions" as "including the conduct of clinical studies or investigation." Pet. App. 18a (quoting 42 U.S.C. 233(a)). The court determined that the inclusion of that phrase indicates that the "related function[]" catch-all is intended to cover activities like "treatment or diagnoses" performed in research settings, not "administrative function[s]" like data security. *Id.* at 19a. And the court found that its understanding was in keeping with Section 233(a)'s focus on "'damage for personal injury, including death,'" explaining that a broader understanding of "related functions" might sweep in "misfeasance that results in other types of damages, such as contract damages." *Ibid.* Accordingly, the court "discern[ed] no ambiguity in the phrase 'related function'" in Section 233(a), concluding that "to trigger immunity, alleged damages giving rise to a lawsuit must arise from the provision of health care." *Ibid.*

The court of appeals further determined that, in this case, the suit was not covered by Section 233(a) because Ford's data "was not released as a result of the provision of health care," but rather because of a data breach at a third-party vendor that occurred "at least a year after [Ford] had ended her treatment." Pet. App. 20a. The court contrasted these facts to those of *Mele* v. *Hill Health Ctr.*, No. 6-cv-455, 2008 WL 160226 (D. Conn. Jan. 8, 2008), observing that in *Mele*, a patient's

sensitive data was disclosed "at the direction of a medical professional in relation to the patient's treatment." Pet. App. 20a. The resulting litigation in *Mele* therefore "concerned the medical functions of providing treatment," while Ford's lawsuit did not. *Id.* at 20a-21a.

The court of appeals rejected the assertion that the health center's maintenance and storage of Ford's data was sufficiently "related" to health care because Ford provided the data in order to be treated. Pet. App. 21a. The court found that accepting such an argument would improperly expand Section 233(a)'s coverage beyond the realm of claims tied to the provision of health care, observing that the "alleged injury" in this case "could have resulted from a data breach at a host of businesses to which [customers] likely disclose[]" their identifying information, "including an employer, an entity involved in a banking, financial, or real estate transaction, or an insurance company." *Id.* at 22a. And the court similarly rejected the contention that the data-breach claims should be covered because the health center had a duty to keep patient data confidential. *Id.* at 21a-25a. The court explained that the duty of confidentiality could not transform claims arising "from a data security breach that occurred at least a year after [Ford] ceased being a patient" into claims arising from "the provision of health care." *Id.* at 24a-25a.

The court of appeals thus vacated the district court's order and remanded for further proceedings consistent with its opinion, explaining that "[b]ecause [S]ection 233(a) does not apply," the United States cannot be substituted for petitioner as the defendant. Pet. App. 25a.

ARGUMENT

Petitioner contends that the United States must be substituted as a defendant in this suit against a private health center for claims arising from a data breach at the health center's third-party data storage provider because the data-breach claims constitute a request "for damage[s] for personal injury resulting from the performance of medical, surgical, dental, or related functions" under 42 U.S.C. 233(a). The court of appeals correctly rejected that contention, and its decision does not conflict with decisions of this Court or the other courts of appeals. The petition for a writ of certiorari should be denied.

1. The court of appeals correctly determined that Section 233's limited grant of immunity to federally-funded health centers for personal injury claims "resulting from the performance of medical, surgical, dental, or related functions" does not extend to the data-breach claims in this case. 42 U.S.C. 233(a).

a. As the court of appeals explained, the plain text of Section 233(a) establishes that claims "resulting from the performance of medical, surgical, dental, or related claims" encompasses claims "aris[ing] from the provision of health care," rather than claims arising from "administrative function[s]" that might be carried out by any business. Pet. App. 19a. That interpretation follows from the basic principle that a catch-all provision should generally be interpreted in light of the enumerated items in the list. See, *e.g.*, *Yates* v. *United States*, 574 U.S. 528, 544 (2015). Because "'medical, surgical, [and] dental'" are all "adjectives that describe various fields of health care," "'related functions'" should be similarly understood. See Pet. App. 17a (citation omitted). The surrounding text is to the same effect,

reflecting Congress's intent to cover the sort of "'personal injury'" claims, "'including [wrongful] death,'" that typically arise from misfeasance in the provision of health care, "including" in "clinical" and research settings. See *id.* at 19a (quoting 42 U.S.C. 233(a)).

The other provisions of Section 233 reinforce the conclusion that Section 233(a) covers claims arising from the provision of health care. Throughout Section 233, Congress repeatedly emphasized its focus on medical malpractice claims—that is, torts that arise uniquely in the health care setting, not business-related torts in general. See, *e.g.*, 42 U.S.C. 233(m) (providing that managed care providers must treat Section 233 as satisfying "malpractice coverage requirements"); 42 U.S.C. 233(n)(1)(A), (D), and (2)(C) (requiring the Comptroller General to report on the "medical malpractice liability claims experience" of deemed entities, including an "estimate of the medical malpractice liability loss history," and the "costs and the benefits to taxpayers of maintaining medical malpractice liability coverage for such entities pursuant to" Section 233). Indeed, the subtitle of the Act that extended Section 233(a)'s coverage to deemed employees was "an Act [t]o amend the Public Health Service Act to permanently extend and clarify *malpractice coverage* for health centers." Federally Supported Health Centers Assistance Act of 1995, Pub. L. No. 104-73, 109 Stat. 777 (emphasis added).

b. Applying this understanding of Section 233(a), the court of appeals correctly determined that the particular claims in this case did not arise from the provision of health care. The court explained that Ford's claims arise from a data breach at a third-party data storage provider, and that the breach occurred long after Ford's medical treatment had ended. Pet. App. 20a.

The claims therefore arose in circumstances that were divorced from the treatment setting. And the court further explained that similar claims could have arisen from a data breach at any number of other businesses to which Ford had likely disclosed similar personally identifying information—including employers, banks, and real estate agents—"none of which are involved in the provision of health care." *Id.* at 22a.

c. In arguing otherwise, petitioner asserts (Pet. 10) that Section 233(a) immunizes the full range of "administrative and operation duties related to medical care," including "hiring" and "case management." But there is no sound basis for that exceedingly broad understanding of Section 233(a)'s sweep. To the contrary, the text of Section 233 makes plain that the statute covers health-care related claims typified by "medical malpractice" torts. 42 U.S.C. 233(m). It does not cover claims resulting from routine business practices that happen to have been carried out by a health center or its vendors, such as the data-breach-related torts here.

2. The court of appeals' fact-bound decision does not conflict with the decisions of any other court of appeals or of this Court. And review of these issues would be premature because other courts of appeals have not weighed in on the question presented and will do so in the near future.

a. Petitioner errs in contending (Pet. 6-11) that the court of appeals' decision conflicts with *Friedenberg* v. *Lane County*, 68 F.4th 1113 (9th Cir. 2023). That case addressed the application of Section 233(a) to medical providers' failure to "report a court-ordered * * * patient's refusal to comply with the medical terms of his probation." *Id.* at 1118. The *Friedenberg* court found that Section 233(a) applied in those circumstances

because the failure to report violations of "the mental health treatment plan" involved "the evaluation of [the] patient"—that is, the provision of health care. *Id.* at 1128-1129. The court further observed that the alleged injury resulted from the performance of defendants' reporting duty that "was tied to their status as medical health professionals." *Ibid.* And the court concluded that "[d]efendants' failure to report [was] intertwined with their provision of medical services to [plaintiff], or at the very least, [was] 'related' to them." *Ibid.*

Whatever the merits of that reasoning, it does not conflict with this case, in which the court of appeals found that Ford's claims did not involve the provision of medical services because, among other things, the data breach occurred at a third-party vendor long after Ford's treatment had concluded and involved the sort of activity that could have been carried out by any number of non-health care related businesses. See Pet. App. 20a-21a. The lower court did not hold that *all* data-related claims were necessarily outside of Section 233(a)'s scope, recognizing that the data-related claims in another case, *Mele*, were distinct because the data was disclosed "at the direction of a medical professional in relation to the patient's treatment." *Id.* at 20a.

Moreover, petitioner exaggerates the breath of *Friedenberg*'s holding. The *Friedenberg* court stopped well short of suggesting that any injury claims against a health center should be covered by Section 233(a), "recogniz[ing] that there are cases that decline[] to extend [Section 233] immunity * * * because the alleged tortious conduct had nothing to do with the provision of medical services and thus could not be a 'related function.'" 68 F.4th at 1130. The court did not reject the result in those cases, instead finding that they were

distinguishable because the conduct in *Friedenberg* "was 'related' to the provision of medical services." *Ibid.* (citation omitted).

Nor is there a conflict with the Second Circuit's decision in *Cuoco* v. *Moritsugu*, 222 F.3d 99 (2d Cir. 2000). In *Cuoco*, the court of appeals held that Section 233(a) covers medical-treatment claims regardless of whether they are brought as state-law medical malpractice claims or as *Bivens* actions. *Id.* at 108. The court did not consider Section 233(a)'s application to suits that did not result from medical treatment because the allegations in that case were that "inexperienced doctors" had "misdiagnosed" plaintiff and "prescribed the wrong course of treatment." *Id.* at 107. "Critical" to the defendant's immunity was "the fact that his complained of behavior occurred entirely in his capacity as a doctor responsible for, and in the course of rendering medical treatment for, [the plaintiff]." *Id.* at 109.

b. Petitioner also errs in suggesting that there is disagreement as to whether a claim must be framed as a medical malpractice suit under state law to fall within the scope of Section 233(a). See Pet. 8. In *Hui* v. *Castaneda*, 559 U.S. 799 (2010), the Court held—at the government's urging—that Section 233 covers claims arising from medical care, even when they are not predicated on a common law theory of medical malpractice. *Id.* at 806; see U.S. Amicus Br. at 7, *Hui*, *supra* (No. 08-1529) ("Section 233(a) affords PHS officers and employees immunity from 'any' civil action arising out of medical care provided in the course of their employment" and "draws no distinction between civil actions predicated on common-law tort theories and those based on the Constitution."). And petitioner's argument (Pet. 11-16) that the court of appeals' decision conflicts with this

Court's statutory interpretation precedents is presented at a level of abstraction that renders it unsuitable for the Court's review and indeed is more properly described as an argument that the Court's precedents in *Yates* and *Circuit City* should not apply at all.

c. Finally, this Court's review would be premature because no other court of appeals has addressed the question of whether Section 233(a) reaches data-breach claims, and several will have the opportunity to do so in the near future. See *Hale* v. *ARcare, Inc.*, No. 24-1726 (8th Cir., docketed Apr. 9, 2024); *Bradford* v. *Asian Health Servs.*, No. 24-3702 (9th Cir., filed June 13, 2024); Pet. 20 n.7 (listing district court cases). Any future consideration of the issue would be aided by further percolation.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted.

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