No. 24-97

IN THE

# Supreme Court of the United States

MARK RANDALL MEADOWS,
*Petitioner,*
v.
THE STATE OF GEORGIA,
*Respondent.*

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

## BRIEF IN OPPOSITION

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## QUESTIONS PRESENTED

1. Whether the Eleventh Circuit's interpretation that the ordinary meaning of "officer" in 28 U.S.C. § 1441(a)(1) means "current officer," the first instance of any court confronting the issue, requires immediate review.

2. Whether the Eleventh Circuit erred in implementing a test identical to the test applied in its sister circuits in order to determine whether Petitioner was entitled to removal under § 1442(a)(1).

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## INTRODUCTION

Petitioner's arguments alternatively miscast the nature of the decision below or entirely omit relevant precedent that would undermine his case. First, Petitioner mischaracterizes the Eleventh Circuit's reading of the federal removal statute's ordinary meaning as somehow flouting two centuries of precedent, despite the acknowledged fact that no court has ever actually confronted the issue. Although no other circuit court has had the opportunity to evaluate the Eleventh Circuit's reasoning or to conduct their own analysis of the question, Petitioner insists that review must occur immediately. In so doing, he overstates the urgency of purely unrealized concerns, claiming that it is "better" that this Court intervene without the benefit of the insights further percolation would yield. The opinion below applied long-established principles of statutory interpretation to arrive at its holding, and review is neither necessary nor urgent.

Second, Petitioner entirely omits relevant precedent in order to suggest that the Eleventh Circuit somehow "deepened a lopsided circuit split" by applying a test considered by sister circuits to be identical to their own. Despite its citation by both the opinion below and the cases upon which he relies in his petition, Petitioner pointedly ignores *Caver v. Ala. Cent. Elec. Coop.*, 845 F.3d 1135 (11th Cir. 2017), a case which plainly demonstrates that the Eleventh Circuit remains firmly in sync with its sister circuits. Once *Caver* is acknowledged, no circuit split is implicated, and Petitioner's actual complaints spring merely from the result rather than the standard employed to reach it. Neither of the issues Petitioner presents require review by this Court, and his petition should be denied.

## STATEMENT OF THE CASE

The federal officer removal statute allows officers of the United States to transfer cases involving their official conduct from state to federal courts. 28 U.S.C. § 1442 (a)(1) authorizes federal courts to take jurisdiction over "a criminal prosecution that is commenced in a State court . . . against . . . any officer (or any person acting under that officer) of the United States . . . for or relating to any act under color of such office." Congress enacted the original form of the statute to protect federal revenue agents who collected tariffs against state officials. 4 Stat. 632, 633 § 3 (Mar. 2, 1833); *See also Watson v. Phillip Morris Cos.*, 551 U.S. 442, 148-49 (2007). The statute was designed to protect the federal government from the "interference with its operations that would ensue were a State able, for example, to arrest and bring to trial in a State court . . . officers . . . of the Federal Government acting within the scope of their authority." *Id.* at 150 (punctuation omitted) (quoting *Willingham v. Morgan*, 395 U.S. 402, 406 (1969)).

When a defendant seeks removal under Section 1442(a)(1), the district court must evaluate whether the defendant satisfies three requirements: (1) that they are a federal agency, a federal officer, or a person "acting under" a federal officer; (2) that the action against them is "for or relating to any act under color of such office"; and (3) that they have a "colorable" federal defense, *Mesa v. California*, 489 U.S. 121, 129, 139 (1989).

On August 14, 2023, a Fulton County grand jury returned an indictment alleging that a group of individuals—including Petitioner Mark Meadows, who served under former President Donald Trump as his Chief of Staff—participated in a conspiracy to unlawfully

change the outcome of the 2020 presidential election in then-President Trump's favor. Pet.App. 2-4, 49-50. Petitioner, co-Defendant Trump, and seventeen others were charged with conspiracy to violate Georgia's Racketeer Influenced and Corrupt Organizations Act ("RICO"). Pet.App. 2; *see* O.C.G.A. § 16-14-4(b), (c). Petitioner is alleged to have joined the conspiracy and committed overt acts to further it, "including but not limited to" eight specified within the indictment:

- attending a meeting with Trump and Michigan officials about election fraud in Michigan, during which Trump "made false statements concerning [election] fraud" and in which Trump's personal attorney, co-Defendant Rudy Giuliani, also participated (Act 5);
- text messaging Scott Perry, a United States Representative from Pennsylvania, asking "Can you send me the number for the speaker and the leader of PA Legislature. POTUS wants to chat with them." (Act 6);
- meeting with Pennsylvania legislators about the possibility of holding an election-related special session of the Pennsylvania General Assembly (Act 9);
- requesting that Trump political aide John McEntee prepare a memorandum "outlining a strategy for disrupting and delaying the joint session of Congress on January 6" by having former Vice President Mike Pence "count only half of the electoral votes from certain states" (Act 19);
- traveling to Cobb County, Georgia, to attempt to observe a nonpublic signature match audit (Act 92);

- arranging a phone call between Trump and the Georgia Secretary of State's Chief Investigator regarding the Georgia presidential election results, during which Trump "falsely stated" that he had won the presidential election "by hundreds of thousands of votes" and told Watson that "when the right answer comes out you'll be praised." (Act 93);
- text messaging an employee of the Georgia Secretary of State to ask, "Is there a way to speed up Fulton county signature verification in order to have results before Jan 6 if the trump campaign assist financially." (Act 96); and
- soliciting Georgia Secretary of State Brad Raffensperger to violate his oath of office by altering the certified returns for presidential electors (Act 112).

Pet.App. 2-4, 63-64; *see* CA11.App. 15-112. Based on his and co-Defendant Trump's solicitation of Secretary Raffensperger as described in Act 112, Petitioner was also charged in Count 28 with Solicitation of Violation of Oath by Public Officer. Pet.App. 2, 50; CA11.App. 101.[1]

Petitioner filed a Notice of Removal pursuant to 28 U.S.C. §§ 1442(a)(1) & 1455. Pet.App. 4. The district court ordered an evidentiary hearing, much of which consisted of the direct and cross-examination of Petitioner

[1] The Superior Court of Fulton County later granted a demurrer dismissing Count 28. Order on Defendants' Special Demurrers, *Georgia v. Trump*, Case No. 23SC188947 (Fulton Super. Ct., March 13, 2024). The State of Georgia appealed, and the appeal was docketed in the Georgia Court of Appeals on September 23, 2024, where it remains pending. Notice of Docketing, *Georgia v. Meadows*, Case No. A25A0400 (Ga. Ct. App., Sept. 23, 2024)

himself. Pet.App. 4-7. Petitioner described himself as the senior official "in charge of the Executive Office of the President" with a broad and almost limitless portfolio of duties. Pet.App. 67. At the same time, Petitioner acknowledged that his role of Chief of Staff did not exempt him from the requirements of the Hatch Act, which he knew to prohibit a federal employee from using "his official authority or influence for the purpose of affecting the result of an election." Pet.App. 5, 68-69; *see also* 5 U.S.C. § 7323(a)(1). Petitioner conceded that working on behalf of a political campaign, specifically the Trump Election Campaign, would be outside the scope of his federal office. Pet.App. 75; CA11.App. 484 ("[W]orking for the campaign, if I were working for the campaign, that would not be my role as Chief of Staff.").

Despite this, Petitioner repeatedly admitted to engaging in activities on behalf of the Trump Campaign. For example, after first denying he played "any role" in coordinating the creation of slates of fraudulent electors throughout the country, Petitioner admitted on cross-examination that he had directed a campaign official to do precisely that. CA11.App. 514-17 (email from Petitioner to campaign official: "[w]e just need to have someone coordinating the electors for the states"; forwarding strategic memo from co-Defendant Kenneth Chesebro). When asked why he did so, Petitioner responded that if he did not, "I knew I would get yelled at." CA11.App. 519. Petitioner also failed to outline any coherent limits to his responsibilities or authority, or to identify any basis for his or Trump's involvement in the states' administration of elections. CA11.App. 510-11.

During his testimony, Petitioner attempted to relate his authority to each of the alleged overt acts. Despite admitting that he sent the text message described in

Act 96 (asking whether financial assistance from the Trump Campaign could "speed up" a signature audit), Petitioner claimed he was not speaking on behalf of the campaign and that the text did not constitute an offer. CA11.App. 463-69. He later admitted that the federal government had no authority over the audit and that he did not have authority to provide any federal funds for it. CA11.App. 464. Petitioner admitted to "setting up" and participating in the call to Raffensperger,[2] which he acknowledged included only the Trump Campaign's attorneys, and during which he personally agreed with allegations of fraud and said that he hoped that "we" could "find a way forward that's less litigious." CA11.App. 468-70, 478-79, 581. He admitted that he went to the signature audit in Cobb County as outlined in Act 93 on his own initiative, and that the meeting with Michigan legislators (Act 5) concerned Trump's "personal interest in the outcome of the election in Michigan." CA11.App. 435, 447-48. He also denied committing or participating in Acts 9 or 19, and he testified that he regularly collected phone numbers for the President as alleged in Act 6. CA11.App. 418-22, 437.

The district court issued an order declining jurisdiction and remanding Petitioner's criminal prosecution to Fulton County Superior Court, concluding that he had not met his burden of establishing that the actions he "took as a participant in the alleged enterprise (the charged conduct) were related to his federal role as White House Chief of Staff." Pet.App. 75. The district court determined that Act 6 "arguably" related to Petitioner's federal duties and credited Petitioner's

[2] Raffensperger also testified and indicated that he understood the call to be campaign-related because there were Trump Campaign lawyers on the call. CA11.App. 581.

denials regarding Acts 9 and 19. Pet.App. 75-76, 76 n.14. However, it found that the evidence "overwhelmingly" suggested that Petitioner "was not acting in the scope of executive branch duties" as part of the remaining activities alleged as overt acts, each of which constituted either unauthorized election interference or electioneering on behalf of the Trump Campaign. Pet.App. 76-83. Because Petitioner was charged with conspiracy, an inchoate crime, and because of the culpability requirements of Georgia's RICO statute, the district court looked to the "gravamen" or "heart" of the charges against Petitioner and concluded that his association with the conspiracy was unrelated to his duties as Chief of Staff. Pet.App. 61-64, 75, 82-83.

Petitioner appealed, and the Eleventh Circuit ordered supplemental briefing on whether 28 U.S.C. § 1442(a)(1) applies to former federal officers in light of their decision in *United States v. Pate*, 84 F.4th 1196 (11th Cir. 2023) (en banc). Petitioner argued that it did, also insisting that the district court had erred in refusing to accept Petitioner's boundless explanation of his own authority wherein he personally embodied "federal operations" and his duties were "at least coextensive with those of the President." Pet.App. 25-26.

In an opinion authored by Chief Judge William Pryor, the Eleventh Circuit affirmed the district court's order of remand. First, applying *Pate* and relying upon textual, historical, and policy rationales, the opinion concluded that Section 1442(a)(1) did not apply to former federal officers. Pet.App. 10-21. Observing that no court had ever confronted the issue, the opinion noted that the result was required by the ordinary meaning of the term "officer" within the statute. Pet.App. 10, 17-18. Second, the opinion held that Petitioner had failed to demonstrate "that the conduct underlying the criminal

indictment relates to his official duties." Pet.App. 21. The panel agreed with the district court's assessment of the evidence, and that the "core" of the charges against Petitioner bore no relation to his federal authority. Pet.App. 21-34. In its estimation, several of the overt acts were either "self-evidently campaign-related" or had no plausible explanation aside from "interference with state election procedures." Pet.App. 32-34. The opinion refused to "rubber stamp" Petitioner's description of his own "unfettered discretion" or to "abdicate any analysis of the limits of his authority" as Petitioner demanded. Pet.App. 26. In a concurring opinion, Judge Robin S. Rosenbaum expressed concern about the potential ramifications of Section 1442(a)(1)'s ordinary meaning and called upon Congress to clarify the text of the statute. Pet.App. 35-46.

After the Eleventh Circuit declined Petitioner's request for en banc review, with no judge requesting that the Court be polled on the matter, Pet.App. 47, Petitioner petitioned this Court for a writ of certiorari.

## THE PETITION SHOULD BE DENIED

This Court should deny review of the Petition for two reasons. *First*, the Eleventh Circuit is the first court to consider whether 28 U.S.C. § 1442(a)(1) should apply to former officials. As no other circuit court has had the opportunity to examine the question, additional percolation is required before the issue is ripe for review. Additionally, the decision below correctly interpreted the language of Section 1442(a)(1) according to its ordinary meaning using long-established principles of statutory interpretation. *Second*, the opinion below did not implicate any circuit split when it directly relied upon *Caver v. Cent. Ala. Elec. Coop.*, a case which the petition omits, to hold that Petitioner was not entitled to removal. Citing *Caver*, the opinion implemented the

very test which Petitioner insists is correct. Under that test, the Eleventh Circuit appropriately declined to authorize removal, as Petitioner's culpable act was not related to his federal office.

## I. Being The First Instance That Any Court Has Examined This Issue, The Eleventh Circuit's Interpretation of 28 U.S.C. § 1442(a)(1) Correctly Relies Upon The Ordinary Meaning of Its Terms And Does Not Warrant Immediate Review

### A. Independent Evaluation of the Issue by Additional Courts Is Warranted

The petition focuses largely on the novelty of the jurisdictional question below and overstates the degree to which the decision conflicts with any considered or settled point of law. In his opinion, Chief Judge Pryor acknowledged that no court had ever ruled that former officers are excluded from removal under Section 1442, but that is because no court has ever considered the issue at all. When considering removal cases, past decisions "drove by" the question, providing cursory references to an officer's status as either active or former, if their status was mentioned at all. Pet.App. 17-18. These are precisely the sort of jurisdictional rulings that this Court has refused to afford precedential value. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 91 (1998) ("We have often said that drive-by jurisdictional rulings of this sort … have no precedential effect."). As Chief Judge Pryor observed, the only court to even acknowledge the question—which was not briefed—brushed past it in two sentences. *See* Pet.App. 18 (citing *People v. Trump*, 683 F. Supp. 3d 334, 344 (S.D.N.Y. 2023)). Certainly, no other circuit has ever analyzed the ordinary meaning of "officer" in the context of Section 1442(a)(1). So while Petitioner decries

the outcome below as novel, the decision would have been novel even if he had prevailed, simply because no other court had ever actually engaged with the issue. Its novelty lies not in its outcome but in its inquiry.

That novelty weighs *against* consideration of Petitioner's arguments in this Court. Certainly, there can be no suggestion of a circuit split on the issue, in the sense that no other circuit has yet examined the question, and the decision is not in disagreement with any other authority because no other court has had the opportunity to weigh in. This Court has in many cases "recognized that when frontier legal problems are presented, periods of 'percolation' in, and diverse opinions from, state and federal appellate courts may yield a better informed and more enduring final pronouncement by this Court." *Arizona v. Evans*, 514 U.S. 1, 23 n.1 (1995) (Ginsburg, J., dissenting). As Justice Gorsuch has explained, that is because "the crucible of adversarial testing on which we usually depend, along with the experience of our thoughtful colleagues on the district and circuit benches, could yield insights (or reveal pitfalls) we cannot muster guided only by our own lights." *Maslenjak v. United States*, 582 U.S. 335, 354 (2017) (Gorsuch, J., concurring in part and concurring in the judgment); *accord Box v. Planned Parenthood of Indiana & Kentucky, Inc.*, 587 U.S. 490, 493 (2019) ("We follow our ordinary practice of denying petitions insofar as they raise legal issues that have not been considered by additional Courts of Appeals."). This would remain true even if even if Petitioner were correct that the Eleventh Circuit's decision represented a discordant holding under a settled question, rather than the first instance of an issue receiving any analysis. *California v. Carney*, 471 U.S. 386, 400 n.11 (1985) (Stevens, J., dissenting) ("[W]e do not think that the Court must act to eradicate disuniformity as soon

as it appears . . . The process of percolation allows a period of exploratory consideration and experimentation by lower courts before the Supreme Court ends the process with a nationally binding rule. The Supreme Court, when it decides a fully percolated issue, has the benefit of the experience of those lower courts.") (citation omitted). However, it is particularly true where, as here, the issue has never been scrutinized at all.

Additionally, allowing independent evaluation of the issue by additional courts would reveal that the opinion below does not warrant the dire sense of urgency portrayed in the petition. Both Chief Judge Pryor's majority opinion and Judge Rosenbaum's concurring opinion, which Petitioner cites extensively, acknowledge that state courts are equipped to fairly and competently address federal defenses. Pet.App. 20-21, 43-44. As will be discussed below, Petitioner attempts to conflate *any* instance of a state court handling federal defenses with the scenario outlined in the concurrence, where a state court "isn't capable—for whatever reason—of quickly, correctly, and fairly adjudicating federal defenses when a federal officer has been indicted for carrying out his official federal responsibilities." Pet.App.44. As Judge Rosenbaum observed, that is not the scenario in the present case,[3]

[3] Judge Rosenbaum twice emphasizes that this scenario is not applicable in this case. Pet.App. 35 n.1 ("This hypothetical scenario does not describe Mark Meadows's situation" because he "has not established that the State charged him for or relating to an act under color of his office," so removal would remain unavailable to him regardless); Pet.App. 36 n.3 ("I emphasize that *this concurrence addresses only those state prosecutions of former federal officers whose charged acts fell within the scope of their official duties*. It does not pertain to state prosecutions of former federal officers for acting outside the scope of their official duties and violating state law.") (emphasis added).

and while Petitioner urges this Court to view the opinion below as an "invitation" for unscrupulous prosecutors to pursue unfounded prosecutions against former federal officials with the aid of complicit state courts, that scenario remains entirely "hypothetical." Pet.App. 35 n.1.

Petitioner assumes that the scenario is inevitable and sure to be widespread, but his references to the overheated words of opinion editorials, Pet.32, cannot suffice to demonstrate that a new era of ubiquitous prosecution of former federal officials is at hand. Contrasting the merely possible with the actual, former officers demonstrably seek removal under Section 1442 extremely rarely. As Chief Judge Pryor noted in his opinion, Petitioner has not identified any case in either this Court or in the Eleventh Circuit permitting removal by a former officer.[4] This Court should reserve its powers of review to address actual, rather than purely hypothetical, concerns.

Two additional points counsel against review in this case. First, Congress is empowered to amend statutes and choose whether or not to adjust or clarify their meaning. The Eleventh Circuit analyzed Section 1442(a)(1) by identifying the ordinary meaning of the words found within it and applying the law as they found it. *See Niz-Chavez v. Garland*, 593 U.S. 155, 160 (2021). As Judge Rosenbaum summarized in calling upon Congress to amend the statute, Congress possesses

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[4] Petitioner emphasizes language in *Mesa v. California* noting that the parties seeking removal had been federal officers "at the time of the incidents," Pet.App. 15 (citing 489 U.S. at 123), but the opinion below has already addressed this. Both the circuit court opinion in *Mesa* and the officers' petitions to this Court made clear that they were still federal employees as the case progressed. Pet.App. 16-17.

the power to enact any necessary changes to the law, while judges "must faithfully interpret the laws as they are written." Petitioner declares that it would be "far better" that this Court take the matter into its hands rather than allowing Congress the opportunity to address the matter if they choose, but it is clear that it would be "far better" because his preferred venue is federal court. Pet. 34.

This is related to the second point, which Petitioner conspicuously does not address, that state courts are "[]equipped to evaluate federal immunities." Pet.App. 20. As Chief Judge Pryor observed, Petitioner has provided no authority indicating otherwise, and this very case contains compelling evidence to the contrary. Former President Trump himself affirmatively chose not to seek removal and to continue his case in Georgia's state courts, specifically citing his "well-founded confidence that this honorable court intends to fully and completely protect his constitutional right to a fair trial and guarantee him due process of law throughout the prosecution of his case." "President Trump's Updated Notice Regarding Removal of His Prosecution to Federal Court," Case No. 23SC188947 (Fulton Super. Ct., Sept. 28, 2023). All of Petitioner's points would seem to apply with equal or greater force to arguments raised by a former President,[5] and yet

[5] Throughout his petition, Petitioner places inordinate reliance upon *Trump v. United States*, 144 S. Ct. 2312 (2024), despite the numerous and significant distinctions between that case and this one. *Trump* involved constitutional questions, while this case hinges on statutory interpretation and the assessment of specific evidence. *Trump* involved immunity, while this case involves only removal. And most significantly, *Trump* involved the utterly singular concerns related to the President's immunity under the Constitution. The case did not purport to create a broader, "Executive Branch immunity" or otherwise seek to apply to

Petitioner's co-Defendant recognized that Georgia courts were capable and evenhanded venues for him to present any defenses. This is the starkest illustration of how Petitioner has overstated the "danger" and importance of this case.

Accordingly, given that the Eleventh Circuit's interpretation of Section 1442(a)(1)'s application to former officers is the very first examination of the question to ever occur, and with no other circuits having had an opportunity to respond or to perform their own analyses, this Court should deny review.

### B. The Eleventh Circuit's Interpretation of The Statute Was Correct, and Petitioner's Critiques Fail to Answer It

Despite Petitioner's strident criticism of the decision below, the Eleventh Circuit applied a standard textual analysis of the statute that began with its ordinary meaning and applied several uncontroversial canons of statutory construction. Beginning "with the language of the statute itself," the Eleventh Circuit's examination of Section 1442(a)(1) proceeds from the basic observation that "[t]he ordinary meaning of 'officer' does not include 'former officer,'" and "the ordinary meaning usually controls." Pet.App. 10. The opinion then progresses through a number of established principles of statutory interpretation, concluding that they reinforced that ordinary meaning.

The panel's interpretation of the ordinary meaning of "officer" followed from the Eleventh Circuit's recent en banc decision in *United States v. Pate*, 84 F.4th 1196 (11th Cir. 2023). *Pate* established that "officer" does not

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officers such as Petitioner, whose role is not prescribed by the Constitution or even mentioned within it.

include "former officer" by referring to the Dictionary Act, contemporaneous dictionary entries, and everyday usage. *Id.* at 1201-02. While Petitioner colorfully disparages the reasoning in Chief Judge Pryor's opinion below as defying "common sense," the opinion relies upon the most basic and common understanding of the statute's actual words.

After establishing the ordinary meaning of "officer," the opinion examines the whole text of Section 1442 and observes the difference in meaning indicated by the "silence" of subsection (a)(1) in contrast with language in subsection (b) that "expressly provides for the removal of actions commenced against a former officer." Pet.App. 11. *See Russello v. United States*, 464 U.S. 16, 23 (1983) (when Congress includes "particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally."). The presumption of meaning applies "with particular force" to Section 1442 because the disparate provisions are "in close proximity" to one another and address the same subject matter. Pet.App. 11. *See* Antonin Scalia & Bryan A. Garner, *Reading Law* § 39, at 252 (2012) ("Statutes *in pari materia* are to be interpreted together, as though they were one law."). "The explicit reference to former officers, in an adjacent section that also addresses removal jurisdiction, suggests that section 1442(a)(1) does not apply to former officers." Pet.App. 11. And because the predecessor to subsection (b) directly cross-referenced the predecessor to subsection (a), the statute's history indicates that "Congress *in fact* contemplated the relationship between the two removal provisions" and that the variance in their language "reflects a deliberate choice." Pet.App. 15. The text, structure, and history of Section 1442 thus reinforce

the ordinary meaning of the term "officer" as excluding "former officers."

Petitioner's attacks on this reasoning do not *answer* the Eleventh Circuit's conclusions. At most they merely point to *alternatives*, and while the panel's interpretation proceeds from the ordinary meaning of "officer" in Section 1442(a)(1), Petitioner's proposed alternatives do not. The only disputation Petitioner provides of the ordinary meaning of "officer" is to suggest that the term can sometimes be understood to include "former officers" in statutes and "ordinary parlance." Pet.18-19. This is precisely the argument acknowledged and rejected by the Eleventh Circuit en banc in *Pate* and again by the panel below. *See* Pet.App. 12. Section 1442 lacks the "compelling textual evidence" or clear "statutory context" required to arrive at Petitioner's preferred interpretation. Petitioner refers to the language of "the closely related Westfall Act" as an example of how statutory context can indicate that formers are included in terms such as "employee" or "officer," but this reliance is misplaced: the Westfall Act includes precisely the sort of explicit temporal language that is *not* found in Section 1442(a)(1). *See* 28 U.S.C. § 2679(d)(1) ("Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment *at the time of the incident out of which the claim arose*…") (emphasis added).

Temporal language of this variety can be found in Section 1442, of course—in subsection (b), not subsection (a)(1). Regarding this difference, Petitioner largely repeats the argument he provided below, suggesting that because the subsections address different legal scenarios, the difference in their language *could* support his preferred interpretation of the statute. Pet.20. However, he does not address the syntactical

analysis Chief Judge Pryor employed in his opinion to reject that interpretation: subsection (a)(1) does not require a single condition but "prescribes *multiple* independent conditions for removal." Pet.App. 13. The first condition—that the party seeking removal be an "officer of the United States"—is not expanded in scope beyond its "ordinary meaning" by the second condition requiring that the suit against him be "for or relating to" the color of his office. Petitioner does not respond to this analysis and offers no reason why review is required to address it.

Similarly, Petitioner points to historical context that *could* mitigate in favor of his interpretation of the statute, but he does not acknowledge the primary historical point upon which the opinion relies. Pet.19-20. Judge Pryor emphasized that Congress had directly compared the predecessors of the two subsections and had "*in fact* contemplated the relationship between the two removal provisions," and that earlier versions of the statute demonstrate "that when Congress intended to permit removal by former officers, it expressed that intent with clear language." Pet.App. 15, 16. Petitioner responds merely by emphasizing that the subsections were enacted 40 years apart, another alternative interpretive approach which the Eleventh Circuit considered and rejected. Pet.App. 14-15 ("We have explained that 'dissimilar language need not always have been enacted at the same time or found in the same statute' to warrant the presumption that dissimilarities are meaningful when the statutes 'exist within the same field of legislation.' *Pate*, 84 F.4th at 1202 (internal quotation marks omitted) (citing *United States v. Papagno*, 639 F.3d 1093, 1099 n.3 (D.C. Cir. 2011) (Kavanaugh, J.) (cataloging examples))."

Petitioner also mischaracterizes the Eleventh Circuit's evaluation of the statute's purpose. He argues that the decision below was "simply wrong to insist that the only interest at stake here is '[s]hielding officers performing current duties,'" Pet.22, but the Eleventh Circuit insisted no such thing. As Chief Judge Pryor emphasized, the Eleventh Circuit's analysis looked first to the statute's actual language because

> the "best evidence of [a statute's] purpose is the statutory text adopted by both Houses of Congress and submitted to the President." *W. Va. Univ. Hosps., Inc. v. Casey*, 499 U.S. 83, 98 (1991); Scalia & Garner, *Reading Law* § 2, at 56 ("[T]he purpose must be derived from the text."). Purpose "must be defined precisely, and not in a fashion that smuggles in the answer to the question before the decision-maker." Scalia & Garner, *Reading Law* § 2, at 56.

Pet.App. 18 (cleaned up). Without attempting to "smuggle in" an answer, the Eleventh Circuit evaluated the ordinary meaning of "officer" and concluded that the statute "shield[ed] officers performing current duties." The panel acknowledged this Court's interpretation of the Section 1442's purpose, which is to protect the federal government from state interference, Pet.App. 18-19 (citing *Willingham*, 395 U.S. at 406), and concluded that their textual interpretation "effects the statute's purpose of protecting the operations of the federal government."[6]

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[6] Extensively citing *Manypenny* and *Willingham* in her concurrence below, Judge Rosenbaum also emphasized the importance of the policy counseling against federal involvement in state criminal prosecutions, even as she outlined her concerns regarding the ordinary meaning of Section 1442(a)(1). Pet.App. 36 n.3.

Pet.App. 19. And far from insisting that there was only one "interest at stake," as Petitioner attempts to portray the opinion, the Eleventh Circuit emphasized how its holding attempts to balance federal and state interests by contemplating the "policy against federal interference with state criminal proceedings." Pet.App. 19 (citing *Mesa*, 489 U.S. at 138) (in turn quoting *Arizona v. Manypenny*, 451 U.S. 232, 243 (1981)).

It is Petitioner who seeks to "insist" that only a single interest is at stake in these proceedings. He characterizes the Eleventh Circuit's acknowledgment of the policy against "federal interference with state criminal proceedings" as a "thumb on the scale against removal" leading to a "grudging" interpretation of the statute that also manages to "defy" this Court's decision in *Trump*, 144 S. Ct. 2312. Pet.21-22. But the Eleventh Circuit did not create that policy out of whole cloth; it directly cited the decisions of this Court that acknowledge its importance. The Eleventh Circuit also did not indicate that the policy controlled its decision; it merely acknowledged that its holding advanced the policy. Either this Court's enunciation of such a principle matters, or it does not. It cannot be true that the Eleventh Circuit grossly misconstrued Section 1442 simply by acknowledging "a State's right to make and enforce its own criminal laws," as this Court has done several times, and observing that its interpretation of the statutory text accords with that principle.

That is Petitioner's argument, however, because the only principle he acknowledges is "to have the validity of the defense of official immunity tried in a federal court." Pet. 17 (citing *Willingham*, 395 U.S. at 407). As Chief Judge Pryor observed, Petitioner insists that Section 1442 is "meant to avoid" all state adjudications of federal immunities. Pet.App. 20. The Eleventh Circuit

acknowledged that adjudicating federal defenses in federal courts is "one of the most important reasons for removal," but there is no indication that the statute is intended to prevent state review of federal defenses *altogether*, Pet.App. 20, and the Eleventh Circuit did not put its "thumb on the scale" merely by refusing to serve that purpose at the expense of both the ordinary meaning of the statutory text and a principle of non-interference in state criminal matters.

Petitioner's depiction of the opinion below casts it as a drastic and catastrophic deviation from precedent, but the result of the decision is that he is to be tried in state court alongside the former President, who willingly chose to proceed there. The decision analyzed a question for the very first time, and Petitioner overstates the urgency of the matter while also distorting the Eleventh Circuit's reasoning in his efforts to argue for immediate review. The issue would benefit from further percolation among the courts, any proposed repercussions remain unrealized, and Chief Judge Pryor's opinion was correct. This Court should deny review.

## II. The Eleventh Circuit Did Not Implicate Any Circuit Split When It Applied Its Own Precedent To Find That Petitioner Is Not Entitled To Removal

### A. The Opinion's Reliance Upon *Caver v. Cent. Ala. Elec. Coop.*, Which Petitioner Ignores, Demonstrates Plainly That The Eleventh Circuit Has Applied The Same Standard As Its Sister Circuits

Petitioner mischaracterizes the opinion below and the current state of the law by ignoring *Caver v. Cent.*

*Ala. Elec. Coop.*, 845 F.3d 1135, and the Eleventh Circuit's reliance upon it in this case. Petitioner argues that Chief Judge Pryor's decision applies an outmoded "causal-nexus test" that was superseded by a 2011 statutory amendment, "deepening a lopsided circuit split." Pet.3. In so doing, Petitioner omits any mention of *Caver*, in which the Eleventh Circuit acknowledged the effect of the statutory amendment, despite the decision below containing several citations to *Caver* and numerous references to the broadened language contained in the amendment. The decision below thus incorporates the very point that Petitioner insists was deliberately ignored, enervating his strident claims that the opinion is somehow "on the wrong side" of the circuit split he proposes. Instead, the Eleventh Circuit applied the low, broadened standard for which Petitioner now advocates, putting it on the "right" side of any such split. The panel below simply declined to decide the question in Petitioner's favor, and with no circuit split implicated, Petitioner cannot demonstrate the need for review by this Court.

In *Jefferson County v. Acker*, this Court advised that a party seeking federal officer removal under Section 1442(a)(1) had to "show a nexus, a causal connection between the charged conduct and asserted official authority." 527 U.S. 423, 431 (1999). Congress amended Section 1442(a)(1) in 2011 to "broaden the universe of acts" that permit removal. H.R. Rep. 112-17, 6, 2011 U.S.C.C.A.N. 420, 425. Removal became authorized for prosecutions "for *or relating to* any act under color of [federal] office," rather than only prosecutions "for" acts under color of office. Removal Clarification Act of 2011, Pub. L. No. 112-51, 125 Stat. 545. The Third Circuit was the first federal appellate court to consider the impact of this change, concluding that in the wake of the amendment, it is "sufficient for there to be a

'connection' or 'association' between the act in question and the federal office." *In re Commonwealth's Motion to Appoint Counsel Against or Directed to Def. Ass'n of Phila.*, 790 F.3d 457, 471 (3d Cir. 2015). Two years later, in *Caver*, the Eleventh Circuit directly cited *In re Commonwealth's Motion*, both to authorize removal based upon a mere "connection" or "association" between a relevant act and federal authority, and to acknowledge Congress's intention "to broaden the scope of acts that allow a federal officer to remove a case to federal court." 845 F.3d at 1144, 1144 n.8. While *Caver* applied the term "causal connection" in addition to "connection" and "association," other circuits—in cases cited by Petitioner to this Court—have recognized that the "causal connection" standard is "identical to the 'relates to' standard described by the other circuits." *Minnesota by Ellison v. Am. Petroleum Inst.*, 63 F.4th 703, 715 (8th Cir. 2023); *see also Latiolais v. Huntington Ingalls, Inc.*, 951 F.3d 286, 292 (5th Cir. 2020) (en banc) (Eleventh Circuit's "causal connection" test "cited the amended 'relating to' language and essentially implemented a connection rationale for removal").

In the present case, Chief Judge Pryor cited *Caver* multiple times, including for the precise point of the removal statute's broad construction.

> Section 1442(a)(1) provides that prosecutions are removable only when brought against officers "for or relating to" any act under color of federal office. Meadows must establish some "causal connection" or "association" between his alleged conspiracy-related activity and his federal office, and the bar for proof is "quite low." *Caver*, 845 F.3d at 1144 (citation and internal quotation marks omitted).

Pet.App. 31. Chief Judge Pryor also repeatedly observed that Petitioner's burden was to persuade the district court that his prosecution "related to" his federal office.[7] The panel ultimately agreed with the district court's assessment that Petitioner had failed to show his "association with the alleged conspiracy was 'related to any legitimate purpose of the executive branch.'" Pet.App. 32. The Eleventh Circuit has thus acknowledged and adapted to the removal statute's 2011 amendment in concert with its sister circuits, a move that was begun in *Caver* and continues in the opinion in this case.

Petitioner never acknowledges *Caver* or the reliance upon it in the opinion below. Indeed, Petitioner conducts a survey of each federal circuit's reaction to the 2011 amendment of Section 1442(a)(1), with the sole exception of the Eleventh Circuit. Pet.App. 29-31. Even though *Caver* is explicitly discussed in several of the cases cited by Petitioner, it is never mentioned in the petition. With *Caver* conspicuously absent, Petitioner insists that Chief Judge Pryor failed to "even acknowledg[e]" the 2011 amendment and "blithely continued to apply"

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[7] *See*, *e.g.*, Pet.App. 8 ("…the 'heavy majority' of the overt acts were not connected with the performance of Meadows's official duties."); Pet.App. 9 ("…even if Meadows were an 'officer,' his participation in an alleged conspiracy to overturn a presidential election was not related to his official duties."); Pet.App. 14 (secondary condition of Section 1442(a)(1) is "that the officer's act relate to his federal office"); Pet.App. 21 ("Meadows fails to prove that the conduct underlying the criminal indictment relates to his official duties."); Pet.App. 22 ("[W]e conclude that Meadows's association with the alleged conspiracy was not related to his office of chief of staff."); Pet.App. 30 ("…activity on behalf of the Trump reelection campaign was unrelated to Meadows's federal duties."); Pet.App. 34 ("Meadows cannot establish that any of these acts related to his federal office.").

*Acker*'s causal-nexus standard. Pet.25. However, as noted above, Chief Judge Pryor explicitly cited the amended statutory language and observed that either a "'causal connection' or 'association'" would suffice to authorize removal, while referring repeatedly to Petitioner's obligation to demonstrate how his prosecution merely "related to" his office or official duties. Pet.App. 31.

To the extent that Petitioner can demonstrate a circuit split exists regarding the post-2011 viability of *Acker*'s causal-nexus test, this case already sits on the "correct" side of that split, and there is no cause for a grant of certiorari. While noting that seven circuits have explicitly abandoned *Acker*'s causal-nexus test, Petitioner observes that three circuits have considered the broader standard to be "incorporated" into their existing tests or at least "acknowledged" the amendment's broadening of the statute. Pet.29-30. *See Minnesota v. API*, 63 F.4th at 715 (Eighth Circuit applying broader test while continuing to use phrase "causal connection"); *DeFiore v. SOC LLC*, 85 F.4th 546, 557 n.6 (9th Cir. 2023) (describing causal-nexus test as "incorporating" broader post-2011 standard); *Ohio St. Chiropractic Ass'n v. Humana Health Plan Inc.*, 647 F. Appx. 619, 624 (6th Cir. 2016) (acknowledging broader standard post-2011). This would appear to leave ten circuits on the "correct" side of the proposed split, with only the Second Circuit persisting in viewing the "causal-nexus" requirement as unchanged following the 2011 amendment. Pet.App. 30-31.

The Eleventh Circuit obviously does not join the Second Circuit, however, since the Eleventh Circuit's approach in *Caver* is identical to how the Eighth and Ninth Circuits have proceeded and goes *further* than the Sixth Circuit. The Eighth Circuit even provided *Caver* as the example of how it planned to proceed

under a broader "related to" test while continuing to refer to a "causal connection." *Minnesota v. API*, 63 F.4th at 715. Petitioner cites directly to the page of the Eighth Circuit's opinion where this point is made, Pet.30, but pointedly omits any mention of *Caver* or the reliance upon it in the opinion below. With *Caver* conspicuously absent, Petitioner's arguments regarding this case's position on the "wrong" side of any circuit split ring hollow.

### B. The Decision Below Correctly Concluded That Petitioner's Culpable Act Was Unrelated To The Color of His Office

With the opinion below properly characterized, Petitioner cannot point to a circuit split implicated by this case, and his petition becomes merely a dispute about the result: the Eleventh Circuit applied the very test he insists was ignored and affirmed the district court's order of remand. The panel was correct to do so, and Petitioner's arguments on the merits of the decision fall short. At most, the constitute no more than suggestions of either erroneous factual findings or the misapplication of a properly stated rule of law. U.S. Sup. Ct. R. 10.

#### 1. The relevant culpable "act" is Petitioner's association with the alleged conspiracy, an analysis which is not affected by the 2011 amendment to Section 1442(a)(1).

Petitioner takes issue with each analytical step taken by the Eleventh Circuit. The panel first identified the pertinent "act" under Section 1442, observing that in a criminal prosecution, the "act" is defined by the "criminal charge," just as it is defined by "a 'claim' brought against the defendant" in civil contexts.

Pet.App. 23.[8] Because Petitioner is charged with conspiracy to violate Georgia's RICO statute, an inchoate crime, the panel applied established Georgia law to determine that the "culpable act" for which Petitioner is being prosecuted is not any individual "*actus reus* in furtherance" but "his *agreement* to join the conspiracy." Pet.App. 23. That in turn required the Eleventh Circuit to look to the "core" of the factual allegations "to identify whether Meadows's conduct in aggregate furthered the alleged enterprise to overturn the election." Pet.App. 24.[9] Chief Judge Pryor noted that this accorded with precedent and the language of the statute. Pet.App. 24-25. Each of these analytical steps flowed naturally from the uncontroversial point, well established in the precedents of the Eleventh Circuit and other circuits, that a "culpable act" is defined by a claim or criminal charge against the defendant. *See* Pet.App. 23 (citing Fourth, Eighth, and

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[8] "Indeed, the state need not prove that Meadows committed any of the overt acts charged in the indictment, *see Nordahl v. State*, 829 S.E.2d 99, 109 (Ga. 2019), or that he engaged in any overt act at all so long as one of his coconspirators did, *see Thomas v. State*, 451 S.E.2d 516, 517 (Ga. Ct. App. 1994). Not only that, but an overt act need not, in and of itself, be criminal in nature to support a conspiracy charge. *See McCright v. State*, 336 S.E.2d 361, 363 (Ga. Ct. App. 1985). In other words, Georgia does not prosecute Meadows because attending any individual meeting or sending any specific message was itself illegal; Georgia prosecutes Meadows because his alleged agreement to join and his alleged conduct undertaken to further the conspiracy are illegal." Pet.App. 23-24.

[9] The Eleventh Circuit's reference to the "gravamen" of the charges—a term employed by Justice Scalia in his separate opinion in *Acker* and used by the District Court in its order—does not somehow transform its substantive analysis into a "blithe" application of the *Acker* test without any reference to the broadened, post-2011 language.

Eleventh Circuit cases); Pet.App. 57 n.8 (observing that "'[c]laims' in civil actions correspond to 'charges' in criminal prosecutions" and citing *Kellogg Brown & Root Srvs. v. United States*, 575 U.S. 650, 653 (2015) ("[W]e must decide . . . whether the Wartime Suspension of Limitations Act applies only to criminal *charges* or also to civil *claims*." (emphasis added)).

Petitioner insists that this approach is part of the panel's application of the *Acker* causal-nexus test rendered obsolete by the 2011 statutory amendment, but that is a mischaracterization of the amendment and the Eleventh Circuit's analysis. As explained above, the 2011 amendment altered the application of Section 1442(a)(1) by broadening the level of relationship required between a federal office and a culpable act. There is no indication that the statutory amendment altered or affected how courts are to define the relevant "act" under Section 1442 in the first place, and Petitioner does not point to any authority supporting that notion. The opinion below makes clear that the Eleventh Circuit sought to define the "act" exactly as other circuits have done, and the panel's analysis appropriately hinged upon the specific elements of Georgia's RICO statute rather than any sort of broadly applicable standard with national implications. Georgia law is clear that Petitioner's "culpability does not depend on any discrete act," so as a result "he cannot remove by proving that one act was undertaken in his official capacity." Pet.App. 24-25. The opinion's definition of the "culpable act" thus involves neither *Acker*, the 2011 statutory amendment, nor any accompanying circuit split requiring this Court's urgent intervention. And while Petitioner derides the panel's analysis as "myopic," he does not supply any argument or authority demonstrating that the opinion below is incorrect either in its association of the

relevant "act" with a specific "claim" or in its interpretation of clear Georgia precedents regarding the RICO statute. Petitioner's argument is simply that the panel's analysis of the culpable act *seems* too narrow, but his attempt to tie that analysis to *Acker* and the 2011 amendment, or any issue requiring urgent action by this Court, does not succeed.

### 2. Petitioner's federal authority did not extend to electioneering or interference with state administration of elections

In the next step of its analysis, the Eleventh Circuit evaluated how Petitioner's association with the alleged conspiracy could relate to his federal office. This step, in Chief Judge Pryor's words, required that Petitioner simply "identify a source of positive law for his assertions of official authority for us to determine whether his alleged acts were attributable to exercises of that authority." Pet.App. 25. Petitioner was unable to do so. He could point to no Constitutional or statutory authority describing any role for the President or his staff in the administration or supervision of presidential elections. While he attempted to associate his culpable act to the President's authority under the Take Care Clause to "ensure that federal voting laws are enforced," Petitioner could provide no indication of how the Clause's power was actually related to the supervision of officials actually empowered to administer elections: "tellingly, he cites no legal authority for the proposition that the President's power extends to assessing the conduct of state officials." Pet.App. 28 (punctuation omitted).

Petitioner does not dispute that he was unable to articulate any coherent source of authority for the President or his staff to supervise or affect a state's

administration of elections "on the federal executive's own initiative," but he insists that the Eleventh Circuit erred nonetheless by failing to "credit his theory of the case." The opinion below addressed this contention, observing that Petitioner's "theory of the case" was "that virtually *any* function of federal operations falls within the color of office of the chief of staff," an interpretation that would require the Eleventh Circuit to "abdicate any analysis of the limits of his authority," "rubber stamp [his] legal opinion," and accept a theory of the case that was "not plausible."[10] Pet.App. 26. Petitioner insisted that the panel should regard his testimony as to his own authority as the final word, without any supporting sources of positive law, and "accept his assertions at face value under *Acker*." Pet.App. 25-26. Petitioner's response at this stage is to simply say that yes, that is what the courts below should have done, and his insistence that they somehow "cho[se] between" two competing factual claims ignores that the panel *did* base their conclusions on his testimony. The panel readily accepted Petitioner's statements about what he actually did; what they refused to uncritically accept was his repeated, conclusory insistence that all of it related to his office.

Indeed, Petitioner attempts to minimize the impact that his testimony had on the results of the litigation below, wherein the district court concluded that the evidence "overwhelmingly" suggested that his acts

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[10] Petitioner denies that he has ever claimed that "the President's chief of staff has unfettered authority." Pet.27 n.4. However, as Judge Pryor observed and as Petitioner does not contest, he has previously argued that his official authority is "at least coextensive with that of the President" and that "he *is* federal authority." Pet.App. 25-26.

were unrelated to his official duties. Pet.App. 83. That testimony played a central role in the third step of the Eleventh Circuit's analysis, where, as discussed above, it evaluated whether he had "provide[d] sufficient evidence" that his association with the alleged conspiracy was "related to any legitimate purpose of the executive branch." Pet.App. 32. The Eleventh Circuit agreed with the district court that, with a single exception, the evidence—consisting primarily of Petitioner's own testimony—indicated that every aspect of Petitioner's association with the conspiracy "involved either unauthorized interference with state election procedures or prohibited campaigning." Pet.App. 32; *see also* Pet.App. 83. The courts below held Petitioner to a permissive standard and sought to make sense of his assertion of broad authority and its relationship to his own actions; he simply had to relate his activities, and his relationship to the alleged conspiracy, to executive branch authority.

He could not do so, and his arguments to this Court suggest that he views any evaluation of his own theories as a "thumb on the scale" against him. Petitioner complains that all of the Eleventh Circuit's analysis was neither "necessary or appropriate," that he has been forced to "win his case before he can have it removed," and that "the very fact that the Eleventh Circuit found itself examining extensive testimony about the duties of a Chief of Staff and resolving complex legal questions about the interplay of federal and state election law" indicates that the case should have been removed.[11] Petitioner thus begins by insisting

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[11] No precedent or statute has ever countenanced deference to a federal officer attempting to define the limits of their own authority as expansively as Petitioner insists is correct in this case. Even the Attorney General's scope-of-office certifications

that his declarations of his own authority, in both argument and testimony, should have been accepted at face value, and he concludes by declaring that any careful scrutiny of those declarations simply demonstrates that he should have prevailed.[12] Put simply, courts should simply accept his own conclusions as to the legal questions at issue, but if the courts are required to engage with them seriously, that too mitigates in his favor.

As Chief Judge Pryor observed, this is not the case. Misguidedly, Petitioner emphasizes the importance of the matter, as it is "hard to imagine a case in which the need for a federal forum is more pressing" than his own. But former President Trump did not even attempt to remove his Georgia case to federal court. Petitioner's case implicates no circuit split, applies the appropriate standard, and turns on specifics of Georgia criminal law that lack nationwide application or repercussions. His arguments emphasize his disagreement with the opinion below, but they do not identify authorities that actually undermine its conclusions. Petitioner has failed to identify qualities of the case indicating the need for Supreme Court review, and his petition should be denied.

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under the Westfall Act, which Congress intended to conclusively establish whether a federal officer was acting within the scope of his or her duties, are subject to *de novo* judicial review upon challenge. *Omnipol, A.S. v. Multinational Def. Servs., LLC*, 32 F.4th 1298, 1305 (11th Cir. 2022).

[12] District courts are *required* to hold evidentiary hearings on removal in all cases not subject to summary remand. *See* 28 U.S.C. § 1455(b)(5). They are thus required to exercise their independent judgment of evidence and testimony in evaluating petitions for removal.

## CONCLUSION

For the foregoing reasons, the petition should be denied.

Respectfully submitted,

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