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**In The
Supreme Court of the United States**

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STANTON M. BUCH and SHARON A. STINUS,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

◆

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit**

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PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the *Feres* Doctrine and the *Feres* progeny should be rejected.

OPINIONS AND ORDERS

The Ninth Circuit Court of Appeals, in reviewing this case, did not select its opinion for publication in the Federal Reporter. The opinion is found on the Ninth Circuit website with the unpublished memoranda at <https://cdn.ca9.uscourts.gov/datastore/memoranda/2017/08/21/16-35287.pdf>. The opinion is reprinted in the Appendix at App. 1.

The District Court also did not publish an opinion in this case. Its order of dismissal on motion to dismiss is reprinted in the Appendix at App. 3.

JURISDICTIONAL STATEMENT

The Ninth Circuit Court of Appeals filed its decision on August 21, 2017. There was no motion for rehearing. This Court has jurisdiction under 28 U.S.C. § 1254(1) to review the circuit court's decision on a writ of certiorari.

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Constitution, Art. 1, Sec. 1 – All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

U.S. Constitution, Amend. I – Congress shall make no law respecting an establishment of religion, or

prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Constitution, Amend. V – No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

28 U.S.C. § 2680(j) – The provisions of this chapter and section 1346(b) of this title shall not apply to –

...

(j) Any claim arising out of the combatant activities of the military or naval forces, or the Coast Guard, during time of war.



STATEMENT OF THE CASE

Stanton Buch served as an enlisted man with the U.S. Army, stationed in Fairbanks, Alaska. In September 2009, distraught over marriage problems, and under the influence of drugs and alcohol, Mr. Buch

slashed his wrists. Discovered alive, he was rushed to Bassett Army Community Hospital where he was sutured, stabilized and promptly transferred to the mental health unit at Fairbanks Memorial Hospital. The next day, he was discharged to U.S. Army personnel and returned to base.

That evening, unsupervised, Mr. Buch left his quarters and drove off base. He purchased a handgun in town and found a secluded area in the woods where he intended to again attempt suicide. Before he pulled the trigger, he texted his mother, petitioner Sharon Stinus, and informed her of his situation. Her distraught attempts to dissuade him and direct help his way were unsuccessful. Amazingly, Mr. Buch survived the bullet wound to his head, but sustained severe injuries.

Mr. Buch and Ms. Stinus filed administrative claims with the U.S. Army under the Federal Tort Claims Act,¹ alleging negligence on the Army's part for its failure to adequately treat and supervise Mr. Buch, a known danger to himself. Ms. Stinus claimed negligent infliction of emotional distress as a directly related bystander. These claims were denied, as were their requests for reconsideration. The claimants then filed the present action with the federal District Court in Anchorage. The court granted the government's motion to dismiss for lack of subject matter jurisdiction

¹ 28 U.S.C. § 2680(j).

under the *Feres* Doctrine.² The dismissal was affirmed on appeal by the Ninth Circuit Court of Appeals.



REASONS FOR GRANTING THE PETITION

The *Feres* Doctrine has done enough damage. Since *Feres* appeared in 1950, untold numbers of injured service members with tort claims against the U.S. government – claims unrelated to combatant activities – have been turned away at the courthouse steps with no regard for either the text of the governing statute or the merits of their claims. The civilian population faces no such obstacle. Petitioners submit that this unequal treatment violates the guarantee of equal protection inherent in the due process clause of the Fifth Amendment. It also frustrates the purpose of the Federal Tort Claims Act, which recognizes (or, perhaps, purports to create) a person’s fundamental right of redress as to the United States,³ an aspect of equal protection and an express element of the First Amendment – the right

² In *Feres v. United States*, 340 U.S. 135, 146 (1950), the Supreme Court held that “the Government is not liable under the Federal Tort Claims Act for injuries to servicemen where the injuries arise out of or are in the course of activity incident to service.”

³ See, e.g., *Marbury v. Madison*, 5 U.S. 137, 163 (1803), “The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws whenever he receives an injury. One of the first duties of government is to afford that protection. In Great Britain, the King himself is sued in the respectful form of a petition, and he never fails to comply with the judgment of his court.”

to “petition the Government for a redress of grievances.”

The very first section of the Constitution vests all legislative powers exclusively in Congress. The U.S. Supreme Court, however, has substituted its own rule in place of the text of the Federal Tort Claims Act – a rule that has swallowed the exception. Petitioners submit that in *Feres* the Supreme Court wrote its own bit of legislation and thus violated the separation of powers established in the structure of the U.S. Constitution. This case presents the Court with a choice opportunity to curb a prominent example of its own overreach.

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CONCLUSION

Petitioners therefore request that the Court accept this case for review.

Respectfully submitted,

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