No. 24-1078

In the Supreme Court of the United States

KARI BECK, PERSONAL REPRESENTATIVE OF THE ESTATE OF CAMERON GAYLE BECK, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

D. JOHN SAUER
Solicitor General
Counsel of Record
BRETT A. SHUMATE
Assistant Attorney General
LOWELL V. STURGILL JR.
Attorney

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTIONS PRESENTED

This Court held in *Feres* v. *United States*, 340 U.S. 135, 146 (1950), that the Federal Tort Claims Act (FTCA), 28 U.S.C. 1346(b), 2671 *et seq.*, does not waive the United States' sovereign immunity from suit for injuries that "arise out of or are in the course of activity incident to" a person's service in the military. The questions presented are:

1. Whether the *Feres* doctrine applies only when the injury was directly caused by the service member's military duties or orders.

2. Whether the Court should limit or overrule its longstanding interpretation of the FTCA in *Feres*.

TABLE OF CONTENTS

Page

Opinions below 1
Jurisdiction 1
Statement 1
Argument 4
Conclusion 18

TABLE OF AUTHORITIES

Cases:

Brooks v. *United States*, 337 U.S. 49 (1949) 8
Buch v. *United States*, 138 S. Ct. 746 (2018) 14
Carter v. *United States*, 145 S. Ct. 519 (2025) 13
Chambers v. *United States*,
357 F.2d 224 (8th Cir. 1966) 8
Chappell v. *Wallace*, 462 U.S. 296 (1983) 5
Costo v. *United States*:
248 F.3d 863 (9th Cir. 2001),
cert. denied, 534 U.S. 1078 (2002) 5, 8
534 U.S. 1078 (2002) 14
Daniel v. *United States*, 139 S. Ct. 1713 (2019) 14
Davidson v. *United States*, 137 S. Ct. 480 (2016) 14
Doe v. *United States*, 141 S. Ct. 1498 (2021) 13
Feres v. *United States*:
177 F.2d 535 (2d Cir. 1949), aff'd,
340 U.S. 135 (1950) 7
340 U.S. 135 (1950) 3, 4, 6, 8, 9, 12, 13, 16
Flowers v. *United States*,
764 F.2d 759 (11th Cir. 1985) 8
Ford v. *Artiga*, 137 S. Ct. 2308 (2017) 14
Frankel v. *United States*,
810 Fed. Appx. 176 (4th Cir.), cert. denied,
141 S. Ct. 360 (2020) 7

Cases—Continued: Page

Futrell v. *United States*, 138 S. Ct. 456 (2017) 14
Griggs v. *United States*, 178 F.2d 1 (10th Cir.), rev'd, 340 U.S. 135 (1950) 6
Hayes v. *United States*, 516 U.S. 814 (1995) 14
Jefferson v. *United States*, 77 F. Supp. 706 (D. Md. 1948) 6
John R. Sand & Gravel Co. v. *United States*, 552 U.S. 130 (2008) 15
Johnson v. *United States*, 704 F.2d 1431 (9th Cir. 1983) 11
Jones v. *United States*, 139 S. Ct. 2615 (2019) 14
Kimble v. *Marvel Entm't, LLC*, 576 U.S. 446 (2015) 14-17
Lanus v. *United States*, 570 U.S. 932 (2013) 14
Lauer v. *United States*, 968 F.2d 1428 (1st Cir.), cert. denied, 506 U.S. 1033 (1992) 8
Matthew v. *Department of the Army*, 558 U.S. 821 (2009) 14
McConnell v. *United States*:
478 F.3d 1092 (9th Cir.), cert. denied, 552 U.S. 1038 (2007) 8
552 U.S. 1038 (2007) 14
Miller v. *United States*, 643 F.2d 481 (8th Cir. 1981) 3
O'Neill v. *United States*, 525 U.S. 962 (1998) 14
Orr v. *United States*, 486 F.2d 270 (5th Cir. 1973) 12
Parker v. *United States*, 611 F.2d 1007 (5th Cir. 1980) 11
Pierce v. *United States*, 813 F.2d 349 (11th Cir. 1987) 10
Pringle v. *United States*, 208 F.3d 1220 (10th Cir. 2000) 5, 8
Purcell v. *United States*, 565 U.S. 1261 (2012) 14
Read v. *United States*, 571 U.S. 1095 (2013) 14

Cases—Continued: Page

Richards v. *United States*:
176 F.3d 652 (3d Cir. 1999), cert. denied, 528 U.S. 1136 (2000) 7
528 U.S. 1136 (2000) 14
Ritchie v. *United States*, 572 U.S. 1100 (2014) 14
Schoemer v. *United States*:
59 F.3d 26 (5th Cir.), cert. denied, 516 U.S. 989 (1995) 5, 13
516 U.S. 989 (1995) 14
Schoenfeld v. *Quamme*, 492 F.3d 1016 (9th Cir. 2007) 10, 11
Shaw v. *United States*, 854 F.2d 360 (10th Cir. 1988) 8
Siddiqui v. *United States*, 140 S. Ct. 2512 (2020) 13
Sonnenberg v. *United States*, 498 U.S. 1067 (1991) 14
Stencel Aero Eng'g Corp. v. *United States*, 431 U.S. 666 (1977) 5
Stewart v. *United States*, 90 F.3d 102 (4th Cir. 1996) 7
Taber v. *Maine*, 67 F.3d 1029 (2d Cir. 1995) 10, 11
United States v. *Brown*, 348 U.S. 110 (1954) 5
United States v. *Johnson*, 481 U.S. 681 (1987) 5, 7, 10, 12, 13, 15, 16
United States v. *Muniz*, 374 U.S. 150 (1963) 5
United States v. *Shearer*, 473 U.S. 52 (1985) 5, 7, 12
United States v. *Stanley*, 483 U.S. 669 (1987) 5, 16
Walls v. *United States*, 832 F.2d 93 (7th Cir. 1987) 8
Warner v. *United States*, 720 F.2d 837 (5th Cir. 1983) ... 7, 8
Watkins v. *United States*, 462 F. Supp. 980 (S.D. Ga. 1977), aff'd, 587 F.2d 279 (5th Cir. 1979) 7
Witt v. *United States*, 564 U.S. 1037 (2011) 14
Zmysly v. *United States*, 560 U.S. 925 (2010) 14
Zoula v. *United States*, 217 F.2d 81 (5th Cir. 1995) 9

Statutes: Page

Federal Tort Claims Act,
28 U.S.C. 1346(b), 2671 *et seq.* 2
28 U.S.C. 1346(b)(1) 13
Military Claims Act, 10 U.S.C. 2731 *et seq.* 17
National Defense Authorization Act for Fiscal Year
2020, Pub. L. No. 116-92, 133 Stat. 1198 17
§ 731, 133 Stat. 1457-1460 (10 U.S.C. 2733a) 18
Public Health Service Act, 42 U.S.C. 201 *et seq.* 17
Veterans Benefits Act, 38 U.S.C. 1701 *et seq.* 2

Miscellaneous:

H.R. Rep. No. 333, 116th Cong., 1st Sess. (2019) 17
H.R. 1054, 100th Cong., 1st Sess. (1987) 17
H.R. 536, 101st Cong., 1st Sess. (1989) 17
H.R. 3407, 102d Cong., 1st Sess. (1991) 17
H.R. 2684, 107th Cong., 1st Sess. (2001) 17
H.R. 4603, 109th Cong., 1st Sess. (2005) 17
H.R. 6093, 110th Cong., 2d Sess. (2008) 17
H.R. 1478, 111th Cong., 1st Sess. (2009) 17
H.R. 1517, 112th Cong., 1st Sess. (2011) 17
H.R. 6585, 115th Cong., 2d Sess. (2018) 17
H.R. 2422, 116th Cong., 1st Sess. (2019) 17
S. 347, 100th Cong., 1st Sess. (1987) 17
S. 2490, 100th Cong., 2d Sess. (1988) 17
S. 1347, 111th Cong., 1st Sess. (2009) 17
S. 1790, 116th Cong. (amendment as passed by the
House of Representatives, Sept. 17, 2019) 17
S. 2451, 116th Cong., 1st Sess. (2019) 17

In the Supreme Court of the United States

No. 24-1078

KARI BECK, PERSONAL REPRESENTATIVE OF THE ESTATE OF CAMERON BECK, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-8) is published at 125 F.4th 887. The opinion of the district court (Pet. App. 9-20) is available at 2024 WL 756281.

JURISDICTION

The judgment of the court of appeals was entered on January 13, 2025. The petition for a writ of certiorari was filed on April 11, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. On April 15, 2021, Air Force Staff Sergeant Cameron Beck was struck and killed while riding his motorcycle on the Whiteman Air Force Base (AFB) in Knob Noster, Missouri. Pet. App. 1, 9. Petitioners, SSgt. Beck's wife and son, seek damages for his wrongful death and for property damage to his motorcycle. *Id.* at 10.

On the day of the collision, SSgt. Beck was on active duty with the Air Force. Pet. App. 2, 9. He was serving on Whiteman AFB pursuant to military orders, and he lived on base as well. C.A. App. 59, 66. SSgt. Beck reported to his duty station that morning and took his lunch break around 11 a.m. Pet. App. 10. While driving his motorcycle to his home on the base for lunch, SSgt. Beck was hit by a civilian federal employee driving a government van. *Ibid.* The collision occurred on the base, at an intersection open only to individuals with authorized access. C.A. Gov't Br. 3. SSgt. Beck was killed, and the civilian government employee pleaded guilty to knowingly operating a vehicle in a careless manner. Pet. App. 2.

As a service member on active duty, SSgt. Beck was subject to the authority and command of Whiteman AFB's Installation Commander while he was on base. Pet. App. 5. SSgt. Beck was also subject to immediate recall for mission-essential purposes even during off-duty hours, such as his lunch break. *Ibid.*

Because SSgt. Beck's accident occurred in the line of duty, petitioners received $523,000 in benefits and monthly payments from the Department of Veterans Affairs (VA) and the Department of Defense. Pet. App. 2. Petitioners also are entitled to free medical care in military medical facilities, eligibility for a housing loan under the VA's loan guaranty program, and various other benefits under the Veterans Benefits Act. See 38 U.S.C. 1701 *et seq.*

2. In April 2023, petitioners filed this action against the United States under the Federal Tort Claims Act (FTCA), 28 U.S.C. 1346(b), 2671 *et seq.* Pet. App. 10. Petitioners alleged that the civilian employee who crashed into SSgt. Beck's motorcycle on the base was negligent and reckless, and that her negligence and recklessness

caused SSgt. Beck's wrongful death and property damage to his motorcycle. Compl. 10-14.

The district court dismissed petitioners' claims for lack of jurisdiction. Pet. App. 20. The court explained that, under *Feres* v. *United States*, 340 U.S. 135, 146 (1950), the FTCA does not waive the United States' sovereign immunity for claims for injuries to a military service member that "arise out of or are in the course of activity incident to service." Pet. App. 12-13. The court identified several indicators that SSgt. Beck's injuries were "incident to service": To begin, the accident "occurred on Whiteman Airforce Base," and "but for his status as an active duty serviceman, he would not have been traveling on Whiteman Airforce base to his home that was also located on base." *Id.* at 17. Moreover, "although Staff Sergeant Beck was on his lunch break at the time of the Accident, it is undisputed he remained subject to immediate recall for mission essential purposes, and thus subject to military control." *Ibid.*

The court of appeals unanimously affirmed. Pet. App. 1-8. The court reasoned that its decision in *Miller* v. *United States*, 643 F.2d 481 (8th Cir. 1981) (en banc), "is controlling and bars [petitioners'] FTCA claim." Pet. App. 5. In *Miller*, the en banc Eighth Circuit had applied *Feres* to bar claims for the wrongful death of a service member who was "killed during off-duty hours" in the course of "non-military activities," but "on-Base, while on active duty, and subject to immediate recall." *Ibid.* Applying *Miller* to the facts at hand, the court of appeals in this case reasoned that SSgt. Beck likewise was injured during off-duty hours but while "on active duty, subject to his Base Commander and the Uniform Code of Military Justice" and to "recall[] to the Base for mission essential purposes if he left during weekends or for lunch." *Ibid.*

The court explained that "*Feres* is not limited to cases" involving "negligent acts committed in the course of actual military duty." *Id.* at 5-6 (citation omitted).

ARGUMENT

The court of appeals correctly held that petitioners' FTCA claims are barred under this Court's decision in *Feres* v. *United States*, 340 U.S. 135 (1950), and by subsequent decisions. Petitioners contend (Pet. i) that the Court should grant certiorari to address whether *Feres* applies only when the service member's injury "was directly caused by the servicemember's military duties or orders." But the court of appeals correctly rejected that contention, and petitioners do not identify any court of appeals decision that has reached a contrary conclusion in similar circumstances. Petitioners also contend (Pet. ii) that this Court should grant review to reconsider *Feres*. But the unanimous *Feres* Court's interpretation of the FTCA was adopted shortly after the FTCA was enacted, has been the law for more than 70 years, and has been repeatedly reaffirmed by this Court. This Court has consistently denied petitions for a writ of certiorari raising the questions presented here. It should deny this petition as well.

1. Petitioners first ask this Court (Pet. 7-21) to address whether *Feres* applies only where a service member's injury was directly caused by the service member's military duties or orders. That issue does not merit this Court's review.

a. In *Feres*, this Court held that the FTCA does not waive the United States' sovereign immunity for injuries that "arise out of or are in the course of activity incident to service." 340 U.S. at 146. Since then, this Court has repeatedly reaffirmed that interpretation of the FTCA and applied it to "bar all suits on behalf of

service members against the Government based upon service-related injuries." *United States* v. *Johnson*, 481 U.S. 681, 687-688 (1987); see *United States* v. *Stanley*, 483 U.S. 669 (1987); *United States* v. *Shearer*, 473 U.S. 52 (1985); *Chappell* v. *Wallace*, 462 U.S. 296 (1983); *Stencel Aero Eng'g Corp.* v. *United States*, 431 U.S. 666 (1977); *United States* v. *Muniz*, 374 U.S. 150 (1963); *United States* v. *Brown*, 348 U.S. 110 (1954).

The Court has emphasized that *Feres*' "incident to service" test requires a case-by-case assessment of the totality of the circumstances. See *Shearer,* 473 U.S. at 57 ("The *Feres* doctrine cannot be reduced to a few bright-line rules.") (citation omitted). Consistent with that fact-sensitive approach, the courts of appeals have looked to considerations like the service member's military status at the time of the alleged injury, whether the injury occurred on-base, the nature of the service member's activity while injured, and whether the service member was enjoying a military benefit at the time. See, *e.g.*, *Costo* v. *United States*, 248 F.3d 863, 866-867 (9th Cir. 2001), cert. denied, 534 U.S. 1078 (2022); *Pringle* v. *United States*, 208 F.3d 1220, 1224 (10th Cir. 2000) (per curiam); *Schoemer* v. *United States*, 59 F.3d 26, 30 (5th Cir.), cert. denied, 516 U.S. 989 (1995).

In light of those principles, the courts below correctly concluded that *Feres* precludes petitioners' suit. Like the service members injured in *Feres*, SSgt. Beck was on active duty at the time of the collision. Pet. App. 5. Although he was on his lunch break, SSgt. Beck could be recalled for mission-essential purposes at any point. *Ibid.* Moreover, SSgt. Beck was injured in a military location—here, on a military base, at an intersection not accessible to the general public. Only because of SSgt. Beck's military status was he traveling within

Whiteman AFB to his home on the base. See *id.* at 17. And SSgt. Beck's survivors are entitled to military benefits. *Id.* at 5. Under this Court's cases, those facts are sufficient to conclude that SSgt. Beck's injuries occurred "in the course of activity incident to service." *Feres*, 340 U.S. at 146.

Petitioners reject that context-sensitive approach and contend (Pet. 10-12) that the *Feres* doctrine applies only to injuries sustained while a service member performs a military mission under orders. But the *Feres* Court's use of the word "incident" in the phrase "incident to service" strongly suggests that it was focused on a broader swath of injuries than those directly caused by a military mission. And since its inception, *Feres* has never been applied in the limited way that petitioners propose. One of the three consolidated cases in *Feres* itself arose out of a service member's abdominal surgery for a gallbladder condition. 340 U.S. at 137; see *Jefferson* v. *United States*, 77 F. Supp. 706, 708 (D. Md. 1948). The service member was not engaged in any military mission at the time, and there is no indication that his gallbladder condition was caused by his military service or that the military ordered the service member to undergo that surgery. *Jefferson*, 77 F. Supp. at 708. The second consolidated *Feres* case involved a service member's surgery after he was admitted to a military hospital pursuant to military orders. *Feres*, 340 U.S. at 137. And the third consolidated case involved injuries to a service member who died while asleep when his barracks caught fire. See *ibid.* The service members in the latter two cases were present in the hospital and the barracks pursuant to military orders, just as SSgt. Beck also was also on Whiteman AFB because of a military assignment. See *Griggs* v. *United States*, 178 F.2d 1, 2

(10th Cir.), rev'd, 340 U.S. 135 (1950); *Feres* v. *United States*, 177 F.2d 535, 536 (2d Cir. 1949), aff'd, 340 U.S. 135 (1950). But they were not engaged in a military mission when they were injured.

This Court's subsequent *Feres* decisions confirm that an injury can be incident to service even if it did not directly result from a military mission or duties. In *Shearer*, for example, the Court applied *Feres* to bar an FTCA claim brought by the mother of a service member who was "kidnapped and murdered by another serviceman" while "off duty" and "away from the base" in New Mexico where he was stationed. 473 U.S. at 53, 57. Shearer was off base and not acting pursuant to military orders when he was injured, just like SSgt. Beck in this case. And in *Johnson*, this Court approvingly cited court of appeals decisions that applied the *Feres* doctrine to cases involving service members injured while engaging in voluntary activities during off-duty hours. See *Johnson*, 481 U.S. at 687 n.8. Indeed, *Johnson* favorably cited two lower-court decisions that involved facts nearly identical to those in this case: motorcycle accidents sustained by active-duty service members on base during off-duty hours. See *ibid.* (citing *Warner* v. *United States*, 720 F.2d 837 (5th Cir. 1983) (per curiam) and *Watkins* v. *United States*, 462 F. Supp. 980 (S.D. Ga. 1977), aff'd, 587 F.2d 279 (5th Cir. 1979)).

Accordingly, the courts of appeals have regularly applied *Feres* to bar claims arising from active-duty service members' vehicular accidents on military bases during off-duty hours. See, *e.g.*, *Frankel* v. *United States*, 810 Fed. Appx. 176 (4th Cir.) (per curiam), cert. denied, 141 S. Ct. 360 (2020); *Richards* v. *United States*, 176 F.3d 652 (3d Cir. 1999), cert. denied, 528 U.S. 1136 (2000); *Stewart* v. *United States*, 90 F.3d 102 (4th Cir. 1996);

Shaw v. *United States*, 854 F.2d 360 (10th Cir. 1988); *Flowers* v. *United States*, 764 F.2d 759 (11th Cir. 1985); *Warner*, 720 F.2d at 838-839. They also have applied *Feres* to other voluntary activities that had no connection to a specific military mission. See, *e.g.*, *McConnell* v. *United States*, 478 F.3d 1092 (9th Cir.) (boating accident), cert. denied, 552 U.S. 1038 (2007); *Costo* v. *United States*, *supra* (rafting trip); *Pringle* v. *United States*, *supra* (enjoyment of military-sponsored social club); *Lauer* v. *United States*, 968 F.2d 1428 (1st Cir.) (walking to off-post bar on military road), cert. denied 506 U.S. 1033 (1992); *Walls* v. *United States*, 832 F.2d 93 (7th Cir. 1987) (recreational flying); *Chambers* v. *United States*, 357 F.2d 224 (8th Cir. 1966) (swimming in on-base pool). This Court has denied certiorari in each of those cases in which a petition was filed, and should do the same here.

b. Petitioners erroneously contend (Pet. 7-14) that the decision below is inconsistent with decisions of this Court. They focus (Pet. 7-9) on *Brooks* v. *United States*, 337 U.S. 49 (1949), but that case predated the seminal decision in *Feres* and was distinguished by *Feres* itself. In *Brooks*, this Court permitted a service member and the estate of another to bring an FTCA suit after a military vehicle struck the private car in which the servicemen rode on a public highway while they were on furlough. *Id.* at 50-51; *Feres*, 340 U.S. at 146 (noting that servicemen in *Brooks* were injured while on furlough). The Court reasoned that the accident was not incident to service because it "had nothing to do with [the service members'] army careers, * * * except in the sense that all human events depend upon what has already transpired." *Brooks,* 337 U.S. at 52.

Here, as in *Feres*, petitioners "ignor[e] th[is] vital distinction." *Feres*, 340 U.S. at 146. Unlike in *Brooks*, SSgt. Beck's status as a member of the military was directly related to the accident and no mere coincidence. SSgt. Beck's accident occurred while he was driving on the military base where he was required by the Air Force to work, and where he also lived because of his military status. C.A. App. 59, 66. While the military status of the servicemen in *Brooks* had no relation to their driving on a public highway while on furlough, SSgt. Beck was driving on the Whiteman base only by virtue of his access as a service member. Pet. App. 5.

The mere fact that SSgt. Beck was off duty during his hour-long lunch break at the time of the accident does not mean that *Brooks* applies. To begin, *Brooks* involved an accident on a public highway, and thus it does not even control whether the FTCA would apply if a service member on furlough were injured in a traffic accident while leaving the base. Moreover, being off duty differs from being on furlough or leave in the military. A service member on furlough or leave is not subject to be called upon to engage in military duty, unless formal steps are taken to cancel his furlough or leave status. *Zoula* v. *United States*, 217 F.2d 81, 83 n.1 (5th Cir. 1955). By contrast, a service member who is merely off duty may be called back to service at any point without any formal steps having been taken. *Ibid.* *Feres* emphasized this distinction between furlough and active duty in explaining why the servicemen on furlough in *Brooks* were permitted to bring suit. 340 U.S. at 138, 146. Thus, the fact that SSgt. Beck was on his lunch break when the accident occurred does not remove this suit from *Feres*'s reach.

Petitioners further contend (Pet. 11-12) that the decision below is out of step with this Court's *Feres* precedents because it supposedly focused too much on SSgt. Beck's active-duty status and the location of the accident. In particular, petitioners argue (Pet. 11) that this Court held in *Shearer* that the critical factor under *Feres* is whether allowing a claim to proceed might require the court to second-guess military decisions or impair essential military discipline. This Court, however, specifically rejected that "reformulation of the *Feres* doctrine," and expressly "decline[d] to modify the doctrine at this late date." *Johnson*, 481 U.S. at 685, 688.

c. Petitioners assert (Pet. 14-21) that the decision below conflicts with decisions from the Second, Fifth, Ninth, and Eleventh Circuits allowing service members' claims to proceed under the FTCA. Petitioners' contention is mistaken. Material factual differences between those cases and this one explain the different outcomes, and petitioners fail to identify any court of appeals that would come out the opposite way on the facts in this case.

In *Pierce* v. *United States*, 813 F.2d 349 (11th Cir. 1987), for example, the motorcycle accident at issue occurred off base and at a time when the service member had been granted a pass that was "akin to being on furlough." *Id.* at 353. As explained above, under the *Feres* doctrine, furlough is a meaningfully different status from off-duty hours, and an on-base injury is a particularly strong factor supporting the doctrine's application.

In *Taber* v. *Maine*, 67 F.3d 1029 (2d Cir. 1995), and *Schoenfeld* v. *Quamme*, 492 F.3d 1016 (9th Cir. 2007), service members were permitted to bring FTCA claims for injuries sustained while on liberty for the weekend

and while traveling on roads that, although on base, were open to the general public with fewer restrictions. See *Taber*, 67 F.3d at 1032; *Schoenfeld*, 492 F.3d at 1017-1018. By contrast, SSgt. Beck was merely off-duty for one hour during the middle of his workday when his accident occurred at an intersection that was not accessible to the general public. See p. 2, *supra*.

The decisions in *Parker* v. *United States*, 611 F.2d 1007, 1014 (5th Cir. 1980), and *Johnson* v. *United States*, 704 F.2d 1431 (9th Cir. 1983), are inapposite for similar reasons. In *Parker*, the injured service member's accident occurred at a time when he had been granted the right to be absent from his regular duties for four days and five nights, see 611 F.2d at 1013, and in *Johnson*, the service member had been released from duty for the rest of the day when his accident occurred, see 704 F.2d at 1438 & n.3. Moreover, both cases emphasized that *Feres* would have barred suit had the service members' injuries occurred while they were engaging in "activities arising from life on the military reservation." *Id.* at 1437 (quoting *Parker*, 611 F.2d at 1014).

Petitioners also assert (Pet. 29-30) a broader disagreement among the courts of appeals over which factors matter most when determining whether a particular injury was "incident to service." Once again, no such conflict exists. *Feres* is a context-dependent doctrine, and different factors may be more important in different contexts. In sum, there is no need for this Court to provide guidance to the lower courts regarding the *Feres* doctrine in this kind of case.

d. Petitioners further contend (Pet. 24-32) that *Feres* should not bar their suit because the three rationales that this Court offered for its interpretation of the FTCA in *Feres* purportedly do not apply to the facts

here. Whether *Feres* bars a particular claim, however, turns on whether the plaintiff's injury is "incident to service," not on an individualized assessment of the presence or force of the general *Feres* rationales. *Johnson*, 481 U.S. at 686, 691-692 (citation omitted). In any event, this case implicates all three of those rationales.

Petitioners argue (Pet. 12 n.2) that two of the original rationales for *Feres*—the "distinctively federal" character of the relationship between the military and service members, and the availability of no-fault statutory benefits for service-related injuries, see 340 U.S. at 143-145—do not apply because this Court has since discarded them altogether. The Court rejected that argument in *Johnson*, reaffirming the continuing validity of both rationales. See 481 U.S. at 689-690.[1]

Both of these rationales support applying the *Feres* bar to petitioners' claims. Because of the "distinctively federal" relationship between "the government and members of its armed force," the government's liability for SSgt. Beck's accident should not be governed by state law. *Johnson*, 481 U.S. at 689 (quoting *Feres*, 340 U.S. at 143); see *Orr* v. *United States*, 486 F.2d 270, 274-275 (5th Cir. 1973) (FTCA liability turns on "'the law of

---

[1] In *Shearer*, this Court stated that the distinctively-federal-character and alternative-compensation rationales for *Feres* were "no longer controlling." 473 U.S. at 58 n.4. The FTCA claim in *Shearer*, however, was precluded because the complaint in that case facially challenged the management of the military and "basic choices about the discipline, supervision, and control of [service members]." *Id.* at 58. The Court in *Johnson* subsequently clarified that *Shearer* did not, by holding that this additional rationale supported the *Feres* bar under the circumstances of that case, declare the other *Feres* rationales immaterial where—as in *Johnson* and many other *Feres* cases—"military negligence is not specifically alleged" on the face of the complaint. *Johnson*, 481 U.S. at 691.

the place where the act or omission occurred'" even when "the claim in question arises on federal property, such as a military installation") (quoting 28 U.S.C. 1346(b)(1)). And petitioners are entitled to various forms of compensation and benefits in light of SSgt. Beck's military status. See p. 2, *supra*.

Petitioners acknowledge (Pet. 27-28) the continued viability of the third rationale for *Feres*: the avoidance of judicial intrusion into military discipline and decision making. But they contend (Pet. 13) that it does not apply in this case because their claims do not "involve second-guessing military orders" or otherwise relate to a military mission. That is far too cramped a view of the third *Feres* rationale. Petitioners' suit implicates military decision making because it might require courts to scrutinize how the armed forces ensure safety on their bases. And permitting suits like this one could unduly interfere in military decision making by requiring the military to consider reallocating and expending greater military resources to avoid tort liability in suits by service members. See *Schoemer*, 59 F.3d at 30.

2. Petitioners alternatively ask this Court (Pet. 21-33) to limit or overrule *Feres*. In *Johnson*, however, this Court specifically "reaffirm[ed] the holding of *Feres*," 481 U.S. at 692, including its rule that "service members cannot bring tort suits against the Government for injuries that 'arise out of or are in the course of activity incident to service,'" *id.* at 686 (quoting *Feres*, 340 U.S. at 146). And in the decades since *Johnson*, the Court has repeatedly denied petitions for a writ of certiorari urging that *Feres* be overruled, reexamined, or limited. See, *e.g.*, *Carter* v. *United States*, 145 S. Ct. 519 (2025) (No. 23-1281); *Doe* v. *United States*, 141 S. Ct. 1498 (2021) (No. 20-559); *Siddiqui* v. *United States*, 140

S. Ct. 2512 (2020) (No. 19-913); *Jones* v. *United States*, 139 S. Ct. 2615 (2019) (No. 18-981); *Daniel* v. *United States*, 139 S. Ct. 1713 (No. 18-460); *Buch* v. *United States*, 138 S. Ct. 746 (2018) (No. 17-744); *Futrell* v. *United States*, 138 S. Ct. 456 (2017) (No. 17-391); *Ford* v. *Artiga*, 137 S. Ct. 2308 (2017) (No. 16-1338); *Davidson* v. *United States*, 137 S. Ct. 480 (2016) (No. 16-375); *Ritchie* v. *United States*, 572 U.S. 1100 (2014) (No. 13-893); *Read* v. *United States*, 571 U.S. 1095 (2013) (No. 13-505); *Lanus* v. *United States*, 570 U.S. 932 (2013) (No. 12-862); *Purcell* v. *United States*, 565 U.S. 1261 (2012) (No. 11-929); *Witt* v. *United States*, 564 U.S. 1037 (2011) (No. 10-885); *Zmysly* v. *United States*, 560 U.S. 925 (2010) (No. 09-1108); *Matthew* v. *Department of the Army,* 558 U.S. 821 (2009) (No. 08-1451); *McConnell* v. *United States*, 552 U.S. 1038 (2007) (No. 07-240); *Costo* v. *United States,* 534 U.S. 1078 (2002) (No. 01-526); *Richards* v. *United States*, 528 U.S. 1136 (2000) (No. 99-731); *O'Neill* v. *United States*, 525 U.S. 962 (1998) (No. 98-194); *Schoemer* v. *United States*, 516 U.S. 989 (1995) (No. 95-528); *Hayes* v. *United States*, 516 U.S. 814 (1995) (No. 94-1957); *Sonnenberg* v. *United States*, 498 U.S. 1067 (1991) (No. 90-539). The Court should deny review here as well.

a. Although "not an inexorable command," the benefit of stare decisis is that "it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Kimble* v. *Marvel Entm't, LLC*, 576 U.S. 446, 455 (2015) (citation omitted). Any decision to overrule precedent thus requires "'special justification'—over and above the belief 'that the precedent was wrongly decided.'" *Ibid.* (citation omitted). Stare decisis has

"enhanced force" in statutory-interpretation cases because "Congress can correct any mistake it sees." *Ibid.*; see *John R. Sand & Gravel Co.* v. *United States*, 552 U.S. 130, 139 (2008) ("Congress remains free to alter what we have done.") (citation omitted). That is especially true where overturning the longstanding precedent of *Feres* would expand the waiver of the United States' sovereign immunity to suit for money damages, given Congress's central role in controlling the public fisc and determining the United States' amenability to suit. Petitioners have not met the exceedingly high bar that would be necessary for the Court to abandon its established precedent in these circumstances.

Petitioners argue (Pet. 22-33) that *Feres* was not correctly decided as an initial matter, and that supposed changes in the underpinnings of *Feres* over the years justify its reconsideration. They focus (Pet. 22-25) on the argument that *Feres* is inconsistent with the FTCA's text, largely echoing Justice Scalia's dissent in *Johnson*, 481 U.S. at 692. The majority in *Johnson*, however, squarely rejected those contentions based on the "three broad rationales" discussed above (pp. 11-13, *supra*): the distinctively federal character of the relationship between the military and service members, the availability of certain no-fault statutory benefits for service-related injuries, and the avoidance of judicial intrusion into military discipline and decision making. *Johnson*, 481 U.S. at 688-691.

Petitioners contend (Pet. 25) that *Feres* has proved unworkable, but it is petitioners' preferred rule that would be difficult to apply. As this Court explained in *Stanley*, the "'incident to service'" test "provides a line that is relatively clear and that can be discerned with less extensive inquiry into military matters" than would

a "test for liability that depends on the extent to which particular suits would call into question military discipline and decisionmaking." 483 U.S. at 682-683. That the *Feres* test is fact-specific and context-dependent does not make it unworkable.

Petitioners also argue that overruling *Feres* "would not upset expectations." Pet. 32 (citation omitted). That too is wrong. Petitioners take a narrow view of the reliance interests at stake, observing that the government "is not hiring negligent drivers or negligent surgeons on the basis that it will escape liability for their actions against servicemembers." *Ibid.* That is true, of course, but it misses the point. As explained above, upending *Feres* would require the military to consider reallocating military resources to avoid tort liability in suits by service members. It would also impose liability on the government in circumstances where Congress, as discussed below, would reasonably believe that federal sovereign immunity remains intact. Overruling *Feres* would thus indeed "upset expectations." *Ibid.*

b. Congress's actions since *Feres* further counsel against revisiting the FTCA's incident-to-service bar.

When *Johnson* was decided in 1987, this Court observed that Congress had not "changed [the *Feres*] standard in the close to 40 years since it was articulated," even though "Congress 'possesses a ready remedy' to alter a misinterpretation of its intent." 481 U.S. at 686 (quoting *Feres*, 340 U.S. at 138). The Court accordingly "decline[d] to modify the doctrine at th[at] late date." *Id.* at 688.

Since *Johnson*, "Congress has spurned multiple opportunities," *Kimble*, 576 U.S. at 456, to enact proposed

legislation that would overrule or limit *Feres*.[2] Congress's actions in the National Defense Authorization Act for Fiscal Year 2020 (2020 Defense Act), Pub. L. No. 116-92, 133 Stat. 1198, vividly illustrate that it understands the *Feres* rule to be embedded in the FTCA's "statutory scheme, subject (just like the rest) to congressional change." *Kimble*, 576 U.S. at 456. In the course of considering that legislation, the House of Representatives passed an amendment that would have partially repealed the *Feres* rule by allowing service members to recover under the FTCA for certain service-related claims for medical malpractice. See S. 1790, 116th Cong. § 729 (amendment as passed by the House of Representatives, Sept. 17, 2019). The Senate, however, passed a bill with no similar provision. See H.R. Rep. No. 333, 116th Cong., 1st Sess. 1280 (2019). The House of Representatives and the Senate ultimately reached a compromise. See *id.* at 1281. Congress declined to amend the FTCA, and instead amended the Military Claims Act (MCA), 10 U.S.C. 2731 *et seq.*, to authorize administrative review and payment of certain service members' claims for medical malpractice. See 2020 Defense Act § 731, 133 Stat. 1457-1460 (10 U.S.C. 2733a). This Court should not override Congress's

---

[2] See, *e.g.*, S. 2451, 116th Cong., 1st Sess. (2019); H.R. 2422, 116th Cong., 1st Sess. (2019); H.R. 6585, 115th Cong., 2d Sess. (2018); H.R. 1517, 112th Cong., 1st Sess. (2011); H.R. 1478, 111th Cong., 1st Sess. (2009); S. 1347, 111th Cong., 1st Sess. (2009); H.R. 6093, 110th Cong., 2d Sess. (2008); H.R. 4603, 109th Cong., 1st Sess. 15-16 (2005) (proposed addition of Section 2161(c)(1)(E) to the Public Health Service Act, 42 U.S.C. 201 *et seq.*); H.R. 2684, 107th Cong., 1st Sess. (2001); H.R. 3407, 102d Cong., 1st Sess. (1991); H.R. 536, 101st Cong., 1st Sess. (1989); S. 2490, 100th Cong., 2d Sess. (1988); S. 347, 100th Cong., 1st Sess. (1987); H.R. 1054, 100th Cong., 1st Sess. (1987).

judgment—recently reiterated—that the incident-to-service bar should be retained in the FTCA.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

D. JOHN SAUER
Solicitor General
BRETT A. SHUMATE
Assistant Attorney General
LOWELL V. STURGILL JR.
Attorney

JULY 2025