No. 25-___

In the Supreme Court of the United States

THE GLYNN ENVIRONMENTAL COALITION, INC., CENTER FOR A SUSTAINABLE COAST, INC., AND JANE FRASER,

Petitioners,

v.

SEA ISLAND ACQUISITION, LLC,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Clean Water Act generally prohibits filling in wetlands that qualify as "waters of the United States." *See* 33 U.S.C. § 1311(a). Landowners who want to confirm whether wetlands on their property fall within that definition may obtain an "approved jurisdictional determination" from the U.S. Army Corps of Engineers, which is subject to judicial review. 33 C.F.R. § 331.2; *see U.S. Army Corps of Eng'rs v. Hawkes Co.*, 578 U.S. 590, 597-99 (2016). Landowners may also, however, forego that process and simply seek a permit from the Corps based on a "preliminary jurisdictional determination." *See* 33 U.S.C. § 1344(a); 33 C.F.R. § 331.2. Those who do agree that "all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States" and that accepting the permit "precludes any challenge to such jurisdiction . . . in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court." Pet. App. 9a.

The question presented is:

Is a Clean Water Act permittee's waiver of "any challenge" to the jurisdictional status of a wetland "in any Federal court" limited to government suits to enforce permit conditions, thereby allowing jurisdictional challenges in suits by states and private citizens under the Act's citizen suit provision?

PARTIES TO THE PROCEEDINGS

The caption contains all the names of all the parties to the proceedings below.

STATEMENT OF RELATED PROCEEDINGS

The proceedings directly related to this petition are:

- *The Glynn Environmental Coalition, Inc., Center for a Sustainable Coast, Inc., Jane Fraser v. Sea Island Acquisition, LLC*, 146 F.4th 1080 (11th Cir. 2025).
- *The Glynn Environmental Coalition, Inc., Center for a Sustainable Coast, Inc., Jane Fraser v. Sea Island Acquisition, LLC*, 26 F.4th 1235 (11th Cir. 2022).
- *The Glynn Environmental Coalition, Inc.; Center for a Sustainable Coast, Inc.; and Jane Fraser v. Sea Island Acquisition, LLC*, No. CV 219-050 (S.D. Ga. Mar. 1, 2024).

RULE 29.6 STATEMENT

The Glynn Environmental Coalition, Inc., has no parent corporation and no publicly listed company owns 10% or more of its stock. Center for a Sustainable Coast, Inc., has no parent corporation and no publicly listed company owns 10% or more of its stock.

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INTRODUCTION

The nation's wetlands are one of its most important, and vulnerable, resources. They act as filters for our drinking water, buffers against rising sea levels and seasonal flooding, and essential habitats for plants and animals, including fully half of the country's endangered species.[1] Yet, since the nation's founding, we have lost more than half of our original wetlands and what remains is shrinking at an alarming and accelerating rate.[2]

Protecting our remaining wetlands is one of the central purposes of the Clean Water Act, 33 U.S.C. § 1251 *et seq.* To that end, the statute generally prohibits filling in wetlands falling within the statute's purview, except as permitted by the U.S. Army Corps of Engineers ("Corps"), subject to important conditions and limitations. Congress understood that government enforcement of these protections would be insufficient. It therefore enacted a broad citizen suit provision, deputizing affected members of the public to act as "private attorneys general" to supplement the government's efforts. *Middlesex Cnty. Sewerage Auth. v. Nat'l Sea Clammers Ass'n*, 453 U.S. 1, 16-17 (1981) (citing 33 U.S.C. § 1365(g)). And it defined states as "citizens" entitled to enforce the Act through these citizen suit provisions. *See U.S. Dep't of Energy v. Ohio*, 503 U.S.

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[1] *See* U.S. EPA, EPA 843-F-01-002d, Threats to Wetlands 1 (Sept. 2001), https://tinyurl.com/4ppd54ra; U.S. Fish & Wildlife Serv., Status and Trends of Wetlands in the Coterminous United States 2009 to 2019 Report to Congress (2024) ("Status and Trends"), https://tinyurl.com/mpv395w3; U.S. EPA, *Why are Wetlands Important?*, https://tinyurl.com/53ymcn89 (last updated July 23, 2025) ("Why are Wetlands Important").

[2] *See* Status and Trends, *supra*, p. 17.

607, 614 n.5 (1992) (citing 33 U.S.C. § 1365(a), (g); 42 U.S.C. § 6972).

The Eleventh Circuit's decision in this case will impede the work of those private attorneys general as well as the government itself. The question its decision presents arises from a problem that occurs when a landowner seeks a permit to fill a wetland without first obtaining an official determination from the Corps as to whether that water resource falls within the scope of the Clean Water Act. Frequently, the work allowed by the permit will make it difficult, if not impossible, to determine after the fact whether the wetlands were sufficiently connected to the nation's navigable waterways to fall within the Act's jurisdiction. And that would create real problems for proving jurisdiction in any subsequent action alleging that the landowner disregarded permit conditions or otherwise violated the statute.

The Corps could have addressed this dilemma by refusing to consider permit applications until the landowner had obtained an approved jurisdictional determination from the Corps. That process involves "extensive factfinding by the Corps regarding the physical and hydrological characteristics of the property," *U.S. Army Corps of Eng's v. Hawkes Co.*, 578 U.S. 590, 597 (2016), and preserves a record of the relevant jurisdictional evidence, in the event of any future dispute. But as an accommodation to landowners wishing to avoid the delay and expense of that process, the Corps instead accepts applications for permits without such a determination, on the condition that permittees waive "any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court." U.S.

Army Corps of Eng'rs, Regulatory Guidance Letter No. 16-01, app. 2, ¶ 2(6) (Oct. 2016) ("RGL 16-01").

In this case, the Eleventh Circuit engrafted two extratextual limitations into that waiver. First, the court held that the waiver applies only in actions to enforce the permit's conditions, thereby allowing a landowner to contest jurisdiction in any other kind of proceeding (*e.g.*, a government enforcement action alleging illegal dumping of barrels of toxic waste into the wetland before obtaining the permit). Pet. App. 10a-11a. Second, the Eleventh Circuit held that the waiver does not apply to citizen suits at all. *Id.* 11a-13a. Both limitations conflict with the plain language of the waiver's text and will dramatically undermine enforcement of the statute unless this Court intervenes.

OPINIONS BELOW

The decision of the court of appeals (Pet. App. 1a-31a) is reported at 146 F.4th 1080. The decision of the district court (Pet. App. 32a-45a) is unreported but available at 2024 WL 1088585.

JURISDICTION

The judgement of the court of appeals was entered on July 29, 2025. Pet. App. 1a. The court of appeals denied a timely petition for rehearing on August 29, 2025. *Id.* 46a. Justice Thomas extended the time for filing this petition through January 26, 2026. No. 25A582. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISION

Section 1365(a) of the Clean Water Act provides, in relevant part:

> Except as provided in subsection (b) of this section and section 1319(g)(6) of this title, any

> citizen may commence a civil action on his own behalf--
>
> > (1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of (A) an effluent standard or limitation under this chapter or (B) an order issued by the Administrator or a State with respect to such a standard or limitation . . . .
>
> The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such an effluent standard or limitation, or such an order, or to order the Administrator to perform such act or duty, as the case may be, and to apply any appropriate civil penalties under section 1319(d) of this title.

STATEMENT OF THE CASE

I. Legal Background

A. General Scheme Of The Clean Water Act

In 1972, recognizing that prior federal efforts to protect the nation's water resources had "been inadequate in every vital aspect," Congress enacted what is now known as the Clean Water Act. *City of Milwaukee v. Illinois & Michigan*, 451 U.S. 304, 310 (1981) (quoting S. Rep. No. 92-414, at 7 (1971)). The Act's overarching objective is "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters" and to ensure "the protection and propagation of fish, shellfish, and wildlife" that depend on those waters. 33 U.S.C. § 1251(a), (a)(2); *see also PUD No. 1 of Jefferson*

Cnty. v. Washington Dep't of Ecology, 511 U.S. 700, 704 (1994).

This includes checking the runaway destruction of wetlands. *See, e.g.*, *United States v. Riverside Bayview Homes, Inc.*, 474 U.S. 121, 132-33, 136-39 (1985). After slowing to an extent in the middle of the last century, net wetland losses accelerated during the first decades of this century.[3] The U.S. Fish and Wildlife Service reports that the annual "rate of net wetland loss" "accelerated by over 50%" between studies covering 2004-2009 and 2009-2019.[4] Those losses are catastrophic. Wetlands serve as filters for the nation's waters, preventing agricultural runoff and other pollutants from reaching larger rivers and water sources.[5] They also afford vital protection for flood-prone areas, absorbing and slowly releasing heavy rains and storm surges.[6] It is estimated that wetland losses between 2001 and 2016 cost taxpayers more than $600 million each year in claims against the National Flood Insurance Program alone.[7] Filtering rain and flood waters through wetlands also slows and limits the transport of sediment downstream, helping slow erosion and the filling of navigation channels.[8] In addition,

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[3] Status and Trends, *supra*, p. 8.

[4] *Id.* p. 17.

[5] *See, e.g.*, *id.* p. 28; Why are Wetlands Important, *supra*; U.S. EPA, Off. of Rsch. & Dev., Connectivity of Streams & Wetlands to Downstream Waters: A Review & Synthesis of the Scientific Evidence ES-2-3 (Jan. 2015) ("Connectivity Report").

[6] *See* Connectivity Report, *supra*, pp. ES-2-3; *see also* Charles A. Taylor & Hannah Druckenmiller, *Wetlands, Flooding, and the Clean Water Act*, 112 Am. Econ. Rev. 1334, 1337, 1352 (2022).

[7] Taylor & Druckenmiller, *supra*, p. 1356.

[8] *See* Status and Trends, *supra*, p. 10; Why are Wetlands Important, *supra*; Connectivity Report, *supra*, pp. ES-2-3.

"[r]oughly half of the species protected under the U.S. Endangered Species Act are wetland-dependent, including the American crocodile, chinook salmon, whooping crane, bog turtle, manatee, and several orchid species."[9] About "80% of protected birds [also] depend on wetlands."[10]

To protect such vital resources, the Clean Water Act "established a new system of regulation under which it is illegal for anyone to discharge pollutants into the Nation's waters except pursuant to a permit." *City of Milwaukee*, 451 U.S. at 310-11. In particular, the Act prohibits "the discharge of any pollutant" into the "waters of the United States." *See* 33 U.S.C. §§ 1311(a), 1362(6)-(7), (12)(A). "Pollutants" include dredged or other fill materials. *Id.* § 1362(6). The Corps may issue permits for discharges, including to fill in wetlands covered by the Act, but only when certain conditions are met. *Id.* § 1344.[11] The permit holder is shielded from enforcement actions by the government and private plaintiffs for otherwise unlawful discharges so long as the permit conditions are observed. *Id.* § 1344(p).

Congress deemed essential public participation in the creation—and enforcement—of clean water standards. *See* 33 U.S.C. § 1251(e) (declaring that "[p]ublic participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program established by the Administrator . . . shall be provided for, encouraged, and assisted by the Administrator and the States").

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[9] Status and Trends, *supra*, p. 10 (citation and footnotes omitted).

[10] *Ibid.* (footnote omitted).

[11] The Corps typically will issue a permit only if the applicant has also obtained the necessary certifications from the state in which the project takes place. *See* 33 U.S.C. § 1341(a)(1).

Consistent with that philosophy, Congress provided for citizen suits for violations of the statute's most essential provisions to supplement government efforts. *See id.* § 1365(a)(1). In bringing such actions, citizens operate as "private attorneys general." *Nat'l Sea Clammers*, 453 U.S. at 16-17. States are likewise authorized to enforce the Act through the same provision by virtue of falling under the Act's definition of a "citizen." *See U.S. Dep't of Energy v. Ohio*, 503 U.S. 607, 614 n.5 (1992) (citing 33 U.S.C. § 1365(a), (g); 42 U.S.C. § 6972).

B. Clean Water Act Permitting

The Corps issues individual and nationwide permits. Individual permits are specific to a particular property and may only be awarded after publication of the application and an opportunity for public hearings. 33 U.S.C. § 1344(a). That process can be time-consuming and costly. *See U.S. Army Corps of Eng'rs v. Hawkes Co.*, 578 U.S. 590, 594-95 (2016). Accordingly, the Act also allows the Corps to issue general nationwide permits for certain categories of activities that "will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment." 33 U.S.C. § 1344(e)(1).

In deciding whether to issue either kind of permit, the Corps considers "probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest." 33 C.F.R. § 320.4(a)(1). The Corps then "balance[s]" the "benefits which reasonably may be expected to accrue from the proposal . . . against its reasonably foreseeable detriments." *Ibid.*

C. Jurisdictional Waivers

Of course, a permit is required only if the affected waters fall within the jurisdictional scope of the Act. The statute regulates discharges into "navigable waters," defined as "the waters of the United States." 33 U.S.C. §§ 1311(a), 1362(7), (12)(A). The "waters of the United States" include "those relatively permanent, standing or continuously flowing bodies of water forming geographical features that are described in ordinary parlance as streams, oceans, rivers, and lakes, as well as any wetland having a continuous surface connection with that water." *Sackett v. EPA*, 598 U.S. 651, 671, 678 (2023) (cleaned up). A continuous surface connection can exist despite "temporary interruptions in surface connection" caused, for example, by "low tides or dry spells." *Id.* at 678. Moreover, "a landowner cannot carve out wetlands from federal jurisdiction by illegally constructing a barrier on wetlands otherwise covered by the [Act]." *Id.* at 678 n.16.

Because it sometimes can be difficult to determine whether a particular parcel of property contains "jurisdictional waters," landowners can ask the Corps to issue an "'approved jurisdictional determination' stating the agency's definitive view on that matter." *Hawkes*, 578 U.S. at 593; *see also* 33 C.F.R. § 331.2; RGL 16-01, *supra*. An approved jurisdictional determination is subject to judicial review. *See Hawkes*, 578 U.S. at 596-97, 602.

A landowner wishing to avoid the expense and delay of obtaining an approved jurisdictional determination may elect to seek a "preliminary jurisdictional determination" through a truncated procedure. *See* RGL 16-01, *supra*, p. 3. At the end of that process, the Corps will determine whether the property may contain jurisdictional waters. *See Hawkes*, 578 U.S. at 595 (citing 33 C.F.R. § 331.2). The applicant can then decide to

either seek a formal, approved determination (and, if necessary, judicial review of that decision) or to accept the preliminary determination and apply for a permit. *See Sackett*, 598 U.S. at 670-71.

If the landowner elects to apply for a permit, it acknowledges that:

> accepting a permit authorization . . . *constitutes agreement* that all wetlands and other water bodies on the site affected in any way by that activity *are jurisdictional waters of the United States*, and *precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court.*

Pet. App. 9a (emphasis added); *see also* RGL 16-01, app. 2, ¶ 2(6).

II. Factual Background

Respondent Sea Island operates a hotel on St. Simon's Island in Georgia. Respondent wished to fill in certain wetlands on its property and cover them with sod. Pet. App. 6a. Water from those wetlands naturally flowed into an adjacent salt marsh and, from there, into Dunbar Creek, a traditionally navigable waterway. *Id.* 6a-7a. The wetland and the marsh were artificially separated by a private road built by respondent's predecessor, but the water flow between the two was maintained via culverts and pipes. *Id.* 7a, 18a. The wetlands acted as a filter for water making its way into Dunbar Creek and were home to a variety of bird species, including egrets, herons, cranes, gulls, osprey, and pelicans, as well as plant species adapted to wetlands. Amended Complaint ¶ 44.[12]

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[12] The Amended Complaint is found beginning at page 237 of the Eleventh Circuit Appendix, Volume II.

Because the project would require a permit unless the wetlands fell outside the jurisdiction of the Clean Water Act, respondent sought a preliminary jurisdictional determination from the Corps. Pet. App. 2a. The Corps concluded that the wetland "might contain 'waters of the United States.'" *Ibid.* Respondent elected not to seek an approved jurisdictional determination, from which it could have sought judicial review if it believed that the wetlands fell outside the purview of the Clean Water Act. *Ibid.* Instead, respondent applied for a permit. *See ibid.*

Since no nationwide permit was available for filling in wetlands for mere landscaping purposes, respondent was required to seek an individual permit. Doing so would have subjected its request to public notice and comment. It also would have required respondent to convince the Corps that the benefits of its landscaping project outweighed the environmental damage of eliminating a portion of the Island's protective wetlands. *See* 33 C.F.R. § 320.4(a) (requiring the Corps to conduct a public interest review).

To avoid this scrutiny, respondent instead applied for Nationwide Permit 39. Pet. App. 4a. That permit allows landowners, under certain specified conditions, to fill wetlands "for the construction . . . of commercial and institutional building foundations and . . . attendant features . . . necessary for the use and maintenance of the structures." Reissuance of Nationwide Permits, 77 Fed. Reg. 10184, 10279 (Feb. 21, 2012). In creating that Nationwide Permit, the Corps determined that when the requirements of the permit are satisfied, the public benefits of creating new commercial or institutional facilities outweighs the environmental costs. *See* 33 C.F.R. § 320.4(a).

To obtain the permit, respondent falsely represented that it intended to build a new office building and parking lot over the filled-in wetland. *See* Amended Complaint ¶ 115. However, planning documents submitted to county authorities immediately before and after requesting the Clean Water Act permit showed no such building. *See id.* ¶¶ 126-28. Instead, the final construction plans given to the county candidly identified the wetlands area proposed to be impacted as "PERMANENT SODDING." *See id.* ¶ 127.

After securing the permit, respondent filled in the wetland and covered it with sod. Pet. App. 6a; Amended Complaint ¶ 121. It never constructed any office building or parking lot on the site. Pet. App. 6a. As a consequence, it failed to comply with the requirements of Nationwide Permit 39, which would not have been issued in the first place but for respondent's false representations.

III. Procedural History

Petitioners are local environmental groups and a private citizen living near the now-destroyed wetland. Had respondent filed for an individual permit, petitioners would have been entitled to participate in public hearings on whether the permit should be granted. And had respondent told the truth about its plans, petitioners could have opposed the application on the ground that the environmental costs of the project far outweighed any public benefit from replacing a diverse and vibrant wetland with a lawn.

1. When it became apparent that respondent had no intention of building on the site, and therefore had obtained its permit through deception, petitioners filed this action under the Act's citizen suit provision. The district court initially dismissed for lack of standing, but the Eleventh Circuit reversed. *See* Pet. App. 7a; *Glynn Env't Coal., Inc. v. Sea Island Acquisition, LLC*, 26 F.4th

1235 (11th Cir. 2022). On remand, the district court again dismissed, this time on the ground that the wetland was not a part of the "waters of the United States" under this Court's intervening decision in *Sackett v. EPA*, 598 U.S. 651 (2023). *See* Pet. App. 44a-45a. The court acknowledged petitioners' argument that respondent had waived the right to challenge the jurisdictional status of the wetland in the course of obtaining its permit. *Id.* 40a-41a. But the court believed that respondent's challenge "is an argument that cannot be waived." *Id.* 41a.

2. Petitioners appealed but the Eleventh Circuit affirmed. The court did not accept the district court's holding that respondent's argument was non-waivable.[13] The court further acknowledged that "[o]n its face, the capacious language of the waiver would seem to encompass citizen suits against violations of the permit." Pet. App. 10a. But it nonetheless concluded that the waiver did not extend to this action for three reasons.

First, the court believed that because the waiver is triggered by acceptance of a permit, that "framing defines the scope of the waiver." Pet. App. 10a. Although applicants agree not to challenge jurisdiction in "'any . . . compliance or enforcement action,'" the court believed that the "text is best read to mean any enforcement *of the permit*." *Ibid.* (emphasis in original). Accordingly, the Eleventh Circuit held that even in an enforcement action by the government, permittees are free to challenge jurisdiction if the plaintiff alleges, for example, that the landowner was discovered to have dumped barrels of toxic waste into the wetland for years before seeking the permit.

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[13] The Eleventh Circuit also rejected respondent's arguments that *Sackett* had deprived the district court of subject matter jurisdiction and rendered the case moot. Pet. App. 15a.

Second, although the court acknowledged that a "'judicial compliance or enforcement action'" may encompass actions brought by private citizens, it nonetheless thought that the "phrases most naturally mean administrative or compliance actions brought *by the Corps* to enforce the permit." Pet. App. 12a (emphasis added). This precludes enforcing the waiver both in citizen suits and in actions by agencies other than the Corp, such as the Environmental Protection Agency, or a state.

Third, excluding citizen suits was consistent with the court's view that permits "function like contracts between the Corps and the permit holder." Pet. App. 12a-13a (finding that the waiver operates as a kind of quid pro quo for "an expedited determination and a shortcut into the permitting process" (cleaned up)). "And under general contract law, only a party to a contract or an intended third-party beneficiary may sue to enforce the terms of a contract." *Id.* 13a (cleaned up).

Accordingly, the Eleventh Circuit refused to enforce the waiver against respondent and proceeded to decide whether the complaint adequately alleged that the subject wetland fell within the jurisdiction of the Clean Water Act. The panel concluded that it did not, finding that petitioners had failed to sufficiently allege a continuous surface connection between the wetland and Dunbar Creek. Pet. App. 17a. The court acknowledged that petitioners had provided an expert report documenting that when it rains, excess water from the wetland enters the adjacent salt marsh, which is "'directly connected by surface and ground water to Dunbar Creek.'" *Id.* 17a-18a. It further recognized that the expert testified that "prior tidal exchange occurred between Dunbar Creek and the wetland." *Id.* 18a (cleaned up). But the Court found this insufficient to

plausibly allege a "continuous" surface connection, noting that at the time of the permit application, "the roads and sections of upland already divided the wetland from the salt marsh." *Ibid.* The court did not point to anything in the Complaint indicating that this road had been lawfully constructed between the wetland and the marsh, and respondents provided no evidence that a permit from the Corps for such construction had ever been obtained. *Id.* 17a-21a; *see Sackett*, 598 U.S. at 678 n.16.

Judge Pryor wrote a concurrence to his own opinion for the court, writing separately to express his view that the Act does not "allow citizen suits to enforce permits issued under section 1344," a defense respondent had not raised on appeal, the district court never addressed, and no other member of the panel embraced. Pet. App. 23a.[14]

The panel subsequently denied a timely petition for panel rehearing. Pet. App. 46a.

REASONS FOR GRANTING THE PETITION

The court of appeals misapplied this Court's precedents and the basic rules governing motions to dismiss in determining that the subject wetlands fell outside the jurisdiction of the Clean Water Act. But the Eleventh Circuit committed an even more fundamental and far-reaching error in reaching that question in the first place. The court acknowledged that the Corps has reasonably provided that if a landowner desires a Clean Water Act permit, it must either first obtain an official determination from the Corps that the Act applies to the subject waters or waive any challenge to such jurisdiction in "*any* . . . . judicial compliance or enforcement action" in

[14] After briefing was completed, the Court ordered the parties to be prepared to discuss this question at oral argument. C.A. Doc. 45. It then granted the parties' motions to submit supplemental briefs on the topic. C.A. Docs. 47 & 53.

"*any* administrative appeal or in *any* Federal court." Pet. App. 9a (emphasis added). By its plain terms that waiver applies to all enforcement actions, including citizen suits. The Eleventh Circuit nonetheless refused to give that unmistakable language its unambiguous breadth.

That error is consequential and should be corrected in this case. At the very least, if the Court has any doubts about the court of appeal's ruling or the importance of the question presented, it should call for the views of the United States, which has unique insights into both issues.

I. The Eleventh Circuit's Construction Of The Waiver Language Is Wrong.

The Eleventh Circuit acknowledged that "[o]n its face, the capacious language of the waiver would seem to encompass citizen suits against violations of the permit." Pet. App. 10a. After all, the waiver applies to "'any'" enforcement proceeding in "'any Federal court,'" *id.* 9a, which obviously includes this case brought under the Act's private attorney general provision. As this Court has repeatedly explained, "[r]ead naturally, the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'" *United States v. Gonzales*, 520 U.S. 1, 5 (1997) (quoting Webster's Third New International Dictionary 97 (1976)); *see also, e.g.*, *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 220 (2008) ("Congress' use of 'any' to modify 'other law enforcement officer' is most naturally read to mean law enforcement officers of whatever kind."). Thus, the "term 'any' ensures that the definition has a wide reach." *Boyle v. United States*, 556 U.S. 938, 944 (2009).

The Eleventh Circuit gave three reasons for reading "any" to mean "some," but none has any merit.

1. First, the court reasoned that because the waiver was required in exchange for a permit, it should be read

to apply only to actions for "enforcement *of the permit*." Pet. App. 10a (emphasis in original). Perhaps the Corps could have decided that the waiver should be qualified in that way, but that limitation is nowhere to be found in the waiver's text. *See, e.g.*, *Gonzales*, 520 U.S. at 5 (where the drafters "did not add any language limiting the breadth of that word," a court is not free to give the term "any" less breadth than its plain meaning requires).

In similar circumstances, this Court has rejected attempts to read such avowedly unrestricted language as containing implicit qualifications. *See Dep't of Hous. & Urb. Dev. v. Rucker*, 535 U.S. 125, 130-31 (2002) ("Congress' decision not to impose any qualification in the statute, combined with its use of the term 'any' to modify 'drug-related criminal activity,' precludes any knowledge requirement."); *Gonzales*, 520 U.S. at 9 (acknowledging dissent's policy concerns with broad reading, but responding that "the straightforward language of § 924(c) leaves no room to speculate about congressional intent"); *Harrison v. PPG Indus.*, Inc., 446 U.S. 578, 592-93 (1980) (rejecting policy argument in favor of narrow reading of phrase "any other final action" on ground that this "is an argument to be addressed to Congress, not to this Court" where giving language its natural reading "is not wholly irrational"); *see also Gallardo By & Through Vassallo v. Marstiller*, 596 U.S. 420, 433-34 (2022) (rejecting reliance on "possible unfairness" of broad reading of "any rights" to "payment for medical care" because interpretation is "dictated by the Medicaid Act's text, not our sense of fairness" (cleaned up)).

Indeed, this Court has relied on the breadth of the word "any" to reach results that it has acknowledged Congress may not have intended, noting that the "fact that a statute can be applied in situations not expressly anticipated by Congress does not demonstrate ambiguity.

It demonstrates breadth." *Massachusetts v. EPA*, 549 U.S. 497, 528 (2007) (citation omitted).

Here, in contrast, there is nothing surprising about the Corps' requirement that applicants waive the right to challenge the jurisdictional status of the waters under review in "any" future proceeding, even if the proceeding was not brought by the Corps to enforce a permit. The work a permit allows will often make it substantially more difficult, perhaps impossible, to determine the prior jurisdictional status of the waters. This case provides a good example. Suppose that after the permit were issued and the wetland filled, the Corps discovered that respondent had been illegally burying barrels of toxic chemicals from its hotel in the wetland for years. Deciding whether the wetland *used to* have a "continuous surface connection" with the adjacent marsh and Dunbar Creek at the time of the dumping, *see Sackett*, 598 U.S. at 670-71, would be exceedingly difficult once the wetland had been destroyed and most evidence of its original water flow lost.

The Eleventh Circuit nonetheless suggested that "*any* . . . compliance or enforcement action" should be read to mean *some subset of* compliance or enforcement actions because waivers require a "voluntary, intentional relinquishment" of a "known right." *See* Pet. App. 10a-11a (quotation marks omitted). But the best way to ensure that a waiver is knowing and voluntary is to interpret it according to its unambiguous meaning. Even in contexts in which courts strain to give waivers narrow constructions—such as waivers of sovereign immunity—they will still give the waiver a broad reading when "the words of a statute are unambiguous, as they are here." *Sebelius v. Cloer*, 569 U.S. 369, 381 (2013) (cleaned up); *see also, e.g.*, *Dep't of Agric. Rural Dev. Rural Hous. Serv. v. Kirtz*, 601 U.S. 42, 58 (2024) ("[I]t is error to grant

sovereign immunity based on inferences from legislative history in the face of clear statutory direction waiving that immunity.").

2. The court also believed that two canons of construction supported its reading.

First, the panel noted that the waiver arises from a "preliminary jurisdictional determination," which it viewed as "focus[ing] on enforcement actions by the Corps." Pet. App. 11a. Invoking the principle that "a 'text must be construed as a whole,'" the court concluded that this meant that "there is little reason to think that the waiver binds [respondent] in citizen suits." *Ibid.* (quoting Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation Of Legal Texts § 24, at 167 (2012)). That is incorrect.

The whole-text canon might be implicated if petitioners' reading rendered some other part of the text surplusage or gave the same terms different meanings in the same document. *See* Scalia & Garner, *supra*, § 24, at 167. But the Eleventh Circuit identified no such consequence here. The only aspect of the statute as a whole that the panel cited was the fact that the waiver arises from a permit application, which it seemingly took as an indication that the purpose of the waiver was to relieve the Corps from having to prove jurisdiction in actions to enforce the permit. Pet. App. 11a. But that reasoning represents the kind of "abuse" of the canon of which Justice Scalia warned. *See* Scalia & Garner, *supra*, § 24, at 167-68 ("It is not a proper use of the canon to say that since the overall purpose of the statute is to achieve *x*, any interpretation of the text that limits the achieving of *x* must be disfavored."). As discussed above, the context the Eleventh Circuit cited might, at most, provide a reason why the Corps could have chosen to write a

narrower waiver; it is no basis for departing from the waiver's clear text.[15]

The panel also invoked the associated-words, or *noscitur a sociis*, cannon. Pet. App. 12 (citing Scalia & Garner, *supra*, § 31, at 195). It observed that the waiver extends to a list of forums, some of which are limited to actions brought by the Corps (*e.g.*, an "'administrative . . . action'" or "'administrative appeal'"). Pet. App. 12a. From this, the court reasoned that although the remaining forums are *not* so limited (*i.e.*, "'judicial compliance or enforcement action'" in "'any Federal court'"), they should nonetheless be given a restrictive reading to match the narrower scope of the other references. *Ibid.* This reasoning fails as well.

As Justice Scalia explained, in applying the associated-words canon, courts must identify a "common quality" shared by *all* the words. *See* Scalia & Garner, *supra*, § 31, at 196. Moreover, the "common quality suggested by a listing should be its most general quality—the least common denominator, so to speak—relevant to the context." *Ibid.* This Court has therefore repeatedly reversed lower courts for invoking the cannon to cherry pick a meaning shared by only *some* of the words in a list to narrow the otherwise ordinary meaning of a remaining term. *See, e.g.*, *Schindler Elevator Corp. v. United States ex rel. Kirk*, 563 U.S. 401, 409 (2011); *Graham Cnty. Soil & Water Conservation Dist. v. United States ex rel. Wilso*n, 559 U.S. 280, 287-88 (2010).

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[15] The panel's premise that preliminary jurisdictional determinations are focused on government enforcement actions is also wrong. Indeed, preliminary jurisdictional determinations play no role in enforcement actions at all because they are not binding on the Corps or the landowner. *See Hawkes*, 578 U.S. at 595.

In this case, what the items in the list have in common—their least common denominator—is that each is a forum in which a jurisdictional challenge could be made. That *some* of the forums are limited to government enforcement actions is not a basis for giving the other terms an unnaturally restricted meaning nowhere else suggested in the text.

In the end, no canon of construction can justify departing from the plain and utterly unambiguous language of the waiver provision the Corps wrote. "Rules of statutory construction are to be invoked as aids to the ascertainment of the meaning or application of words otherwise obscure or doubtful." *Russell Motor Car Co. v. United States*, 261 U.S. 514, 519 (1923). "They have no place, as this court has many times held, except in the domain of ambiguity." *Ibid.*; *see, e.g.*, *United States v. Stevens*, 559 U.S. 460, 474 (2010) (associated-words canon applies only to interpretation of an "ambiguous term" and is not applicable where text "contains little ambiguity"); *Harrison*, 446 U.S. at 588-89 (refusing to apply closely related *ejusdem generis* canon to construe phrase "any other final action" because the cannon, "while firmly established, is only an instrumentality for ascertaining the correct meaning of words when there is uncertainty" (cleaned up)).

3. Finally, the court of appeals concluded that "permits based on preliminary jurisdictional determinations function *like* contracts between the Corps and the permit holder" and therefore should be enforceable only by a "party" to that contract, which excludes private parties and states invoking the citizen suit provision. Pet. App. 12a-13a (emphasis added). The analogy is inapt.

To begin, those who apply for, and obtain, a government permit are not parties to a contract with the

government. Instead, a permit represents the government's exercise of regulatory authority to control pollution, not a negotiated exchange of promises between equal parties. Permit holders are participants in a regulatory regime, with the consequences of their decisions dictated by regulations and other legal materials that are interpreted in accordance with the usual rules for construing legal texts—hence, the Eleventh Circuit's reliance on cannons of statutory construction in interpreting the waiver.

Nor are petitioners mere bystanders to this supposed "contract." Congress expressly elevated the role of affected citizens to that of "private attorneys general" when they act to enforce certain statutory obligations. *Middlesex Cnty. Sewerage Auth. v. Nat'l Sea Clammers Ass'n*, 453 U.S. 1, 16-17 (1981). Acting in that capacity, they perform a role more akin to a government enforcer than a beneficiary to a contract. For example, the plaintiff may seek civil penalties payable to the U.S. Treasury. *See* 33 U.S.C. § 1365(a) (cross-referencing *id.* § 1319(d)); *Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found., Inc.*, 484 U.S. 49, 53 (1987). Conversely, consistent with their quasi-government enforcement role, plaintiffs in a citizen suit may not seek personal, backward-looking relief, such as damages. *See Gwaltney*, 484 U.S. at 59, 61; *Nat'l Sea Clammers*, 453 U.S. at 18.

The statute further provides that a citizen suit is not permitted if the government itself has already "commenced and is diligently prosecuting" an enforcement action, *see* 33 U.S.C. § 1365(b)(1)(B), reflecting that "the citizen suit is meant to supplement . . . governmental action," *Gwaltney*, 484 U.S. at 59-60 (duplicate citizen and government suits barred "presumably because governmental action has rendered" the citizen suit "unnecessary"). And when a citizen suit is

filed, the plaintiff must serve a copy of the complaint on the Attorney General and Administrator, 33 U.S.C. § 1365(c)(3), who then have the option of intervening in the litigation. Likewise, citizen plaintiffs must give the government 45 days' notice before entry of any consent judgment, *ibid.*, allowing the government to submit any objections it may have to the decree.

Because citizen suits by private individuals and states serve the same fundamental function as a government enforcement action, it is entirely appropriate that the waiver the Corps required to facilitate enforcement of the statute would apply to a citizen suit as well. The basic problem the waiver addresses—that once the permit work is done, proving jurisdiction will be made far more difficult, and perhaps impossible—applies whether the enforcement action is initiated by the U.S. Attorney General, a private attorney general, or a state.

The government's enforcement interests are thus frustrated if the waiver is not enforced as written, regardless of who initiated the case. When meritorious private suits are stymied because the defendant has destroyed jurisdictional evidence after promising not to contest jurisdiction in "any Federal court," the government loses the opportunity for the benefits of appropriate enforcement (including the possibility of civil penalties, injunctions, and settlements) and is saddled with the task of having to undertake the litigation itself or let potentially significant violations escape a remedy if it lacks the resources to take over the case.

II. The Question Presented Is Important And Should Be Decided In This Case.

The Court should not delay correcting the Eleventh Circuit's wrong and harmful decision.

1. Although it is difficult to find public information on the number of waivers each year, it appears to be in the thousands. As discussed, a waiver arises every time a landowner applies for a permit without first seeking an approved jurisdictional determination. The Corps reports issuing "90,000 permits a year"[16] and making some "50,000 jurisdictional determinations."[17] Of those jurisdictional determinations, only a few thousand appear to be approved jurisdictional determinations—by petitioners' count, there were fewer than 4,000 in 2025.[18] Accordingly, from all appearances, the vast majority of the tens of thousands of permits issued each year are based on preliminary jurisdictional determinations and subject to the waiver provision at issue in this case.

As discussed above, the decision below diminishes the effectiveness of those waivers—and, consequently, enforcement of the statute—in two important ways. First, the Eleventh Circuit held that "the waiver applies only to actions to enforce the permit authorization." Pet. App. 10a. By its plain terms, that holding applies to any enforcement action, brought by private parties, a state, or the government. Moreover, the reasons the Eleventh Circuit gave for its holding—that the waiver arises in the context of a permit application and implicates permittees'

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[16] U.S. Army Corps of Eng'rs, *Environmental Program*, https://www.usace.army.mil/Missions/Environmental/ (last visited Jan. 25, 2026).

[17] U.S. Army Corps of Eng'rs, *Regulatory Permits*, https://www.iwr.usace.army.mil/Missions/Value-to-the-Nation/Regulatory/Regulatory-Permits/ (last visited Jan. 25, 2026).

[18] This is based on a review of the Corps' online database of approved jurisdictional determinations. *See* U.S. Army Corps of Eng'rs, USACE Regulatory Permits Database, https://permits.ops.usace.army.mil/orm-public# (last visited Jan. 25, 2026). The database does not include preliminary jurisdictional determinations.

right to make a "know[ing]" waiver, *see* Pet. App. 10a-11a—do not turn on the identity of the plaintiff. Accordingly, unless the Court intervenes, even the Corps is now precluded from relying on the waiver in any action to enforce provisions of the Act (say, those prohibiting pollution prior to obtaining the permit) even if the permittee has destroyed some or all of the jurisdictional evidence through the work authorized by the permit (*e.g.*, by filling in a wetland).

Second, the court held that the waivers do not apply in citizen suits. Pet. App. 11a. That holding will impair private and state enforcement of the statute in multiple ways. As just discussed, it will allow landowners to obtain a permit without the Corps undertaking an official approved jurisdictional determination, destroy much of the evidence needed for anyone (including states or private attorneys general) to prove jurisdiction, then contest jurisdiction in any state or private enforcement action alleging noncompliance with the permit or the statute.

As this Court has noted, it "is often difficult to determine whether a particular piece of property contains waters of the United States." *Hawkes*, 578 U.S. at 594. Identification of wetlands requires a landowner or a consultant to document the presence of hydric soils, hydrophytic vegetation, and the hydrology of the area, in accordance with technical procedures published by the Corps.[19] Identification of former soils, vegetation, and hydrology is even more difficult, and may be impossible, when the defendant has destroyed much of the

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[19] *See* U.S. EPA, *What is a Jurisdictional Delineation under CWA Section 404?*, https://www.epa.gov/cwa-404/what-jurisdictional-delineation-under-cwa-section-404 (last visited Jan. 25, 2026).

jurisdictional evidence. And it is expensive, typically requiring plaintiffs to hire experts to conduct extensive surveys and studies to establish the connection between wetlands and other waterways. *Cf. Hawkes*, 578 U.S. at 594-95 (discussing cost and time required to obtain permits).

The unfortunate effects of the Eleventh Circuit's rule are particularly acute in cases like this. Here, the size of the lost wetland is modest, making it difficult for environmental plaintiffs to raise the funds necessary to bring enforcement actions if required to prove the jurisdictional status the landowner agreed not to challenge when applying for the permit. Yet the cumulative effect of such small-scale developments has substantially contributed to the loss of more than half the nation's original wetlands since European settlement.[20]

The Court should act immediately to remove this barrier to fulsome enforcement of the Clean Water Act to protect the nation's wetlands. Further percolation is unnecessary. The Question Presented is purely legal and entirely straightforward. The harm of waiting far outweighs any potential benefit.

III. If Necessary, The Court Should Call For The Views Of The United States.

If the Court is unsure whether the Eleventh Circuit misconstrued the Corps' waiver provision, or whether any misconstruction warrants correction, it should call for the views of the United States.

As discussed, the decision below established an important limitation on the Government's ability to enforce the Act (as well as on the ability of states to effectively use the citizen suit provision). The court did

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[20] *See* Status and Trends, *supra*, pp. 17, 24.

so without hearing from the United States, which has not participated in the litigation to this point. Moreover, the United States is obviously well positioned to address the intended meaning of the waiver provision. And it could provide the Court useful insight into the practical implications of the decision below, including for the Corps' own enforcement program.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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