

**05-593 OSBORN V. HALEY**

DECISION BELOW:422 F3d 359

LOWER COURT CASE NUMBER: 04-5716, 04-5820

**QUESTIONS PRESENTED:**

When a federal employee is sued in a civil action in a state court, the Westfall Act, 28 U.S.C. § 2679(d)(2), authorizes the Attorney General to remove the action to federal district court-and seek to substitute the United States as the party defendant in place of the employee-by certifying that "the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose." As the court of appeals expressly acknowledged, this case presents two questions "that have split the circuits" for more than a decade, namely:

1. Whether the Westfall Act authorizes the Attorney General to certify that the employee was acting within the scope of his office or employment at the time of the incident solely by denying that such incident occurred at all.
2. Whether the Westfall Act forbids a district court to remand an action to state court upon concluding that the Attorney General's purported certification was not authorized by the Act.

Cert. Granted 5/15/2006

**IN ADDITION TO THE QUESTIONS PRESENTED BY THE PETITION, THE PARTIES ARE DIRECTED TO BRIEF AND ARGUE THE FOLLOWING QUESTION:**

Whether the court of appeals had jurisdiction to review the district court's remand order, notwithstanding 28 U.S.C. § 1447(d).