No. _____

In the
Supreme Court of the United States

MARK RANDALL MEADOWS,

Petitioner,

v.

THE STATE OF GEORGIA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Georgia has brought a criminal prosecution against a former White House Chief of Staff for actions that he took in the West Wing to assist the President. Petitioner Mark Meadows has denied those charges and asserted both federal immunity and the more modest statutory right to have that federal defense adjudicated in federal court. For nearly two centuries, Congress has provided a federal forum for federal officers facing criminal charges brought by state and local officials. Over time, Congress has consistently expanded access to federal forums for federal officers invoking federal defenses. Yet the court below became the first court "in the 190-year history of the federal officer removal statute" to hold that the statute offers no protection to former federal officers facing suit for acts taken while in office. App.17. Not content with bucking common sense and two centuries of history and precedent, the court then faulted Meadows for failing to satisfy a "causal-nexus" test that Congress abrogated in one of its amendments broadening the scope of federal-officer removal, as multiple circuits have recognized. None of this makes any sense. Indeed, two panel members wrote separately to implore Congress to prevent the "nightmare scenario[s]" unleashed by the novel interpretation adopted below. App.37. The far better course is for this Court to intervene.

The questions presented are:

1. Whether the right to remove an action against "any officer … for or relating to any act under color of such office," 28 U.S.C. §1442(a)(1), evaporates when the officer leaves federal office.

2. Whether §1442(a)(1) demands the kind of strict "causal-nexus" test that the Eleventh Circuit employed here now that Congress has amended the statute to cover not just suits "for," but also those "relating to," any act under color of office.

PARTIES TO THE PROCEEDING

Petitioner is Mark Randall Meadows. Respondent is the State of Georgia.

STATEMENT OF RELATED PROCEEDINGS

This case arises from and is directly related to the following proceedings:

- *The State of Georgia v. Mark Meadows*, No. 23-12958 (11th Cir.), judgment entered on December 18, 2023; petition for rehearing en banc denied on February 28, 2024.
- *The State of Georgia v. Meadows*, No. 1:23-cv-3621 (N.D. Ga.), order remanding entered September 8, 2023; order denying stay pending appeal entered September 12, 2023.
- *State of Georgia v. Donald John Trump, et al.*, No. 23SC188947 (Fulton Cnty. Super. Ct.), indictment filed on August 14, 2023.

This case is also related to the following proceedings:

- *State of Georgia v. David Shafer*, No. 23-13360 (11th Cir.), reply brief filed May 13, 2024.
- *State of Georgia v. Shawn Still*, No. 23-13361 (11th Cir.), reply brief filed May 13, 2024.
- *State of Georgia v. Cathleen Latham*, No. 23-13362 (11th Cir.), reply brief filed May 13, 2024.
- *State of Georgia v. Jeffrey Clark*, No. 23-13368 (11th Cir.), reply brief filed May 13, 2024.
- *The State of Georgia v. Shafer*, No. 1:23-cv-3720 (N.D. Ga.), order remanding entered September 29, 2023.

- *The State of Georgia v. Clark*, No. 1:23-cv-3721 (N.D. Ga.), order remanding entered September 29, 2023; order denying stay pending appeal entered November 9, 2023.
- *The State of Georgia v. Still*, No. 1:23-cv-3792 (N.D. Ga.), order remanding entered September 29, 2023.
- *The State of Georgia v. Latham*, No. 1:23-cv-3803 (N.D. Ga.), order remanding entered September 29, 2023.

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PETITION FOR WRIT OF CERTIORARI

Georgia has brought a criminal prosecution against Petitioner Mark Meadows for actions that he took while serving as the White House Chief of Staff. When state prosecutors wield their powers to file criminal charges against federal officers, federal law provides two essential safeguards. First, in certain circumstances, the Supremacy Clause guarantees immunity for conduct undertaken in furtherance of the officer's federal functions. Second, to avoid the risk that "hostile state courts" will not faithfully and neutrally adjudicate immunity and other federal defenses, *Willingham v. Morgan*, 395 U.S. 402, 405 (1969), Congress has for nearly two centuries allowed federal officers to remove to federal court any case implicating such a defense, *see* 28 U.S.C. §1442(a)(1).

For 190 years, that statutory right to remove was uniformly understood by courts to cover both current and former federal officers for actions taken during their tenure. What matters is their status at the time of actions for which they are being held to account, not their status at the time suit is filed. That makes sense, as federal protections cannot prevent the distortion of federal decisionmaking by current officeholders if they expire as soon as they leave office, as this Court reiterated just this past Term. *See Trump v. United States*, 144 S.Ct. 2312 (2024). Indeed, the proposition that former officers remain entitled to remove is so obvious that it did not even occur to Georgia or the district court to suggest otherwise. But that did not stop a panel of the Eleventh Circuit from making itself the first court "in the 190-year history of the federal officer removal

statute [to] rule[] that former officers are excluded from removal." App.17.

That decision defies statutory text, context, history, and common sense. In fact, two of the three members of the panel that issued it wrote separately to lament the "nightmare scenario" it ushers in. App.37. As they explained, allowing "a rogue state's weaponization of the prosecution power to go unchecked and fester" could ultimately "paralyze our democratic-republic system of government," which depends on having "talented and enthusiastic people willing to serve in public office." App.36-37. While a majority of the panel called for Congress to intervene, this Court can save Congress the trouble by granting certiorari and confirming that the existing statutory text does not inexplicably exclude former federal officers.

Not content with eliminating removal for former officers, the Eleventh Circuit also faulted Meadows for failing to demonstrate a "causal nexus" between the state's charges and his official duties, which it insisted required proof that the Chief of Staff's "authority … extend[s] to an alleged conspiracy to overturn valid election results." App.22. But as at least six circuits have recognized, Congress abrogated the "causal-nexus" test in 2011 when it amended the federal-officer removal statute to permit removal of suits not just "for," but also "relating to," any act under color of federal office. And even when that test held sway, this Court repeatedly made clear that it did not demand accepting all the state's allegations as true or conducting a full-blown adjudication of the merits at the jurisdictional threshold. Yet that is exactly what

the Eleventh Circuit did here, deepening a lopsided circuit split in the process.

The magnitude and consequences of those two holdings is underscored by this Court's recent decision in *Trump*. Echoing the essential lesson of *Nixon v. Fitzgerald*, 457 U.S. 731 (1982), this Court reiterated that the threat posed by prosecutions against federal officers for actions relating to their federal functions does not evaporate once they leave federal office. Just as immunity protection for former officers is critical to ensuring that current and future officers are not deterred from enthusiastic service, so too is the promise of a federal forum in which to litigate that defense. To the extent the outer boundaries of the applicable immunities are underdeveloped and fact intensive, that is all the more reason why a federal forum is imperative. And while courts may struggle with whether tobacco companies and health insurers are entitled to remove, a White House Chief of Staff facing criminal charges based on actions relating to his work for the President of the United States should not be a close call—especially now that this Court has recognized that federal immunity impacts what evidence can be considered, not just what conduct can form the basis for liability. Any test that relegates to state court sensitive questions about whether and to what extent the Chief of Staff's activities in service of the President can form the basis of a criminal prosecution has gone seriously awry. The decision below is not just wrong, but dangerously so. The Court should grant review, or at the very least vacate and remand in light of *Trump*.

OPINIONS BELOW

The Eleventh Circuit's opinion is reported at 88 F.4th 1331 and reproduced at App.1-46. The opinion of the Northern District of Georgia is reported at 692 F.Supp.3d 1310 and reproduced at App.48-88.

JURISDICTION

The Eleventh Circuit denied a timely filed petition for rehearing en banc on February 28, 2024. Justice Thomas extended the time to file a petition for a writ of certiorari to July 27, 2024. This Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Relevant constitutional and statutory provisions are reproduced in the Appendix.

STATEMENT OF THE CASE

1. The federal-officer removal statute authorizes removal of any "civil action or criminal prosecution" against "any officer (or any person acting under that officer) … for or relating to any act under color of such office." 28 U.S.C. §1442(a)(1). That venerable statute has a centuries-long pedigree, predating even the grant of general federal-question jurisdiction.[1] Section 1442(a)(1) is the successor to the 1833 Force Act, enacted during the Nullification Crisis to provide removal protection to "any officer of the United States, or other person," involved in enforcing customs revenue laws. *See Tennessee v. Davis*, 100 U.S. 257, 268 (1879). And at pivotal moments in federal-state

[1] *See* Act of March 3, 1875, ch. 137, §1, 18 Stat. 470, 470 (codified as amended at 28 U.S.C. §1331).

relations, Congress has repeatedly expanded the removal statute to protect still more federal officials faced with the prospect that state suits might seek to retaliate against them for pursuing federal priorities to the chagrin of state and local authorities with different agendas. That includes customs officials harassed in New England during the War of 1812, *Willingham*, 395 U.S. at 405, Union officers targeted by insurrectionists during the Civil War and Reconstruction, *Mitchell v. Clark*, 110 U.S. 633, 639 (1884), and prohibition enforcers implementing the Volstead Act, *Maryland v. Soper*, 270 U.S. 9, 31-32 (1926). The core of the act is "[o]bviously … an attempt to protect federal officers from interference by hostile state courts." *Willingham*, 395 U.S. at 405.

The statute's form follows its function. Unlike statutory federal-question jurisdiction, which turns on the existence of a federal issue "on the face of [a] well-pleaded complaint," *Franchise Tax Bd. of Cal. v. Constr. Laborers Vacation Tr. for S. Cal.*, 463 U.S. 1, 14 (1983), Congress granted removal to protect any officer whose asserted "*defense* depends on federal law," *Jefferson Cnty. v. Acker*, 527 U.S. 423, 431 (1999) (emphasis added). The defense need not be proven at the outset. Indeed, the *raison d'être* of federal-officer removal is "to have the validity of the defense of official immunity tried in a federal court." *Id.* Thus, "[a]n officer's federal defense need be only colorable to assure the federal court that it has jurisdiction to adjudicate the case." *Kircher v. Putnam Funds Tr.*, 547 U.S. 633, 644 n.12 (2006).

2. Mark Meadows served as the 29th Chief of Staff to the President of the United States from March 31,

2020, to January 20, 2021. The Chief of Staff is the President's closest advisor and one of the most important unelected officials and non-Senate-confirmed officials in the federal government. The Chief of Staff is responsible not just for advising the President on all manner of official matters, but for mediating between the President's private and public schedules to ensure the President has sufficient time to focus on his daunting official responsibilities. Meadows was no exception to this rule. He advised the President on everything from the COVID-19 pandemic to military operations to ensuring that the President's re-election campaign did not unduly distract the President from his official responsibilities. CA11.App.391:8-14, 394:2-14.

In 2023, the Fulton County District Attorney indicted Meadows, along with former President Trump and 17 others, on charges related to alleged interference in the 2020 presidential election. CA11.App.15-112. Of the 41 counts, only two are brought against Meadows: Count 1, which alleges that Meadows engaged in a racketeering conspiracy with the President, and Count 28, which alleges that Meadows participated in an effort to solicit a public officer to violate his oath. CA11.App.27, 101.

As to Count 1, the indictment alleges that Meadows conspired with the President to try to "change the outcome of the election in favor of Trump," CA11.App.28, and that Meadows participated in eight "overt acts" in furtherance of that conspiracy:

- Meeting with the Michigan Speaker of the House and Senate Majority Leader "in the Oval Office at the White House," where

Trump "made false statements concerning fraud" in the election.

- Sending a text message to a member of Congress asking for the number of the "speaker and the leader of the PA Legislature" because "POTUS wants to chat with them."
- Meeting with the President and a "group of Pennsylvania legislators at the White House and discuss[ing] holding a special session of the Pennsylvania General Assembly."
- Meeting with the President and another person to "request[] that [the other person] prepare a memorandum outlining a strategy for disrupting and delaying the joint session of Congress on January 6, 2021."
- Traveling to the Cobb County Civic Center in Georgia to "attempt[] to observe the signature match audit being performed there."
- "Arrang[ing]" a "telephone call" between the President and the Georgia Secretary of State Chief Investigator in which the President "falsely stated that he had won the election."
- Sending a text message to the Investigator asking if the "signature verification" could be "sp[ed] up" before January 6.

CA11.App.35-36, 38, 58-59.

As to Count 28, the indictment alleges that Meadows facilitated a telephone call between President Trump and Georgia Secretary of State Brad Raffensperger during which the President allegedly asked Raffensperger to unlawfully influence the election's outcome. CA11.App.101.[2]

All the acts alleged in the indictment took place while Meadows was serving as Chief of Staff, and all but one took place from inside the West Wing.

3. Meadows promptly removed the case to federal court under §1442(a)(1), asserting immunity under the Supremacy Clause. CA11.App.113-26. The district court ordered an evidentiary hearing, CA11.App.127-37, during which Meadows voluntarily testified for several hours.

Describing his role as Chief of Staff, Meadows explained that he was the most "senior official in charge of the Executive Office of the President"—other than the President himself—and frequently attended meetings as a trusted advisor. CA11.App.383, 385, 392. He arranged meetings between the President and both public officials and private citizens for myriad purposes. And regardless whether the President's reason for holding a meeting was official,

[2] The state trial court has dismissed that count because the indictment did "not give the Defendants enough information to prepare their defenses intelligently." Order 7, *Georgia v. Trump*, No. 23SC188947 (Mar. 13, 2024). The District Attorney appealed the dismissal, and several defendants appealed the district court's refusal to disqualify the District Attorney from the case based on conflicts of interest. The Georgia Court of Appeals stayed all trial-court proceedings pending its review of the disqualification appeal.

personal, or political, Meadows participated as part of his job, as he needed to have "an understanding of what was going on" in case he needed, e.g., to redirect the President's focus to critical issues of national and/or international import. CA11.App.404-06. That included understanding the President's political and campaign objectives, in order to manage his time and compete with the campaign for his attention. CA11.App.398, 402-03, 405-06. And, in the wake of the election, it included filtering the tsunami of election-fraud allegations flowing to the President: Meadows needed to understand what was coming across the President's desk, separate the "wheat from the chaff," and route allegations to DOJ and/or the campaign as appropriate. CA11.App.406-10.

Meadows also addressed all the overt acts in the indictment. While he denied several allegations altogether, he explained that, even if true, they still alleged actions related to his role as the principal and general advisor, assistant, and coordinator for the President. *See* CA11.Br.8-9 (collecting citations). For example, Meadows testified that he did not attend the Pennsylvania meeting except to tell several attendees that they could not approach the President due to positive COVID-19 tests. CA11.App.419-20. He denied asking for the January 6 memo, but testified that he would have been involved in any related matters only in his official capacity. CA11.App.420-22. And as to the lone act outside the White House, the trip to Cobb County, Meadows testified that the trip was to gather information for the President. CA11.App.447:14-449:2, 451:9-454:1.

As for the Raffensperger call, Meadows testified that he was on the line to ensure that he would understand the substance of the call so he would be "able to speak with some kind of direction and authority on allegations that were being made." CA11.App.499:8-12. Raffensperger, who also testified, confirmed that Meadows was on the line "on behalf of the President," CA11.App.590:14, and testified that Meadows said nothing "inappropriate" on the call, CA11.App.591:16.

4. The district court ordered the case remanded to state court. App.48-49. The court first acknowledged that the threshold inquiry is "whether Meadows was a federal officer during the time of the allegations in the Indictment," which the state conceded he was. App.55. The court also accepted that at least some of the charged conduct implicates Meadows' official duties. CA11.App.754. But the court posited that it is not enough that a "defendant can characterize individual instances of behavior as part of his official duties within the broader charged conduct"; in the court's view, a defendant must instead show that "the State is criminally prosecuting the officer for those specific acts." App.56-57. The court then maintained that there was "insufficient evidence to establish that the gravamen, or a heavy majority of overt acts alleged against Meadows relate to his role as White House Chief of Staff." App.82.

5. Meadows exercised his statutory right to appeal. 28 U.S.C. §1447(d). The Eleventh Circuit affirmed—on one ground that was concededly novel and another that exacerbates a circuit split. First, it avowedly became the first court in history to hold that

§1442(a)(1) does not cover *former* officers for actions taken under color of their office during their tenure—a proposition so counterintuitive and novel that it had not even occurred to Georgia or the district court until the panel injected the issue into the case via a *sua sponte* supplemental-briefing request. App.10-21. The court readily admitted that, "in the 190-year history of the federal officer removal statute, no court has ruled that former officers are excluded from removal." App.12-13, 17. And it acknowledged that this Court has reached the opposite conclusion in cases involving similar statutes, and has at least twice assumed that former officers *can* remove. App.12-13. But the court embraced its novel reading of the statute anyway, relying largely on circuit precedent positing that "officer" ordinarily does not include a "former officer." App.11 (citing *United States v. Pate*, 84 F.4th 1196 (11th Cir. 2023) (en banc)).

Second, the court held that Georgia's prosecution is not "for or relating to" acts done under color of federal office because there is purportedly an insufficient "causal nexus" between the "gravamen" of Georgia's allegations and official acts taken by Meadows. App.21-34. Ignoring an interceding 2011 amendment, the court invoked precedent addressing an earlier version of the statute for the proposition that an officer "must establish a 'causal connection between the charged conduct and asserted official authority.'" App.21 (quoting *Acker*, 527 U.S. at 431). Under that causal-nexus test, courts had to look to the "core of the factual allegations," App.24, which the court posited here was Meadows' "*association* with the alleged conspiracy," App.32. The court then found its causal-nexus test not satisfied. App.34.

Two of the panel's three members issued a concurrence in which they urged Congress to amend the statute to abrogate their first holding, lamenting the "profound" implications of greenlighting "unchecked" state and local "prosecutions of former federal employees for undertaking locally unpopular actions." App.36. As they explained, the "nightmare scenarios" that would ensue without removal protection for former officers confirm that the "government's interests in protecting … federal officers for carrying out their official duties do not evaporate as soon as a particular officer leaves her post." App.45. Nevertheless, they felt compelled to conclude that Congress mandated that illogical result.

REASONS FOR GRANTING THE PETITION

The Eleventh Circuit's miserly and counterintuitive construction of the federal-officer removal statute is egregiously wrong, wholly unprecedented, and exceptionally dangerous. What matters is a federal officer's status at the time of the conduct at issue, not her status at the time the prosecutor or plaintiff gets around to filing suit. As this Court just reaffirmed, all the justifications for immunity from suit apply equally to former officers and those justifications would be defeated if a current officer knows her actions will open her to criminal or civil liability once she leaves office. And what is true of substantive immunities is true *a fortiori* of the statutory right to a federal forum, as the prospect of facing suit in state court at the hands of any one of literally thousands of state and local prosecutors is chilling in the extreme. The Eleventh Circuit's

contrary conclusion is grievously wrong and necessitates this Court's intervention.

Denying former officers removal protection by focusing on officer status at the time the prosecutor or plaintiff decides to file suit, rather than when actions under color of federal office occurred, is unprecedented for a reason. It defies statutory text, context, and common sense. By its plain terms, §1442(a)(1) focuses on the nature of the conduct at issue—i.e., whether it involves acts taken "under color of law"—not on the defendant's status at the time of suit. That is especially evident given that the statute covers those "acting under" a federal officer too—a protection that could rarely be invoked if the defendant had to continue to be "acting under" a federal officer at the time of suit. And because former officers unquestionably retain immunity defenses for the official acts taken during their tenure, relegating those defenses and the sensitive determinations about their outer bounds to state court would defeat "[o]ne of the primary purposes of the removal statute," which is "to have the validity of the defense of official immunity tried in a federal court." *Willingham*, 395 U.S. at 407. That is particularly true of immunities grounded in the Supremacy Clause, which is the principal protection federal officers enjoy against the whims of literally thousands of state and local prosecutors.

The Eleventh Circuit's alternative "causal-nexus" holding deprives a recent statutory amendment of any force, while putting the court on the wrong side of a lopsided circuit split. Congress' latest amendment to the federal-officer removal statute continued a longstanding trend of broadening the circumstances in

which federal officers enjoy the benefit of a federal forum. Congress revised the federal-officer removal statute to permit removal of suits not just "for," but also "relating to," "any act" taken "under color of" law, 28 U.S.C. §1442(a)(1). In doing so, Congress eliminated the need to prove some "causal nexus" between the "heart" of the "indictment" and official conduct, as numerous circuits have recognized. App.22-23. And as obvious as that should have been when the decision below came down, it is even more so in the wake of this Court's decision in *Trump*. That decision makes clear that federal immunity fully protects former officers, often requires difficult and fact-intensive judgment calls at the margins, and provides not just a substantive immunity but a use immunity that protects against the use of official acts to try to hold a current or former federal officer liable for *un*official acts. All of those sensitive disputes plainly belong in federal court.

Both of those holdings would warrant this Court's attention in any case. But this is not just any case. The Chief of Staff is a unique federal officer, the top aide to a coequal branch of government personified by the President. If former officers cannot remove at all, and if even a current Chief of Staff cannot remove a case arising out of acts taken in the White House in service of the President, then the floodgates are open, and "nightmare scenarios" will not take long to materialize. Even a majority of the court below recognized that reality and called on Congress to intervene. But there is no need for Congress to fix what is not broken. This Court should intervene and reaffirm that the existing text does not relegate federal officers to state court to account for their

actions under color of federal office the moment they leave office.

I. The Eleventh Circuit's Unprecedented Holding That Former Officers Cannot Remove Is Egregiously Wrong.

As this Court and all others to consider the issue previously have repeatedly recognized, the federal-officer removal statute provides a federal forum for charges arising out of the official acts of those who were federal officers or were acting on their behalf "at the time of the incidents." *Mesa v. California*, 489 U.S. 121, 123 (1989). Statutory text, precedent, history, and the underlying rationale for federal-officer removal all make clear beyond cavil that the right to remove does not evaporate once an officer leaves office.

1. Section 1442(a)(1) permits removal of a suit against "any officer (or any person acting under that officer) of the United States … , in an official or individual capacity, for or relating to any act under color of such office." 28 U.S.C. §1442(a)(1). By its plain terms, that language contemplates that removal depends on whether a suit involves actions taken under color of federal office, not whether the defendant remains a federal officer at the time of suit.

First, by asking whether a suit is "for or relating to any act under color of such office," *id.*, the statute naturally puts the focus on the defendant's status "at the time of the incidents," *Mesa*, 489 U.S. at 123, not at some later juncture like indictment or removal or whenever a plaintiff or prosecutor gets around to filing suit. Indeed, the statute gives no guidance as to when status would be assessed if it is *not* at the time of the incidents. That itself is a strong indication that courts

are supposed to focus on the incidents. And not even the court below seems to think federal courts must yield jurisdiction over a removed suit if a federal officer resigns during litigation, but nothing in the statute makes that clear.

That is particularly telling since the statute expressly includes suits filed against officers in their "individual capacity." 28 U.S.C. §1442(a)(1). Unlike official-capacity suits, *see Lewis v. Clarke*, 581 U.S. 155, 162 (2017), individual-capacity suits can be brought or continued against federal officials long after they leave office. The statute thus expressly contemplates that it can be used to remove cases that can be litigated in federal court once an officer leaves office, undercutting any claim that Congress' sole concern is with "shielding officers performing current duties." App.19.

Moreover, the statute covers not just "any officer," but any "person acting under that officer." That coverage of non-governmental officials performing federal functions who are then sued for their troubles is proof positive that Congress took a functional, not formal, approach to federal-officer removal. What matters is not whether the defendant is a federal officer at the time of the suit—*or ever*. What matters is whether the defendant is sued for actions taken under color of federal office. In fact, this Court has expressly held that acting-under removal is available if, "in carrying out the 'act[s]' that are the subject of the … complaint, [the defendant] *was* 'acting under' any 'agency' or 'officer' of 'the United States.'" *Watson v. Philip Morris Cos.*, 551 U.S. 142, 147 (2007) (quoting 28 U.S.C. §1442(a)(1)) (emphasis added). The

rule could hardly be otherwise, as those invoking "acting-under" removal will almost always have been only temporary agents of federal officers. Indeed, one of this Court's seminal acting-under cases involved a private chauffeur who was merely assisting federal prohibition officers in a particular law-enforcement action. *See Soper*, 270 U.S. at 22-23. Rendering the right to remove dependent on the defendant's status at the time of the suit thus not only would shrink removal for federal officers, but would practically eliminate it for those acting under them.

Confining its protection to current officers would also defeat "[o]ne of the primary purposes of the removal statute," which is "to have the validity of the defense of official immunity tried in a federal court." *Willingham*, 395 U.S. at 407. It is, of course, black-letter law that immunity defenses turn on the nature of the challenged action, not the defendant's status at the time of suit, and so continue to protect former officers once they leave office. *See, e.g.*, *Nixon*, 457 U.S. at 756. Indeed, this Court reiterated that just this past Term, engaging in an extensive analysis of what immunity "a former President [has] for actions taken during his Presidency." *Trump*, 144 S.Ct. at 2326. Yet if federal-officer removal turned on the defendant's status at the time of the lawsuit rather than at the time of the acts underlying it, then former officers would be forced to litigate their federal immunity defenses in state court. In that regard, it bears emphasis that the justification for providing a *federal* forum is to avoid prejudice, not just distraction of current office holders. Being subject to suit, especially criminal prosecutions and individual-capacity suits, is distracting no matter where the case

is litigated. But a federal forum provides a forum attuned to federal priorities and free from local prejudices. The need for that federal forum hardly ends when a federal officer turns in her federal government ID.

Finally, reading the statute to cover former officers better accords with its history. The original 1833 version authorized removal of any action against any "officer of the United States, *or other person*, for or on account of any act done under the revenue laws of the United States." Force Act of 1833, ch. 57, 4 Stat. 632, 633 (emphasis added); *accord, e.g.*, Act of March 3, 1863, ch. 81, §5, 12 Stat. 755, 756 ("any suit or prosecution … against any officer … *or against any other person*, for any arrest or imprisonment made, or other trespasses or wrongs done or committed … at any time during the present rebellion, by virtue or under color of any [federal] authority" (emphasis added)). The "or other person" language would be nonsensical if the right to remove turned on the defendant's status at the time of the lawsuit rather than at the time of the relevant act.

2. The Eleventh Circuit resisted all these textual and contextual cues in favor of becoming the first court in history to deny a federal forum to federal officers sued after they leave office. None of its reasons for reaching that unprecedented conclusion holds water.

First, invoking circuit precedent, the court posited that "the ordinary meaning of 'officer' does not include 'former officer.'" App.11 (quoting *Pate*, 84 F.4th at 1201-02). But as the dissenters in that case explained, it is actually quite common both in ordinary parlance and in statutes to use terms like "officer" or

"employee" to include formers. *See Pate*, 84 F.4th at 1219-20 (Lagoa, J., dissenting). Take, for instance, the closely related Westfall Act, which makes a suit against the United States the exclusive remedy for damages "resulting from the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment." 28 U.S.C. §2679(b)(1). That act precludes actions "against the employee" or "against *the estate of such employee*," *id.* (emphasis added)—a phrase that makes no sense if "employee" does not include "former employees."

The Eleventh Circuit next emphasized the different language in §1442(b), which allows removal of an action "by an alien against any citizen of a State who is, or at the time the alleged action accrued was, a civil officer of the United States and is a nonresident of such state." 28 U.S.C. §1442(b). The court posited that because subsection (b) expressly refers to the defendant's status "at the time the alleged action accrued," the exclusion of comparable language from subsection (a)(1) must reflect an intentional effort to exclude former officers. App.11.

At the outset, trying to draw inferences about §1442(a)(1) from §1442(b) is a dubious enterprise, for although they are now codified together, the two provisions were enacted separately and 40 years apart. *See Fourco Glass Co. v. Transmirra Prods. Corp.*, 353 U.S. 222, 227-28 (1957) (subsequent section rearrangement through 1948 codification of Title 28 has no substantive effect "unless … clearly expressed"); *cf. Gutierrez v. Ada*, 528 U.S. 250, 257-58 (2000) ("drafting difference … four years after

enacting the phrase at issue" is "'beside the point' in reading the first enactment"). Moreover, unlike §1442(a)(1), which authorizes removal of suits involving particular *conduct*, §1442(b) is exclusively status-based—i.e., removal is not limited to suits challenging acts taken under color of federal office, but extends to any suits brought by an alien against certain defendants. Congress thus *had* to specify when the defendant must have the relevant status for the statute to make sense. And without the "or at the time the alleged action accrued was" clause, the present tense "is … a civil officer" would plainly exclude former officers. That problem does not arise in §1442(a)(1) because it does not contain any present-tense language that could affirmatively exclude former officers. If anything, then, the fact that Congress expressly included former officers when it was forced to confront the question in §1442(b) is a reason to reject the Eleventh Circuit's reading, not to embrace it.[3]

That alone suffices to defeat the Eleventh Circuit's claim that "Congress has had ample

[3] The Eleventh Circuit's reliance on the 1911 version of the removal statute was equally misplaced. While that version authorized removal of an action "against any person for [or] on account of anything done by him while an officer of either House of Congress in the discharge of his official duty, in executing any order of such House," 36 Stat. 1087, 1097, §33 (Mar. 3, 1911), Congress has since revised that provision to permit removal for any suit against "[a]ny officer of either House of Congress, for any act in the discharge of his official duty under an order of such House," 62 Stat. 869, 938 (June 25, 1948). There is zero indication that Congress intended that wording change to eliminate removal for former House members—yet that is the necessary implication of the Eleventh Circuit's logic.

opportunity to modify" the purported "discrepancy" between §1442(a)(1) and §1442(b) but "has not done so." App.15; *see also Cent. Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 186 (1994) ("It does not follow that Congress' failure to overturn a statutory precedent is reason for this Court to adhere to it." (alteration omitted)). But Congress can hardly be expected to step in to address a potential problem that it is not aware exists, and not a single court in nearly 200 years had held that federal officers lose removal protection once they leave office.

Finally, the Eleventh Circuit put a thumb on the scale against removal, insisting that federal courts must hesitate to interfere with "a State's right to make and enforce its own criminal laws." App.19. But this Court has long instructed that the federal-officer removal statute must be "liberally construed," *Watson*, 551 U.S. at 147, not given "a narrow, grudging interpretation," *Willingham*, 395 U.S. at 407. *See also, e.g.*, *Colorado v. Symes*, 286 U.S. 510, 517 (1932) ("It scarcely need be said that" the act is "to be liberally construed[.]"). That makes sense, as removal does not prevent a state from enforcing its law. It just ensures an "impartial setting … in which the federal defense of immunity can be considered." *Arizona v. Manypenny*, 451 U.S. 232, 242 (1981); *see Davis*, 100 U.S. at 266 (rejecting proposition that "it is an invasion of the sovereignty of a State to withdraw from its courts into the courts of the general government the trial of prosecutions for alleged offences against the criminal laws of a State"). And any effort to interpret §1442(a) more grudgingly in criminal cases would defy not only this Court's liberal-construction

precedent but also the statutory text, which applies equally to a "civil action or criminal prosecution."

It would also defy this Court's recent decision in *Trump*. As the Court explained in recognizing that Presidents retain substantial immunity after they leave office, immunity exists not just to protect current officers from the distractions of litigation, but "to protect against the chilling effect [later legal] exposure might have on the carrying out of" an officer's duties. *Trump*, 144 S.Ct. at 2325. That was long settled as to civil liability, *see Nixon*, 457 U.S. at 756, but *Trump* emphasized that the concern is even more pronounced as to criminal charges because "[p]otential criminal liability, and the peculiar public opprobrium that attaches to criminal proceedings, are plainly more likely to distort … decisionmaking than the potential payment of civil damages." *Trump*, 144 S.Ct. at 2331. And the threat from a single federal prosecutor is magnified a thousand-fold when it comes to state criminal laws that are enforced by innumerable state and local prosecutors, including many hoping to make a name for themselves in pursuit of higher office. The Eleventh Circuit was therefore simply wrong to insist that the only interest at stake here is "[s]hielding officers performing current duties." App.19.

In short, the decision below not only bucks 200 years of history, but defies text, context, precedent, and common sense. And it threatens acknowledged "nightmare scenario[s]" in which former federal officers facing rogue politicized prosecutions for unpopular federal policies "may not see a federal forum until much of the damage has been done." App.36. The Court should grant certiorari and restore

the long-recognized removal protection that Congress afforded federal officers.

II. The Eleventh Circuit's "Causal-Nexus" Test Conflicts With Statutory Text, This Court's Cases, And Decisions From Other Circuits.

Relying largely on this Court's decision in *Acker*, the Eleventh Circuit in the alternative faulted Meadows for purportedly failing to prove a "causal connection between the charged conduct and asserted official authority." App.21 (quoting *Acker*, 527 U.S. at 431). But the court neglected to mention that Congress has broadened the federal-officer removal statute since *Acker* was decided. As nearly every court to consider that 2011 amendment has recognized, it abrogated Acker's "causal-nexus" test. Yet rather than join the majority of its sister circuits in abandoning that test, the Eleventh Circuit applied a particularly demanding variant of it, setting the removal bar unrealistically high.

A. The Decision Below Inexplicably Ratchets Up a Causal-Nexus Test that the Statute No Longer Requires.

1. Before 2011, the federal-officer removal statute asked if a suit was "*for* an[y] act under color of office," a phrase this Court interpreted to require the officer to "show a nexus, a causal connection between the charged conduct and asserted official authority." *Acker*, 527 U.S. at 431. But in 2011, Congress amended the statute to permit removal of an action "for *or relating to* any act under color of such office," 28 U.S.C. §1442(a)(1) (emphasis added). *See* Removal Clarification Act of 2011, Pub. L. No. 112-51, §2(b)(1)(A), 125 Stat. 545, 545.

Multiple courts have recognized the "significance of the insertion of the words 'or relating to,'" *In re Commonwealth's Motion*, 790 F.3d 457, 471 (3d Cir. 2015): "Congress broadened federal officer removal to actions, not just *causally* connected, but alternatively *connected* or *associated*, with acts under color of federal office." *Latiolais v. Huntington Ingalls, Inc.*, 951 F.3d 286, 292 (5th Cir. 2020) (en banc); *see also, e.g.*, *Moore v. Elec. Boat Corp.*, 25 F.4th 30, 35 (1st Cir. 2022); *Sawyer v. Foster Wheeler LLC*, 860 F.3d 249, 258 (4th Cir. 2017); *Baker v. Atl. Richfield Co.*, 962 F.3d 937, 944 (7th Cir. 2020); *Bd. of Cnty. Comm'rs v. Suncor Energy (U.S.A.) Inc.*, 25 F.4th 1238, 1251 (10th Cir. 2022); *District of Columbia v. Exxon Mobil Corp.*, 89 F.4th 144, 155-56 (D.C. Cir. 2023).

As the Third Circuit explained in reaching that conclusion, the "ordinary meaning" of "relating to" "'is a broad one—to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with.'" *Commonwealth's Motion*, 790 F.3d at 471. So only a "'connection' or 'association' between the act in question and the federal office" is required. *Id.* That reading is bolstered by the legislative history of the amendment, which makes plain that it was "intended to 'broaden the universe of acts that enable Federal officers to remove to Federal court.'" *Id.* at 471-72 (quoting H.R. Rep. No. 112-17 (2011)). In short, "[a]fter the amendment, the statute does not require a causal connection between acts taken under color of federal office and the basis for the action." *Exxon Mobil*, 89 F.4th at 155.

2. Without even acknowledging the intervening amendment substantially broadening the statutory text, the Eleventh Circuit blithely continued to apply *Acker*'s "causal-nexus" test. App.21. The court thus explicitly rejected the proposition that "so long as any *one*" of Meadows' actions "related to his official duties, he is entitled to remove." App.22. It instead insisted that it must look to the "gravamen" of the state's charges against Meadows, which it took to be not the specific conduct alleged in the indictment, but the legal prerequisite that Meadows "agree[d] to join the [alleged] conspiracy." App.23 (emphases altered). The court then proceeded to analyze removability through the lens of whether the Chief of Staff's "authority … extend[s] to an alleged conspiracy to overturn valid election results." App.22.

There are any number of problems with that approach, the first being that it deprives the 2011 amendment of all force. The whole point of adding the words "or relating to" was to ensure that the defendant does not have to prove that the prosecution is "for" an act taken under color of federal law; it is now enough that it is "*connected or associated*[] with" such an act. *Latiolais*, 951 F.3d at 292. Even accepting the dubious proposition that the "gravamen" of this prosecution is the alleged agreement to join a conspiracy, not the conduct alleged to constitute overt acts in furtherance of that conspiracy, the prosecution is plainly at least related to that conduct. Indeed, that is why those "overt acts" are alleged in the indictment. So the Eleventh Circuit was simply wrong to insist that all that matters is whether the "culpable 'act'" of allegedly agreeing to be part of a conspiracy was itself taken under color of law. App.22. The statutory text

demands a broader inquiry into whether the charges relate to official conduct.

Once again, the court's error is particularly pronounced in light of *Trump*. As *Trump* made clear, federal immunity guards not only against prosecution *for* the official conduct it protects, but also against using protected conduct "to help secure [a] conviction … based only on … *unofficial* conduct." *Trump*, 144 S.Ct. at 2341 (emphasis added). So it makes perfect sense for Congress to want to ensure the availability of a federal forum both when a federal officer is prosecuted "for … any act under color of such office" and when a federal officer is faced with a prosecution "relating to any [such] act." 28 U.S.C. §1442(a)(1). Yet under the Eleventh Circuit's approach of myopically focusing on the purported "gravamen" of a charge, a federal officer would be deprived a federal forum when litigating the highly sensitive question of what conduct taken while in federal office a state can use to try to prove its case.

The flaws in the Eleventh Circuit's analysis do not end there. By framing the question as whether the Chief of Staff's "authority … extend[s] to an alleged conspiracy to overturn valid election results," App.22, the court defied the bedrock rule that courts assessing removal must "credit the [officer's] theory of the case." *Acker*, 527 U.S. at 432. Indeed, time and again, the Eleventh Circuit proceeded as if the state had already proven its case, asking, e.g., whether the Chief of Staff has a "role in supervising state elections," App.27, or may "engage in electioneering on behalf of a political campaign," App.29. But the core of Meadows' federal defense is that he participated in any meetings and

phone calls at issue in furtherance of his official duty to stay apprised of the President's activities and communications, not in furtherance of an effort to "supervise," "influence," or "overturn" an election. By "choos[ing] between those" two competing factual claims, the Eleventh Circuit effectively "decide[d] the merits of th[e] case" before even analyzing removability. *Acker*, 527 U.S. at 432.[4]

On top of that, the decision below flouts the rule that "[t]he officer need not win his case before he can have it removed." *Willingham*, 395 U.S. at 407. It is black-letter law that a defendant does not have to prove that he has "a *clearly sustainable* [federal] defense" just to remove, as that would defeat "[o]ne of the primary purposes of the removal statute," which is to ensure that disputes over the scope of an officer's authority can be "litigated in the federal courts." *Id.* at 407 (emphasis added). That is all the more true after *Trump* given this Court's emphasis on the sensitive and fact-intensive nature of questions about the scope of federal immunity. Yet the Eleventh Circuit not only accepted the state's framing of disputed facts wholesale, but insisted that it must conduct "an independent assessment of the limits of Meadows' office" just to determine whether he is entitled to a federal forum in which to litigate that very question. App.26. The court then proceeded to

[4] Contrary to the Eleventh Circuit's contention, Meadows has never claimed that "the President's chief of staff has unfettered authority." App.26. He has simply explained that the Chief of Staff may be acting in an official capacity even when the President is not, as managing the President's time and priorities requires keeping abreast of the President's official *and unofficial* activities.

engage in a detailed exegesis on the metes and bounds of the Chief of Staff's authority, complete with addressing novel issues about the scope of the Hatch Act and its applicability to the Chief of Staff, all based on the truncated record at the removal stage. *See* App.27-34.

None of that was necessary or appropriate at the threshold removability stage. And the very fact that the Eleventh Circuit found itself examining extensive testimony about the duties of a Chief of Staff and resolving complex legal questions about the interplay between federal and state election law should have been a sure sign that this case belongs in federal, not state, court. Indeed, Georgia itself has framed the case as about "*federal* meddling in matters of *state* authority," CA11.App'ee.Br.1 (emphasis altered), and it seeks to prove its case by asking a jury to examine conduct undertaken by the President's Chief of Staff, primarily from within the West Wing itself. It is hard to imagine a case in which the need for a federal forum is more pressing than one that requires resolving novel questions about the duties and powers of one of the most important federal offices in the Nation.

B. The Decision Below Joins the Wrong Side of a Lopsided Circuit Split.

The Eleventh Circuit's exceedingly demanding "causal-nexus" test not only defies statutory text and this Court's precedent, but puts the court on the wrong side of a lopsided circuit split. Nearly every circuit to consider the question has held that the Removal Clarification Act of 2011 abrogated the causal-nexus test in favor of a much less demanding "connected or associated" test.

The Third Circuit was the first to "address[] the significance of the insertion of the words 'or relating to' in the statute," and it concluded that those words eliminated the causal-nexus test. *Commonwealth's Motion*, 790 F.3d at 471. Others quickly followed suit. The Fourth Circuit held that, while "for" required a "*causal* connection," "relating to" does not. *Sawyer v. Foster Wheeler LLC*, 860 F.3d 249, 258 (4th Cir. 2017).[5] A unanimous en banc Fifth Circuit "strip[ped] away the confusion" in its precedents, "align[ed] with sister circuits, and relied on the plain language of the statute, as broadened in 2011," to hold that "Congress broadened federal officer removal to actions, not just *causally* connected, but alternatively *connected* or *associated*, with acts under color of federal office." *Latiolais*, 951 F.3d at 289, 292. The Seventh Circuit "join[ed] all the courts of appeals that have replaced causation with connection." *Baker*, 962 F.3d at 944. The First Circuit rejected "the 'causal link' standard" as "far narrower than the proper standard under §1442(a)(1), as amended in 2011." *Moore*, 25 F.4th at 34. The Tenth Circuit adopted the Fourth and Fifth Circuits' "connection or association" test. *Suncor Energy*, 25 F.4th at 1251. And the D.C. Circuit held that, "[a]fter the amendment, the statute does not

[5] The decision below invokes a different Fourth Circuit case as purported support for its "heart"-of-the-indictment analysis. *See* App.22 (citing *Mayor of Baltimore v. BP P.L.C.*, 31 F.4th 178, 234 (4th Cir. 2022)). But the court in that case said only that it "might be inclined" to come out the other way (i.e., in favor of removal) if the conduct taken under color federal law "went to the heart of Baltimore's claims." *BP*, 31 F.4th at 234. The court did not purport to reintroduce a causal-nexus test focused only on the "heart" of the plaintiff's case.

require a causal connection between acts taken under color of federal office and the basis for the action"; "it is enough that acts taken under color of federal office are connected or associated with the conduct at issue in the case." *Exxon Mobil*, 89 F.4th at 155-56.

Two more circuits, the Eighth and Ninth, continue to use the words "causal nexus" but no longer demand the kind of "causal link" that was required before the amendment. As the Eighth Circuit explained, while it "ha[s] continued to describe the standard in terms of 'causal connection,' the causal connection required by §1442(a)(1) is for the activity in question to relate to a federal office." *Minnesota by Ellison v. Am. Petroleum Inst.*, 63 F.4th 703, 715 (8th Cir. 2023). And the court expressly acknowledged that its "post-amendment standard" is "lower" than the causal-nexus test it used to apply. *Id.* The Ninth Circuit likewise chose to "read [its] 'causal nexus' test as incorporating the 'connected or associated with' standard reflected in Congress' 2011 amendment," rather than abandoning the test entirely. *DeFiore v. SOC LLC*, 85 F.4th 546, 557 n.6 (9th Cir. 2023). And while it has not had occasion to expressly abrogate the causal-nexus test, the Sixth Circuit has acknowledged that the 2011 amendment broadened the statute's reach. *Ohio St. Chiropractic Ass'n v. Humana Health Plan Inc.*, 647 F. App'x 619, 624 (6th Cir. 2016).

Only one circuit, the Second, has maintained that the causal-nexus test survived the 2011 amendment—but it did so without analyzing the issue. In a footnote, the court "reject[ed]" the argument that "the causal-nexus requirement recognized in pre-2011 cases … was abrogated by the Removal Clarification Act of

2011," observing that the circuit has "continued to apply the casual-nexus [sic] requirement in … binding and precedential opinions long after 2011." *State by Tong v. Exxon Mobil Corp.*, 83 F.4th 122, 145 n.7 (2d Cir. 2023) (citing *Agyin v. Razmzan*, 986 F.3d 168, 179 (2d Cir. 2021)). But none of those opinions analyzes the question either, so the court has never explained why it has refused to give any meaning to an amendment that it has acknowledged was "intended to broaden the universe of acts that enable Federal officers to remove to Federal court." *Agyin*, 986 F.3d at 174 n.2 (quoting *Commonwealth's Motion*, 790 F.3d at 467).

In short, nearly every circuit has recognized that the causal-nexus test no longer exists. Yet the decision below not only continued to apply the test, but managed to make it even *more* demanding than it was before the 2011 amendment. This Court should grant certiorari and follow the majority of the circuits in rejecting the test once and for all.

III. The Questions Presented Are Exceptionally Important, And They Arise Here In An Exceptionally Important Context.

As two members of the panel candidly admitted, the decision below threatens disastrous consequences, leaving "unchecked" "a rogue state's weaponization of the prosecution power" to retaliate against former federal officials. App.36. Inevitably, at least some of the Nation's 2,330 chief local prosecutors,[6] many elected by their constituents, will view the decision as

[6] *See* DOJ, *Prosecutors in State Courts* (Dec. 2011), https://perma.cc/Z9J6-6L44.

an invitation to start preparing their "day-after" indictments, ready to be deployed against locally unpopular federal officials immediately following a change in administration. Indeed, there has already been pervasive talk of "retaliation in kind" for recent lawsuits against former President Trump and other former federal officials, which have heightened the risk that a "city, county, or state prosecutor might be encouraged to prosecute any federal officer for conjured violations of a state's criminal law." John Yoo, *Trump's Trial Has Already Damaged the Office of the Presidency*, Nat'l Rev. (May 29, 2024), https://perma.cc/T63E-8VX2; *see also, e.g.*, Jonathan Swan et al., *The G.O.P. Push for Post-Verdict Payback: 'Fight Fire with Fire,'* N.Y. Times (June 5, 2024), https://perma.cc/87CV-FX3F.

The "nightmare scenario" that the decision below portends is not limited to executive officials either: The removal statute uses identical language as to the removal rights of "officer[s] of either House of Congress" and "officer[s] of the courts of the United States." 28 U.S.C. §1442(a)(3)-(4). Aggressive prosecutors thus could insulate politically motivated prosecutions against all manner of former federal officials from federal review for years (or, in many instances, forever since this Court rarely grants merits review). While Article III judges at least have the option of retaining their "appoint[ments] for life," *Yovino v. Rizo*, 586 U.S. 181, 186 (2019) (per curiam), elected and term-appointed officers lack even that. And those who are able to remain in office will still have to withstand the Eleventh Circuit's searching "causal-nexus" inquiry just to get a federal forum.

The Eleventh Circuit tried to brush those concerns aside, observing that "no one suggests that Georgia's prosecution of Meadows has hindered the current administration." App.20. But as this Court just reminded, immunity exists not only to protect federal officers from being distracted from their duties, but "to protect against the chilling effect [legal] exposure might have on the carrying out of" an officer's duties. *Trump*, 144 S.Ct. at 2326. In short, tomorrow's retaliation is distorting today's decisionmaking, potentially "discourag[ing] federal officers from faithfully performing their duties." App.36-37. That risk is even more pronounced when it comes to "potential criminal liability, and the peculiar public opprobrium that attaches to criminal proceedings." *Trump*, 144 S.Ct. at 2331. And it is not even just a matter of chilling current officials; the threat of politically motivated prosecutions in hostile state courts could "dissuade talented people from entering public service" in the first place. App.36-37. Federal-officer removal thus "safeguard[s] officers and others acting under federal authority" not just against peril of litigation, but "against *peril of punishment* for violation of state law or obstruction or embarrassment by reason of opposing policy on the part of those exerting or controlling state power." *Symes*, 286 U.S. at 517 (emphasis added).

Hopefully state courts will make short work of the most egregious of the prosecutions the decision below invites. But the whole point of the federal-officer removal statute is to ensure that defendants are not forced to rely on potentially "hostile state courts" when litigating federal immunity and other defenses. *Willingham*, 395 U.S. at 405. That is why Congress

has been protecting federal officers facing state-court actions from the early days of our Nation and has continued to expand those protections ever since. And it is why this Court has repeatedly admonished against the kinds of "narrow, grudging" readings of the federal-officer removal statute that the decision below embraces. *Id.* at 407. As both Congress and this Court well understand, empowering state prosecutors to call open season on federal officers and then force them to defend on the state's home turf would pose a very real "threat to our republic's stability" regardless whether the officers are current or former. App.37.

The Eleventh Circuit's contrary conclusion is not just wrong, but dangerous. Two members of the panel below recognized as much and called for Congress to intervene. But there is no need to call in the congressional cavalry to fix a problem of courts' own making. Properly construed, the existing text protects former officers sued for their actions while in office, as courts and federal officers have understood for nearly two centuries. At a minimum, the Court should vacate and remand so that the Eleventh Circuit can take into account the critical guidance the *Trump* case provides on both questions presented. But the better course is to grant certiorari, restore removal protection to former officers, and ensure that Meadows is not the first White House Chief of Staff in history to be deprived of a federal forum in which to defend against criminal charges arising out of actions taken in support of the President.

CONCLUSION

For the foregoing reasons, this Court should grant the petition.

Respectfully submitted,

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