No. 23-939

In the Supreme Court of the United States

DONALD J. TRUMP,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ of Certiorari to
the United States Court of Appeals
for the District of Columbia Circuit

BRIEF FOR FORMER WHITE HOUSE CHIEF OF STAFF MARK R. MEADOWS AS *AMICUS CURIAE* IN SUPPORT OF NEITHER PARTY

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QUESTION PRESENTED

Whether and if so to what extent does a former President enjoy presidential immunity from criminal prosecution for conduct alleged to involve official acts during his tenure in office.

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INTERESTS OF *AMICUS CURIAE*[1]

Amicus Curiae Mark R. Meadows is currently a senior partner at the Conservative Partnership Institute in Washington, D.C. He previously served as the 29th Chief of Staff to the President of the United States from March 31, 2020, until January 20, 2021, under former President Donald J. Trump. Before that, Meadows served as a Member of the U.S. House of Representatives, representing North Carolina's 11th Congressional District, from January 3, 2013, to March 30, 2020.

On August 14, 2023, the District Attorney for Fulton County, Georgia, indicted Meadows, along with former President Donald J. Trump and 17 others, on criminal charges related to alleged interference in the 2020 presidential election. The only charge that relates to Meadows (since the other was recently dismissed by the state court) alleges that he participated in a racketeering conspiracy with the President in an effort to change the outcome of the 2020 election. The eight predicate acts that Meadows allegedly took in furtherance of this racketeering conspiracy all occurred during his service as Chief of Staff and most occurred physically within the White House itself, including attending an Oval Office meeting with Michigan legislators, allegedly requesting a memo from a member of the White House

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[1] No party's counsel authored any part of this brief. No person or entity, other than *amicus curiae* and his counsel, paid for the preparation or submission of this brief. Since this brief does not set forth a position on the Question Presented, it is submitted in support of neither party.

staff, tracking down a phone number for the President, and arranging phone calls between the President and state officials.

Meadows has consistently maintained his innocence, and that he is immune from state prosecution under the Supremacy Clause because the charges in Fulton County arise from his official acts as Chief of Staff. *See generally In re Neagle*, 135 U.S. 1 (1890). Meadows promptly removed the Fulton County prosecution to the U.S. District Court for the Northern District of Georgia under the Federal Officer Removal Statute, 28 U.S.C. § 1442(a). The district court remanded the action, *see Georgia v. Meadows*, No. 1:23-cv-03621-SCJ, 2023 WL 5829131 (N.D. Ga. Sept. 8, 2023), and the U.S. Court of Appeals for the Eleventh Circuit affirmed, *see State v. Meadows*, 88 F.4th 1331 (11th Cir. 2023).[2] The Eleventh Circuit held that the federal court was without jurisdiction under § 1442(a), ruling that *former* officials may never invoke the Federal Officer Removal Statute. *See id.* at 1338–43.[3] As a result, the federal courts have never addressed the merits of Meadows's Supremacy Clause immunity defense, only the threshold jurisdictional inquiry under the removal statute. Meadows now has a pending motion in state trial court seeking dismissal

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[2] The time within which to seek this Court's review has not yet expired.

[3] In *obiter dictum*, the Eleventh Circuit further opined that the prosecution was not "for or relating to [an] act under color of . . . office" within the meaning of 28 U.S.C. § 1442(a)(1) because the relevant alleged "act" was his entering into an unlawful RICO conspiracy. *See id.* at 1343–50.

of the indictment on the basis of Supremacy Clause immunity. That prosecution is ongoing.

Meadows has no direct interest in the outcome of this case, which involves a *federal* prosecution and an assertion of *presidential* immunity. But he does have a direct interest in his closely related case, which involves a *state* prosecution and an assertion of *Supremacy Clause* immunity arising from the same or similar events. Moreover, as someone having served his country in both the Executive and Legislative Branches, Meadows has both an abiding interest in and unique insight into the value of robust official immunity as this Court has applied it in the past. Meadows therefore offers his perspective to help inform the Court's decision-making and its reasoning.

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SUMMARY OF ARGUMENT

The Court granted certiorari to address presidential immunity from federal criminal prosecution for conduct alleged to involve official acts during a former President's tenure in office. That issue is critically important for the office of the President and for the Separation of Powers, as the Court's decision to grant review reflects. The parties and other *amici* will no doubt brief that issue extensively.

But how the Court's resolves the issue of *presidential* immunity from *federal* prosecution could significantly influence how lower courts address issues of federal officials' *Supremacy Clause* immunity from *state* prosecution. Those latter issues are important not only to former Presidents but also to a

wide range of subordinate federal officers, both current and former, including Meadows.

Meadows respectfully points the Court's attention to two distinct but related issues which are not presented directly in this case but on which the Court's decision may nonetheless bear: (1) the distinct characteristics of Supremacy Clause immunity, and (2) the scope of immunity for subordinate federal officials.

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ARGUMENT

1. The presidential immunity at issue here, articulated just over four decades ago in *Nixon v. Fitzgerald*, 457 U.S. 731 (1982), is distinct from the doctrine of Supremacy Clause immunity, articulated nearly a century-and-a-half ago in *In re Neagle*, 135 U.S. 1 (1890). Presidential immunity and Supremacy Clause immunity address important but distinct constitutional concerns. Whatever conclusions the Court may reach about the authority of federal prosecutors to enforce federal law against a former President arising from conduct during his term of office, the Supremacy Clause and this Court's precedent make clear that state prosecutors lack authority to enforce state law against federal officials, current or former, for official acts. The entire premise of the Supremacy Clause, and its attendant immunity doctrine, is that the conduct of federal officials in their federal roles is governed by *federal* law and subject to

federal supervision, not by *state* law subject to *state* supervision.[4]

"Although the Supremacy Clause explicitly refers only to the 'Constitution' and 'Laws,' its implication is that states may not impede or interfere with the actions of federal executive officials when they are carrying out federal laws." *Wyoming v. Livingston*, 443 F.3d 1211, 1217 (10th Cir. 2006) (McConnell, J.). Consistent with that understanding, this Court has long interpreted the Supremacy Clause to provide federal officials "immunity from suit" involving state charges to "protect[] federal operations from the chilling effect of state prosecution." *New York v. Tanella*, 374 F.3d 141, 147 (2d Cir. 2004).[5]

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[4] The Framers of our Constitution knew that, without a robust doctrine of federal Supremacy, our Nation would have been, "for the first time, a system of government founded on an inversion . . . a monster, in which the head is under the direction of the members." THE FEDERALIST No. 5, at 287 (James Madison) (Clinton Rossiter ed., 1961). They rejected that aberration, providing instead that "[t]his Constitution, and the laws of the United States which shall be made in pursuance thereof . . . shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding." U.S. CONST. art. V, § 2.

[5] Federal courts, and at least one state court, have thus held over the course of more than a century that the Supremacy Clause barred criminal prosecution of a federal official for actions within the outer perimeter of his official duties. *See, e.g.*, *Johnson v. Maryland*, 254 U.S. 51 (1920); *Ohio v. Thomas*, 173 U.S. 276 (1899); *Wyoming v. Livingston*, 443 F.3d 1211 (10th Cir. 2006); *New York v. Tanella*, 374 F.3d 141 (2d Cir. 2004); *Kentucky v. Long*, 837 F.2d 727 (6th Cir. 1988); *Baucom v. Martin*, 677 F.2d

Supremacy Clause immunity is structural rather than functional, rooted firmly in the notion that "states may not impede or interfere with the actions of federal executive officials when they are carrying out federal laws." *Livingston*, 443 F.3d at 1217.

The D.C. Circuit below acknowledged in a footnote that it was not addressing the availability of immunity from "state prosecution." *United States v. Trump*, 91 F.4th 1173, 1195 n.8 (D.C. Cir. 2024). This Court should likewise note that immunities of federal officials serve important constitutional purposes which may vary from doctrine to doctrine concerning immunity. Whatever the Court concludes about the scope of the presidential immunity doctrine articulated in *Nixon v. Fitzgerald*, it should not and need not undermine the robust, long-standing doctrine of Supremacy Clause immunity.

2. The Court should also leave room for broad immunity from state claims for federal officials. Under the Supremacy Clause, Presidential aides and other

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1346 (11th Cir. 1982); *Clifton v. Cox*, 549 F.2d 722 (9th Cir. 1977); *Texas v. Kleinert*, 143 F. Supp. 3d 551 (W.D. Tex. 2015), *aff'd*, 855 F.3d 305 (5th Cir. 2017); *California v. Dotson*, No. 12-cr-00917-AJB, 2012 WL 1904467 (S.D. Cal. May 25, 2012); *Colorado v. Nord*, 377 F. Supp. 2d 945 (D. Colo. 2005); *Texas v. Carley*, 885 F. Supp. 940 (W.D. Tex. 1994); *Petition of McShane*, 235 F. Supp. 262 (N.D. Miss. 1964); *In re Lewis*, 83 F. 159 (D. Wash. 1897); *State v. Adler*, 67 Ark. 469 (1900); *see also Matter of Jenkins*, 437 Mich. 15, 28 n.12 (1991) (noting that, even if federal officials had violated state law in making surreptitious recordings, they "were acting within the scope of their authority under federal law" and "would be immune from direct state sanction . . . under the Supremacy Clause").

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subordinate federal officials must be robustly insulated from state interference (and especially state prosecution) when they act within the outer perimeter of their federal duties, including at the direction of the President.

This Court has held that official immunity should extend broadly to acts that an official plausibly (even if mistakenly) believes to be within the scope of his official duty. Executive officials—just like judges and members of Congress—generally enjoy immunity when acting "within the outer perimeter of [their] line of duty." *Barr v. Matteo*, 360 U.S. 564, 575 (1959). Even if a court later concludes that a federal official exceeded his authority or otherwise violated federal law, that does not vitiate immunity from state prosecution so long as the violation of federal law was not clear and willful. *See, e.g.*, *Baucom v. Martin*, 677 F.2d 1346, 1351 (11th Cir. 1982). And senior federal officials who exercise a high degree of discretionary authority are entitled to a particularly broad scope of immunity. *See Harlow v. Fitzgerald*, 457 U.S. 800, 807 (1982) ("[H]igh officials require greater protection than those with less complex discretionary responsibilities.") (citing *Scheuer v. Rhodes*, 416 U.S. 232 (1974)).

If the Court addresses or resolves the question whether a president may act in a non-official capacity while in office and thereby lose the protection of presidential immunity, the Court should make clear that its ruling does not reach the conduct of subordinate federal officials who, like Meadows,

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generally assisted the former President as part of their federal roles.

The classification of official conduct by presidential aides and other subordinate federal officials turns not on the classification of the President's own conduct. Rather, it turns on the subordinates' official roles in and duties to support the President. The principle is not difficult to illustrate: The pilot of Air Force One engages in official conduct when she flies the President to a campaign event, even if one were to posit that the President was engaged in non-official conduct at the time. And an assistant in chambers engages in official conduct if he connects a phone call for a Justice, even if the call is to a family member or involves a private financial matter. In sum, a subordinate's duty to assist can remain official even when the principal's conduct is non-official. It is vitally important to the office of the President and to the proper functioning of the Federal Government that federal officials enjoy broad immunity from state interference—especially, from state criminal prosecution—for all acts "within the outer perimeter of [their] line of duty." *Barr*, 360 U.S. at 575.

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Meadows respectfully submits that the Court should take due account of those fundamental considerations as it resolves this case.

CONCLUSION

The Court has granted certiorari in this case to address whether federal prosecutors may charge a former President for official acts that allegedly violated federal law. As the grant itself reflects, that

is an important constitutional issue that will no doubt garner the close attention of the Court, the parties, and other *amici*. But the Court should also be aware that its decision in this case may have ripple effects which influence how lower courts address distinct but related issues in other cases, including the pending criminal prosecution in Fulton County, Georgia. The Court should therefore take care to ensure that it leaves intact the robust immunity from state prosecution afforded under the Supremacy Clause, particularly as it relates to subordinate federal officials.

Respectfully submitted,

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