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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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HUI ET AL. *v.* CASTANEDA, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF CASTANEDA, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 08–1529. Argued March 2, 2010—Decided May 3, 2010

While detained by immigration authorities, Francisco Castenada persistently sought treatment for a bleeding, suppurating lesion. Although a U. S. Public Health Service (PHS) physician’s assistant and three outside specialists repeatedly advised that Castaneda urgently needed a biopsy, petitioners—a PHS physician and a commissioned PHS officer—denied the request. After Castaneda was released from custody, tests confirmed that he had metastatic cancer. He then filed this suit, raising medical negligence claims against the United States under the Federal Tort Claims Act (FTCA), 28 U. S. C. §§1346, 2671–2680, and constitutional claims against petitioners under *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U. S. 388, 397. When Castaneda died, respondents, his representative and heir, were substituted as plaintiffs. The District Court denied petitioners’ motion to dismiss the *Bivens* action, rejecting their claim of absolute immunity under 42 U. S. C. §233(a), which provides: “The [FTCA] remedy *against the United States* provided by [28 U. S. C. §§1346(b) and 2672] for damage for personal injury, including death, resulting from the performance of medical . . . or related functions . . . by any [PHS] commissioned officer or employee . . . while acting within the scope of his office or employment, *shall be exclusive of any other civil action or proceeding by reason of the same subject-matter against the officer or employee.*” (Emphasis added.) The Ninth Circuit affirmed.

Held: The immunity provided by §233(a) precludes *Bivens* actions against individual PHS officers or employees for harms arising out of constitutional violations committed while acting within the scope of their office or employment. Pp. 5–13.

(a) The Court’s inquiry begins and ends with §233(a)’s text, which

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plainly precludes a *Bivens* action against petitioners by limiting recovery for harms arising from the conduct at issue to an FTCA action against the United States. The breadth of §233(a)'s words "exclusive" and "any" supports this reading, as does the provision's inclusive reference to all civil proceedings arising out of "the same subject-matter." Because the phrase "exclusive of any other civil action" is easily broad enough to accommodate both known and unknown causes of action, the Court's reading is not undermined by the fact that §233(a) preceded *Bivens*. The later enacted Westfall Act further supports this understanding of §233(a). In amending the FTCA to make its remedy against the United States exclusive for most claims against Government employees for their official conduct, the Westfall Act essentially duplicated §233(a)'s exclusivity language, 28 U. S. C. § 2679(b)(1), but provided an explicit exception for constitutional violations, §2679(b)(2). This shows that Congress did not understand the exclusivity provided by §2679(b)(1)—or the substantially similar §233(a)—to imply such an exception. Pp. 5–7.

(b) Respondents' arguments to the contrary do not undermine the Court's conclusion. Pp. 7–12.

(1) Respondents' heavy reliance on *Carlson v. Green*, 446 U. S. 14, is misplaced. *Carlson* is inapposite to the issue in this case—whether petitioners are immune from suit for the alleged violations—because the *Carlson* petitioners invoked no official immunity. Instead, the case considered the separate question whether a remedy was available under the Eighth Amendment for alleged violations of the Cruel and Unusual Punishments Clause notwithstanding that a federal remedy was also available under the FTCA. Pp. 7–8.

(2) Contrary to respondents' contention, §233(a) does not incorporate a *Bivens* exception through its cross-reference to §1346(b) and that section's cross-reference to the FTCA, which includes the Westfall Act exception for constitutional claims, §2679(b)(2)(A). Because §233(a) refers only to "[t]he *remedy* . . . provided by sections 1346(b) and 2672" (emphasis added), only those portions of the FTCA that establish its remedy are incorporated by §233(a)'s reference to §1346. Section 2679(b) is not such a provision. Pp. 8–10.

(3) Respondents' claim that the Westfall Act's *Bivens* exception, §2679(b)(2)(A), directly preserves a *Bivens* action against PHS officers and employees is belied by the fact that the provision by its terms applies only to the specific immunity set forth in "[p]aragraph (1)." Moreover, if §233(a) forecloses a *Bivens* action against PHS personnel, respondents' reading of §2679(b)(2)(A) would effect an implied repeal of the more specific §233(a). Repeals by implication are not favored and will not be presumed absent a clear and manifest legislative intent to repeal. *Hawaii v. Office of Hawaiian Affairs*, 556 U. S.

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____, _____. Nothing suggests that Congress intended §2679(b) to repeal §233(a)'s more comprehensive immunity. P. 10.

(4) Respondents' contention that other features of §233 show that §233(a) does not make the FTCA remedy exclusive of all other actions against PHS personnel is rejected. Neither §233(c) nor §233(f) indicates that an injured party may maintain a *Bivens* action against an individual PHS officer or employee in these circumstances. Pp. 10–12.

546 F. 3d 682, reversed and remanded.

SOTOMAYOR, J., delivered the opinion for a unanimous Court.