SUPREME COURT OF THE UNITED STATES

No. 91–1538

SANDRA JEAN SMITH, PETITIONER *v.*
UNITED STATES

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

[March 8, 1993]

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

This case presents the question whether the Federal Tort Claims Act (FTCA), 28 U. S. C. §§1346(b), 1402(b), 2401(b), 2671–2680 (1988 ed. and Supp. II), applies to tortious acts or omissions occurring in Antarctica, a sovereignless region without civil tort law of its own.[1] We hold that it does not.

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[1]Without indigenous human population and containing roughly one-tenth of the world's land mass, Antarctica is best described as "an entire continent of disputed territory." F. Auburn, Antarctic Law and Politics 1 (1982). Seven nations—Argentina, Australia, Chile, France, New Zealand, Norway, and the United Kingdom—presently assert formal claims to pie-shaped portions of the continent that total about 85 percent of its expanse. Boczek, The Soviet Union and the Antarctic Regime, 78 Am. J. Int'l L. 834, 840 (1984); Hayton, The Antarctic Settlement of 1959, 54 Am. J. Int'l L. 349 (1960). The United States does not recognize other nations' claims and does not itself assert a sovereign interest in Antarctica, although it maintains a basis for such a claim. Lissitzyn, The American Position on Outer Space and Antarctica, 53 Am. J. Int'l L. 126, 128 (1959). In any event, these sovereign claims have all been suspended by the terms of the Antarctic Treaty, concluded in 1959.

Petitioner Sandra Jean Smith is the widow of John Emmett Smith and the duly appointed representative of his estate. At the time of his death, Smith worked as a carpenter at McMurdo Station on Ross Island, Antarctica, for a construction company under contract to the National Science Foundation, an agency of the United States. Smith and two companions one day took a recreational hike to Castle Rock, located several miles outside of McMurdo Station. On their return, they departed from the marked route to walk across a snow field in the direction of Scott Base, a New Zealand outpost not far from McMurdo Station. After stopping for a snack, one of the three men took a step and suddenly dropped from sight. Smith followed, and he, too, disappeared. Both men had fallen into a crevasse. Despite search and rescue efforts, Smith died from exposure and internal injuries suffered as a result of the fall.

Petitioner filed this wrongful death action against the United States under the FTCA in the District Court for the District of Oregon, the district where she resides. Petitioner alleged that the United States was negligent in failing to provide adequate warning of the dangers posed by crevasses in areas beyond the marked paths. It is undisputed that petitioner's claim is based exclusively on acts or omissions occurring in Antarctica. Upon the motion of the United States, the District Court dismissed petitioner's complaint for lack of subject-matter jurisdiction, 702 F. Supp. 1480 (1989), holding that her claim was barred by 28

Antarctic Treaty, Dec. 1, 1959 [1961] 12 U. S. T. 794, T. I. A. S. No. 4780. Article 4 of the Treaty states that no claim may be enforced, expanded, or compromised while the Treaty is in force, *id.*, art. IV, 12 U. S. T., at 796, thus essentially freezing nations' sovereign claims as of the date of the Treaty's execution.

U. S. C. §2680(k), the foreign-country exception. Section 2680(k) precludes the exercise of jurisdiction over "[a]ny claim arising in a foreign country."

The Court of Appeals affirmed, 953 F. 2d 1116 (CA9 1991). It noted that the term "foreign country" admits of multiple interpretations, and thus looked to the language and structure of the FTCA as a whole to determine whether Antarctica is a "foreign country" within the meaning of the statute. Adopting the analysis and conclusion of then-Judge Scalia, see *Beattie* v. *United States*, 244 U. S. App. D. C. 70, 85–109, 756 F. 2d 91, 106–130 (1984) (Scalia, J., dissenting), the Court of Appeals ruled that the FTCA does not apply to claims arising in Antarctica. To hold otherwise, the Court of Appeals stated, would render two other provisions of the FTCA, 28 U. S. C. §§1402(b), 1346(b), nonsensical. The Court of Appeals held, in the alternative, that petitioner's suit would be barred even if Antarctica were not a "foreign country" for purposes of the FTCA. Because the FTCA was a limited relinquishment of the common-law immunity of the United States, the Court of Appeals concluded that the absence of any clear congressional intent to subject the United States to liability for claims arising in Antarctica precluded petitioner's suit. We granted certiorari to resolve a conflict between two Courts of Appeals,[2] 504 U. S. —— (1992), and now affirm.

Petitioner argues that the scope of the foreign-country exception turns on whether the United States has recognized the legitimacy of another nation's sovereign claim over the foreign land. Otherwise, she contends, the land is not a "country" for purposes of the FTCA. Petitioner points out that the United States

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[2]Compare *Beattie* v. *United States*, 244 U. S. App. D. C. 70, 756 F. 2d 91 (1984) (holding that Antarctica is not a "foreign country" within the meaning of the FTCA).

does not recognize the validity of other nations' claims to portions of Antarctica. She asserts, moreover, that this construction of the term "foreign country" is most consistent with the purpose underlying the foreign-country exception. According to petitioner, Congress enacted the foreign-country exception in order to insulate the United States from tort liability imposed pursuant to foreign law. Because Antarctica has no law of its own, petitioner claims that conventional choice-of-law rules control and require the application of Oregon law, the law of her domicile. Thus, petitioner concludes, the rationale for the foreign-country exception would not be compromised by the exercise of jurisdiction here, since the United States would not be subject to liability under the law of a foreign nation.

Petitioner's argument for governmental liability here faces significant obstacles in addition to the foreign-country exception, but we turn first to the language of that proviso. It states that the FTCA's waiver of sovereign immunity does not apply to "[a]ny claim arising in a foreign country." 28 U. S. C. §2680(k). Though the FTCA offers no definition of "country," the commonsense meaning of the term undermines petitioner's attempt to equate it with "sovereign state." The first dictionary definition of "country" is simply "[a] region or tract of land." Webster's New International Dictionary 609 (2d ed. 1945). To be sure, this is not the only possible interpretation of the term, and it is therefore appropriate to examine other parts of the statute before making a final determination. But the ordinary meaning of the language itself, we think, includes Antarctica, even though it has no recognized government.

Our construction of the term "foreign country" draws support from the language of §1346(b), "[t]he principal provision of the Federal Tort Claims Act." *Richards* v. *United States*, 369 U. S. 1, 6 (1962). That

section waives the sovereign immunity of the United States for certain torts committed by federal employees "under circumstances where the United States, if a private person, would be liable to the claimant *in accordance with the law of the place where the act or omission occurred*." 28 U. S. C. §1346(b) (emphasis added). We have construed §1346(b) in determining what law should apply in actions brought under the FTCA. See *Richards*, *supra*. But by its terms the section is more than a choice-of-law provision: it delineates the scope of the United States' waiver of sovereign immunity. If Antarctica were not a "foreign country," and for that reason included within the FTCA's coverage, §1346(b) would instruct courts to look to the law of a place that has no law in order to determine the liability of the United States—surely a bizarre result.[3] Of course, if it were quite clear from the balance of the statute that governmental liability was intended for torts committed in Antarctica, then the failure of §1346(b) to specify any governing law might be treated as a statutory gap that the courts could fill by decisional law. But coupled with what seems to us the most natural interpretation of the foreign-country exception, this portion of §1346(b) reinforces the conclusion that Antarctica is excluded from the coverage of the FTCA.

Section 1346(b) is not, however, the only FTCA

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[3]Nor can the law of the plaintiff's domicile, Oregon here, be substituted in FTCA actions based on torts committed in Antarctica. "Congress has expressly stated that the Government's liability is to be determined by the application of a particular law, the law of the place where the act or omission occurred . . . ." *Richards* v. *United States*, 369 U. S. 1, 9 (1962). Petitioner does not contend that her cause of action is based on acts or omissions occurring in Oregon.

provision that contradicts petitioner's interpretation of the foreign-country exception. The statute's venue provision, §1402(b), provides that claims under the FTCA may be brought "only in the judicial district where the plaintiff resides or wherein the act or omission complained of occurred." Because no federal judicial district encompasses Antarctica, petitioner's interpretation of the FTCA would lead to yet another anomalous result: the FTCA would establish jurisdiction for all tort claims against the United States arising in Antarctica, but no venue would exist unless the claimant happened to reside in the United States.[4] As we observed in *Brunette Ma-*

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[4]The history of the FTCA reveals that Congress declined to enact earlier versions of the statute that would have differentiated between foreign and United States residents. Those versions would have barred claims "arising in a foreign country *in behalf of an alien.*" S. 2690, 76th Cong., 1st Sess., §303(12) (1939) (emphasis added); H. R. 7236, 76th Cong., 1st Sess., §303(12) (1939) (emphasis added). At the suggestion of the Attorney General, the last five words of the proposed bills were dropped. See Hearings on H. R. 5373 and H. R. 6463 before the House Committee on the Judiciary, 77th Cong., 2d Sess., 29, 35, 66 (1942). As we observed in *United States* v. *Spelar*, 338 U. S. 217, 220 (1949), "[t]he superseded draft had made the waiver of the Government's traditional immunity turn upon the fortuitous circumstance of the injured party's citizenship." The amended version, however, "identified the coverage of the Act with the scope of United States sovereignty." *Id.*, at 220–221. At least insofar as Antarctica is concerned, petitioner's interpretation of the FTCA would effectively resurrect the scheme rejected by Congress; it would deny relief to foreign residents in circumstances where United States residents could recover.

chine Works, Ltd. v. *Kockum Industries, Inc.*, 406 U. S. 706, 710, n. 8 (1972), "Congress does not in general intend to create venue gaps, which take away with one hand what Congress has given by way of jurisdictional grant with the other." Thus, in construing the FTCA, it is "reasonable to prefer the construction that avoids leaving such a gap," *ibid.*, especially when that construction comports with the usual meaning of a disputed term.

Our decisions interpreting the FTCA contain varying statements as to how it should be construed. See, *e.g.*, *United States* v. *Yellow Cab Co.*, 340 U. S. 543, 547 (1951); *Dalehite* v. *United States*, 346 U. S. 15, 31 (1953); *United States* v. *Orleans*, 425 U. S. 807, 813 (1976); *Kosak* v. *United States*, 465 U. S. 848, 853, n. 9 (1984). See also *United States* v. *Nordic Village, Inc.*, —— U. S. ——, —— (1992). A recent statement of this sort, and the one to which we now adhere, is found in *United States* v. *Kubrick*, 444 U. S. 111, 117–118 (1979): "We should also have in mind that the Act waives the immunity of the United States and that . . . we should not take it upon ourselves to extend the waiver beyond that which Congress intended. [Citations omitted.] Neither, however, should we assume the authority to narrow the waiver that Congress intended." Reading the foreign-country exception to the FTCA to exclude torts committed in Antarctica accords with this canon of construction.

Lastly, the presumption against extraterritorial application of United States statutes requires that any lingering doubt regarding the reach of the FTCA be resolved against its encompassing torts committed in Antarctica. "It is a longstanding principle of American law `that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States.'" *EEOC* v. *Arabian American Oil Co.*, 499 U. S. ——, —— (1991) (quoting *Foley Bros., Inc.* v. *Filardo*, 336 U. S. 281,

285 (1949)). In applying this principle, "[w]e assume that Congress legislates against the backdrop of the presumption against extraterritoriality." *Arabian American Oil Co.*, *supra*, at ——; accord, *e.g.*, *Argentine Republic* v. *Amerada Hess Shipping Corp.*, 488 U. S. 428, 440 (1989) ("When it desires to do so, Congress knows how to place the high seas within the jurisdictional reach of a statute"). The applicability of the presumption is not defeated here just because the FTCA specifically addresses the issue of extraterritorial application in the foreign-country exception. To the contrary, as we stated in *United States* v. *Spelar*, 338 U. S. 217, 222 (1949), "[t]hat presumption, far from being overcome here, is doubly fortified by the language of this statute and the legislative purpose underlying it." Petitioner does not assert, nor could she, that there is clear evidence of congressional intent to apply the FTCA to claims arising in Antarctica.[5]

For all of these reasons, we hold that the FTCA's waiver of sovereign immunity does not apply to tort claims arising in Antarctica. Some of these reasons are based on the language and structure of the statute itself; others are based on presumptions as to extraterritorial application of Acts of Congress and as to waivers of sovereign immunity. We think these norms of statutory construction have quite likely led us to the same conclusion that the 79th Congress

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[5]Petitioner instead argues that the presumption against extraterritoriality applies only if it serves to avoid "`unintended clashes between our laws and those of other nations which could result in international discord.'" Brief for Petitioner 16 (quoting *EEOC* v. *Arabian American Oil Co.*, 499 U. S. ——, —— (1991)). But the presumption is rooted in a number of considerations, not the least of which is the common-sense notion that Congress generally legislates with domestic concerns in mind.

would have reached had it expressly considered the question we now decide: it would not have included a desolate and extraordinarily dangerous land such as Antarctica within the scope of the FTCA. The judgment of the Court of Appeals is therefore

Affirmed.