

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 Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

SMITH v. UNITED STATES

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

No. 91-1538. Argued December 7, 1992—Decided March 8,
1993

After her husband was killed in Antarctica—a sovereignless region without civil tort law of its own—while he was working for a private firm under contract to a federal agency, petitioner filed this wrongful death action against the United States under the Federal Tort Claims Act (FTCA). The District Court dismissed the complaint for lack of subject-matter jurisdiction, holding that the claim was barred by the FTCA's foreign-country exception, which states that the statute's waiver of sovereign immunity does not apply to "[a]ny claim arising in a foreign country," 28 U. S. C. §2680(k). The Court of Appeals affirmed.

Held: The FTCA does not apply to tortious acts or omissions occurring in Antarctica. The ordinary meaning of "foreign country" includes Antarctica, even though it has no recognized government. If this were not so, §1346(b)—which waives sovereign immunity for certain torts committed "under circumstances where the United States, if a private person, would be liable . . . in accordance with the law of the place where the act or omission occurred" (emphasis added)—would have the bizarre result of instructing courts to look to the law of a place that has no law in order to determine the United States' liability. Similarly, if Antarctica were included within the FTCA's coverage, §1402(b)—which provides that claims may be brought "only in the judicial district where the plaintiff resides or wherein the act or omission complained of occurred"—would have the anomalous result of limiting venue to cases in which the claimant happened to reside in the United States, since no federal judicial district encompasses Antarctica. This interpretation of the FTCA accords with the canon of construction that prohibits courts from either extending or narrowing the statute's sovereign immunity waiver beyond

what Congress intended, *United States v. Kubrick*, 444 U. S. 111, 117-118, and with the presumption against extraterritorial application of United States statutes, see, e.g., *EEOC v. Arabian American Oil Co.*, 499 U. S. ___, ___. It is unlikely that Congress, had it expressly considered the question when it passed the FTCA, would have included a desolate and extraordinarily dangerous land such as Antarctica within the statute's scope. Pp. 3-8.

SMITH v. UNITED STATES

Syllabus

953 F. 2d 1116, affirmed.

REHNQUIST, C. J., delivered the opinion of the Court, in which WHITE, BLACKMUN, O'CONNOR, SCALIA, KENNEDY, SOUTER, and THOMAS, JJ., joined. STEVENS, J., filed a dissenting opinion.