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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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UNITED STATES v. OLSON ET AL.

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

No. 04-759. Argued October 12, 2005—Decided November 8, 2005

Claiming that federal mine inspectors' negligence helped cause a mine accident, two injured workers (and a spouse) sued the United States under the Federal Tort Claims Act (FTCA or Act), which authorizes private tort actions against the Government "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)(1). The District Court dismissed in part on the ground that the allegations did not show that Arizona law would impose liability upon a private person in similar circumstances. The Ninth Circuit reversed, reasoning from two premises: (1) Where unique governmental functions are at issue, the Act waives sovereign immunity if a state or municipal entity would be held liable under the law where the activity occurred, and (2) federal mine inspections are such unique governmental functions since there is no private-sector analogue for mine inspections. Because Arizona law would make a state or municipal entity liable in the circumstances alleged, the Circuit concluded that the United States' sovereign immunity was waived.

Held: Under §1346(b)(1), the United States waives sovereign immunity only where local law would make a "private person" liable in tort, not where local law would make "a state or municipal entity" liable. Pp. 2–5.

(a) The Ninth Circuit's first premise is too broad, reading into the Act something that is not there. Section 1346(b)(1) says that it waives sovereign immunity "under circumstances where the United States, if a private person," not "the United States, if a state or municipal entity," would be liable. (Emphasis added.) This Court has consistently adhered to this "private person" standard, even when

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uniquely governmental functions are at issue. *Indian Towing Co.* v. *United States*, 350 U. S. 61, 64; *Rayonier Inc.* v. *United States*, 352 U. S. 315, 318. Even though both these cases involved Government efforts to *escape* liability by pointing to the *absence* of municipal entity liability, there is no reason for treating differently a plaintiff's effort to *base* liability solely upon the fact that a State would impose liability upon a state governmental entity. Nothing in the Act's context, history, or objectives or in this Court's opinions suggests otherwise. Pp. 2–3.

- (b) The Ninth Circuit's second premise reads the Act too narrowly. Section 2674 makes the United States liable "in the same manner and to the same extent as a private individual under *like circumstances*." (Emphasis added.) The words "like circumstances" do not restrict a court's inquiry to the same circumstances, but require it to look further afield. See, e.g., Indian Towing, supra, at 64. The Government in effect concedes, and other Courts of Appeals' decisions applying Indian Towing's logic suggest, that private person analogies exist for the federal mine inspectors' conduct at issue. The Ninth Circuit should have looked for a such an analogy. Pp. 3–4.
- (c) The lower courts should decide in the first instance precisely which Arizona tort law doctrine applies here. P. 5.

362 F. 3d 1236, vacated and remanded.

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