No. 21-1438

IN THE

Supreme Court of the United States

TAMIA BANKS, RONNIE HOOKS, JOEL HOGAN, KENNETH NIEBLING, KENDALL LACY, TANJA LACEY, WILLIE CLAY, BOBBIE JEAN CLAY, ANGELA STATUM, AND MISSOURI RENTALS COMPANY, LLC, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED,
Petitioners,

v.

COTTER CORPORATION, COMMONWEALTH EDISON COMPANY, DJR HOLDINGS, INC., AND ST. LOUIS AIRPORT AUTHORITY,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeal for the Eighth Circuit

BRIEF IN OPPOSITION

JENNIFER STEEVE
RILEY SAFER HOLMES & CANCILA LLP
100 Spectrum Center Drive
Suite 440
Irvine, CA 92618
(949) 359-5515
jsteeve@rshc-law.com

BRIAN O. WATSON
Counsel of Record
RILEY SAFER HOLMES & CANCILA LLP
70 W. Madison Street
Suite 2900
Chicago, IL 60602
(312) 471-8700
bwatson@rshc-law.com

Counsel for Respondent Cotter Corporation (N.S.L.)

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QUESTIONS PRESENTED

Since 1988, the Price-Anderson Act has conferred original jurisdiction on federal district courts and provided for the removal from state court of "any public liability action arising out of or resulting from a nuclear incident." 42 U.S.C. § 2210(n)(2). The Act defines a "nuclear incident" as "any occurrence, including an extraordinary nuclear occurrence," that causes bodily injury or property damage "arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material." 42 U.S.C. § 2014(q). Below, the Eighth Circuit held that the word "occurrence" means "any occurrence" that meets the requirements of § 2014(q). It rejected Petitioners' request to append a further, non-textual limit requiring that a named defendant have a specific kind of governmental license or indemnity agreement.

The questions presented are:

1. Does the term "occurrence" under § 2014(q) mean "any occurrence" that meets the requirements of § 2014(q)—as each court of appeals to address the issue has concluded—or does it also require that a named defendant have a governmental license or indemnity agreement, as Petitioners urge?

2. Do appellate courts have jurisdiction to review orders of district courts rejecting federal jurisdiction under the Price-Anderson Act and remanding claims covered by the Price-Anderson Act to state court under 28 U.S.C. § 1367?

PARTIES TO THE PROCEEDING

All parties appear in the caption of the case on the cover page.

RELATED PROCEEDINGS

U.S. Court of Appeals for the Eighth Circuit:

In re: Cotter Corporation (N.S.L.), No. 21-1160 (January 7, 2022)

Tamia Banks, et al. v. Cotter Corporation (N.S.L.), *et al.*, No. 21-1165 (January 7, 2022)

RULE 29.6 STATEMENT

Respondent Cotter Corporation (N.S.L.) certifies that its parent company is General Atomics Uranium Resources, LLC and that no publicly held companies own 10% or more of its stock.

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BRIEF IN OPPOSITION

Respondent Cotter Corporation (N.S.L.) ("Cotter") respectfully submits this brief in opposition to the petition for a writ of certiorari.

INTRODUCTION

The Price-Anderson Act ("Act") confers original jurisdiction on federal courts over "any public liability action arising out of or resulting from a nuclear incident," and provides for its removal from state court. 42 U.S.C. § 2210(n)(2). The Act defines a "nuclear incident" as "any occurrence, including an extraordinary nuclear occurrence," that causes bodily injury or property damage "arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material." 42 U.S.C. § 2014(q).

The principal question in this case is whether the word "occurrence" means "any occurrence"—as the Eighth Circuit held below—or whether it also includes a further, non-textual limit requiring the defendant to have "an applicable license or indemnity agreement," as Petitioners urge. Pet. 18.

The Court should deny review because there is no conceivable circuit split on the issues presented. Every circuit to have reached the issue has come to the same conclusion. And precedent from this Court supports the unanimous reasoning of the circuits.

The supposed "inconsistent" interpretations of the Act among "lower courts," Pet. 26, are solely between district court decisions and the circuit decisions overruling them. Pet. 27. Petitioners themselves waffle in their assertion of inconsistency among the circuits: "Is there a Circuit Split? Maybe." Pet. 26. But ultimately,

even Petitioners concede that "each court of appeals to address the issue," including the court below, has rejected Petitioners' non-textual argument. Pet. 3, 22. In other words, the law is uniform.

The Third, Fifth, Sixth, and now Eighth Circuits have squarely addressed the interpretation of the word "occurrence" within "nuclear incident." Each circuit has accorded the term its plain text meaning and found that meaning to be consistent with the Act's history and purpose. *See Acuna v. Brown & Root Inc.*, 200 F.3d 335, 339 (5th Cir. 2000); *Est. of Ware v. Hosp. of the Univ. of Penn.*, 871 F.3d 273, 280 (3d Cir. 2017); *Matthews v. Centrus Energy Corp.*, 15 F.4th 714, 722–23 (6th Cir. 2021); Pet. App. 9a–14a.

This consensus is correct. The Eighth Circuit interpreted the term "occurrence" according to its "ordinary meaning," which it found consistent with the Act's context and history. Petitioners' central claim of error is that the Eighth Circuit should *not* have followed "the plain meaning" and improperly "ignore[d] the legislative history where Congress precisely defined the word 'occurrence.'" Pet. 21.

As a threshold matter, Petitioners ignore the first rule of statutory interpretation: if the text is clear, the statutory analysis ends. *See Gonzales v. Carhart*, 550 U.S. 124, 152 (2007). Even if that were not enough, the Act's legislative history does not support Petitioners either.

The Eighth Circuit decision also accords with holdings from this Court that the Act's "unusual preemption provision . . . transforms into a federal action 'any public liability action arising out of or resulting from a nuclear incident,' . . . gives a district court original jurisdiction over such a claim, [and] provides for

removal to a federal court as of right." *El Paso Nat. Gas Co. v. Neztsosie*, 526 U.S. 473, 484–85 (1999); *see also Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 6 (2003).

Petitioners, however, do not want their putative class action to stay in federal court—lest the parties avail themselves of the protections of Federal Rule of Civil Procedure 23, the exacting standards of *Daubert*, and the Price-Anderson Act's prohibition on punitive damages and medical monitoring claims. Because Petitioners want to have their nuclear incident claim heard in Missouri state court, they assert that the decision below—and every circuit to have reached the issue—erred in holding that the Act "provides federal court jurisdiction even when the [Price-Anderson Act's] insurance and indemnification scheme is not implicated." Pet. 3. Petitioners thus argue that there cannot be a "nuclear incident" claim without a named defendant having a certain kind of license or indemnification agreement with the U.S. Government. Pet. 23.

In so doing, Petitioners conflate the broad sweep of the Act's jurisdictional provisions with its more specific substantive provisions that deal with licensing and indemnification. As the court below found, Petitioners seek to import into the relevant jurisdictional provision terms that "appear[] nowhere in the definition of 'nuclear incident,'" defy a plain text reading, and "conflict[] with the clear purpose" of the Act as amended in 1988. Pet. App. 12a–13a. The Eighth Circuit thus rejected Petitioners' "tortured . . . logic," Pet. 12a, consistent with every appellate decision to address the issue.

There is also no conflict among the circuits that rejecting federal jurisdiction under the Act and declining to exercise supplemental jurisdiction under

28 U.S.C. § 1367, thus remanding a federal suit to state court, is a final decision reviewable under 28 U.S.C. § 1291. That is a settled question of law faithfully applied by the court below. *See Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 712–15 (1996); *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 10 & n.11 (1983). Nor do the Fourth and Eighth Circuits conflict on this issue. *Compare Campbell-McCormick, Inc. v. Oliver*, 874 F.3d 390, 395 (4th Cir. 2017), *with* Pet. App. 4a–5a.

STATEMENT OF THE CASE

A. Statutory Framework: The Price-Anderson Act

Congress passed the Price-Anderson Act ("Act") in 1957 to (1) "protect the public" and (2) "provide a measure of financial protection for entities involved in the high-risk enterprise of developing the nation's nuclear programs for energy and defense." *Halbrook v. Mallinckrodt, LLC*, 888 F.3d 971, 974 (8th Cir. 2018) (citing 42 U.S.C. § 2012). The Act applies to all claims arising from a "nuclear incident"—defined broadly as:

> any occurrence, including an extraordinary nuclear occurrence within the United States causing . . . bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive . . . properties of source, special nuclear, or byproduct material.

42 U.S.C. § 2014(q). The Act thus governs any action in which "a party asserts that another party bears any legal liability arising out of an incident in which the hazardous properties of radioactive material caused bodily injury, sickness, or property damage." *Cotroneo*

v. Shaw Env't & Infrastructure, Inc., 639 F.3d 186, 194 (5th Cir. 2011).

As amended in 1988, the Act gives federal district courts original and removal jurisdiction over any and all "nuclear incident" claims—whether they assert liability resulting from an "occurrence" or an "extraordinary nuclear occurrence." 42 U.S.C. §§ 2014(hh), 2210(n)(2). Accordingly, the Court has interpreted the Act's "unusual pre-emption provision" to "not only give[] federal courts jurisdiction over tort actions arising out of nuclear accidents but also [to] expressly provide for removal of such actions brought in state court even when they assert only state-law claims." *Anderson*, 539 U.S. at 6. Indeed, the Court has noted that the "pre-emptive force" of the Act "is so extraordinary that it converts an ordinary state common-law complaint into one stating a federal claim." *Neztsosie*, 526 U.S. at 484 n.6.

B. The Manhattan Project and the St. Louis Sites

This suit arises out of an alleged release of nuclear material. Petitioners are current or former owners of or residents on properties near Coldwater Creek, a waterway in St. Louis County that runs past several sites where radioactive materials from the Manhattan Project were handled and stored. CA JA 511 ¶¶ 1–2, 528 ¶ 62. Petitioners filed a proposed class action in Missouri state court alleging that, since World War II, radioactive materials from the Manhattan Project nuclear development have migrated from those sites into Coldwater Creek and its floodplain, causing widespread contamination and exposure to all residents, damaging their property, and requiring medical monitoring for potential bodily injury. JA 511–12 ¶¶ 1–5, 520–33 ¶¶ 32–98.

The parties do not dispute the history of the Manhattan Project in the St. Louis area. JA 527 n.4. During World War II, the U.S. Government began importing and processing uranium for the Manhattan Project in downtown St. Louis City, Missouri. JA 269 ¶ 20; *see also* JA 528 ¶ 62.

Mallinckrodt LLC ("Mallinckrodt") processed the uranium and handled the radioactive materials for the Manhattan Project under an exclusive contract with the government. JA 269–70 ¶¶ 20–21; Pet. 9. Mallinckrodt's government contract also provided for "indemnification of the Contractor [Mallinckrodt] and others with respect to public liability" for any Price-Anderson Act claims arising from a "nuclear incident which involves . . . material . . . produced or delivered under this contract." JA 505–506 §§ 3(a), 3(b)(4); *see also* JA 273–74 ¶¶ 29–32; JA 279 ¶ 48; JA 341–425; JA 505 § 3(a) ("the Commission will and does hereby indemnify Contractor, and other persons indemnified, against (i) claims for public liability"); JA 505–506 § 3(b)(2) (providing indemnity for public liability claims arising out of "a nuclear incident which takes place at any other location . . . by other persons for the consequences of whose acts or omissions the Contractor is liable"). The Mallinckrodt contract later explicitly adopted the language of the Act, which defined "person indemnified" to include "the person with whom an indemnity agreement is executed or who is required to maintain financial protection, *and any other person who may be liable for public liability*." 42 U.S.C. § 2014(t) (emphasis added).

From the mid-1940s through the 1960s, Mallinckrodt and the government moved the radioactive materials from downtown St. Louis and stored them at the St. Louis Airport Site ("SLAPS") near Lambert

International Airport. JA 269 ¶ 20; *see also* JA 528 ¶¶ 65–66, JA 529–30 ¶¶ 75–80. In 1957, some of the radioactive materials were buried on part of SLAPS that ran next to Coldwater Creek. JA 864; JA 34 ¶¶ 58–60, JA 531–32 ¶¶ 84–91. In the 1960s, some of the radioactive materials from Mallinckrodt's processing were then moved from SLAPS to storage sites in Hazelwood, Missouri, including a site known as "Latty Avenue." JA 269 ¶ 20; JA 528 ¶¶ 67, 81–83.

In the late 1960s, the government offered for sale the radioactive residue materials that had been produced by Mallinckrodt and moved to Latty Avenue. JA 658; *see also* JA 34 ¶¶ 63–66.

Cotter ultimately acquired some of the radioactive residue materials at Latty Avenue. JA 661–65; *see also* JA 34 ¶¶ 63–66. Between 1969 and 1974, Cotter held a "source material license" from the Atomic Energy Commission ("AEC," predecessor to the Nuclear Regulatory Commission ("NRC")) that allowed Cotter to possess, use, and transport the licensed materials Cotter had purchased. JA 168–69; *see also* JA 661–65; JA 742–52; JA 255 n.2; Pet. 10. Petitioners concede that Cotter had a source material license and that Cotter's materials contained uranium and thorium, Pet. 10, which are source materials, 42 U.S.C. § 2014(z).

At the time, the Act compelled the AEC to require certain types of licensees to maintain financial protection for public liability claims as a condition of the licenses—such as utilization or production facilities, 42 U.S.C. §§ 2133, 2235; or special nuclear material for medical therapy, 42 U.S.C. § 2134. *See* 42 U.S.C. § 2210(a). But the Act gave the AEC discretion whether to require financial protection of other licensees—such as for source material licensees, 42 U.S.C. § 2093. *See* 42 U.S.C. § 2210(a). The parties

agree that, by the AEC's authority under 42 U.S.C. § 2210(a), the AEC did not require Cotter to maintain financial protection as a condition of its source material license.

By 1973, the licensed materials at Latty Avenue had been removed to other sites, and Cotter ceased operations at Latty Avenue. JA 835–36. In 1974, the AEC thus terminated the license at Cotter's request under AEC regulations. *Id.*; JA 839.

C. The Class Action Petition, First Removal, and First Remand

In February 2018, Petitioners filed their proposed class action petition in Missouri state court. JA 1 ¶ 1. They brought tort claims purportedly under Missouri state law against Cotter, the St. Louis Airport Authority, and four other entities, but chose not to sue Mallinckrodt. JA 517–20 ¶¶ 27–31, JA 533–44. The petition explicitly disclaimed application of the Price-Anderson Act. JA 514 ¶¶ 15–17.

In April 2018, Cotter timely removed the case to the Eastern District of Missouri, invoking federal question jurisdiction under 28 U.S.C. § 1331 based on the Act. JA 1, 5, 263.

Petitioners moved to remand. JA 57–77. Petitioners argued that they only pleaded state law claims and the district court lacked subject matter jurisdiction. JA 57–58 ¶¶ 3, 10. Cotter opposed (JA 78–171), relying on the Act's jurisdictional provisions and this Court's precedent that when a federal statute such as the Act provides for complete preemption, even claims purportedly pleaded under state law are in reality based on federal law. JA 80–91 (citing *Neztsosie*, 526 U.S. at 477); JA 5–6 (citing *Anderson*, 539 U.S. at 8).

In March 2019, the district court rejected Cotter's arguments, concluded it lacked subject matter jurisdiction, and remanded the case under 28 U.S.C. § 1447(c). JA 246–63. The district court went beyond the language of the text and ruled that "a license or indemnification agreement covering the activities which give rise to the liability alleged" was required for there to be an "occurrence." JA 257–58 (citing, *inter alia*, *Strong v. Republic Servs., Inc.*, 283 F. Supp. 3d 759, 772 (E.D. Mo. 2017)).

The district court also rejected Cotter's alternative argument that, even if the Act imposed a non-textual license or indemnification requirement, Cotter had such a license. JA 260, 262–63. While the district court found the record before it inconclusive on the nature of the materials at issue, it ultimately assumed without deciding that byproduct materials, not source materials, were at issue, and therefore Cotter's license did not cover the materials at issue in Petitioners' complaint. JA 262–63. As a result, the district court ruled that "Cotter's license does not provide a basis for federal subject matter jurisdiction." JA 263.

Because the district court remanded for lack of subject matter jurisdiction under 28 U.S.C. § 1447(c), Cotter did not seek direct appellate review at the time. *See In re Bus. Men's Assur. Co. of Am.*, 992 F.2d 181, 182 (8th Cir. 1993) (interpreting 28 U.S.C. § 1447(d) to preclude review of remand order based on § 1447(c)).

D. The Removal and Remand at Issue

Back in state court, Petitioners filed a Second Amended Class Action Petition. JA 510–52. Cotter timely filed a third-party action against seven third-party defendants, including Mallinckrodt, for contribution based on Petitioners' amended claims. JA 553–71.

On September 10, 2020, Mallinckrodt removed the case again, under 28 U.S.C. § 1441 based on the Act and under § 1442 based on its role as a federal officer and government contractor. JA 264–65. Cotter and all other Defendants joined Mallinckrodt's removal or consented to removal. JA 294–303.

Petitioners moved to sever and remand their claims. JA 575–80. Petitioners did not challenge Mallinckrodt's removal or federal jurisdiction over the third-party claims. JA 582–83. Instead, Petitioners argued that the district court's first remand ruling meant Petitioners' claims fell outside the Act and that the district court should decline to exercise supplemental jurisdiction over Petitioners' purportedly state law claims. JA 587–90, JA 884.

In December 2020, the district court agreed with Petitioners, severed Cotter's third-party claim against Mallinckrodt, and remanded all other claims to state court. JA 900–914.

The district court refused to reconsider the premise of its first remand order that a license or indemnity agreement is a prerequisite to federal jurisdiction under the Act. JA 905, 907–908. And the district court assumed that neither Mallinckrodt's indemnity agreement nor the record evidence regarding the scope of Cotter's license conferred original jurisdiction on the court even under its license or indemnity "prerequisite." JA 912–913.

Relying on its first remand order, the district court also concluded that the Act was an "affirmative defense" of ordinary preemption, rather than effecting extraordinary preemption. The district court thus ruled that Mallinckrodt's "defense" under the Act "does not establish federal jurisdiction over Plaintiffs'

state law claims." JA 912. It ignored Cotter's evidence regarding its source material license. *Id.*

The district court thus assumed federal jurisdiction over Cotter's claim against Mallinckrodt, but declined to exercise supplemental jurisdiction over the remaining claims. JA 903.

The district court acknowledged that "Plaintiffs' entire claim, as well as Cotter's claim of contribution," both "clearly stem[] from the same underlying facts"—the "processing and transporting of hazardous materials in association with the Manhattan Project." JA 904. Thus, the court concluded that the two sets of claims were "so related" "that they form part of the same case or controversy" under the U.S. Constitution, Article III, allowing supplemental jurisdiction over any "state law" claims. JA 903–904 (quoting 28 U.S.C. § 1367(a)). Nevertheless, the court found that "the state law claims predominate." *See* JA 904–909 (assessing factors from *United Mine Workers v. Gibbs*, 383 U.S. 715, 725 (1966)).

For these reasons, the district court severed Cotter's contribution claim against Mallinckrodt and remanded Petitioners' claims—and Cotter's other third-party claims—to state court. JA 913.

E. The Eighth Circuit Decision Below

Cotter timely appealed the December 2020 severance and remand order, as well as the 2019 remand order to the extent it was incorporated or relied upon in the 2020 order or reviewable under pendent appellate jurisdiction. *See* JA 915–18; Cotter's Opp'n to Pls.' Mot. to Dismiss Appeal, Feb. 16, 2021. (Cotter also filed an alternative petition for writ of mandamus that was later dismissed as moot.) Petitioners moved to dismiss the appeal for lack of subject matter jurisdiction.

After oral argument, the Eighth Circuit—Judges Loken, Colloton, and Benton—denied Petitioners' motion to dismiss for lack of jurisdiction. The court held that the 2020 remand order was "a reviewable final judgment under 28 U.S.C. § 1291 because it effectively put Cotter out of federal court for Plaintiffs' claims." Pet. App. 4a–5a (citing *Quackenbush*, 517 U.S. at 712–15; *Moses H. Cone*, 460 U.S. at 10 & n.11; *Gaming Corp. of Am. v. Dorsey & Whitney*, 88 F.3d 536, 542 (8th Cir. 1996); *Baker v. Kingsley*, 387 F.3d 649, 653–56 (7th Cir. 2004)).

The Eighth Circuit then reversed the district court's decision. The court held that "an indemnity agreement is not a prerequisite for jurisdiction under the [Act's] jurisdictional grant for a 'nuclear incident.' Because the [Act] provides federal question jurisdiction over the claims against Cotter and a 'district court has no discretion to remand a claim that states a federal question,' the district court abused its discretion." Pet. App. 15a (citation omitted).

The court held that—based on the "text and history" of the Act—the Act "provides federal question jurisdiction over all 'nuclear incidents,' regardless of whether the defendant had an applicable license or indemnity agreement." Pet. App. 8a (citing 42 U.S.C. §§ 2210(n)(2), 2014(q)). The court reasoned that since the Act did not define "occurrence," it should be given its dictionary definition: "something that takes place." Pet. App. 9a. The court noted that this plain text interpretation aligned with the history and purpose of the Act, which sought to address liability risks stunting development of private nuclear energy. Pet. App. 10a (citing *Neztsosie*, 526 U.S. at 476). The Act provided a system of private insurance, government indemnification, and limited liability for those in the industry. *Id.* The Act's

expansion of federal jurisdiction in 1988 from "extraordinary nuclear incidents" to all nuclear incidents confirmed that the reach of the jurisdictional provisions should be broad. Pet. App. 10a–11a.

The court below rejected Petitioners' arguments that "occurrence" should be limited only to nuclear incidents happening at the site of licensed or indemnified activity: that "interpretation incorrectly imports limiting concepts from 'extraordinary nuclear occurrence' to interpret the word 'occurrence' in nuclear incident." Pet. App. 12a. Instead, the court followed the first rule of statutory interpretation—to interpret words not defined in a statute according to their plain meaning unless context requires otherwise. *Id.* Here, the word "occurrence" was adequately defined by its plain meaning, and that meaning did not create absurdity or run contrary to the Act's framework. *Id.* Moreover, Petitioners' interpretation of "occurrence" imposed limits imported from the separate, more narrow definition of "extraordinary nuclear occurrence." Pet. App. 12a–13a. Lastly, the court held that Petitioners' interpretation conflicted with the clear purpose of the 1988 amendments to the Act to broaden federal jurisdiction over nuclear incidents. Pet. App. 13a. For that reason, the court determined *Silkwood v. Kerr-McGee Corporation*, 464 U.S. 238 (1984), was irrelevant to the question at issue because "*Silkwood* was decided in 1984, four years before the 1988 [Price-Anderson Act] Amendments revised the jurisdictional grant to apply to 'nuclear incident' instead of 'extraordinary nuclear occurrence.'" Pet. App. 13a–14a.

The court also noted that its decision aligned with the other circuits to have expressly considered the issue after the 1988 amendments. Pet. App. 10a (citing

Est. of Ware, 871 F.3d at 280; *Acuna*, 200 F.3d at 339; *Centrus*, 15 F.4th at 722–23); Pet. App. 14a.

REASONS FOR DENYING THE PETITION

The Court should deny the petition because—as Petitioners acknowledge—there is no circuit split. The circuits are in complete agreement to interpret the Price-Anderson Act according to its plain meaning, a meaning supported by the Act's context and history.

I. THERE IS NO CONFLICT AMONG THE CIRCUITS.

There is no circuit split on the plain text statutory interpretation adopted in the decision below. Indeed, Petitioners concede that "each court of appeals to address the issue, including the Eighth Circuit, has held that the [Act] is applicable and provides federal court jurisdiction even when the [Act's] insurance and indemnification scheme is not implicated." Pet. 3.

The Third, Fifth, Sixth, and now Eighth Circuits are the only circuits to have explicitly addressed this issue, and all have agreed that the Price-Anderson Act's jurisdictional provisions apply regardless of a party's license or indemnity status. Each circuit reached this conclusion based on a plain text reading of the statute, as supported by its legislative history. *See Est. of Ware*, 871 F.3d at 280; *Acuna*, 200 F.3d at 339; *Centrus*, 15 F.4th at 722–23; Pet. App. 8a–9a.

In 2000, the Fifth Circuit was the first circuit to address the as-amended jurisdictional provisions of the Act. The decision upheld removal jurisdiction under the Price-Anderson Act, 42 U.S.C. § 2210(n)(2), despite the plaintiffs' argument—as here—that the jurisdictional provision, by using the term "nuclear incident," referred only to claims brought against

defendants whose contested nuclear activity occurred "at a contract location subject to the indemnification portion of the Act." *Acuna*, 200 F.3d at 338–40. The court rejected the plaintiffs' "intricate series of interpolations from definitions elsewhere in the legislation" into the jurisdictional provision, deeming it "a tortured interpretation" that "is unnecessary and runs counter to the plain language of the statute as well as the Congressional intent behind the 1988 amendment of § 2210(n)(2)." *Id.* at 339.

The Fifth Circuit roundly rejected the same arguments that Petitioners make here:

> There is nothing in the definition of "nuclear incident" which suggests it should be contingent on . . . whether the facility is covered under the separate indemnification portions of the Act. "Nuclear incident" is not limited to a single, catastrophic accident: indeed, one purpose behind the 1988 amendments was to expand the scope of federal jurisdiction beyond actions arising from "extraordinary nuclear occurrences" only. Plaintiffs' attempts to reintroduce the limitations of "extraordinary nuclear occurrence" into the 1988 amendments' substitution of "nuclear incident" rely on faulty statutory interpretation and are contrary to Congressional intent.

Id. (quoting *Kerr–McGee Corp. v. Farley*, 115 F.3d 1498, 1502 (10th Cir. 1997)).

In 2017, the Third Circuit reached the same issue. A researcher brought a claim against a university alleging radiation injuries arising from his use of cesium-137 in the university's research lab. *Est. of Ware*, 871 F.3d at 281. The court first applied a plain

text reading to the definition of "nuclear incident": "As long as we give the word 'occurrence' its ordinary meaning—'something that takes place; esp. something that happens unexpectedly and without design; or the action or process of happening or taking place'—the facts alleged constitute a 'nuclear incident' under § 2014(q)." *Id.* (citations omitted).

The plaintiff there specifically argued—as here—that the Act did not apply unless the defendant had an indemnity agreement with the NRC (the AEC's successor agency). *Id.* at 282. Like the Fifth Circuit, the Third Circuit rejected this rationale:

> We are unpersuaded that an indemnification agreement is necessary to trigger the Act's applicability. . . . "[O]ne purpose behind the 1988 amendments was to expand the scope of federal jurisdiction beyond actions arising from 'extraordinary nuclear occurrences[.]'" Indeed, that is why the definition of 'nuclear incident' is so broad. Thus we agree with the Fifth Circuit's conclusion that . . . "attempts to reintroduce the limitations of 'extraordinary nuclear occurrence' into the 1988 amendments' substitution of 'nuclear incident' rely on faulty statutory interpretation and are contrary to Congressional intent."

Id. at 283 (citations omitted; overruling *Gilberg v. Stepan Co.*, 24 F. Supp. 2d 325 (D.N.J. 1998), *supplemented*, 24 F. Supp. 2d 355 (D.N.J. 1998)). Ultimately, the Third Circuit concluded that the Act's definition of "nuclear incident" is "facially quite broad" and, as a result, the Act's jurisdictional grant "is also broad." *Id.* at 280.

In October 2021, the Sixth Circuit addressed the same issue, followed the same rationale, and reached the same conclusion:

> In the absence of a statutory definition of "occurrence," we give the term its ordinary meaning. At the time of the Act's passage, "occurrence" meant "something that occurs, happens, or takes place," or "something that takes place; esp.: something that happens unexpectedly and without design[.]" With occurrence defined in such broad fashion, one can fairly conclude that plaintiffs' alleged radiation-related injuries stemmed from an "occurrence." Plaintiffs thus allege facts that constitute a "nuclear incident." And because plaintiffs assert claims based upon that incident, they are asserting claims for "public liability." Taking all of this together, plaintiffs' state law claims amount to a "public liability action," meaning their claims are preempted by the Act.

Centrus, 15 F.4th at 722–23.

As discussed above, the Eighth Circuit agreed with the Third, Fifth, and Sixth Circuits and applied the same plain text meaning to "occurrence," finding that the Act preempted Petitioners' state law claims and allowed Cotter to remove the case to federal court. Pet. App. 9a–14a.

None of the remaining circuits have reached the same issue, much less come to a contrary conclusion. Petitioners thus ultimately concede that there is no circuit split on the interpretation of "occurrence," which would bring Petitioners' nuclear injury claim within the jurisdictional reach of the Act. Pet. 3, 22.

Indeed, no circuit has suggested even in dicta that Petitioners are correct. And *every* circuit to address federal jurisdiction under the Act, as well as this Court, has affirmed the same complete preemption rule the Eighth Circuit applied here. *See Neztsosie*, 526 U.S. at 484–85; *see also Anderson*, 539 U.S. at 6; *Fracasse v. People's United Bank*, 747 F.3d 141, 144 (2d Cir. 2014); *In re TMI Litig. Cases Consol. II*, 940 F.2d 832, 854 (3d Cir. 1991); *Cotroneo*, 639 F.3d at 195; *Nieman v. NLO, Inc.*, 108 F.3d 1546, 1549 (6th Cir. 1997); *O'Conner v. Commonwealth Edison Co.*, 13 F.3d 1090, 1100 (7th Cir. 1994); *Halbrook*, 888 F.3d at 977; *In re Hanford Nuclear Reservation Litig.*, 534 F.3d 986, 1009 (9th Cir. 2008); *Farley*, 115 F.3d at 1504; *Pinares v. United Tech. Corp.*, 973 F.3d 1254, 1261 (11th Cir. 2020).

These decisions unanimously upheld federal question jurisdiction under the Act without first inquiring into whether a defendant held an applicable license or indemnity agreement with the U.S. Government. As a result, Petitioners concede that the decision below agrees with *every* circuit to have addressed the issue. Pet. 3, 22. In short, there is no circuit split.

II. THE LOWER COURT FOLLOWED THE PLAIN TEXT MEANING OF THE STATUTE, AS CONFIRMED BY ITS LEGISLATIVE HISTORY.

In addition to following precedent of the Court and agreeing with all other circuits to address the issue, the decision below does not merit review because it correctly applied established rules of statutory construction.

A. The Court Applied the Plain Text Meaning, Which No Party Disputes.

The court below recognized and followed its obligation to interpret "[a] term not defined in a statute . . . consistent[ly] with its 'ordinary meaning,' departing "from this interpretation only if context requires a different result." Pet. App. 9a (citations omitted).

The court noted that the Act does not define "occurrence" and thus applied the dictionary definition at the time the jurisdictional provision was broadened in 1988: "something that occurs" or "something that happens." Pet. App. 14a (citing MERRIAM-WEBSTER.COM, https://www.merriamwebster.com/dictionary/occurrence (last visited Oct. 4, 2022)).

The court noted and faithfully followed this Court's precedent on basic statutory interpretation: (1) interpreting "words consistent with their 'ordinary meaning . . . at the time Congress enacted the statute,'" *Wisconsin Central Ltd. v. United States*, 138 S. Ct. 2067, 2070 (2018); (2) interpreting "a word or phrase depends upon reading the whole statutory text, considering the purpose and context of the statute, and consulting any precedents or authorities that inform the analysis," *Dolan v. U.S. Postal Serv.*, 546 U.S. 481, 486 (2006); and (3) not departing from the ordinary meaning unless the words are otherwise defined in the statute itself, or if "context requires a different result," *Carhart*, 550 U.S. at 152.

Here, the Eighth Circuit recognized that "occurrence" unambiguously means "something that occurs" or "something that happens." Pet. App. 14a. Indeed, Petitioners provide no other way to interpret the word itself, but rather resort to appending additional, non-textual limitations taken from irrelevant legislative

history documents. Petitioners offer no compelling reason why the statute does not mean what it says on its face, which ends further analysis.

And, to be sure, there is no dispute that if "occurrence" means what it says, then the broad sweep of the Act conferred original jurisdiction on the district court in this case.

B. The Legislative History Affirms the Plain Text Reading of "Occurrence."

After the Eighth Circuit concluded that "occurrence" was adequately defined by its plain meaning, the court nevertheless evaluated whether anything in the statute's text, history, or purpose required departing from that plain meaning. Pet. App. 10a–13a. It concluded that the legislative history supported, and did not undermine, the plain text reading. *Id.*

The court followed the correct analysis and reached the correct conclusion. The legislative history of the Price-Anderson Act, and the 1988 amendments broadening its jurisdictional reach, compel this broad interpretation of "occurrence." There is no dispute that Congress amended the jurisdictional provision (and inserted a new one) in response to a specific historical incident—the 1979 Three Mile Island ("TMI") nuclear incident. *See* S. Rep. No. 100-218, at 13 (1987), reprinted at 1988 U.S.C.C.A.N. 1476; *Neztsosie*, 526 U.S. at 477. Claims regarding the TMI incident fell outside federal jurisdiction under the pre-1988 version of the Act because it extended federal jurisdiction only to an "extraordinary nuclear incident," and the NRC declined to deem the TMI incident "extraordinary" (defined as releasing radiation at a certain defined level). *See* S. Rep. No. 100-218, at 13 (1987); *Neztsosie*, 526 U.S. at 477; 42 U.S.C. § 2014(j); *O'Conner*, 13 F.3d

at 1102. The lack of federal jurisdiction over the TMI incident created a patchwork of litigation in state and federal courts. *See* S. Rep. No. 100-218, at 13 (1987); *Neztsosie*, 526 U.S. at 477. Congress responded by amending § 2210(n)(2) and adding 42 U.S.C. § 2014(hh) to extend the scope of federal jurisdiction to "*any* occurrence, *including* an extraordinary nuclear incident." 42 U.S.C. § 2014(q) (emphasis added); Pub. L. 100-408 (HR 1414), August 20, 1988, 102 Stat 1066, § 11. Indeed, Congress stated the purpose of its amendment act was "*to extend* and improve the procedures for liability and indemnification for nuclear incidents." *Id.* (emphasis added); *see also* S. Rep. 100-218, at 13 ("The bill *expands* existing law to allow for the consolidation of claims arising out of *any* nuclear incident in federal district court" (emphasis added)).

Through these amendments, Congress "expressed an unmistakable preference for a federal forum" for nuclear incident claims. *Neztsosie*, 526 U.S. at 484–85. Thus, the extension of federal jurisdiction to any "nuclear incident," and not just an extraordinary nuclear occurrence, was an intentional broadening of federal jurisdiction, *see Estate of Ware*, 871 F.3d at 283; *Acuna*, 200 F.3d at 339, and "the entire Price–Anderson landscape was transformed." *In re TMI Litig. Cases Consol. II*, 940 F.2d at 857.

At bottom, the legislative history supports, rather than undermines, the plain text reading of "occurrence" as "something that happens."

C. The 1957 Senate Report and 1998 NRC Report Further Support the Plain Text.

Petitioners make only two arguments that "occurrence" somehow imports a license or indemnity requirement—they assert: (1) a half-sentence from a 1957 Senate

Report precludes a broad interpretation of the 1988 amendment, and (2) the NRC's 1998 report on the Price-Anderson Act indicates that there are extra-textual limitations on federal jurisdiction, such as requiring a defendant to have an indemnity agreement with the government or a license with financial protection. Neither source actually rebuts the plain text meaning of "occurrence."

Indeed, Petitioners' primary argument relies on legislative history materials predating the relevant provision *by more than 30 years*. *See* S. Rep. 85-296 (1957), reprinted at 1957 U.S.C.C.A.N. 1803. Even if relevant, the specific excerpt Petitioners quote simply elaborates on the venue provision of the Act: the court that should hear claims arising from a nuclear incident should be the court situated where the "event" occurred, not where damage was caused. *See id.* at 1817–18; *see also* 10 C.F.R. § 8.2 (1998) ("This definition . . . is crucial to the Act's placing of venue under [§ 2210(c)]").

Moreover, this superseded legislative history source ultimately undermines Petitioners' argument by repeatedly underscoring the jurisdictional reach of the Act to even unlicensed and un-indemnified parties. For example, the 1957 Report notes that the Act's purpose to "protect the public" is fulfilled by applying the Act if an unlicensed third party caused a nuclear incident, such as if negligent maintenance of "an airplane motor . . . cause[d] an airplane to crash into a [nuclear] reactor" or "a carrier transporting spent fuel elements . . . should have an accident which would spill the radioactive materials into a stream." 1957 U.S.C.C.A.N. at 1818.

The report further acknowledged that the term "person indemnified" in 42 U.S.C. § 2014(t) "is not

meant to be limited solely to those who may be found liable due to their contractual relationship with the licensee." 1957 U.S.C.C.A.N. at 1818. Although the AEC had proposed that the Act's protections be limited to those "in privity" with a licensee, the AEC "reconsidered" this limitation and "decided to accept the premise of the original bills which would make the person indemnified any person [who] might be found liable, regardless of the contractual relation." *Id.* at 1811–12. For that reason, the Act as adopted defined "person indemnified" as "the person with whom an indemnity agreement is executed or who is required to maintain financial protection, *and any other person who may be liable for public liability*." 42 U.S.C. § 2014(t) (emphasis added).

For these reasons, even if the 1957 Senate Report applied to interpreting the 1988 amendments, it still does not require limiting federal jurisdiction to parties carrying a license with financial protection or those named in an indemnity agreement with the government.

Petitioners also rely on the NRC's Price-Anderson report to Congress in 1998. Pet. 25. Petitioners focus on an offhanded comment in a nonbinding report issued 10 years after the relevant amendments that did not even purport to state a position on the question actually at issue here: the scope of the Act's jurisdictional provisions. In any event, Petitioners' attempt to invoke deference to the NRC's interpretations fails because the 1998 NRC report supports—rather than undermines—the plain text meaning.

If the Court wants to know the NRC's position on the jurisdictional question, it appears in the NRC's amicus brief filed that same year in *Neztsosie*: the NRC asserted its view that, by their very terms, "the preemption, removal, and consolidation provisions

resulting from the 1988 amendments extend to all cases involving 'nuclear incidents,' as broadly defined by the Act, *whether or not the defendant has an indemnification agreement with the government*." Br. for the United States, *Neztsosie*, No. 98-6, 1998 WL 858533, at *30 (Dec. 8, 1998) (emphasis added); *see also id.* at *28 n.16.

Finally, to the extent Petitioners make policy arguments that a literal interpretation of "occurrence" undermines certain goals of the Act, Pet. 18–23, the statute says what it says, and if public policy should compel a different standard, Congress is the appropriate body to change the statutory text. *See Ysleta Del Sur Pueblo v. Texas*, 142 S. Ct. 1929, 1943 (2022); *Burrage v. United States*, 571 U.S. 204, 218 (2014); *Revere Copper & Brass Inc. v. Overseas Priv. Inv. Corp.*, 628 F.2d 81, 84 (D.C. Cir. 1980). The judiciary can particularly trust that the legislature will fulfill its role to amend the Act as necessary because Congress has done so regularly in response to historical events and court cases.

D. The Court's Pre-1988 Decision in *Silkwood* Is Irrelevant to the Decision Below.

Petitioners claim the decision below conflicts with a 1984 case decided by the Court: *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238 (1984). Specifically, Petitioners assert that *Silkwood* held "that the 'Price-Anderson Act does not apply' where an NRC licensee does not maintain financial protection under 42 U.S.C. § 2210(a)." Pet. 24 (citing *Silkwood*, 464 U.S. at 251). As an initial matter, Petitioners overread *Silkwood*. But more importantly, Congress enacted the 1988 amendments in part to abrogate *Silkwood*, intentionally broadening the scope of the Act.

In *Silkwood*, the Court "determine[d] whether a state-authorized award of punitive damages arising out of the escape of plutonium from a federally-licensed nuclear facility is preempted" by the Act either because it regulated safety aspects of nuclear energy "or because it conflicts with some other aspect of the Atomic Energy Act." 464 U.S. at 241. Because plutonium processing plants were not required to maintain financial protection at the time of the plutonium release, the plant did not have an indemnification agreement with the government; the Court therefore held that the plutonium plant was not entitled to the limitation on liability within the Price-Anderson Act. *Id.* n.12. In other words, the Court held that a *substantive* provision of the Act did not apply to a particular kind of plutonium plant at the time. That holding has nothing to do with the *jurisdictional* provisions at issue here, which were not yet enacted in their current form at the time of the Court's ruling in *Silkwood*. *See* 42 U.S.C. § 2210(n)(2); 42 U.S.C. § 2014(hh); Pub. L. 100-408 (HR 1414), August 20, 1988, 102 Stat 1066.

In 1988, Congress amended the Act "in part as a congressional response" to *Silkwood*. *Farley*, 115 F.3d at 1503. Congress added § 2210(s) to override *Silkwood*'s holding and clarify that the Act prohibited punitive damages when the United States had to make payments under an indemnification agreement. *See* Pub. L. 100-408 (HR 1414), August 20, 1988, 102 Stat 1066, § 14. At the same time, Congress also added new provisions, discussed *supra*, to expand the scope of federal jurisdiction in response to *TMI*. Thus, Congress clearly knew how to draft provisions dependent on the United States being obligated under an indemnification agreement: Congress so limited the substantive provision in § 2210(s) but chose not to impose that

limitation when broadening the federal jurisdictional provision in § 2210(n)(2) and adding § 2014(hh).

After the 1988 amendments, plaintiffs in the Tenth Circuit continued to try to rely on *Silkwood* just like Petitioners here, arguing that "the [Price-Anderson] system simply does not apply to this case because [defendant] does not have an indemnity agreement with the federal government." *Farley*, 115 F.3d at 1504. The Court rejected the argument:

> This argument misreads *Silkwood*, which simply refused to apply the indemnification provisions of the [Act] to the claim in that case because the defendant lacked the necessary indemnity agreement. *Silkwood*, 464 U.S. at 252 n.12, 104 S.Ct. at 623 n. 12. Nothing in *Silkwood* suggests that the absence of an indemnity agreement makes the [Act's] jurisdictional provisions inapplicable. Furthermore, as quoted above, the jurisdictional provisions of the [Act], 42 U.S.C. §§ 2014(w), 2210(n), as amended by the 1988 Amendments, appear broad enough to create a federal forum for any tort claim even remotely involving atomic energy production. The [Act] on its face provides the sole remedy for the torts alleged in this case . . . .

Id.

As noted above, every case since 1988 has consistently interpreted the jurisdictional provisions in the same way. Most significantly, the Court has twice addressed the Act's jurisdictional provisions post-*Silkwood*, post-1988 amendments, and both times the Court concluded it effected extraordinary preemption.

See Neztsosie, 526 U.S. at 484–85, n.6; *Anderson*, 539 U.S. at 6.

For these reasons, the decision below rejected application of *Silkwood* because it was decided 4 years before the critical 1988 amendments to the Act. Pet. App. 13a–14a.

III. CERTIORARI WOULD NOT CHANGE THE OUTCOME.

Even if the Court were to determine that a license or indemnity were required to invoke federal jurisdiction under the Act, the outcome here would not change. Federal jurisdiction would still be affirmed. There is no dispute that Cotter was an AEC source material licensee during the relevant time. And, independently, Mallinckrodt was an indemnified contractor. Thus, Mallinckrodt's indemnity flowed to Cotter as an "other person indemnified" under the express terms of Mallinckrodt's contract and the Act itself. *See* JA 505–506 §§ 3(a), 3(b)(2), 3(b)(4); JA 273–74 ¶¶ 29–32; JA 279 ¶ 48; JA 341–425; 42 U.S.C. § 2014(t).

Certiorari is therefore unwarranted because the question the Eighth Circuit decided—whether a license or indemnity agreement is required for federal jurisdiction under the Price-Anderson Act—is not outcome-determinative in this case, since several alternative bases for federal jurisdiction exist.

IV. THERE IS NO CIRCUIT SPLIT REGARDING THE FINALITY OF AN ORDER PUTTING FEDERAL CLAIMS OUT OF FEDERAL COURT.

Petitioners' challenge to the jurisdiction of the court below also does not implicate a circuit split. The Eighth Circuit cited and applied clear precedent of this

Court. And no other circuit has decided differently under the same circumstances.

The decision below concluded that the remand order at issue was final under 28 U.S.C. § 1291 because it effectively put Cotter out of federal court on the federal claims brought against Cotter. Pet. App. 4a–5a. The Eighth Circuit relied on precedent from this Court: *Quackenbush*, 517 U.S. at 712–15 (holding remand order reviewable under § 1291), and *Moses H. Cone*, 460 U.S. at 10 & n.11 (holding stay order appealable under § 1291 where it put the litigant "effectively out of court," and "surrender[ed] jurisdiction of a federal suit to a state court"). Pet. App. 4a.

The Eighth Circuit also cited its own precedent and supporting precedent from the Seventh Circuit: *Gaming Corp.*, 88 F.3d at 542 (holding challenge to § 1367(c) remand order was properly heard on direct appeal where remand order was final because defendant "would have no other opportunity to appeal that decision in federal court"); *Baker*, 387 F.3d at 653–56 (concluding § 1291 provided jurisdiction over remand order). Pet. App. 4a–5a.

Petitioners simply ignore this precedent. Instead, Petitioners claim the decision below is "directly contrary" to the Fourth Circuit's decision in *Campbell*, 874 F.3d at 395. Pet. 4. In *Campbell*, however, the court remanded state law claims to state court. 874 F.3d at 397–98 (noting that it dealt with a lesser "right to keep . . . state law claims in federal court"). *Campbell* is thus irrelevant because it concerns remanding *state law* claims under supplemental jurisdiction and explicitly did not address exercising federal question jurisdiction over *federal* claims. *Id.*

Here, unlike the state law claims in *Campbell*, there is no question that the Eighth Circuit properly reviewed the remand of *federal* claims because the extraordinary "pre-emptive force" of the Act "convert[ed]" the "ordinary state common-law complaint into one stating a federal claim." *Neztsosie*, 526 U.S. at 484 n.6. Thus, *Quackenbush* and *Moses H. Cone* control because the decision here indisputably "surrender[ed] jurisdiction of a federal suit to a state court." 460 U.S. 1, 10 & n.11.

Petitioners cite no circuit decision holding that an order remanding federal claims to state court lacked finality. As *Campbell* itself acknowledged, a remand order based on § 1367(c) is appealable as a final order pursuant to § 1291. 874 F.3d at 394. And even if there were tension between *Campbell* and the decision below—there is not—Petitioners would have at best drummed up a 1-1 split issue that bears no indication of repeating itself. This does not warrant certiorari.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

JENNIFER STEEVE
RILEY SAFER HOLMES & CANCILA LLP
100 Spectrum Center Drive
Suite 440
Irvine, CA 92618
(949) 359-5515
jsteeve@rshc-law.com

BRIAN O. WATSON
Counsel of Record
RILEY SAFER HOLMES & CANCILA LLP
70 W. Madison Street
Suite 2900
Chicago, IL 60602
(312) 471-8700
bwatson@rshc-law.com

Counsel for Respondent Cotter Corporation (N.S.L.)

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