No. 24-1001

In the Supreme Court of the United States

COTTER CORPORATION, ET AL., PETITIONERS

v.

NIKKI STEINER MAZZOCCHIO, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

D. JOHN SAUER
Solicitor General
Counsel of Record
ADAM R.F. GUSTAFSON
Principal Deputy Assistant Attorney General
MALCOLM L. STEWART
Deputy Solicitor General
ROBERT N. STANDER
Deputy Assistant Attorney General
FREDERICK LIU
Assistant to the Solicitor General
BRIAN C. TOTH
CHRISTOPHER ANDERSON
AMY E. COLLIER
Attorneys

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether the federal government's comprehensive regulation of the field of nuclear safety provides the applicable standard of care for federal public liability actions brought under the Price-Anderson Act, 42 U.S.C. 2210.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Statutes and regulations:

Statutes and regulations—Continued: Page

Miscellaneous:

In the Supreme Court of the United States

No. 24-1001

COTTER CORPORATION, ET AL., PETITIONERS

v.

NIKKI STEINER MAZZOCCHIO, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

INTEREST OF THE UNITED STATES

This brief is submitted in response to the Court's order inviting the Solicitor General to express the views of the United States. In the view of the United States, the petition for a writ of certiorari should be denied.

INTRODUCTION

The "Federal Government has occupied the entire field of nuclear safety concerns." *Pacific Gas & Elec. Co.* v. *State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190, 212 (1983). Until 1988, state-law causes of action provided the only mechanisms by which private parties could seek compensation for injuries suffered as a result of nuclear-safety violations. In 1988, however, Congress created a federal private right of action to pursue such claims, see 42 U.S.C. 2014(w) and (ii), while generally providing that "the substantive rules for decision in such action[s] shall be derived from the law of the State in

which the nuclear incident involved occurs," 42 U.S.C. 2014(ii).

The court of appeals in this case held that plaintiffs in such suits may invoke state-law standards of care, even if those standards differ from the applicable federal-law standards. That holding is erroneous. As several other circuits have correctly recognized, rules defining the standards of care for handling and disposing of nuclear materials are derived exclusively from federal law.

Nevertheless, the Court's review is not warranted at this time. In challenging the Eighth Circuit's decision, petitioners advance arguments that no court of appeals has addressed. This Court would therefore benefit from further percolation in the lower courts. Awaiting such percolation would not foreclose further review even in this case, since respondents' suit is currently in an interlocutory posture, and the parties would have the opportunity to seek this Court's review after final judgment. At that point, the Court could better assess whether the relevant federal- and Missouri-law standards of care are actually different, whether any such differences are outcome-determinative in this case, and how the applicable standard of care should be determined for an entity other than a federal licensee. Thus, although the question presented may warrant further review in the future, the Court should deny review here.

STATEMENT

A. Legal Background

1. When it enacted the Atomic Energy Act of 1946, ch. 724, 60 Stat. 755, Congress "contemplated that the development of nuclear power" would be a federal-government "monopoly." *Duke Power Co.* v. *Carolina Envtl. Study Grp., Inc.*, 438 U.S. 59, 63 (1978). "Within a decade, however, Congress concluded that the national

interest would be best served if the Government encouraged the private sector to become involved in the development of atomic energy for peaceful purposes under a program of federal regulation and licensing." *Ibid.* The Atomic Energy Act of 1954 (AEA), ch. 1073, 68 Stat. 919 (42 U.S.C. 2011 *et seq.*), "implemented this policy decision, providing for licensing of private construction, ownership, and operation of commercial nuclear power reactors for energy production under strict supervision by the Atomic Energy Commission (AEC)," a federal agency later replaced by the United States Nuclear Regulatory Commission (NRC) to perform the AEC's licensing and regulatory functions. *Duke Power*, 438 U.S. at 63; see *id.* at 63 n.1.

In enacting the AEA, Congress found that the "processing and utilization of source, byproduct, and special nuclear material must be regulated in the national interest" to "protect the health and safety of the public." 42 U.S.C. 2012(d); see 42 U.S.C. 2012(e). The AEA granted the AEC "exclusive jurisdiction to license the transfer, delivery, receipt, acquisition, possession, and use of nuclear materials." *Pacific Gas & Elec. Co.* v. *State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190, 207 (1983). "Upon these subjects, no role was left for the States." *Ibid.* Subsequent amendments to the AEA "preserved" the federal government's "complete control of the safety and 'nuclear' aspects of energy generation." *Id.* at 211-212. Thus, "the Federal Government has occupied the entire field of nuclear safety concerns, except the limited powers expressly ceded to the States." *Id.* at 212. States retain the authority "to regulate activities

for purposes other than protection against radiation hazards." 42 U.S.C. 2021(k).[1]

2. Although Congress made "the safety of nuclear technology" "the exclusive business of the Federal Government," *Pacific Gas*, 461 U.S. at 208, Congress initially did not "provide any federal remedy for persons injured by" the violation of federal nuclear-safety standards, *Silkwood* v. *Kerr-McGee Corp.*, 464 U.S. 238, 251 (1984). Instead, at the time of the AEA's enactment, injured persons had to look to state law for any private right to sue, and the AEA did not "forbid[] the States to provide such remedies." *Ibid.*

Shortly after the AEA was enacted, "private companies contemplating entry into the nuclear industry expressed concern over potentially bankrupting state-law suits arising out of a nuclear incident." *Silkwood*, 464 U.S. at 251. In 1957, Congress responded by enacting the Price-Anderson Act (PAA or Act), Pub. L. No. 85-256, 71 Stat. 576, which "provided certain federal licensees with a system of private insurance, Government indemnification, and limited liability for claims of 'public liability.'" *El Paso Natural Gas Co.* v. *Neztsosie*, 526 U.S. 473, 476 (1999) (citation omitted). Those provisions presupposed the availability of private tort suits, even though the PAA did not then create a federal private right of action. The Act generally defined "public liability" as "any legal liability arising out of or resulting from a nuclear

---

[1] Under the AEA, the federal government and a State may enter into an agreement that authorizes the State to license and regulate the transfer, possession, use, and disposal of nuclear materials "for the protection of the public health and safety from radiation hazards." 42 U.S.C. 2021(b); see *Pacific Gas*, 461 U.S. at 209, 212 n.25. Missouri did not have such an agreement with the federal government during the period relevant here.

incident." PAA § 3, 71 Stat. 576. And it defined "nuclear incident" to encompass "any occurrence * * * causing bodily injury, sickness, disease, or death * * * arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties" of any one of three types of nuclear material: (1) "source" material, such as natural uranium; (2) "byproduct material; and (3) "special nuclear" material. *Ibid.*

The Act's indemnification and liability-limiting provisions were codified at 42 U.S.C. 2210. In 1966, Congress amended Section 2210 to "respond to concerns about the adequacy of state-law remedies." *Silkwood*, 464 U.S. at 253; see Act of Oct. 13, 1966, Pub. L. No. 89-645, § 3, 80 Stat. 891-893. The 1966 amendments "provided that in the event of an 'extraordinary nuclear occurrence,' licensees could be required to waive any issue of fault, any charitable or governmental immunity defense, and any statute of limitations defense of less than 10 years." *Silkwood*, 464 U.S. at 253-254 (citation and footnote omitted). The 1966 amendments also gave United States district courts original and removal jurisdiction over "any public liability action arising out of or resulting from an extraordinary nuclear occurrence." § 3, 80 Stat. 892.

"In the wake of the 1979 accident at the Three Mile Island nuclear power plant, suits proliferated in state and federal courts, but because the accident was not an 'extraordinary nuclear occurrence,' within the meaning of the Act, there was no mechanism for consolidating the claims in federal court." *Neztsosie*, 526 U.S. at 477 (citation omitted). "Congress responded in 1988 by amending the Act to grant United States district courts original and removal jurisdiction over all 'public liability actions.'" *Ibid.* (citation omitted); see Price-Anderson Amendments Act of 1988, Pub. L. No. 100-408, § 11, 102 Stat. 1076; 42

U.S.C. 2014(ii), 2210(n)(2). The 1988 PAA amendments expanded the pre-existing statutory language that defines the term "public liability" to include "any legal liability arising out of or resulting from a nuclear incident *or precautionary evacuation*." 42 U.S.C. 2014(w) (emphasis added). The amendments provided that "[t]he term 'public liability action,' as used in section 2210 of this title, means any suit asserting public liability." 42 U.S.C. 2014(ii). Section 2014(ii) further provides:

> A public liability action shall be deemed to be an action arising under section 2210 of this title, and the substantive rules for decision in such action shall be derived from the law of the State in which the nuclear incident involved occurs, unless such law is inconsistent with the provisions of such section.

Ibid.; see 42 U.S.C. 2210(n)(2) ("With respect to any public liability action arising out of or resulting from a nuclear incident, the United States district court in the district where the nuclear incident takes place * * * shall have original jurisdiction without regard to the citizenship of any party or the amount in controversy.").

The 1988 PAA amendments also established a limitation on punitive damages in response to this Court's decision in *Silkwood*, which had upheld a State's authority to award "punitive damages arising out of the escape of plutonium from a federally licensed nuclear facility." 464 U.S. at 241. The 1988 amendments prohibit any court from "award[ing] punitive damages in any action with respect to a nuclear incident or precautionary evacuation against a person on behalf of whom the United States is obligated to make payments under an agreement of indemnification covering such incident or evacuation." 42 U.S.C. 2210(s).

The NRC has issued extensive regulations to protect workers and the public from NRC-licensed activities, including specific radiation dose limits based on the known effects of radiation exposure. See generally 10 C.F.R. Pt. 20. Those regulations set standards for the handling, storage, and disposal of source, byproduct, and special nuclear materials. See, *e.g.*, 10 C.F.R. Pt. 20, Subpts. F, I, K; see also 10 C.F.R. 20.1301(e) (cross-referencing the Environmental Protection Agency's generally applicable environmental radiation standards in 40 C.F.R. Pt. 190).

B. Factual Background

Because this case is currently at the motion-to-dismiss stage, the facts alleged in respondents' complaint must be taken as true. During World War II, the federal government contracted with Mallinckrodt Chemical Works to process natural uranium. First Am. Compl. ¶¶ 17, 34. Mallinckrodt stored radioactive source material at a site near the St. Louis airport. *Id.* ¶¶ 36, 41. That material was later transported to a location known as the Latty Avenue site, which abutted Coldwater Creek in Hazelwood, Missouri. *Id.* ¶ 42.

In the late 1960s, petitioner Cotter Corporation purchased the source material at the Latty Avenue site and obtained an AEC license to possess it. First Am. Compl. ¶¶ 44-45. Cotter dried some of the material and shipped it to Colorado; Cotter mixed the rest with soil and discarded it at a local landfill. *Id.* ¶¶ 47, 50. In 1974, petitioner Commonwealth Edison Company purchased Cotter, and Cotter certified that there was no longer any radioactive contamination at the Latty Avenue site. *Id.* ¶¶ 13, 57. Despite that certification, however, surveys indicated that the site still contained source material. *Id.* ¶¶ 60-61.

Respondents are two sisters who lived for many years in the French Quarter apartments near the St. Louis airport and Latty Avenue sites. First Am. Compl. ¶¶ 10-12. During that time, their apartments "would flood with waters from the nearby Coldwater Creek." *Id.* ¶¶ 10-11. In 2018, both respondents were diagnosed with multiple myeloma, a type of blood cancer. *Ibid.*

C. Procedural Background

1. In 2022, respondents filed suit in Missouri state court against petitioners; the St. Louis Airport Authority, which owned the St. Louis airport site; and DJR Holdings, Inc., which owned the Latty Avenue site. D. Ct. Doc. 5, at 7-9 (Mar. 10, 2022); see First Am. Compl. ¶¶ 37, 63. Respondents alleged that the defendants' "processing, distribution, transporting, storing, handling and/or disposing of hazardous and radioactive substances" had caused respondents to develop cancer. D. Ct. Doc. 5, at 6-7. Respondents sought damages under various Missouri-law theories of liability, including negligence, negligence per se, and strict liability. *Id.* at 22-35. Cotter removed the case to the United States District Court for the Eastern District of Missouri on the ground that the suit was a "public liability action" deemed to arise under federal law. D. Ct. Doc. 1, at 5 (Mar. 10, 2022) (quoting 42 U.S.C. 2210(n)(2)); see *id.* at 2.

Respondents filed an amended complaint in the district court, asserting a "public liability action" that encompasses Missouri-law claims for negligence, negligence per se, strict liability, and civil conspiracy. First Am. Compl. ¶¶ 92-147. In support of those claims, respondents allege violations of both federal- and state-law standards of care. See, *e.g.*, *id.* ¶¶ 106-107, 117-124. For example, as part of their negligence and negligence per se claims, respondents allege that "Cotter released ra-

diation into unrestricted areas in the environment in excess of the levels permitted by federal [dosage] regulations in effect at the time, including but not limited to[] 10 C.F.R. §§ 20.105 and 20.106." *Id.* ¶ 52 (emphases omitted); see *id.* ¶¶ 10-11, 107, 121. Respondents also allege that the "[d]efendants violated Missouri regulations for Protection against Ionizing Radiation, 19 C.S.R. 20-10.070, 20-10.090, and the Missouri Clean Water Act, Mo. Rev. Stat. § 644.051.1, which require the safe storage and disposal of radioactive material so as to protect the health and safety of the public." *Id.* ¶ 117 (emphasis omitted).

Petitioners moved to dismiss the amended complaint, arguing that federal standards of care preempt respondents' reliance on any state-law standards of care, D. Ct. Doc. 59, at 11-16 (Mar. 3, 2023), and that respondents have not plausibly alleged a breach of federal standards, *id.* at 7-10. The district court denied the motion. Pet. App. 20a-47a. The court held that federal standards "do not provide the exclusive standard of care" in "public liability actions." *Id.* at 21a. Rather, the court took the view that "the standard of care to be used in a PAA action must be made on a case-by-case basis and determined under ordinary preemption principles." *Id.* at 21a-22a. The court then concluded that, although federal dosage regulations set forth in 10 C.F.R. Part 20 "*could* provide the standard of care in some claims," Pet. App. 22a, they could do so here only with respect to the claims against Cotter, because Cotter is "the only [d]efendant" that was "licensed by" the federal government, *ibid.*, and "these regulations apply only to NRC-licensed entities or facilities," *id.* at 39a; see *id.* at 39a-46a.

The district court certified for interlocutory appeal under 28 U.S.C. 1292(b) the question "[w]hether federal

dosage regulations should be exclusively utilized as the standard of care in a Price-Anderson Act public liability action." Pet. App. 18a; see *id.* at 12a-19a. The court explained that "immediate appeal of the issue would allow for the potential termination of the matter, but termination aside, such an appeal would clarify the standard of care in conducting discovery and also would determine whether a party could adequately meet such standard of care." *Id.* at 17a.

2. The court of appeals permitted the interlocutory appeal and affirmed. Pet. App. 3a-11a; 23-8008 C.A. Order (Dec. 19, 2023). The court recognized that, "absent an agreement between the NRC and a state, states cannot enact and enforce 'before-the-fact nuclear safety' statutes or regulations." Pet. App. 7a (citation omitted). The court framed the question before it as "whether the rules of state tort law, which might indirectly regulate in this field, are preempted as well." *Ibid.*

The court of appeals answered that question in the negative. The court construed Section 2014(ii) to mean that state standards of care are preempted only insofar as they are "inconsistent with" Section 2210. Pet. App. 9a. And in the court's view, "the defendants [had] identif[ied] nothing in [Section 2210] that even mentions federal dosage regulations, much less an indication that they take precedence over state standards of care." *Ibid.* Thus, while the court of appeals "recognize[d] that other circuits have held that federal law preempts state standards of care in a public liability action," the court "respectfully disagree[d] with those circuits on this question." *Id.* at 10a.

3. The court of appeals denied rehearing en banc. Pet. App. 1a-2a.

DISCUSSION

The court of appeals held that plaintiffs in public liability actions under the PAA may invoke state-law standards of care governing the handling and disposal of nuclear materials. Pet. App. 7a-11a. That decision is incorrect, and it conflicts with decisions of other courts of appeals recognizing that federal law provides the exclusive standards of care in this context. The 1988 PAA amendments created a new federal "public liability action" that incorporates certain aspects of state law, but Congress has not ceded to States the authority to determine permissible levels of radiation exposure.

Nevertheless, the petition for a writ of certiorari should be denied. This Court could benefit from further percolation in the lower courts. And awaiting such percolation would not preclude the Court from granting review in this case after final judgment, when the practical effect of the Eighth Circuit's holding may be clearer.[2]

A. The Court Of Appeals' Decision Is Incorrect

The court of appeals acknowledged that the federal government has "occup[ied]" the "field of nuclear safety." Pet. App. 8a. The court nevertheless held that state law may supply its own nuclear-safety standards in "after-the-fact" tort suits. *Id.* at 10a (citation omitted). That holding is incorrect.

1. When Congress amended the PAA in 1988, it was well established that, through the AEA, "the Federal Government ha[d] occupied the entire field of nuclear safety concerns." *Pacific Gas & Elec. Co.* v. *State Energy*

---

[2] The United States has filed a petition for a writ of certiorari in a different case involving Cotter and the PAA. See *United States* v. *Cotter Corp.*, No. 25-1127 (filed Mar. 23, 2026). That petition presents a distinct question, concerning a provision of the Act not at issue here.

Res. Conservation & Dev. Comm'n, 461 U.S. 190, 212 (1983); see *Silkwood* v. *Kerr-McGee Corp.*, 464 U.S. 238, 240-241 (1984) ("States are precluded from regulating the safety aspects of nuclear energy."). But while Congress had previously enacted various provisions that assumed the availability of tort remedies to compensate injured persons (see pp. 4-6, *supra*), Congress had not created a federal private right of action to enforce federal nuclear-safety standards. See *Silkwood*, 464 U.S. at 251 (noting "Congress' failure to provide any federal remedy for persons injured"). Persons injured by nuclear incidents therefore had to rely on state-law causes of action to seek redress for violations of those federal standards. See *id.* at 251-252 (discussing resort to state-law "remedies").

2. In *Silkwood*, this Court held that state-law punitive-damages rules could be applied in a suit to redress injuries a private party had suffered as a result of plutonium contamination at a nuclear power plant. See 464 U.S. at 241-245, 258. In its decision below, the court of appeals relied substantially on the *Silkwood* Court's holding that, despite the federal government's occupation of the nuclear-safety field, "a state may nevertheless award damages based on it[s] own law of liability." Pet. App. 7a (quoting *Silkwood*, 464 U.S. at 256). The court stated that, in enacting the 1988 PAA amendments, "Congress did not repudiate the [*Silkwood*] Court's understanding of the role that state tort law plays in a public liability action. In fact, Congress approved it." *Id.* at 8a. For two reasons, the court of appeals' reliance on *Silkwood* was misplaced.

a. Evidence at the *Silkwood* trial indicated that the defendant company had not consistently complied with NRC regulations, *Silkwood*, 464 U.S. at 243-244, and that

radiation exposure levels were two and one-half times the amount that those regulations permitted, see *Roberts* v. *Florida Power & Light Co.*, 146 F.3d 1305, 1308 n.5 (11th Cir. 1998) (per curiam) (citing *Silkwood* v. *Kerr-McGee Corp.*, 485 F. Supp. 566, 583 (W.D. Okla. 1979)), cert. denied, 525 U.S. 1139 (1999). The district court in *Silkwood* concluded that NRC regulations imposed "a duty" on the company to "maintain the release of radiation 'as low as reasonably achievable,'" and that punitive damages could be imposed for grossly negligent, reckless, or willful conduct. *Silkwood*, 464 U.S. at 245 (quoting 485 F. Supp. at 585). The disputed question in this Court was whether the federal scheme precluded the State from awarding punitive damages as a remedy for that conduct. *Id.* at 258. The Court had no occasion to address the question presented here, *i.e.*, whether a State may impose tort liability based on a defendant's failure to comply with state-law nuclear-safety standards of care that are more demanding than the applicable federal standards.

b. *Silkwood* predated the 1988 amendments to the PAA. The claim in *Silkwood* was brought in diversity under Oklahoma law—not under the federal public liability cause of action (which did not yet exist)—and the Court remarked that the PAA did "not apply." 464 U.S. at 251; see *id.* at 243. Under the legal regime in effect at that time, the question before the Court was whether the federal scheme preempted state-law damages rules that would otherwise apply of their own force in adjudicating Silkwood's state-law claims. See *id.* at 255 (explaining that Congress "assumed" at that time "that traditional principles of state tort law would apply with full force unless they were expressly supplanted"). In concluding that state-law tort claims were not categorically

preempted, the Court observed that a contrary holding would mean that Congress had, "without comment, remove[d] all means of judicial recourse for those injured by illegal conduct." *Id.* at 251.

The 1988 PAA amendments obviated the need for persons injured by nuclear-safety violations to invoke state-law causes of action. Under those amendments, "any suit asserting public liability" as defined in the statute "shall be deemed to be an action arising under section 2210 of" Title 42 of the United States Code. 42 U.S.C. 2014(ii). For any suit that constitutes a "public liability action," the amendments thereby *replaced* state-law causes of action with a new federal cause of action. See *El Paso Natural Gas Co.* v. *Neztsosie*, 526 U.S. 473, 484 (1999); *In re Hanford Nuclear Reservation Litig.*, 534 F.3d 986, 1009 (9th Cir.) (explaining that PAA public liability actions now provide the "exclusive means of compensating victims for any and all claims arising out of nuclear incidents"), cert. denied, 555 U.S. 1084 (2008); *In re TMI Litig. Cases Consol. II*, 940 F.2d 832, 856-857 (3d Cir. 1991) (*TMI II*) (explaining that the 1988 amendments "create[d] a federal cause of action which did not exist prior to the Act, establishe[d] federal jurisdiction for that cause of action, and channel[ed] all legal liability to the federal courts through that cause of action"). Thus, although the court of appeals described the disputed issue before it as whether "rules of state tort law * * * are *preempted*" in public liability actions, Pet. App. 7a (emphasis added), the question presented here is not whether federal dosage regulations preclude the enforcement of Missouri-law liability rules that otherwise would apply of their own force. It instead is whether Missouri-law nuclear-safety standards of care that are more demanding than the applicable federal standards should be *incorporated*

into the body of *federal* law that governs public liability actions.

3. Congress has enacted other statutes that strike a similar balance, by providing that a particular field will be governed exclusively by federal law, but that state law can be incorporated into federal law as needed to fill gaps in the federal scheme. For example, in the Outer Continental Shelf Lands Act (Lands Act), 43 U.S.C. 1331 *et seq.*, Congress extended federal law to the Outer Continental Shelf (OCS) but recognized that federal law "might be inadequate to cope with the full range of potential legal problems." *Rodrigue* v. *Aetna Cas. & Sur. Co.*, 395 U.S. 352, 357 (1969). Congress therefore "supplemented gaps in the federal law with state law through the 'adoption of State law as the law of the United States.'" *Ibid.*

Under the Lands Act, however, state law is incorporated only as needed to fill gaps in coverage; "state law is not adopted to govern the OCS where federal law is on point." *Parker Drilling Mgmt. Servs., Ltd.* v. *Newton*, 587 U.S. 601, 613 (2019). The Court in *Parker Drilling* explained that, because "state law has never applied of its own force" on the OCS, the decision whether to incorporate particular state laws "does not present the ordinary question in pre-emption cases—*i.e.*, whether a conflict exists between federal and state law." *Id.* at 610. Rather, if "federal law has already addressed the relevant issue * * * , state law would necessarily be inconsistent with existing federal law and cannot be adopted as surrogate federal law." *Ibid.*

In enacting the 1988 PAA amendments, Congress looked to the Lands Act as a model. See H.R. Rep. No. 104, 100th Cong., 1st Sess. Pt. 1, at 18 (1987) (House Report); *TMI II*, 940 F.2d at 855-856. In order to ensure

that public liability actions could be brought in or removed to federal court, Congress elected to "mak[e] suits asserting public liability 'Cases . . . arising under . . . the laws of the United States.'" House Report 18. State law therefore no longer applies of its own force in private tort suits encompassed by the statutory definition of "public liability action." But Congress did not wish to "design[] a new body of substantive law to govern such cases." *Ibid.* Congress therefore directed that in public liability actions, "substantive rules for decision" that are "derived from the law of the State in which the nuclear incident occurs" can be incorporated into the federal scheme as surrogate federal law. 42 U.S.C. 2014(ii). As under the Lands Act, however, state law should be incorporated only as necessary to make the federal scheme effective, not in a manner that would subvert the operation of federal law. Cf. *Parker Drilling*, 587 U.S. at 604 (concluding that incorporation of state law is inappropriate "where federal law addresses the relevant issue").

4. Section 2014(ii) states that "the substantive rules for decision in [a public liability] action shall be derived from the law of the State in which the nuclear incident involved occurs, unless such law is inconsistent with the provisions of [Section 2210]." 42 U.S.C. 2014(ii). The court of appeals concluded that, because no language in Section 2210 "even mentions federal dosage regulations," Section 2014(ii)'s "plain statutory text" dictates that state standards of care must apply in public liability actions. Pet. App. 9a. That conclusion is erroneous.

a. Although the term "substantive rules for decision" could literally be read to encompass nuclear-safety standards of care, a narrower construction is reasonable as well. Under that approach, state law would provide the

"infrastructure" for adjudicating tort claims in public liability actions. State law thus would identify the general theories of liability—*e.g.*, negligence and negligence per se, see First Am. Compl. ¶¶ 92-147—that injured persons could pursue. State law would specify the elements of those theories—*e.g.*, duty, breach, causation, and damages. See *Hoover's Dairy, Inc.* v. *Mid-America Dairymen, Inc.*, 700 S.W.2d 426, 431 (Mo. 1985) (setting forth the elements of a negligence claim under Missouri law). Unless inconsistent with the provisions of Section 2210, state law might also govern liability issues such as the availability of comparative fault or the standards for proving causation. And a federal court deciding a public liability action might look to state law for the applicable statute of limitations, see, *e.g.*, *Pinares* v. *United Techs. Corp.*, 973 F.3d 1254, 1259 (11th Cir. 2020); *Nieman* v. *NLO, Inc.*, 108 F.3d 1546, 1561 (6th Cir. 1997), or to inform the meaning of "bodily injury" under the PAA, see *Rainer* v. *Union Carbide Corp.*, 402 F.3d 608, 618 (6th Cir. 2005).

b. Even if the term "substantive rules for decision" is construed more expansively, as encompassing industry-specific standards of care as well as the more general rules described in the preceding paragraph, Section 2014(ii) does not say that all state-law "rules for decision" must be applied mechanically and inflexibly in public liability actions. Rather, Section 2014(ii) states that, in public liability actions, such rules generally "shall be *derived from* the law of the State in which the nuclear incident involved occurs." 42 U.S.C. 2014(ii) (emphasis added). A body of rules used to adjudicate a public liability action might reasonably be described as "derived from" the law of the relevant State, even if adjustments to particular

state-law rules are made to ensure consistency with the federal scheme.

c. The court of appeals' approach appears to have no limiting principle. Under that approach, a federal court adjudicating a public liability action must not simply "tolerate" some degree of "tension" between "the NRC's exclusive authority to regulate [nuclear] safety matters" and States' efforts to compensate injured persons. *Silkwood*, 464 U.S. at 256. Rather, under the court of appeals' construction of Section 2014(ii), the federal court in such a suit must give controlling effect to the relevant State's nuclear-safety standard of care, no matter how sharply that standard deviates from the applicable federal standard of care or how disruptive of the federal scheme the State's standard may be.

That approach is especially anomalous given the backdrop against which Congress acted in enacting Section 2014(ii). In *Silkwood*, the Court held that the then-applicable federal nuclear-safety regime did not completely foreclose States from compensating persons who had suffered nuclear-safety-related injuries. See 464 U.S. at 256. The Court recognized, however, that federal law limited the States' authority in this sphere, explaining that preemption of state damages remedies under the pre-1988 federal statutory scheme should turn on "whether there is an irreconcilable conflict between the federal and state standards or whether the imposition of a state standard in a damages action would frustrate the objectives of federal law." *Ibid.* In the 1988 PAA amendments, Congress responded by federalizing tort remedies in the nuclear-safety sphere through the creation of a "public liability action" that arises under federal law, replacing the state-law causes of action through which injured persons had previously sought

redress. The Eighth Circuit, however, read those amendments as effectively *eliminating* the prior federal check on the application of state standards of care in private tort suits. This Court should not lightly conclude that Congress mandated such an incongruous result.

B. This Court's Review Is Not Warranted At This Time

Petitioners correctly observe (Pet. 12) that the decision below conflicts with decisions of other courts of appeals. Three other circuits have squarely addressed the question presented and have held that, because the federal government has occupied the field of nuclear-safety concerns, federal law provides the exclusive source of the nuclear-safety standards of care that apply in PAA public liability actions. See *Roberts*, 146 F.3d at 1308 ("holding that federal safety regulations conclusively establish the duty of care owed in a public liability action"); *O'Conner* v. *Commonwealth Edison Co.*, 13 F.3d 1090, 1105 (7th Cir.) (holding that "federal regulations must provide the sole measure of the defendants' duty in a public liability cause of action"), cert. denied, 512 U.S. 1222 (1994); *In re TMI*, 67 F.3d 1103, 1106-1107 (3d Cir. 1995) (*TMI III*) (recognizing that the court in *TMI II* had "definitively resolved the issue" by finding "federal preemption of state tort law on the applicable standard of care").[3]

Nevertheless, further percolation is warranted. The court of appeals in this case was the first to hold that state standards of care may apply in a public liability action. See Pet. App. 10a. And in challenging that hold-

[3] Petitioners assert (Pet. 14-15) that the decision below also conflicts with decisions of the Sixth and Ninth Circuits. But neither of those circuits has rendered a holding on the standard-of-care issue. See *Hanford*, 534 F.3d at 1003 (addressing the standard-of-care issue only in dicta); *Nieman*, 108 F.3d at 1553 (addressing only a statute-of-limitations issue).

ing, petitioners advance (Pet. 24) the novel argument that, for purposes of Section 2014(ii), "federal law *is* 'the law of the State.'" Petitioners did not make that argument below, and no court of appeals has addressed it. See Br. in Opp. 12. Accordingly, this Court could benefit from further consideration and development of the arguments on both sides of the question presented before it grants review.

Awaiting further percolation would not prevent this Court from granting review of the issue at a later point in this case. This case is currently in an interlocutory posture. Pet. App. 12a-19a. The district court denied petitioners' motion to dismiss the amended complaint, *id.* at 20a-47a, and the court of appeals affirmed, allowing respondents' claims to go forward, *id.* at 3a-11a. After final judgment, the parties will have another opportunity to seek this Court's review, and a denial of certiorari now would not prejudice petitioners' ability to raise the question presented at that time. See *Major League Baseball Players Ass'n* v. *Garvey*, 532 U.S. 504, 508 n.1 (2001) (per curiam) (explaining that this Court has "authority to consider questions determined in earlier stages of the litigation where certiorari is sought from the most recent of the judgments of the Court of Appeals").

After final judgment, moreover, the Court will be better able to assess the practical significance of the court of appeals' holding that respondents may invoke Missouri-law standards of care. As noted, respondents' amended complaint alleges the violation of both federal and state standards of care. See pp. 8-9, *supra*. The effect of the decision below is to allow respondents to pursue their claims under both sets of standards because the state standards themselves make the federal regulations relevant. See Pet. App. 10a n.2; *Giddens* v. *Kan-*

sas City S. Ry., 29 S.W.3d 813, 821 (Mo. 2000) (per curiam) (holding that in a general negligence case, "[federal] regulations offered as evidence of the standard of care owed by a party are competent evidence relevant to the question of negligence"); Br. in Opp. 17 (arguing that respondents have "sufficiently alleged a violation of federal regulations"). Further proceedings will therefore clarify whether the federal- and Missouri-law standards of care are actually different, and whether any such difference affects the outcome of this case.

Finally, the district court suggested that the choice-of-law issues presented in this case might be resolved differently for Cotter than for the other defendants because only Cotter was a federal licensee. See Pet. App. 22a, 39a-46a; p. 9, *supra*. Because only Cotter and its parent corporation have sought this Court's review, granting certiorari now would give the Court no occasion to decide how Section 2014(ii) operates with respect to the other, non-licensee defendants. After final judgment, by contrast, this case may provide an opportunity to consider Section 2014(ii)'s application to a broader range of circumstances.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

D. JOHN SAUER
Solicitor General
ADAM R.F. GUSTAFSON
Principal Deputy Assistant Attorney General
MALCOLM L. STEWART
Deputy Solicitor General
ROBERT N. STANDER
Deputy Assistant Attorney General
FREDERICK LIU
Assistant to the Solicitor General
BRIAN C. TOTH
CHRISTOPHER ANDERSON
AMY E. COLLIER
Attorneys

APRIL 2026