No. 24-1001

In the Supreme Court of the United States

COTTER CORPORATION; COMMONWEALTH EDISON COMPANY,
PETITIONERS,

v.

NIKKI STEINER MAZZOCCHIO; ANGELA STEINER KRAUS,
RESPONDENTS.

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

SUPPLEMENTAL BRIEF FOR PETITIONERS

BRIAN O. WATSON
LAUREN E. JAFFE
RILEY SAFER HOLMES & CANCILA LLP
1 S. Dearborn St.
Ste. 2200
Chicago, IL 60603
(312) 471-8700

JENNIFER STEEVE
100 Spectrum Center Dr.
Ste. 650
Irvine, CA 92618
(949) 359-5515

LISA S. BLATT
Counsel of Record
CHARLES L. MCCLOUD
ERIN M. SIELAFF
ROHIT P. ASIRVATHAM
CLAIRE E. GRODEN
CHRISTOPHER J. BALDACCI
WILLIAMS & CONNOLLY LLP
680 Maine Avenue, S.W.
Washington, DC 20024
(202) 434-5000
lblatt@wc.com

CORPORATE DISCLOSURE STATEMENT

Petitioner Cotter Corporation (N.S.L.) is a wholly owned subsidiary of General Atomics Uranium Resources, LLC. No publicly held corporation owns 10% or more of Cotter Corporation (N.S.L.)'s stock.

Commonwealth Edison Company is a wholly owned subsidiary of Exelon Energy Delivery Company, LLC. No publicly held corporation owns 10% or more of Commonwealth Edison Company's stock.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

In the Supreme Court of the United States

COTTER CORPORATION; COMMONWEALTH EDISON COMPANY,
PETITIONERS,

v.

NIKKI STEINER MAZZOCCHIO; ANGELA STEINER KRAUS,
RESPONDENTS.

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

SUPPLEMENTAL BRIEF FOR PETITIONERS

The government (at 2, 11) agrees that the decision below is "incorrect" and splits "with decisions of other courts of appeals." The government also agrees that fostering nuclear development is "of critical importance to the Nation's economy and security" and a top priority for the President and Congress alike. *See* Pet. for Cert. 4, 29-30, *United States v. Cotter Corp., N.S.L.*, No. 25-1127 (U.S. Mar. 23, 2026). The government (at 19-21) nevertheless asks this Court to deny review in the name of further percolation. But percolation has no upsides. This Court has never insisted that every circuit weigh in on an issue before it intervenes. And the government has repeatedly called for this Court's review in similar circumstances when the government's ox is being gored. *Infra* p.3. In-

deed, in other cases involving federal preemption defenses, the government has rightly urged the Court to grant review to resolve an "[a]cknowledged [c]ircuit [c]onflict" and prevent "inconsistency and patchwork results." U.S. Cert.-Stage Am. Br. 20, 22-23, *Monsanto Co. v. Durnell*, No. 24-1068 (U.S. Dec. 1, 2025). The Court should follow the same course in this case.

The downsides of further percolation are massive. The Eighth Circuit is home to seven nuclear reactors. Unless and until this Court resolves the clear split, those nuclear operators will exist in a state of intolerable uncertainty. As the nuclear industry has advised this Court, any further delay "would wreak havoc on nuclear operators in the Eighth Circuit," destroy regulatory stability, and threaten nuclear operators with "crushing liability." NEI Br. 3-4. And nothing the government says in asking for delay justifies that course given the presence of an acknowledged circuit split and a clean vehicle.

1. The United States (at 19) seeks percolation. But *six* circuits have already definitively decided the question presented in decisions spanning almost 35 years. Pet. 12-15. That is the definition of percolation. And three circuits have expressly addressed plaintiffs' argument that section 2014(ii) allows state juries to invent a standard of care applicable to nuclear incidents. *See In re TMI ("TMI II")*, 67 F.3d 1103, 1106-07 (3d Cir. 1995) (rejecting the argument); *Roberts v. Fla. Power & Light Co.*, 146 F.3d 1305, 1307-08 (11th Cir. 1998) (same). *But see* Pet.App.8a-9a (agreeing with plaintiffs). No benefit would be gained by further delaying the resolution of this pure question of law.

The government (at 19 & n.3) nitpicks the circuit split, claiming that the Sixth and Ninth Circuits have not "rendered a holding on the standard-of-care issue." That

would be news to those courts. The Sixth Circuit has acknowledged that it "joined with almost every other circuit in *holding* that NRC safety regulations conclusively establish the duty of care" in public liability actions. *TNS, Inc. v. NLRB*, 296 F.3d 384, 398 (6th Cir. 2002) (emphasis added). And the Ninth Circuit was equally clear that "any federal authorization would preempt state-derived standards of care." *In re Hanford Nuclear Rsrv. Litig.*, 534 F.3d 986, 1003 (9th Cir. 2008). Unsurprisingly, the Eighth Circuit counted the Ninth as among "other circuits [that] have held" that federal safety standards control in public liability actions, rather than state tort standards of care. Pet.App.10a. Regardless, even on the government's count, the split is still 3-1 in petitioners' favor. That would be a more-than-sufficient split for the government itself to call for this Court's review. *See, e.g.*, U.S. Pet. for Cert. 17-19, *U.S. Postal Serv. v. Konan*, No. 24-351 (U.S. Sept. 27, 2024) (identifying a 2-1 split and noting that this Court "has recently and repeatedly granted certiorari in cases arising from 1-1 or 2-1 circuit conflicts").

2. The government (at 20) claims that petitioners' specific theory of preemption is "novel." That's incorrect. Petitioners expressly argued below that federal law governs the standard of care in public liability actions because federal law preempts state "regulat[ion of] radiation safety … through common law" standards of care. C.A. Cotter Br. 24. The circuit conflict exists because the Eighth Circuit rejected that exact argument when petitioners made it. *See* Pet.App.10a ("We recognize that other circuits have held that federal law preempts state standards of care in a public liability action. We respectfully disagree with those circuits on this question…." (citation omitted)).

The government is also wrong that petitioners are making new arguments in this Court regarding section

2014(ii). Petitioners' court of appeals brief is replete with the argument that, because "ordinary preemption principles still operate," section 2014(ii) "should be read in conjunction with the field preemption operating throughout … the larger statutory scheme." C.A. Cotter Br. 22, 28.[1] The government (at 20) points to petitioners' argument that federal law *is* the law of the state, but that phrase just restates the necessary implication of the Supremacy Clause. Because federal law "displace[d] any overlapping state standard," applying state substantive law requires applying federal law for the standards of care. Pet. 24; Pet. Reply 11. Petitioners have always argued, and continue to argue, that section 2014(ii) must be read in conjunction and in harmony with the background preemption scheme, not as obliterating it.[2]

3. Apparently recognizing the dangers of declining review here, the government (at 20) tells the Court not to

---

[1] *See also* C.A. Cotter Br. 29 ("[Section 2014(ii)] works in conjunction with the broader field preemption of nuclear safety standards."); C.A. Cotter Reply 1 ("[*O*]*ne part* of *one section* taken out of context" cannot defeat preemption because it operates against the "backdrop of federal preemption[] and surrounding federal regulatory structure."); *id.* at 10-11 ("Section 2014([ii]) operates in conjunction with federal occupation of nuclear safety.").

[2] To the extent the government contends this is a new argument in favor of preemption, that still would not create any vehicle problem. "Once a federal claim is properly presented, a party can make any argument in support of that claim…." *Yee v. Escondido*, 503 U.S. 519, 534 (1992). So even if petitioners *were* advancing a "new argument," that would not matter because it would be in support of their "consistent claim" that federal law does not permit state law to determine the standard of care in public liability actions under the PAA. *See Lebron v. Nat'l R.R. Passenger Corp.*, 513 U.S. 374, 379 (1995).

worry because the interlocutory posture of this case allows the Court a second bite at the certiorari apple after final judgment. Start worrying: The government's delay strategy hinges on (1) petitioners and plaintiffs expending significant resources litigating a case that should never have made it past a motion to dismiss; and (2) petitioners not succumbing to the pressures of settling this action and eventually losing a trial on the merits. At a minimum, that process will take years. And that needless delay does more than just harm the parties. It would put nuclear handlers in a state of intolerable uncertainty and hamstring nuclear-development efforts in the Eighth Circuit and beyond—the very policy the government seeks to advance. *See infra* p.6.

As the government has recognized elsewhere, "this Court frequently grants review of interlocutory court of appeals decisions that would qualify for review except for their non-final posture." U.S. Pet. Reply 7, *United States v. Philip Morris USA, Inc.*, 546 U.S. 960 (2005) (No. 05-92); *accord* U.S. Cert.-Stage Am. Br. 21, *Pac. Bell Tele. Co. v. LinkLine Commc'ns, Inc.*, 555 U.S. 438 (2009) (No. 07-512) (supporting petition "[n]otwithstanding the interlocutory posture"). That is precisely the case here. The question presented is outcome-dispositive, cleanly presented, implicates an acknowledged circuit split, and is of exceptional importance. Pet. Reply 1. This case was certified under 28 U.S.C. § 1292—a statute that exists to expedite pure legal issues to save the judicial system and parties from wasting time and resources. Delay would utterly defeat the purpose of that statute.

4. The government (at 20-21) argues that further proceedings will clarify whether the federal and state standards of care actually differ. That is not a basis to deny

review, either. For starters, the application of state standards of care "affects the outcome of this case," U.S. Br. 21, because the plaintiffs allege that Cotter is strictly liable for its handling of nuclear material, *see* Am. Compl. ¶¶ 128-36, No. 4:22-cv-292 (E.D. Mo. Feb. 7, 2023), ECF No. 44. On plaintiffs' theory, not only do federal regulations lack preemptive force, they are irrelevant as a matter of law because state law imposes strict liability on *any* use of nuclear material. Little wonder, then, that the district court readily concluded that the "imposition of Defendants' proposed [federal-law] standard, would lead to the dismissal of the action." Pet.App.15a.

Besides, any uncertainty about the content of Missouri's state tort standards just underscores the importance of the issue and why the Court must answer the question presented now. Given the enormous costs and risks of private nuclear enterprise, "nuclear development is highly sensitive to regulatory uncertainty." NEI Br. 10. The Eighth Circuit's rule thrusts nuclear operators into "a new era of uncertainty," raising the specter that their conduct may be judged by uncertain state rules rather than the precise and detailed federal regulations that have governed for decades. *Id.* at 11. And that uncertainty extends outside the Eighth Circuit. Although a majority of circuits reject the Eighth Circuit's deeply flawed view, nuclear operators cannot be sure that the remaining undecided circuits will do the same. This Court should not stand on the sidelines to see if the discord in the circuits spreads further.

Notably, the government cannot even identify what Missouri's standards of care are for handlers of radioactive material. Even if Missouri law treats federal regulations as "evidence *relevant* to the question of negligence," U.S. Br. 21 (emphasis added) (quoting *Giddens v. Kan.*

City S. Ry., 29 S.W.3d 813, 821 (Mo. 2000) (en banc)), it is lay juries that must make a hindsight determination of whether a nuclear operator acted reasonably. That regime makes ultimate liability impossible to predict, and it leaves nuclear operators in a "perpetual state of uncertainty." NEI Br. 12. This Court should resolve that confusion before the Eighth Circuit's rule undercuts the "attractiveness of nuclear development at a time when the Nation is aiming to expand nuclear-energy production." *Id.*

5. Lastly, it is hard to credit the government's parting hypothesis (at 21) that waiting until final judgment to grant review would allow this Court to consider how section 2014(ii) applies to "other, non-licensee defendants" and "to a broader range of circumstances." That would make this case *less* suitable for Supreme Court review, not more. This Court typically strives to say only what it needs to say in order to resolve a petition. *See, e.g.*, *Google LLC v. Oracle Am., Inc.*, 593 U.S. 1, 20 (2021). And right now, the petition presents a pure question of law—whether federal nuclear safety standards preempt state tort standards of care—on paradigmatic facts. That question is dispositive for the petitioners (Cotter and its purchaser). The presence of additional defendants facing different theories of liability after years more litigation would only complicate this Court's attempt to resolve an otherwise clean and urgent circuit split.

At bottom, the government's reasons for delaying review are at best picayune. At worst, they are actively harmful to the nation's nuclear operators, who operate within a massive, reticulated scheme of federal regulation. Those companies must be able to know whether that federal scheme governs their potential liability, or whether their operations may be second-guessed by lay juries in all

50 states regardless of compliance. Only this Court can provide that certainty, and now is the time to do so.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

BRIAN O. WATSON
LAUREN E. JAFFE
RILEY SAFER HOLMES & CANCILA LLP
1 S. Dearborn St.
Ste. 2200
Chicago, IL 60603
(312) 471-8700

JENNIFER STEEVE
100 Spectrum Center Dr.
Ste. 650
Irvine, CA 92618
(949) 359-5515

LISA S. BLATT
Counsel of Record
CHARLES L. MCCLOUD
ERIN M. SIELAFF
ROHIT P. ASIRVATHAM
CLAIRE E. GRODEN
CHRISTOPHER J. BALDACCI
WILLIAMS & CONNOLLY LLP
680 Maine Avenue, S.W.
Washington, DC 20024
(202) 434-5000
lblatt@wc.com

APRIL 28, 2026