No. 24-1309

In the Supreme Court of the United States

EAST PENN MANUFACTURING COMPANY, INC.,
PETITIONER

v.

LORI CHAVEZ-DEREMER,
SECRETARY, DEPARTMENT OF LABOR

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Fair Labor Standards Act of 1938, 29 U.S.C. 201 *et seq.*, permits an employer to pay its employees based on the amount of time the employer estimates the employees' work should take, rather than the amount of time employees worked.

2. Whether this Court should overrule *Steiner* v. *Mitchell*, 350 U.S. 247 (1956).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Cases—Continued: Page

Statutes and regulations:

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-13a) is reported at 123 F.4th 643. A memorandum opinion of the district court (Pet. App. 16a-107a) is reported at 555 F. Supp. 3d 89.

JURISDICTION

The judgment of the court of appeals was entered on December 19, 2024. A petition for rehearing was denied on February 20, 2025 (Pet. App. 14a-15a). On April 17, 2025, Justice Alito extended the time within which to file a petition for a writ of certiorari to and including June 20, 2025, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial, petitioner was held liable for failing to compensate its employees for time spent on required activities at the beginning and end of their shifts, in violation of the Fair Labor Standards Act, 29 U.S.C. 207, 211(c), and 215(a)(2) and (5). Pet. App. 3a-4a. The district court ordered backpay to petitioner's hourly uniformed workers. *Id.* at 4a. The court of appeals affirmed. *Id.* at 1a-13a.

1. a. The Fair Labor Standards Act of 1938 (FLSA), 29 U.S.C. 201 *et seq.*, requires that covered employers pay their employees a minimum wage for all hours worked and an overtime rate for hours worked over 40 in a workweek. 29 U.S.C. 206, 207. The FLSA does not define "work" or "workweek." *IBP, Inc.* v. *Alvarez*, 546 U.S. 21, 25 (2005).

Soon after its enactment, questions arose over whether certain activities at the beginning and end of the workday should be counted as compensable "work." In the first of three "portal cases," this Court held that travel time from the portal of an iron mine to the working face was compensable under the FLSA. See *Tennessee Coal, Iron & R.R.* v. *Muscoda Local 123*, 321 U.S. 590, 598 (1944). The next year, the Court held that travel time in underground coal mines was likewise compensable. See *Jewell Ridge Coal Corp.* v. *Local No. 6167, United Mine Workers of Am.*, 325 U.S. 161, 170 (1945). And the year after that, the Court held that preshift time spent walking from a factory time clock to workbenches and conducting certain necessary preparatory activities at those workbenches was compensable. See *Anderson* v. *Mt. Clemens Pottery Co.*, 328 U.S. 680, 690-694 (1946).

b. Significant litigation followed this Court's decision in *Anderson*. See *Integrity Staffing Solutions, Inc.* v. *Busk*, 574 U.S. 27, 31 (2014). Congress responded by enacting the Portal-to-Portal Act of 1947, 29 U.S.C. 251 *et seq.* Section 2 of that Act cut off all then-pending claims for activities that were not compensable by contract, custom, or practice. 29 U.S.C. 252. Section 4 then established an objective standard for future claims concerning beginning- and end-of-workday activities. 29 U.S.C. 254. Specifically, Section 4 excluded the following activities from compensability:

> (1) walking, riding, or traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform, and
>
> (2) activities which are preliminary to or postliminary to said principal activity or activities,
>
> which occur either prior to the time on any particular workday at which such employee commences, or subsequent to the time on any particular workday at which he ceases, such principal activity or activities.

29 U.S.C. 254(a).

Shortly after enactment, the Department of Labor (Department) issued an interpretation explaining several ways in which the Portal-to-Portal Act had modified the FLSA. *General Statement as to the Effect of the Portal-to-Portal Act of 1947 on the Fair Labor Standards Act of 1938*, 12 Fed. Reg. 7655 (Nov. 18, 1947); 29 C.F.R. Part 790. First, given "[t]he use by Congress of the plural form 'activities,'" the Department determined that "an employee may, for purposes of the Portal-to-Portal Act, be engaged in several 'principal' activities during the workday." 29 C.F.R.

790.8(a). Next, the Department interpreted "principal activities" to "include[] all activities which are an integral part of a principal activity[,]" including "those closely related activities which are indispensable to its performance." 29 C.F.R. 790.8(b) and (c). In so concluding, the Department affirmed that "[s]uch preparatory activities, which the [Department] has always regarded as work and as compensable under the Fair Labor Standards Act, remain so under the [Portal-to-]Portal Act, regardless of contrary custom or contract." 29 C.F.R. 790.8(b)(2). Finally, the Department explained that clothes-changing is subject to a fact-based analysis, as it may be "merely a convenience to the employee and not directly related to his principal activities" or, alternatively, "an integral part of the employee's principal activity," such as where an employee "cannot perform his principal activities without putting on certain clothes." 29 C.F.R. 790.8(c).

c. Two years later, Congress enacted the Fair Labor Standards Amendments of 1949 (1949 amendments), ch. 736, 63 Stat. 910, which included two provisions relevant to Section 4 of the Portal-to-Portal Act. First, Congress permitted employers and employees to agree to make "changing clothes or washing at the beginning or end of each workday" noncompensable through collective bargaining. 29 U.S.C. 203(*o*). Second, Congress explicitly ratified all existing Department interpretations of the FLSA and Portal-to-Portal Act that it had not legislatively overridden:

> Any order, regulation, or interpretation of the Administrator of the Wage and Hour Division or of the Secretary of Labor * * * on the effective date of this Act, shall remain in effect as an order, regulation, interpretation, or agreement of the Administrator or

> the Secretary, as the case may be, pursuant to this Act, except to the extent that any such order, regulation, interpretation, or agreement may be inconsistent with the provisions of this Act[.]

1949 amendments, § 16(c), 63 Stat. 920.

d. This Court interpreted Section 4 of the Portal-to-Portal Act in *Steiner* v. *Mitchell*, 350 U.S. 247 (1956). There, battery-plant employees were required by their employer to change into work clothes before the beginning of production and to shower and change clothes afterward to avoid exposure to hazardous materials. *Id.* at 250-251. This Court unanimously held that time spent in these required activities was compensable, agreeing with the Department's 1947 interpretation of "principal activities" and articulating a substantially identical test for such activities:

> [A]ctivities performed either before or after the regular work shift, on or off the production line, are compensable under the portal-to-portal provisions of the Fair Labor Standards Act if those activities are an integral and indispensable part of the principal activities for which covered workmen are employed and are not specifically excluded by Section 4(a)(1) [as pre- and post-workday travel to and from the place of performance].

Id. at 256. Alongside *Steiner*, the Court decided *Mitchell* v. *King Packing Co.*, 350 U.S. 260 (1956), holding that meatpacking employees' time spent sharpening knives before and after their shifts—which was required by their employer—was integral and indispensable to the butchering activities and therefore compensable, *id.* at 262-263. Congress has not legislatively abrogated *Steiner* or *King Packing*.

2. Like the employer in *Steiner*, petitioner is a manufacturer of lead-acid batteries. Pet. App. 3a. To avoid exposure to lead and other hazardous substances, certain of petitioners' employees are required to don uniforms onsite before entering the production floor and to shower and change back into street clothes before going home. *Ibid.*; see *id.* at 21a-22a.

Until 2003, petitioner had no written policy to compensate time spent clothes-changing and showering, and employees were expected to don uniforms onsite before their paid shifts began. Pet. App. 115a. In 2003, petitioner adopted a policy providing a five-minute "grace period" after the start of each shift for employees to don uniforms and a five-minute period before the end of each shift for showering and clothes-changing. *Id.* at 115a-116a. When devising that policy, petitioner did not engage in any investigation into the amount of time needed; instead, its five-minute estimate was "based on management's collective anecdotal surmising" of the time employees would need. *Id.* at 116a. In 2016, the Occupational Safety and Health Administration received a complaint that petitioner's employees were given insufficient time to shower after their shifts. *Id.* at 79a. Petitioner then amended its policy to increase the end-of-shift time to ten minutes. *Id.* at 116a.

In practice, however, petitioner's policy continued to prove insufficient. Most employees did not regularly use the start-of-shift "grace period" and instead arrived at their workstations at shift start after donning on unpaid time. Pet. App. 25a-27a, 44a, 48a-49a, 51a. Many employees also showered and changed clothes on unpaid, post-shift time. *Id.* at 44a, 48a.

3. a. In 2016, the Department began an investigation into petitioner, which ultimately led to a lawsuit.

Pet. App. 81a. Following discovery, the parties moved for summary judgment on several issues. Although petitioner conceded that its uniformed employees' clothes-changing and showering were compensable under *Steiner*, *id.* at 4a, it contended that it was required to pay only for the time "reasonably spent" on such activities (rather than the time employees actually spent) and that its five- and ten-minute periods satisfied that standard, *id.* at 34a. The district court rejected petitioner's argument, deeming it "improper as a matter of law for [petitioner] to pay an estimated amount of time for compensable pre- and post-shift activities" and thus "hold[ing] that the standard for compensable time is 'actual' time, not 'reasonable' time." *Id.* at 43a; see *id.* at 34a-43a.

The case proceeded to trial, where the evidence included, *inter alia*, testimony and sworn declarations from petitioner's employees and testimony from experts who measured the actual time employees spent changing and showering. Pet. App. 22a-23a, 25a-27a, 117a, 124a-133a. The jury found petitioner liable for $22,253,087.56 in back wages to 11,780 uniformed employees over a nine-year period. *Id.* at 117a-118a.

b. The court of appeals affirmed. Pet. App. 1a-13a. Noting that petitioner "concedes that the changing and showering activities *are* work" under *Steiner*, the court rejected petitioner's contention that "it did enough by paying [employees] for * * * the time it believes was reasonable." *Id.* at 7a-8a. Grounding its decision in the statutory text, the court affirmed that the FLSA "bas[es] liability on the actual time that workers spend." *Id.* at 9a.

ARGUMENT

Petitioner asks (Pet. 13-18) this Court to grant review as to how to measure time spent on integral and indispensable activities, citing a putative circuit split. Alternatively, petitioner asks (Pet. 19-32) this Court to overrule *Steiner* v. *Mitchell*, 350 U.S. 247 (1956), which adopted the integral-and-indispensable test as an interpretation of the Portal-to-Portal Act. Neither course is warranted. The court of appeals correctly understood the Fair Labor Standards Act to require compensation for hours actually worked, a determination that does not conflict with any decision of this Court or of another court of appeals. And *Steiner* was correctly decided and has been left intact by Congress and relied upon by regulated parties for nearly 70 years. The petition for a writ of certiorari should be denied.

1. The court of appeals correctly held that the FLSA "focuses on actual time" and therefore requires an employer to compensate its employees for the hours actually worked, not for the employer's approximation of the hours reasonably necessary to perform work. Pet. App. 7a-9a. Petitioner's contrary contention (Pet. 17-18) has not been adopted by any court of appeals and does not warrant this Court's review.

a. Under the statutory text, employers must pay employees the minimum wage per "hour," 29 U.S.C. 206(a)(1), and overtime rates for "hours" above 40 in a workweek, 29 U.S.C. 207(a)(1). The FLSA repeatedly refers to the "hours" subject to the Act's requirements as "hours worked." *E.g.,* 29 U.S.C. 203(*o*); 207(f) and (*o*); 213(a)(1) and (b)(11); 218d(b)(2) (Supp. IV 2022). Neither "hours" nor "hours worked" is defined by statute. "In the absence of such a definition, [this Court] construe[s] a statutory term in accordance with its

ordinary or natural meaning." *FDIC* v. *Meyer*, 510 U.S. 471, 476 (1994). And the "ordinary or natural meaning" of "hours worked" is natural hours—60-minute increments—that were actually worked, not estimated. See *Holzapfel* v. *Town of Newburgh*, 145 F.3d 516, 523 (2d Cir.) ("[T]he word 'reasonable' is not found in the definition of 'work.'"), cert. denied, 525 U.S. 1055 (1998).

The FLSA's context and structure support this interpretation. The FLSA's requirement that employers keep records of employees' "hours," 29 U.S.C. 211(c), cannot be squared with a system under which "hours" means the estimated time the employer deems necessary for employees to complete their tasks. As the court of appeals pointed out, "[i]f reasonable time sufficed, employers could instead estimate hours, but estimating violates the recordkeeping requirement." Pet. App. 8a-9a. And when the FLSA intends to permit payment on a basis *other than* hours actually worked, such as production or efficiency, it says so explicitly. See, *e.g.*, 29 U.S.C. 206(a)(2) (permitting a piece-rate-based minimum wage for homeworkers in Puerto Rico and the Virgin Islands); 29 U.S.C. 207(g) (establishing special overtime rules for piece-rate workers); 29 U.S.C. 213(a)(6)(C) and (D) (exempting certain agricultural piece-rate workers from wage rules).

Accordingly, this Court has for decades understood the FLSA to govern hours "actually worked." *E.g.*, *Bay Ridge Operating Co.* v. *Aaron*, 334 U.S. 446, 459-460 (1948) ("Where there are no overtime premium payments the rule for determining the regular rate of pay is to divide the wages actually paid by the hours actually worked in any workweek."); *Anderson* v. *Mt. Clemens Pottery Co.*, 328 U.S. 680, 690 (1946) (observing that time clocks that do not record the "actual time worked"

cannot be "an appropriate measurement of the hours worked"); *Walling* v. *Helmerich & Payne, Inc.*, 323 U.S. 37, 42 (1944) (The FLSA "requir[es] the employer to pay one and one-half times the regular hourly rate for all hours actually worked in excess of 40."); cf. *Tyson Foods, Inc.* v. *Bouaphakeo*, 577 U.S. 442, 465 (2016) (Roberts, C.J., concurring) (expressing concern that a jury's verdict failed to indicate "how much donning and doffing time the jury actually found to have occurred"). The court of appeals' determination that the FLSA's "text focuses on actual time," Pet. App. 8a, was consistent with that unbroken line of authority.

b. Petitioner's argument to the contrary (Pet. 17-18) lacks merit. Petitioner does not address the plain meaning of "hours" or "hours worked"; does not explain how its employer-estimate approach would coexist with the FLSA's recordkeeping and production- and efficiency-based provisions; and does not grapple with the decisions of this Court reading the Act to govern "hours actually worked." See pp. 8-10, *supra*. Petitioner instead asserts (Pet. 17) that this Court's decision in *Anderson*, *supra*, already "settled" the issue in petitioner's favor.

The court of appeals correctly rejected the same contention. Pet. App. 7a-8a. There, as here, petitioner relied on a portion of *Anderson* concerning preliminary and postliminary walking time between time clocks and workstations, see 328 U.S. at 692—time that Congress subsequently made noncompensable under Section 4 of the Portal-to-Portal Act, see 29 U.S.C. 254(a)(1). In concluding that only the "minimum time necessarily spent in walking" was compensable, this Court recognized—as Congress would—that this transit activity fit uneasily within the category of "work." *Anderson*, 328

U.S. at 692; see *ibid.* (explaining that "[m]any employees took roundabout journeys and stopped off en route for purely personal reasons" that were extrinsic to the compensable work activity); Pet. App. 7a ("*Anderson*'s reach is limited because it addressed activity that was not clearly work."). By contrast, the Court held that activities performed at workstations, such as preparing equipment, were "clearly" work without any limit on the time *reasonably* or *necessarily* spent performing them. *Anderson*, 328 U.S. at 692-693. *Anderson* thus has no relevance to activities that, like the required showering and clothes-changing at issue here, are undisputedly compensable work under the Portal-to-Portal Act. See Pet. App. 4a (noting petitioner's concession "that changing and showering are 'integral and indispensable' to the workers' principal activities") (citation omitted). To the extent petitioner is arguing that start-of-shift and end-of-shift compensable work should be treated differently from other compensable work, this Court has already rejected the invitation to create such an "intermediate" category. *IBP, Inc.* v. *Alvarez*, 546 U.S. 21, 33-34 (2005).*

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* Petitioner asserts (Pet. 17) that "the Department of Labor itself long agreed that reasonable time is an appropriate metric." That is incorrect. A single 1956 opinion letter stated that "an employer may set up a formula by which the employees are allowed given amounts of time to perform clothes changing and wash-up activities" so long as "a majority of the employees usually perform the activities in the time allowed." Pet. App. 178a. Petitioner, of course, undertook no effort to ascertain whether its allotted periods reflected the actual time spent by "a majority of [its] employees," *ibid.*, instead basing its policy "on management's collective anecdotal surmising" of the time employees would need, *id.* at 116a. In any event, the Department has long since clarified that actual hours are the appropriate metric under the FLSA. See *id.* at 39a. And petitioner's remaining

c. Petitioner's attempt to manufacture a circuit conflict (Pet. 13-16) likewise fails. No court of appeals has adopted petitioner's view that the FLSA authorizes an employer to compensate its employees based on what the employer unilaterally deems to be a reasonable period spent on integral and indispensable work activities.

As petitioner acknowledges (Pet. 14-16), the Second, Third, Fourth, and Sixth Circuits have expressly rejected the employer-estimate approach. See Pet. App. 7a-9a; *Perez* v. *Mountaire Farms, Inc.*, 650 F.3d 350, 372 (4th Cir. 2011), cert. denied, 565 U.S. 1241 (2012); *Brock* v. *City of Cincinnati*, 236 F.3d 793, 803 (6th Cir. 2001); *Holzapfel*, 145 F.3d at 523.

The First, Ninth, and Tenth Circuit decisions petitioner cites for the contrary proposition fail to establish a conflict. In *Tum* v. *Barber Foods, Inc.*, 360 F.3d 274 (1st Cir. 2004), aff'd in part, rev'd in part, and remanded, 546 U.S. 21 (2005), although the jury was instructed to use reasonable time when assessing liability, no party challenged that portion of the instruction, and the First Circuit did not address it. *Id.* at 282-283 & n.7. And the Ninth and Tenth Circuits have approved a factfinder's use of reasonable time only for purposes of calculating damages retrospectively—not as a correct statement of the standard of liability under the FLSA. In *Reich* v. *IBP, Inc.*, 38 F.3d 1123 (10th Cir. 1994), the Tenth Circuit permitted the use of reasonable time when calculating damages where the employer did not

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authorities—a 1996 Field Operations Handbook and the government's brief in *Alvarez*, *supra*—do not support its argument; the former is specific to collective-bargaining agreements, see Pet. App. 41a; 29 U.S.C. 203(*o*), while the latter supported reasonable time only as "a *remedial* measure," U.S. Br. at *29, *Alvarez*, No. 03-1238, 2005 WL 1811400 (Aug. 1, 2005); see pp. 12-13, *infra*.

record its employees' actual time donning and doffing protective gear and "differences in personal routines" posed evidentiary challenges to reconstructing the actual time expended. *Id.* at 1124, 1127. Similarly, in *Alvarez* v. *IBP, Inc.*, 339 F.3d 894 (9th Cir. 2003), aff'd in part, rev'd in part, and remanded, 546 U.S. 21 (2005), the Ninth Circuit affirmed the use of reasonable time in a "damage calculation where myriad internal 'differences' permeated a class-wide award." *Id.* at 914.

These decisions merely reflect the unremarkable principle that, when employers' recordkeeping failures prevent employees from demonstrating "the precise extent of uncompensated work," courts have discretion to use reasonable estimates to fashion an appropriate remedy. *Bouaphakeo*, 577 U.S. at 456 (citation omitted). They do not stand for the proposition that an employer satisfies its obligations under the FLSA by estimating and implementing a reasonable-time compensation system. Because petitioner identifies no authority so holding, its contention does not merit this Court's review.

d. Even if petitioner could demonstrate meaningful variation among the courts of appeals as to the use of a reasonable-time standard, no such disagreement is implicated in this case. When assessing damages, the jury was instructed to estimate the difference between what petitioner's employees "should have been paid" and what "they were paid." Pet. App. 139a. Accordingly, to the extent petitioner posits a role for reasonableness in the remedial calculus in line with the decisions of the Ninth and Tenth Circuits, it has already received the benefit of that rule here. See *id.* at 43a ("To the extent that the concept of 'reasonableness' permeates this case, it is limited to the calculation of damages once liability is established.").

2. Petitioner alternatively requests (Pet. 19-34) that this Court overrule *Steiner*. This Court previously observed as to *Steiner* that "[c]onsiderations of *stare decisis* are particularly forceful in the area of statutory construction, especially when a unanimous interpretation of a statute has been accepted as settled law for several decades." *Alvarez*, 546 U.S. at 32. Petitioner offers no sound basis for jettisoning that approach in favor of a disruptive new course.

a. *Steiner* correctly interpreted the Portal-to-Portal Act's reference to "principal activities," 29 U.S.C. 254(a), to encompass "integral and indispensable" activities, 350 U.S. at 253. That understanding of "principal" is consistent with contemporaneous sources, which defined "principal" to mean, *inter alia*, "essential," *Webster's New American Dictionary* 775 (1947), "fundamental," *Roget's International Thesaurus* § 642.14 (1946), and "vital," *ibid.* See *Meyer*, 510 U.S. at 476 (construing undefined "statutory term in accordance with its ordinary or natural meaning"); cf. *Tennessee Coal, Iron & R.R.* v. *Muscoda Local 123*, 321 U.S. 590, 598 (1944) ("[I]n the absence of a contrary legislative expression, we cannot assume that Congress [in the FLSA] was referring to work or employment other than as those words are commonly used."); see *id.* at 598 n.11. This Court has thus "consistently interpreted the term 'principal activity or activities' to embrace all activities which are an 'integral and indispensable part of the principal activities,'" and its "prior opinions [have] used those words in their ordinary sense." *Integrity Staffing Solutions, Inc.* v. *Busk*, 574 U.S. 27, 33 (2014) (internal quotation marks, brackets, and citation omitted). Looking at the ordinary meaning of the relevant terms accordingly buttresses *Steiner*'s holding.

To be sure, *Steiner* recognized that the term "principal activities" was "not free from ambiguity" and relied on legislative history. 350 U.S. at 254. But, contrary to petitioner's assertions, *Steiner* did not stop there.

The Court also analyzed the statute's structure, *Steiner*, 350 U.S. at 254-256, consistent with the "fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme," *City & Cnty. of San Francisco* v. *EPA*, 604 U.S. 334, 350 (2025) (quoting *Utility Air Regulatory Grp.* v. *EPA*, 573 U.S. 302, 320 (2014)). Specifically, the Court parsed the interaction of Sections 2 and 4 of the Portal-to-Portal Act and reasoned that, "[h]ad Congress intended the result urged by petitioner"—*i.e.*, broadly precluding compensability for all "activities performed either before or after the regular work shift"—"the very different provisions of Sections 2 and 4 would have been unnecessary; Section 2 could have been given prospective, as well as retroactive, effect." *Steiner*, 350 U.S. at 255-256. In so holding, *Steiner* appropriately "interpret[ed] the statute 'as a symmetrical and coherent regulatory scheme,' and 'fit * * * all parts into an harmonious whole.'" *Food & Drug Admin.* v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132-133 (2000) (citations omitted).

Steiner also reviewed statutory amendments to interpret the Portal-to-Portal Act. The Court found that Congress had resolved any ambiguity about the intended meaning of "principal activities" when it amended the FLSA in 1949—expressly excluding from compensability time spent showering and clothes-changing at the beginning or end of a workday *only if* employers and employees agreed to such an arrangement under a collective-bargaining agreement. *Steiner*,

350 U.S. at 254-255; see 29 U.S.C. 203(*o*). That reasoning reflects the well-established principle that "the meaning of one statute may be affected by other Acts, particularly where Congress has spoken subsequently and more specifically to the topic at hand." *Brown & Williamson*, 529 U.S. at 133; accord *United States* v. *Estate of Romani*, 523 U.S. 517, 530-531 (1998).

Finally, *Steiner* reasoned that "[t]he congressional understanding of the scope of Section 4 is further marked by the fact that the Congress also enacted Section 16(c) at the same time, after hearing from the [Department regarding its] outstanding interpretation of the coverage of certain preparatory activities closely related to the principal activity and indispensable to its performance." 350 U.S. at 255 (footnote omitted). Section 16(c) of the 1949 amendments expressly preserved all existing interpretations by the Department—presumptively including the 1947 interpretation of the Portal-to-Portal Act defining "principal activities" to "include[] all activities which are an integral part of a principal activity" and "those closely related activities which are indispensable to its performance," 29 C.F.R. 790.8(b) and (c)—"except to the extent * * * [such interpretations were] inconsistent with the provisions of" the new legislation, 1949 amendments, § 16(c), 63 Stat. 920. Because nothing in the 1949 amendments legislatively abrogated that portion of the 1947 interpretation, the Court correctly understood Congress to have ratified the Department's interpretation of "principal activities." *Steiner*, 350 U.S. at 255; see *Alstate Const. Co.* v. *Durkin*, 345 U.S. 13, 17 (1953) (relying on Section 16(c) of the 1949 amendments in "declin[ing] to repudiate an administrative interpretation of the Act which Congress refused to repudiate after being repeatedly urged

to do so"). *Steiner* thus relied on text, structure, context, and history to arrive at the "single, best meaning" of the law. *Loper Bright Enters.* v. *Raimondo*, 603 U.S. 369, 400 (2024).

b. Even were *Steiner*'s analysis deficient in some respect, principles of statutory *stare decisis* would still counsel against overruling that 70-year-old interpretation of the Portal-to-Portal Act. While "not an 'inexorable command,'" *Loper Bright*, 603 U.S. at 407 (citation omitted), "*stare decisis* carries enhanced force when a decision"—like *Steiner*—"interprets a statute," *Kimble* v. *Marvel Entm't, LLC*, 576 U.S. 446, 456 (2015). That is so "regardless whether [the] decision focused only on statutory text or also relied * * * on the policies and purposes animating the law." *Ibid.*

As this Court has previously recognized, these rationales apply with particular force to *Steiner*—"a unanimous interpretation of a statute [that] has been accepted as settled law for several decades." *Alvarez*, 546 U.S. at 32. For nearly 70 years, *Steiner* has shaped employers' and employees' understanding of the compensable workday, and the integral-and-indispensable principle is central to the rules governing workplaces nationwide. See *id.* at 37 (recognizing that *Steiner* "definitively resolved" the meaning of Section 4 of the Portal-to-Portal Act). Because the subject matter at issue—wages paid to workers—"'involv[es] property and contract rights,'" "considerations favoring *stare decisis* are 'at their acme,'" as "parties are especially likely to rely on such precedents when ordering their affairs." *Kimble*, 576 U.S. at 457 (citations omitted). "So long as [this Court] see[s] a reasonable possibility that parties have structured their business transactions in light of [*Steiner*]," such a reliance interest is "one more reason

to let it stand." *Id.* at 457-458. Indeed, the likely disruption from petitioner's proposed course goes beyond overturning a single foundational precedent; virtually every portal-to-portal case decided by this Court and the lower courts over the last several decades has relied, either explicitly or implicitly, on the analytical framework articulated in *Steiner*.

c. Further counseling against revisiting *Steiner*, Congress has revisited the statutory framework on numerous occasions and has implicitly ratified *Steiner*'s holding. See *Kimble*, 576 U.S. at 456 (applying *stare decisis* where "Congress has spurned multiple opportunities to reverse [a decision]" that "ha[d] governed [the area of law] more than half a century").

For example, Congress necessarily affirmed *Steiner* when it enacted the Employee Commuting Flexibility Act of 1996 (ECFA), Pub. L. No. 104-188, §§ 2101-2103, 110 Stat. 1755, 1928. In the years preceding that Act, the Department had opined that certain categories of workers who drive employer-provided vehicles between assignments, such as service technicians, should be compensated for commutes from home to the first assignment and from the last assignment home. Wage & Hour Op. Ltr. WH-538, 1994 WL 975107 (Aug. 5, 1994); see H.R. Rep. No. 585, 104th Cong., 2d Sess. 2-3 (1996) (citing Aug. 1994 opinion letter). The ECFA legislatively overrode that interpretation by amending Section 4 of the Portal-to-Portal Act to specifically exclude commuting in employer-provided vehicles and activities incidental to the use of such vehicles from "principal activities" under defined circumstances. See 29 U.S.C. 254(a). Since these actions would not constitute "principal activities" at all under petitioner's interpretation—as they are not the actual service work such

employees were hired to do—the ECFA makes sense only if Congress understood "principal activities" to encompass "integral and indispensable" activities. Congress enacted a targeted amendment that specifically excluded from compensation certain activities that would only be compensable to begin with under the integral-and-indispensable rule.

Indeed, Congress has repeatedly amended the FLSA without disturbing *Steiner*. It has done so to exclude types of workers or activities from minimum-wage and overtime-pay requirements. *E.g.*, Consolidated Appropriations Act, 2018 (2018 Act), Pub. L. No. 115-141, § 201, 132 Stat. 1126-1127 (generally exempting minor-league baseball players); Court Reporter Fair Labor Amendments of 1995, Pub. L. No. 104-26, 109 Stat. 264 (exempting certain hours worked by court reporters from overtime requirements). It has done so to change, correct, or clarify provisions that it believed were being misinterpreted or misapplied by agencies and courts. *E.g.*, Worker Economic Opportunity Act, Pub. L. No. 106-202, 114 Stat. 308 (2000) (excluding stock options from employees' regular rate of pay for overtime purposes). In just the last decade, Congress specified that portions of a Department rule barring tip-pooling in certain circumstances would "have no further force or effect until any future action taken by the" Department. 2018 Act, § 1201, 132 Stat. 1148. That Congress has routinely amended the FLSA—but never displaced this Court's "seminal" decision interpreting the Portal-to-Portal Act, *Graham* v. *City of Chicago*, 828 F. Supp. 576, 580 (N.D. Ill. 1993)—supports the inference that Congress kept *Steiner* intact.

d. Finally, none of the "special justification[s]," *Halliburton Co.* v. *Erica P. John Fund*, 573 U.S. 258, 266

(2014) (citation omitted), this Court has required before overturning a statutory-interpretation precedent is present here. *Steiner* carries no constitutional implications, does not "undermine[] the very 'rule of law' values that *stare decisis* exists to secure," and has not "required judges to disregard their statutory duties." *Loper Bright*, 603 U.S. at 411. And because *Steiner* is fully consistent with the FLSA's text, structure, context, and history, see pp. 14-17, *supra*, intervening methodological developments have not "removed or weakened [its] conceptual underpinnings." *Patterson* v. *McLean Credit Union,* 491 U.S. 164, 173 (1989).

Nor has *Steiner* proved "unworkable" in practice. *Loper Bright*, 603 U.S. at 407. In most cases, the determination whether tasks are integral and indispensable to principal activities "will be straightforward and intuitive." *Wooden* v. *United States*, 595 U.S. 360, 369 (2022). "Of course, there will be some hard cases in between, as under almost any legal test." *Id.* at 370. But this Court has managed, without undue difficulty, to apply *Steiner* to varying factual scenarios. *E.g.*, *Busk*, 574 U.S. at 37; *Alvarez*, 546 U.S. at 33; cf. *Sandifer* v. *United States Steel Corp.*, 571 U.S. 220, 229-230 (2014) (relying on *Steiner* as "this Court's only prior opinion purporting to interpret [29 U.S.C.] 203(*o*)").

While petitioner posits (Pet. 28-31) "confusion in the lower courts" over the application of *Steiner* and its progeny, the cases it cites do not evidence meaningful disagreement. As in other employment-law contexts, courts appropriately instruct juries on the relevant standards to "ensure that juries return verdicts that reflect the application of the correct legal rules to the facts." *Vance* v. *Ball State Univ.*, 570 U.S. 421, 445, (2013). At most, petitioner posits shallow circuit

variation as to *de minimis* violations and the donning and doffing of non-protective attire. Neither of those issues is implicated here, however, where petitioner's employees were required to don, doff, and shower to avoid hazardous exposure, see p. 6, *supra*, and the jury found a "recovery period span[ning] years," such that "[e]ven a handful of minutes on most days adds up to thousands of minutes of required [pre- and] post-shift work for each plaintiff," *Perry* v. *City of New York*, 78 F.4th 502, 532 (2d Cir. 2023); see p. 7, *supra*.

Moreover, overruling *Steiner* would not clear the field of ambiguity. The Portal-to-Portal Act would still delineate the compensable workday by an employee's "principal activity *or activities*." 29 U.S.C. 254(a) (emphasis added). For the millions of workers who perform a variety of on-the-job duties, overruling *Steiner* would invite a flood of litigation over whether a particular task is sufficiently "principal" to start or end the workday—a question that, under current law, is often rendered moot by application of the integral-and-indispensable test. Petitioner offers no sound reason to discard a test that has been consistently applied, reaffirmed, and ratified for decades in favor of a new type of uncertainty.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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