No. 25-1127

In the Supreme Court of the United States

UNITED STATES OF AMERICA,
PETITIONER,

v.

COTTER CORP., N.S.L.,
RESPONDENT.

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

BRIEF IN OPPOSITION

JENNIFER STEEVE
RILEY SAFER HOLMES & CANCILA LLP
100 Spectrum Center Dr.
Ste. 650
Irvine, CA 92618
(949) 359-5515

ALEJANDRO L. SARRIA
MILLER & CHEVALIER CHARTERED
900 16th Street N.W.
Washington, DC 20006
(202) 626-5822

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

QUESTION PRESENTED

The petition states the question presented as:

> Whether a downstream purchaser's liability for mishandling nuclear material that the purchaser obtained for private benefit, but that was originally produced more than a decade earlier under a government contract with another party, is subject to indemnification by the United States under the original government contract because it qualifies as "public liability arising out of or in connection with the contractual activity" under 42 U.S.C. 2210(d).

CORPORATE DISCLOSURE STATEMENT

Respondent 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.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Cases:

Page

Statutes and Regulations:

Other Authorities:

Page

Other Authorities—continued:

In the Supreme Court of the United States

No. 25-1127

UNITED STATES OF AMERICA,
PETITIONER,

v.

COTTER CORP., N.S.L.,
RESPONDENT.

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

BRIEF IN OPPOSITION

INTRODUCTION

This case does not warrant review. The Price-Anderson Act (PAA) was enacted almost 70 years ago. Yet the courts below appear to be the first to ever consider whether government-contract indemnity under 42 U.S.C. § 2210(d) extends to so-called "downstream purchasers." There is no reason for this Court to issue only the second ever appellate decision on that issue.

At stake in this case is the prospect that the government may have to indemnify respondent for $15 million after discovery, summary judgment, and possibly a trial. Although the government objects to indemnification, it

provides no reason to think that the unusual facts giving rise to that obligation are likely to recur outside the context of this one pre-Cold-War government contract. The government's insistence (at 2) that the Federal Circuit's rule nonetheless "threatens a vast expansion" of government-contract indemnity is hard to credit when it took over six decades for this issue to arise *once*.

Nor is the unusual legal issue here even outcome dispositive in this case. Cotter would still be indemnified under the government's proposed rule (at 17, 19), which would require indemnification only for liability caused by activities undertaken "for the benefit of the United States." Cotter's purchase of the nuclear material stemmed from the government's own efforts to benefit itself by offloading the material and selling it to private custodians like Cotter.

While the government fears for the nuclear industry's growth, its own agencies have explained that uncertainty about government indemnity is what threatens industry growth and safety. The government's amorphous and atextual for-the-benefit-of-the-government test would exacerbate that uncertainty. Concerns for the nuclear industry's growth are instead reasons to grant a *different* petition currently pending before the Court, which presents the antecedent question of when *liability* attaches for nuclear incidents. *See* Pet. for Cert., *Cotter Corp. v. Mazzocchio*, No. 24-1001 (Mar. 18, 2025). Liability always matters to nuclear operators; the specific brand of government-contract indemnity at issue in the government's petition does not.

This Court's intervention in this case is also unnecessary because the Federal Circuit got the result exactly right, and the government has failed to propose any plausible alternative rule. Under section 2210(d), when the

government enters a contract that solicits activities risking a nuclear incident and extends indemnity, the United States "shall" indemnify not only the contractor, but all other "persons indemnified" whose liability "aris[es] out of or in connection with" the contract activity. Contractual privity is not required, as the government concedes. The familiar phrase "arises out of or in connection with" encompasses traditional tort causation, as text, context, and purpose all confirm. And the Federal Circuit correctly concluded that the original contractual activity here—the production of nuclear material—was the but-for and proximate cause of Cotter's liability, which stemmed from the handling of that same nuclear material. The smattering of executive-branch reports the government musters do not overcome the clear statutory text. In fact, when reviewed for legal principles rather than opportunistic quotes, many of the government's prior statements support *Cotter's* position by acknowledging the breadth of the government's indemnity obligations under the PAA, including in circumstances like this.

The Court should deny the petition.

STATEMENT

A. Legal Background

In the wake of World War II, Congress enacted the Atomic Energy Act of 1946, creating a "Government monopoly" on nuclear power. *Duke Power Co. v. Carolina Env't Study Grp., Inc.*, 438 U.S. 59, 63 (1978). Less than a decade later, Congress changed course and passed the Atomic Energy Act of 1954 (AEA) to encourage private development of nuclear energy. *Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190, 206-07 (1983). As it turned out, the private nuclear industry faced serious challenges. Paramount

among the barriers to private development was "the risk of potentially vast liability in the event of a nuclear accident." *Duke Power Co.*, 438 U.S. at 64.

Congress responded in 1957 by amending the AEA with the PAA. *El Paso Nat. Gas Co. v. Neztsosie*, 526 U.S. 473, 476 (1999). The PAA aimed "to protect the public and to encourage the development of the atomic energy industry." 42 U.S.C. § 2012(i) (1964).[1] To do so, the PAA established "a system of private insurance, Government indemnification, and limited liability for claims of 'public liability.'" *Neztsosie*, 526 U.S. at 476.

This case centers on the PAA's government-contract indemnity provisions. The PAA authorized the Atomic Energy Commission (AEC) to enter into indemnity agreements with contractors under government contracts "for the benefit of the United States" involving activities that risk "public liability for a substantial nuclear incident." 42 U.S.C. § 2210(d). Under the PAA, such indemnity agreements covered the contractor and other "persons indemnified" against "public liability arising out of or in connection with the contractual activity." *Id.*

The statute also defined several essential terms. A "person indemnified"—"with respect to a nuclear incident occurring in the United States"—was broadly defined to include "the person with who[m] an indemnity agreement is executed and any other person who may be liable for public liability." *Id.* § 2014(r). The definition encompassed "unusual incident[s]," such as if "negligence in maintaining an airplane motor[] should cause an airplane to crash into a reactor and thereby cause damage to the

---

[1] Unless otherwise noted, all subsequent references to the PAA (codified at 42 U.S.C. § 2010 *et seq.*) are likewise to the 1964 version of the U.S. Code, which memorializes the language in effect at the relevant time.

public." S. Rep. No. 85-296, at 17 (1957). In that scenario, the airplane company would be a person indemnified. *Id.*

"Public liability," in turn, meant "any legal liability arising out of or resulting from a nuclear incident" (with certain exceptions not relevant here). 42 U.S.C. § 2014(u). And a "nuclear incident" meant "any occurrence within the United States causing" injury "arising out of or resulting from the … hazardous properties of source, special nuclear, or byproduct material." *Id.* § 2014(*o*).

Congress amended the PAA in 1962, expanding coverage to nuclear incidents occurring outside the United States. To do so, Congress added language defining "person indemnified" differently for overseas incidents and limiting coverage to the contractor and "any other person who may be liable for public liability by reason of his activities under any contract with the [government] or any project to which indemnification under the provisions of [the PAA] has been extended." *Id.* § 2014(r).

The PAA also capped the government's aggregate indemnification obligation for a nuclear incident at $500 million, *id.* § 2210(d), which has since been adjusted for inflation and amended, *e.g.*, 88 Fed. Reg. 78011, 78012 (Nov. 14, 2023).

B. Factual Background

1. In 1942, Mallinckrodt Chemical Works began processing uranium in St. Louis, Missouri. Pet.App.9a-10a. Under a contract with the government, Mallinckrodt purified and delivered uranium for the Manhattan Project, while the government retained ownership of the relevant radioactive material. Pet.App.45a & n.4. The contract—which the parties modified over time through numerous supplemental agreements—also required the government to indemnify Mallinckrodt and "other persons indemnified" against "claims for public liability."

Pet.App.12a (cleaned up) (quoting SA No. 124); *see also* Pet.App.10a-11a (discussing additional supplemental agreements). This indemnification obligation was "unaffected … by the completion, termination or expiration of the contract." Pet.App.37a (citation omitted).

Initially, the government stored the excess radioactive material at a facility in downtown St. Louis. But after World War II ended, the government opened a new site near the St. Louis airport and moved the excess material there, ultimately accumulating several thousand tons of radioactive residue material. Compl. ¶ 15; Pet.App.10a-11a. In June 1960, the government decided it no longer wanted to store the excess material and attempted to solicit a buyer. The government enticed potential buyers by promising the material had "contents of value" and that "the buyer could dispose of any remaining material at a quarry site near … Weldon Spring, Missouri." Compl. ¶ 16.

It took nearly six years and several failed attempts before the government found a willing buyer. *Id.* ¶¶ 16-21. In February 1966, the government sold 117,000 tons of material to Continental Mining & Milling Company and issued it a license to move the material to a new storage site, referred to as Latty Avenue. Pet.App.13a. The bill of sale stated that the government sold the material "as is." Pet.App.36a. Continental folded shortly thereafter; its creditor, Commercial Discount Corporation, foreclosed Continental's assets in 1967, including the radioactive material. Pet.App.14a, 48a.

From 1967 to 1969, respondent Cotter Corporation purchased radioactive material from Commercial; Cotter obtained a license from the government in 1969 to possess and dry the material at Latty Avenue. Pet.App.48a. Cotter also received government authorization to have other

entities transport the material from Latty Avenue to Cotter's plant in Cañon City, Colorado. Pet.App.48a; Compl. ¶ 6. In 1973, Cotter ceased operations at Latty Avenue and its license ended. Pet.App.15a. The government inspected Latty Avenue in 1974 and "confirmed compliance with relevant regulations and requirements." Pet.App.15a.

2. Starting in February 2012, more than 500 individual plaintiffs sued Cotter; Mallinckrodt, Inc. (Mallinckrodt's successor-in-interest); and others in a series of lawsuits filed in the Eastern District of Missouri. Pet.App.15a. The *McClurg* plaintiffs brought a public-liability action under the PAA, seeking strict liability personal-injury and wrongful-death damages from alleged exposure to the radioactive material originally produced by Mallinckrodt under its government contract and later allegedly released by Mallinckrodt and Cotter into Coldwater Creek. Pet.App.15a-16a, 49a. The government was notified of the litigation in March 2012. Pet.App.48a.

In February 2018, the Missouri district court directed the Department of Energy to attend an upcoming mediation because the government was a "possible indemnitor." Pet.App.49a (citation omitted). The Department declined. Pet.App.17a.

3. Cotter, Mallinckrodt, and the *McClurg* plaintiffs settled on September 12, 2018. Pet.App.17a-18a, 49a. Following the settlement, Cotter filed this suit under the Tucker Act against the United States on April 11, 2022. Pet.App.18a, 49a. Cotter sought to recover $14,961,418.74 from the government for its portion of the *McClurg* settlement because (1) the PAA mandated indemnification and (2) Cotter was a third-party beneficiary of the Mallinckrodt contract's indemnification clause. Pet.App.3a; Compl. ¶¶ 8, 53-74.

The Court of Federal Claims dismissed the complaint on March 3, 2023. Pet.App.41a-70a. As to statutory indemnification, the court held that the PAA "require[s] some nexus to a contractual relationship for the benefit of the government" and "limits who may be a party to or benefit from an indemnification agreement." Pet.App.59a-60a. The court "concede[d]" that the term "person indemnified" in the PAA "appears to be untethered to a nexus to contractual activity." Pet.App.57a. Even so, the court imposed a nexus requirement because of the "broader statutory context of PAA indemnity." Pet.App.57a. Cotter did not satisfy the court's newfound nexus requirement because it "was not in privity of contract with Mallinckrodt" and "only became linked to the material in 1969 after [the material] had changed hands several times" among private entities. Pet.App.61a-62a. As to contractual indemnity, the court held both that Cotter lacked standing and the claim failed on the merits. Pet.App.67a-69a.

4. The Federal Circuit unanimously reversed. Pet.App.1a-40a. The court began with the statutory claim and held that Cotter was a "person indemnified" under the PAA. Pet.App.28a. The court explained that the definitions of "persons indemnified," "public liability," and "nuclear incident" did not limit the time period for indemnity and instead "focused simply on the hazard from the material." Pet.App.25a. Cotter was thus a "person indemnified" because it sought indemnification for damages incurred from material first "produced by Mallinckrodt for the government under the … contract." Pet.App.28a.

Next, the court held that Cotter adequately alleged that its public liability from the *McClurg* settlement "ar[ose] out of or in connection with the contractual activity" under the Mallinckrodt contract. Pet.App.28a. The

court explained that the phrase "arising out of" incorporated basic principles of but-for and proximate causation, while the phrase "in connection with" was broader. Pet.App.29a-30a.

While disclaiming a "bright-line rule," the court found the allegations here sufficient to show but-for and proximate cause. Pet.App.31a. First, Mallinckrodt created the at-issue nuclear material under its government contract, and that material created Cotter's public liability. Pet.App.31a. Second, the Mallinckrodt contract "had not yet terminated when the material was sold to Cotter." Pet.App.31a. Third, the government transferred the material to Continental—which "quickly folded," causing the material to briefly pass through the foreclosing company before Cotter. Pet.App.32a. And finally, Cotter was "in the relevant line of work" and had secured a government license. Pet.App.32a.

The court also reversed the dismissal of Cotter's contract-indemnification claim. Pet.App.33a. The court reasoned that Cotter had standing and the complaint adequately alleged that Cotter was a third-party beneficiary and that the government breached the contract. Pet.App.34a-39a.

REASONS FOR DENYING THE PETITION

The question presented does not warrant this Court's review. Aside from the decisions below, the government does not identify a single judicial opinion addressing the question presented in the nearly 70-year history of the PAA.

The question presented results only from the rare confluence of circumstances present in this case: an AEC licensee without its own indemnity guarantee purchased and handled nuclear material originally created under a World-War-II-era government contract. As a result, the

government's appeals to the fisc and the future of nuclear development ring hollow. Plus, the Federal Circuit expressly relied on fact-laden causation analysis, leaving open the possibility that its general causation standard would apply differently on different facts. So the government is essentially asking for garden-variety alleged error correction.

Nor is the question presented even outcome determinative. Cotter meets the government's for-the-benefit-of-the-government test, because Cotter performed a task the government sorely needed: handling orphaned nuclear material produced under a government contract.

Regardless, the decision below is plainly correct. The Federal Circuit properly interpreted the PAA's "arising out of or in connection with" requirement to include ordinary tort causation. And applying that standard, the court correctly reasoned that government contract activity—the production of nuclear material—was a but-for cause of Cotter's liability and that this type of liability was plainly foreseeable at the time of the U.S.-Mallinckrodt contract. The government, by contrast, asks this Court to craft a narrower test. But it is tellingly unable to clearly articulate either a proposed test or the test's legal grounding. At the very least, this Court should wait to see how the Federal Circuit undertakes the fact-laden causation analysis in future cases, should any arise, before taking up the issue.

I. The Government Overstates The Importance Of The Question Presented

A. The question presented is unlikely to frequently recur. The government has been indemnifying contractors and persons indemnified for almost 70 years. Yet the question presented is entirely novel. The government does not identify *any* prior decisions involving the narrow

question presented. Cotter knows of only one remotely comparable case involving a different fact pattern—and there, the party seeking indemnification for a $2-million judgment was a successor-in-interest to the government contractor, not a "downstream purchaser" of the nuclear material. *Cf.* Pet. I; *see Tex. Instruments Inc. v. United States*, 2011 WL 2784579, at *1 (Fed. Cl. June 13, 2011).

Indeed, the question here arises from idiosyncratic facts unlikely to be repeated. At issue is an application of government-contract indemnity in which the company that handled radioactive source material created by a government contractor was not itself in privity with the contractor or the government, nor otherwise indemnified pursuant to a license. Had Continental maintained title to the nuclear material, government-contract indemnity would apply even under the government's test, because Continental contracted directly with the government to "contribut[e] to the performance of the [Mallinckrodt] contract" by taking custody and disposing of the excess material created under that contract. Pet. 22-23. So the question presented is trained on the happenstance of the foreclosure upon Continental's title to the material and Cotter's subsequent purchase of it. Tellingly, the government does not claim this fact pattern is likely to recur—or has *ever* occurred outside of the handling of the material created under the Mallinckrodt contract.

Instead, the government attempts to manufacture stakes by pointing to the size of the PAA indemnification program in general. The government (at 29) notes that the industry insurance association received claims for more than 200 incidents involving nuclear material between 1957 and 2018. But the government does not even attempt to argue those insurance claims led to government indemnification—much less the uncommon genre of government-contract indemnification at issue here. To

the contrary, the report cited by the government for that figure concerned only government-*licensee* indemnity. *See* U.S. Nuclear Regul. Comm'n, *The Price-Anderson Act: 2021 Report to Congress* xvi & n.1 (Dec. 2021). Likewise, the fact that Congress has set a $16.6-billion nuclear-incident indemnification cap says nothing about the stakes of the question presented here, which is based on a rare application of a particular type of indemnity and a single $15-million indemnification request.

The petition also fails to include factual evidence to substantiate the government's claim (at 4) that the decision below threatens "potentially enormous liability" that taxpayers will bear. The Manhattan Project generated vast quantities of nuclear material pursuant to government contracts like Mallinckrodt's. *See* Pet. 21. Surely the government kept tabs on where all that nuclear material, made at its direction and carefully regulated through mandatory licensing, has ended up. To the extent that public-liability claims arising from that era's nuclear material are likely to result in government-contract indemnification claims falling within the question presented here, the government should know, and the petition would have presumably recounted them.

B. Without substantial financial ramifications on the line, the government (at 17) claims that the Federal Circuit's standard "will now govern all claims for Price-Anderson indemnification." That is flatly wrong.

The Federal Circuit's decision governs only government-contract indemnification under 42 U.S.C. § 2210(d)—a specific genre of indemnification that covers Department of Energy contractors like the National Laboratories. *See* Dep't of Energy, *Price-Anderson Act Report to Congress* 14 (Jan. 2023) (hereinafter "2023 DOE Report"); *see also* Pet. 20 (acknowledging that indemnification for licensees such as nuclear-reactor operators is

"not at issue here"). And as applied to the lion's share of circumstances, the scope of indemnification is undisputed. Even the government (at 7, 23, 26) agrees that section 2210(d) indemnification covers not only direct government contractors, but also subcontractors, suppliers, and other entities not in privity with the government, so long as the activity in question could be said to be for the government's benefit.

The narrow question presented simply concerns government-contract indemnification for entities downstream of government contractors who have "purchase[d]" nuclear material created pursuant to a contract—e.g., Cotter. Pet. I. Again, the government offers no reason to think that fact pattern comes up with any regularity, which explains the glaring absence of prior cases addressing the issue.

C. Next, the government (at 29-30) makes unsubstantiated claims that the Federal Circuit's decision risks "significant harms" to the maintenance of a predictable indemnification regime and the "development of safe nuclear technology." Those claims are hard to take seriously.

First, it is the *government's* position—not the Federal Circuit's decision—that injects unpredictability into the application of the PAA indemnification scheme. The government's rule would narrow the scope of government-contract indemnity. And it would generate intolerable uncertainty for entities and individuals downstream of direct contractors, whose indemnification would seem to turn on the government's post-hoc assessment of whether their conduct constituted a "benefit" to the government. *See, e.g.*, Pet. 17.

Second, the government's claim (at 30) that its indemnification of companies like Cotter will "impede the

development of safe nuclear technology by diverting limited government resources" makes no sense. As explained, *supra* pp.10-12, the government has not demonstrated that the Federal Circuit's rule will actually result in substantial governmental outlays. And far from impeding public safety, indemnification enhances it. As the Department of Energy report cited by the government (at 9-10, 23, 29) states: "The availability of … indemnification enhances, rather than detracts from, DOE contractors' motivation to engage in safe and responsible policies and practices" and "protects the public" by ensuring expedited public compensation. 2023 DOE Report at 15-16.

Finally, the narrow question presented is irrelevant to the President's policy goal of re-establishing the United States as a leader in nuclear energy. *Contra* Pet. 29. Commercial nuclear-power reactors are indemnified as licensees. *See* 42 U.S.C. § 2210(a), (c) (2018). And government-contract indemnity does not factor into major nuclear-power reactors' growth plans, because they typically obtain nuclear material commercially, rather than through contracts with the government. *See* U.S. Energy Info. Admin., *Uranium Marketing Annual Report* (Sept. 30, 2025), https://tinyurl.com/yfn2s3mm.

D. Review is not warranted merely because the question presented can arise only within the Federal Circuit. *Contra* Pet. 30. Contrast this petition with others recently granted from the Federal Circuit. The petition in *Hikma Pharmaceuticals v. Amarin Pharma*, No. 24-889, identified a circuit split. And the other petitions noted by the government (at 30) identified questions with concrete implications for veterans numbering in the thousands to millions. For example, the question presented in *Rudisill v. McDonough* affected the benefits of more than 1.7 million veterans. *See* Pet. 18, No. 22-888. And in *Feliciano*

v. Department of Transportation, the question presented had resulted in "extensive litigation, numerous calls for rehearing en banc, and three petitions … pending with this Court." Pet. 12, No. 23-861. In contrast, the government here identifies nothing more than a single judgment and a $15-million bill it prefers not to pay.

E. At bottom, the government's petition asks this Court to grant certiorari simply to narrow the Federal Circuit's proximate-cause standard to exclude the particular circumstances alleged here. But the Federal Circuit's decision "d[id] not create a bright-line rule." Pet.App.31a. The court's conclusion that the contractual activity was sufficiently connected to the public liability claims turned "*[o]n this record*," including the "nature of the material, the … government actions recognizing a need for careful long-term management of the materials, and even the government's awareness that an initial transferee might default." Pet.App.32a (emphasis added).

The government does not dispute that the scope of government-contract indemnity turns on the sufficiency of the nexus between the alleged public liability and contractual activity. *See* Pet. 24. Instead, the government simply argues that the causation standard must be defined to preclude the particular facts alleged. But whether the Federal Circuit correctly drew the line in this particular fact pattern is a fact-bound, good-for-one-ride-only question that does not merit the Court's review.

The more important question in cases implicating PAA indemnity is not how far the government's indemnity obligations extend (the statute already extends them broadly), but whether handlers of nuclear material are liable in the first place. There is an active circuit split about whether federal nuclear safety regulations preempt state tort standards of care in public-liability actions, with the

Eighth Circuit breaking from five other circuits in holding that state standards apply, as determined by state juries, rather than the carefully calibrated federal safety standards that have been thought to preempt for decades. *See Mazzocchio v. Cotter Corp.*, 120 F.4th 565, 569 (8th Cir. 2024).

Cotter has petitioned for review of the Eighth Circuit's decision, and that petition is still pending. *Mazzocchio* Pet. In response to the Court's invitation to express its views, the United States has advised that it agrees that the Eighth Circuit's decision is wrong, but notwithstanding its arguments here about the importance of stability in the nuclear industry, the government has advised against certiorari in *Mazzocchio*. Am. Br. of U.S. 1-2, No. 24-1001 (Apr. 9, 2026). But the appropriate standard of care in public-liability suits is logically antecedent to the question of who pays the judgment. And the standard of care matters immensely to nuclear operators. It governs their activities across the board and has significant implications for how the nuclear industry will operate going forward. Am. Br. of Nuclear Energy Inst. 9-15, No. 24-1001 (Apr. 21, 2025). By contrast, the question presented here governs only indemnity for "downstream purchasers" of nuclear material created under government contracts. As explained, *supra* p.14, nuclear operators' current operations are unlikely to be affected by the answer to that question. So (on top of the circuit split) the *Mazzocchio* petition presents a far more important question than the one presented here.

II. The Government's Alternative Rule Would Not Change The Outcome Of This Case

Even if the Court were to apply what seems to be the government's proposed rule, the government must indemnify Cotter.

The government insists that government-contract indemnity attaches only to downstream entities whose activities "are … for the account of [the government]," Pet. 23 (quoting C.A.App.1236), or "for the benefit of the United States," Pet. 18-19 (cleaned up). Cotter's purchase and handling of the government's unwanted nuclear residual material clearly meets that standard.

By the 1950s, Mallinckrodt and the government had piled several thousand tons of radioactive material at the government-owned airport site. C.A.App.25; Pet.App.11a. The government was desperate for a private entity to handle the material, some of which was stored in "deteriorated drums," C.A.App.1106; otherwise, the government would have to manage the material itself at significant expense, C.A.App.26-27. Six years and several rounds of failed invitations for bids passed before the government decided to sell the material to Continental for a song: approximately $1 per ton. C.A.App.26-27, 1106. At that point, the government apparently was so motivated to find a buyer that it sold the material despite its awareness that Continental might default. Pet.App.32a. Cotter's eventual purchase and handling of the material was "for the benefit of the government" because it ensured that—despite Continental's unsurprising default—the nuclear material would still be handled as previously promised. *See* Pet.App.14a-15a.

The government (at 23) claims that "the benefit to the government's nuclear program" had already "ended" by the time of Cotter's liability-producing activities. But it cannot be the case that any benefit to the government ceased once Mallinckrodt stopped producing new radioactive material. The government still required the material to be professionally transported, processed, and stored. The government's contention that Cotter was allegedly

conducting "private activity for its own benefit, off of government property," Pet. 24, is obviously overbroad. If that were the test for indemnity, then even direct government contractors like Mallinckrodt (whom all agree are indemnified, *see* Pet. 7) would fail. All for-profit contractors work for their own benefit, even as they fulfill contractual obligations that also benefit the government. Nor is it dispositive that Cotter allegedly mishandled the material. As the government itself has explained, PAA indemnification covers "any other person that might be legally liable, *notwithstanding* whether the contractor or other person indemnified caused the nuclear incident as an act of gross negligence or willful misconduct." 2023 DOE Report at 6-7 (emphasis added). That requirement is essential to protect the public by ensuring victim compensation in the event of a nuclear accident—one of the twin goals of the PAA. *Infra* pp.23-24.

III. The Decision Below Is Correct

The Federal Circuit rightly concluded that Cotter sufficiently pled that its liability "arose out of or in connection with" Mallinckrodt's contract activity. Indeed, the legal disagreement here is quite narrow; for all the government's talk about nexus, the parties *agree* that there must be a nexus between the contractual activity and the liability at issue. The only dispute is over what kind of nexus. The Federal Circuit correctly held that "arising out of" is defined by traditional causation principles that Congress frequently prescribes and courts regularly apply. The government urges the Court to require a stricter nexus. But the government struggles to clearly define how that nexus would operate in practice, let alone tie that proposed nexus to the statutory text.

A. The PAA Entitles Cotter To Indemnity

When the government enters into contracts for activities that risk a domestic nuclear incident, and when those contracts extend PAA indemnity, the United States must indemnify both the contractor *and* any other party for public liability. 42 U.S.C. §§ 2210(d), 2014(r). The public liability just needs to "aris[e] out of or in connection with" the contract activity. *Id.* § 2210(d). That key phrase has a long common-law pedigree: It means a causal or logical connection.

So where—as here—a contractor creates radioactive material, indemnity runs with the material. That's because Mallinckrodt's contract activity of generating radioactive material is a but-for cause of any public liability that later results. Pet.App.31a. Without the material, there could be no liability for allegedly mishandling the material. And both the United States and Mallinckrodt well understood that the radioactive properties of (and therefore potential public liability from) the material would continue long past the expiration of the contract. Pet.App.32a. Indeed, Congress created, and the United States contractually promised, sweeping PAA indemnity precisely because private enterprise needed encouragement to take part in all stages of the nuclear life cycle, including the critical storage and disposal phases. That indemnity, in turn, ensured that victims would be compensated for any resulting harm from nuclear material created at the government's behest whenever the harm arose. Pet.App.33a.

The Federal Circuit understood and applied that rule correctly. Pet.App.24-33a. The *McClurg* plaintiffs alleged that Cotter was both strictly and jointly and severally liable with Mallinckrodt for its possession of material originally created under the U.S.-Mallinckrodt contract. Because the PAA indemnifies *all* persons for *all*

public liability caused by or connected to the contract activity (and concededly would indemnify Mallinckrodt, *see* C.A. Oral Arg. at 16:35-17:45 (Dec. 3, 2024), https://tinyurl.com/3v7bu82m), the government must also indemnify Cotter for its liabilities here.

1.a. Under the plain terms of the PAA, the government must indemnify all "persons indemnified" for all "public liability" arising out of or connected to activity under a government contract that promises PAA indemnity. 42 U.S.C. § 2210(d). When the government "enter[s] into agreements of indemnification with its contractors" under contracts "involving activities under the risk of public liability," the government "*shall* indemnify the persons indemnified." *Id.* (emphasis added). That is mandatory language. Although the government has discretion whether to include indemnity guarantees in government contracts, once it does so, it *must* indemnify both the contractor and all other "persons indemnified." *Id.* The government does not contend otherwise. *See* Pet. 2, 7.

"Persons indemnified" is a defined term. For a nuclear incident occurring within the territorial United States, a "person indemnified" is a "person with who[m] an indemnity agreement is executed and *any other person* who may be liable for public liability." 42 U.S.C. § 2014(r) (emphasis added).

There is also no dispute that the government had an obligation to indemnify "persons indemnified" because it entered into a contract with Mallinckrodt in which it agreed to indemnify both Mallinckrodt and all other "persons indemnified" for public liability. Pet.App.12a. And Cotter is plainly a "person indemnified." The *McClurg* plaintiffs sued Cotter and Mallinckrodt for joint and several "public liability," or "legal liability arising out of or resulting from" "the radioactive … properties of source … material." 42 U.S.C. § 2014(*o*), (u).

So the only remaining question is whether Cotter's public liability "arise[s] out of or in connection with [Mallinckrodt's] contractual activity." *Id.* § 2210(d). The phrase "arising out of or in connection with" is well-known in the law: It means a causal or logical connection. That is clear from the plain meaning of each part of the phrase.

Start with "arising out of." To "arise" means "to originate from,"[2] and so "[t]he phrase 'arising out of' is usually interpreted as indicating a causal connection." *Coregis Ins. Co. v. Am. Health Found., Inc.*, 241 F.3d 123, 128 (2d Cir. 2001) (Sotomayor, J.) (cleaned up); *accord Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639, 652 n.4 (2022). That meaning holds across countless areas of the law. To take just one example, a case "arise[s] out of" a defendant's in-state conduct for purposes of personal jurisdiction when there is a "causal relationship" between the defendant's activity and the plaintiff's suit. *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351, 362 (2021) (cleaned up).

The phrase "in connection with" is even more capacious: It connotes liability that is logically related to contract activity, even absent a strict causal relationship. Indeed, the term "in connection with" is so "broad" as to be "essentially indeterminate." *Mont v. United States*, 587 U.S. 514, 521-22 (2019) (citations omitted). Context can help define its outer bounds, *see Maracich v. Spears*, 570 U.S. 48, 59-60 (2013), but it generally means just "*some*" relevant "logical or causal connection," *Azima v. RAK Inv. Auth.*, 926 F.3d 870, 877 (D.C. Cir. 2019) (cleaned up). For instance, as this Court recently emphasized, "an act can relate to its consequences even when the causal chain includes actions by intermediaries." *Chevron*

---

[2] Margaret Nicholson, *A Dictionary of American-English Usage* 33 (1957).

USA Inc. v. Plaquemines Parish, No. 24-813, slip op. at 11 (U.S. 2026).

The government does not disagree. It protests that there must be some "nexus" between public liability and contract activity, *see, e.g.*, Pet. 17-18 (citations omitted), but Cotter has never contended otherwise. A nexus is just a "connection," "often a causal one." *Black's Law Dictionary* (12th ed. 2024). The question is what level of nexus the PAA requires.

At bottom, the government's petition fishes unsuccessfully for some limit that would cut off its indemnity obligations in this specific case. But Congress already provided plenty of limiting principles: an indemnitee must face public liability (that is, liability from three kinds of nuclear material licensed by the government), not any other type of liability. And the public liability must arise out of or in connection with a government contract that carries forward the PAA's indemnity promises. If those requirements are met, the PAA requires nothing more—the government must indemnify.

b. Context confirms that "arising out of or in connection with" simply means a causal or logical connection and extends to a broad range of parties who are potentially liable for public liability. As originally enacted, the PAA defined "person indemnified" simply as "the person with whom an indemnity agreement is executed and any other person who may be liable for public liability." Pub. L. No. 85-256, 71 Stat. 576, 576 (1957). But in 1962, Congress distinguished between domestic and foreign nuclear incidents, and it updated the definition of "person indemnified" to match. For domestic nuclear incidents, a "person indemnified" continues to include "any … person who may be liable for public liability," full stop. 42 U.S.C. § 2014(r). But for foreign nuclear incidents, a "person indemnified" extends only to "any other person who may be

liable for public liability *by reason of his activities under any contract*." *Id.* (emphasis added). That Congress "had at [its] disposal readily available language that could have connoted a narrower understanding of" persons indemnified for domestic nuclear incidents but chose not to use it is powerful evidence that the government's indemnity obligations for domestic incidents are not limited to parties who perform contract activities. *Cf. Kemp v. United States*, 596 U.S. 528, 534 (2022).

c. The Federal Circuit's reading of the phrase "arising out of or in connection with" also accords with the codified twin purposes of the PAA: compensating victims in the event of any nuclear release and incentivizing nuclear development. Pet.App.33a. On the one hand, the "primary concern of the Federal Government [was] with the protection to the people who might suffer damages from the new atomic energy industry" and to "hav[e] mon[ies] available to them for payment of public liability claims." S. Rep. No. 85-296, at 15 (1957). But Congress also created an expansive indemnity regime to "encourage the development of the atomic energy industry" and reassure private companies that they would not face ruinous liability if they entered the industry. 42 U.S.C. § 2012(i).

The Federal Circuit's rule furthers both of those purposes. Radioactive material is unique in terms of its long life and the breadth of its possible impact. Having indemnity run with the material created pursuant to government contracts ensures that government funds will be available to compensate victims for injuries that result, even where a defendant is long defunct or goes bankrupt. Indeed, this case illustrates the problem—the first company after Mallinckrodt to handle the radioactive material, Continental, had its assets foreclosed on. Pet.App.48a. And Mallinckrodt itself eventually went

bankrupt; its Manhattan-Project-related liabilities were not discharged in bankruptcy precisely because they were being indemnified by the government. *See In re Mallinckrodt PLC*, No. 20-12522, Dkt. 6660, ¶ 268 (Bankr. D. Del. filed Mar. 2, 2022). In other words, without indemnity, there may be no one capable of paying injured members of the public, which is antithetical to the entire notion of "public liability." Indemnity also incentivizes companies to participate in the nuclear life cycle and take charge of federally regulated materials without the threat of potentially ruinous judgments.

d. For many decades, all three branches of government shared Cotter's interpretation of the statute.

In debates over the many amendments to the PAA since 1957, Congress has consistently understood that the government's indemnity obligations flow from contractor-created nuclear material itself, not the indemnitee's status as a contractor or subcontractor. As one analysis in the Congressional Record summarized: "Coverage [under the PAA] is not limited … to persons in contractual privity with the licensee, but also applies to strangers." 120 Cong. Rec. 27368 (Aug. 8, 1974). "[I]ndemnity coverage appl[ies]" and "protect[s] each and every person who might have liability *regardless of that person's relationship with the licensee*." *Id.* (emphasis added); *accord* S. Rep. No. 85-296, at 17. Over a decade later, a Senate Report on PAA amendments said the same thing: "[T]he 1957 Act provided that any person who might be held liable for public liability resulting from a nuclear incident, including not only the party directly engaged in the activity that results in the nuclear incident but any other person as well, was to be indemnified under the Price-Anderson system." S. Rep. No. 100-218, at 2 (1987).

The Executive Branch too has reported to Congress on multiple occasions that "[t]he term 'person indemnified' is defined" to "extend[] the protection of the DOE Price-Anderson indemnification to any person, *including those persons who have no legal relationship to DOE or the indemnified contracto*r, who may be liable for a nuclear incident within the United States arising under a DOE contract." Office of General Counsel; Preparation of Report to Congress on Price-Anderson Act, 62 Fed. Reg. 68272, 68274 (Dec. 31, 1997) (emphasis added). "Thus, a subcontractor, a supplier, a shipper, or other third party is covered even if it is not party to the indemnity agreement between DOE and the contractor." *Id.*; *accord* U.S. Dep't of Energy, *Report to Congress on the Price-Anderson Act* 12 (Mar. 1999) (hereinafter "1999 DOE Report").

DOE even assured that it would indemnify a private entity for a nuclear incident caused by mere "proximity" to "legacy material" resulting "from prior contractual activity conducted for DOE." 1999 DOE Report at 19. The ensuing public liability "would be included within the omnibus coverage of the DOE indemnification that related to the contractual activity that resulted in the legacy material." *Id.* Here, Cotter did not just conduct non-nuclear commercial activity *near* legacy material; it *handled* the legacy material so that the government didn't have to, and it did so under careful federal supervision.

Federal courts in other contexts have long read the PAA's indemnification provisions the same way. In the litigation following the Three Mile Island incident, the Third Circuit concluded that an "important feature" of the PAA was the "channeling of liability" to the federal government, such that "*any entity* exposed to potential liability for activity resulting in a nuclear incident, *even if it were not a direct participant* in the activity, was entitled

to indemnification." *In re TMI Litig. Cases Consol. II*, 940 F.2d 832, 852 (3d Cir. 1991) (emphasis added). A concurring opinion reiterated that indemnification "extends to any other person who may be liable for public liability, which ensures that every victim will be compensated from some source." *Id.* at 872 (Scirica, J., concurring).

2. Having interpreted the phrase "arising out of or in connection with" to include both but-for and proximate causation, the Federal Circuit correctly concluded that Cotter's liability had all the necessary connections to Mallinckrodt's contract activity. The government acknowledges that the source material giving rise to Cotter's liability was produced by Mallinckrodt in performance of its contract with the United States. Pet. 11-13. So, as the Federal Circuit recognized, "[t]he AEC-Mallinckrodt contractual activity of creating the nuclear material at issue was a but-for cause of [Cotter's] public liability." Pet.App.31a. Importantly, Mallinckrodt's contractual activity was a but-for cause "even though there were other but-for causes, such as Cotter's own actions (or omissions) involving that material." Pet.App.31a. Moreover, the Federal Circuit held it was not implausible that "the asserted nuclear incident meets a standard of reasonable, objective foreseeability" because it was apparent to the government at the time of the Mallinckrodt contract that the material created could "eventual[ly] expos[e] … the public" to radiation. Pet.App.32a (citation omitted). Because Mallinckrodt's contractual activity was a but-for and proximate cause of Cotter's public liability, Cotter's public liability "arose out of" the contract activity. Pet.App.31a.

B. The Government's Contrary Theory Is Unpersuasive

The government contends that the statutory phrase "arising out of or in connection with the contractual activity" does not require any ordinary nexus to the

contractual activity. Instead, according to the government, indemnity attaches only "where liability arises from activities that are … for the account of the government," and where "responsibility" can "be logically attributed to the Government." Pet. 23 (cleaned up). That language is found only in DOE reports, not the statutory text. And even DOE has stated that indemnity should apply in fact patterns just like this one.

1. Start with the government's textual arguments.

a. The government (at 17-18) begins by arguing that there must be a "nexus" between "liability and 'contractual activity.'" But that is common ground; the real question is what that nexus must be. The Federal Circuit correctly defined the nexus based on traditional causation principles. Pet.App.28a-30a. The fact that there must be *a* nexus does not mean that the *government's* self-serving nexus test is correct.

b. The government next claims that section 2210(d) "limits government liability by emphasizing a relationship with the government itself or an indemnified contractor." Pet. 18 (cleaned up). But the general "importance" of contracting relationships in section 2210(d), Pet. 18, does not mean only contractors are indemnified. There is specific statutory text outlining that the government "shall" indemnify not just contracting counterparties, but "*all* persons indemnified." 42 U.S.C. § 2210(d) (emphasis added). Even the government concedes (and conceded below) that it must indemnify parties who face public liability even if they were never in privity with the government at all. Pet. 26; U.S. Brief 46, Fed. Cir. Dkt. 15.

c. The government contends that "indemnification under Section 2210(d) requires a contractual relationship *for the benefit of the United States*." Pet. 18-19 (cleaned

up). But the Federal Circuit did not hold differently. Section 2210(d) requires that *the original contract* giving rise to the nuclear material be for the benefit of the United States. But Congress also made clear that "persons indemnified" "cover[s] not just the contractor but '*any* other person who may be liable for public liability.'" Pet.App.24a-25a (quoting AEA § 11(r)); *see supra* p.20. And here, the government agrees that the "nuclear material … was originally produced under a contract … for the benefit of the United States[]." *See* Pet. I. So, again, the question remains: what nexus does section 2210(d) require between later public liability and the original contract that was for the government's benefit? The fact that the original contract must be for the benefit of the government does not suggest that Congress intended to require that any activity that arises out of or in connection with that contract must necessarily also be for the benefit of the government.

Thus, the government's assertions (at e.g., 17) that Cotter purchased the nuclear material "for its own benefit" are entirely beside the point. The only thing that had to be for the government's benefit was the original government-Mallinckrodt contract. And in any event, Cotter's activity here *was* for the government's benefit. *See supra* pp.16-18.

2. Next consider the government's structural arguments (at 19-21). Again, none support its atextual for-the-benefit-of-the-government rule.

a. The government (at 19-20) contends that Congress's grant of discretion to the government to limit indemnification obligations to certain licensees would be nullified if licensees were always automatically indemnified under section 2210(d). But the Federal Circuit's rule does not produce that result. To reiterate, section 2210(d) indemnifies only liability "arising out of or in connection

with" government contractual activities. If there is no connection to a government contract—for example, because the nuclear material giving rise to liability has been imported—there is no automatic indemnification obligation. And today, many licensees utilize nuclear material that was *not* produced under a government contract. Indeed, "the vast majority of the uranium used to fuel U.S. commercial nuclear reactors is mined abroad."[3] As to those licensees and activities, the government retains discretion to indemnify or not. But where, as here, the public liability flows from the government's own decision to create nuclear material under contract, the indemnification obligation runs with the material. And while the government (at 21-22) claims that the Congress that enacted the PAA in 1954 could not have foreseen the growth of non-government-contractor-produced nuclear material, the opposite is true. While the 1946 Act "contemplated that the development of nuclear power would be a Government monopoly," the 1954 Act's goal was to "encourage[] the private sector to become involved in the development of atomic energy." *Duke Power*, 438 U.S. at 63.[4]

b. The government also points to a "congressional finding that 'the United States may make funds available for *a portion* of the damages suffered by the public from

---

[3] GAO, Report to Congressional Requesters, GAO-16-713, *Nuclear Material: Agencies Have Sound Procedures for Managing Exchanges but Could Improve Inventory Monitoring* 9 (2016), https://tinyurl.com/2p4xsz3z.

[4] For similar reasons, the government is wrong to claim that the Federal Circuit's rule conflicts with this Court's statement that the PAA's "'indemnity scheme' reaches only 'a limited class of nuclear incidents.'" Pet. 20 (quoting a parenthetical from *Hercules Inc. v. United States*, 516 U.S. 417, 428-29 (1996)). Under the Federal Circuit's rule, indemnity applies only in the limited class of cases where public liability has a causal relationship to government contractual activity.

nuclear incidents, and may limit the liability of those persons liable for such losses.'" Pet. 20 (quoting 42 U.S.C. § 2012(i)). The Federal Circuit's rule does not suggest otherwise. Everyone agrees that when the government requires financial protection, the United States is liable under the PAA to indemnify only the portion of the damages that "exceed[] the amount [covered by] private insurance." *Duke Power*, 438 U.S. at 64-65.

c. The government (at 20-21) argues that if Congress wanted indemnity to run with "nuclear material," it could have said so directly, rather than using the term "contractual activity." But substituting "nuclear material" for "contractual activity" would have entirely changed section 2210(d)'s scope. For example, it would mean indemnity even for nuclear incidents involving nuclear material not produced under a government contract. And in any event, the same can be said with even more force of the government's argument. If Congress intended to limit indemnity to only those parties whose activities benefited the government, it could have easily said so, just as it did in the 1962 PAA amendments for nuclear incidents occurring overseas.

3. The scattered executive-branch materials cited by the government do not support its reading of the statute, let alone substitute for the actual statutory text.

a. The government (at 22) points to the 1962 AEC standard contract language, but that language supports the Federal Circuit's rule, not the government's. The language stated that the government would indemnify for "public liability which (i) arises out of or in connection with the contractual activity; *and* (ii) arises out of or results from" one of an enumerated list of scenarios. 27 Fed. Reg. 7877, 7880 (Aug. 9, 1962) (emphasis added). Each scenario presents a paradigmatic example of liability that arises out of or in connection with the contractual activity—for

instance, incidents at the contract location, incidents arising out of the performance of the contractual activity, and incidents arising out of transport to or from the contract location. *See id.* Most relevant here, the list includes "a nuclear incident which involves … material … produced or delivered under this contract," with no requirement that the incident be the fault of a government contractor. *Id.* Inclusion of that example demonstrates that just five years after the PAA's passage, the AEC believed that material produced under a government contract could by itself give rise to indemnification.

b. The government primarily derives its for-the-benefit-of-the-government test from DOE reports written decades after the PAA's enactment. *See* Pet. 23 (quoting reports). Given that decades-long delay, the government's claim that these interpretations were "issued contemporaneously with the statute," Pet. 23 (citation omitted), is simply wrong. And none of the government's cited materials engage in any real parsing of the statutory text. Most do not even reference the operative text at all.

Regardless, DOE's interpretation again accords with the Federal Circuit's, not the government's. The government's key quote is that DOE believed that indemnity does not attach to "activities that are not for the account of" the government. Pet. 23 (citation omitted). But DOE clarified that liability for any nuclear incident stemming from nuclear material originally created for the benefit of the government meets that standard and must be indemnified. As DOE put it, while "DOE indemnification does not cover commercial activities that are not for the account of DOE," "[i]f a nuclear incident results from" "nuclear material that is a legacy from prior contractual activity conducted for DOE," "then the commercial activity would be included within the omnibus coverage of the

DOE indemnification that related to the contractual activity that resulted in the legacy material." 1999 DOE Report 19; *see also supra* p.25. That is exactly this case. While DOE's 2023 report took a different stance, *see* Pet. 23, that report (1) was issued decades after the PAA's enactment, and, critically, *after* Cotter filed this suit for indemnity, which the government opposed, and (2) cited only the government's motion to dismiss in the Court of Federal Claims below as its support. *See* 2023 DOE Report 7 & n.34.

The government's suggestion that "responsibility" must also be "logically attribut[able] to the Government" is based on a phrase plucked out of context from a 1983 DOE report. Pet. 26 (citation omitted). But that report actually reaffirmed that "the broad umbrella coverage of [government] contract indemnity" would apply where liability was "the result of any item produced … under the contract." U.S. Dep't of Energy, *Report to the Congress as Required by Section-170 p. of the Atomic Energy Act of 1954*, at 7 (Aug. 1, 1983). DOE reasoned that in precisely such circumstances, liability can be "logically attributed to the Government." *Id.* To the extent the government proposes some *additional* government "responsibility" test, that would war with the PAA's text, which requires only causation or logical connection. Moreover, a responsibility test would conflict with the conclusion that an airplane manufacturer would be indemnified if its negligence caused a plane to crash into a nuclear reactor, *see supra* pp.4-5. Even DOE has acknowledged that this is the "seminal example of the intended breadth of" the PAA. 2023 DOE Report 7 n.32.

In any event, the government's executive-branch materials are not entitled to any deference and cannot overcome the statutory text. *Skidmore* deference typically applies only to "factbound statutory

determinations," not "pure[ly] legal question[s]." *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 389-90 (2024). The legal interpretation of the statutory phrase "arising out of or in connection with" is bread-and-butter work for the judiciary. *Cf. Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 360-62 (2013) (refusing to afford deference to EEOC interpretation of a Title VII causation standard).

4. Congress did not plausibly intend the government's amorphous nexus test. The twin purposes of the PAA are encouraging private nuclear development and ensuring public safety. *See supra* p.23. But the government's test would leave everyone guessing as to whether any given action will be covered. Such ambiguity is particularly pernicious, given that the existence of "DOE indemnification is essential" to ensure the provision of "goods and services in connection with activities that involve the risk of a nuclear incident." 1999 DOE Report 10. This concern applies when downstream providers lack certainty as to indemnification. Moreover, eliminating indemnity for parties handling nuclear material would remove a critical safety net for the public and risk that in the event of a nuclear incident, injured victims would go uncompensated.

CONCLUSION

For the foregoing reasons, the Court should deny the petition.

Respectfully submitted,

JENNIFER STEEVE
RILEY SAFER HOLMES & CANCILA LLP
100 Spectrum Center Dr.
Ste. 650
Irvine, CA 92618
(949) 359-5515

ALEJANDRO L. SARRIA
MILLER & CHEVALIER CHARTERED
900 16th Street N.W.
Washington, DC 20006
(202) 626-5822

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 21, 2026