No. 25-1127

In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

COTTER CORP., N.S.L.

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

REPLY BRIEF FOR THE PETITIONER

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In the decision below, the Federal Circuit announced a "very sweeping" new standard for government-contract indemnification under the Price-Anderson Act, Pub. L. No. 85-256, 71 Stat. 576. Pet. App. 30a (citation omitted). That ruling promises a windfall of up to $16.6 billion in taxpayer funds for each nuclear incident caused by purely private tortfeasors, including far-downstream companies like respondent—even though the government never entered into any relevant contract with respondent, let alone an indemnification agreement "for the benefit of the United States." 42 U.S.C. 2210(d) (1964). Respondent fails to reconcile that ruling with the statutory text, structure, and longstanding executive practice.

Respondent's additional grounds for denying review are also unpersuasive. Although respondent portrays this case as a one-off, respondent and others are engaged in extensive litigation involving similar issues and many

millions of dollars in potential liability, including another indemnification suit that respondent recently filed in reliance on the decision below. And the decision affects thousands of other parties that, like respondent, have held non-indemnifying licenses to handle nuclear material over the past 70 years. The Court should grant the petition for a writ of certiorari.

A. The Federal Circuit's Decision Is Incorrect

Price-Anderson authorized the government to "enter into agreements of indemnification with its contractors" under "contracts for the benefit of the United States involving activities under the risk of public liability for a substantial nuclear incident," to provide government indemnification against "public liability arising out of or in connection with the contractual activity." 42 U.S.C. 2210(d) (1964). The Federal Circuit held that the allegations here—malfeasance of a private party handling nuclear material for its own benefit, causing sickness and death—stated a claim for indemnification because the "eventual exposure of the public" to harm by respondent was supposedly a "'foreseeab[le]'" result of the material's creation, a decade-plus earlier, under an unrelated contract for the United States' atomic-weapons program. Pet. App. 32a (citation omitted). That holding was erroneous. Price-Anderson does not refer to foreseeability or "focus[] simply on the hazard from the material," *id.* at 25a; it requires a nexus to contractual activity for the benefit of the United States before the government may take the momentous step of relieving a private party from financial responsibility for that party's misdeeds (and shifting that responsibility to federal taxpayers).

1. Respondent fails to reconcile the Federal Circuit's sweeping new standard with the statutory text. Respond-

ent repeatedly and confusingly attacks as "atextual" what it calls "the government's" "for-the-benefit-of-the-government rule." Br. in Opp. 2, 10, 28. But that rule comes straight from the text of Price-Anderson, which limited indemnification to government contracts "for the benefit of the United States." 42 U.S.C. 2210(d) (1964); see Pet. 18-19. Absent that express prerequisite, indemnification is not authorized (let alone "mandated," Br. in Opp. 7). Respondent also ignores Section 2210(d)'s language linking indemnity to "financial protections," which undisputedly cannot apply to unrelated parties like respondent, and the other respects in which Section 2210(d) "explicitly underscores" that indemnity is limited to "the context of a contractual activity that benefits the government's nuclear program." Pet. 18 (citations omitted).

Indeed, respondent now purports to "*agree* that there must be a nexus between the contractual activity and the liability at issue." Br. in Opp. 18; see *id.* at 22, 27. But respondent argued below that the trial court "erred as a matter of law when it concluded that Price-Anderson indemnity is limited to persons who perform activities under or with some causal nexus to a contract benefiting the government." C.A. Br. 15. Regardless, respondent continues to insist that "indemnity runs with the material," Br. in Opp. 19; see *id.* at 23, 29-30—evidently for "hundreds of years," whether or not the liability-producing activity "contributed to contract performance" in any way, Pet. 25-26 (quoting Pet. App. 24a, 26a n.6) (brackets omitted). Respondent's maximalist "runs-with-the-material" position thus amounts to no contractual nexus requirement at all.

At bottom, respondent's position rests on an untenably broad reading of the phrase "arising out of or in connection with" in Section 2210(d). Instead of looking to

the surrounding language and Price-Anderson's context, respondent primarily relies (Br. in Opp. 21-22) on isolated quotes from cases discussing partially similar language in quite different statutes (or in several instances, not interpreting statutes at all).[1] But this Court has declined to adopt a "broad interpretation" of "'in connection with'" by reading it in isolation, instead recognizing the need for "a limiting principle consistent with the structure of the statute and its other provisions." *Maracich* v. *Spears*, 570 U.S. 48, 59-60 (2013); see *Chevron USA Inc.* v. *Plaquemines Parish*, 146 S. Ct. 1052, 1061 (2026) (invoking statutory "context" to reject "'tenuous'" connections) (citation omitted). That supports the government's limited, Price-Anderson-specific reading, not the Federal Circuit's "'sweeping'" standard transplanted from "another context." Pet. App. 30a (citation omitted).

Nor does respondent properly account for Price-Anderson's structure and historical context. Pet. 19-22. Respondent acknowledges that its position yields "sweeping [Price-Anderson] indemnity," Br. in Opp. 19, contravening Congress's choice to indemnify only "a portion of the damages," 42 U.S.C. 2012(i) (1964), from "a limited class of nuclear incidents," *Hercules, Inc.* v. *United States*, 516 U.S. 417, 429 (1996). In particular, respondent does not dispute that under its expansive reading, Section 2210(d) effectively "nullified" Congress's contemporaneous grant of discretion under Section 2210(a)-(c) *not*

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[1] *E.g.*, *Azima* v. *RAK Inv. Auth.*, 926 F.3d 870, 876 (D.C. Cir. 2019) (interpreting settlement agreement governed by English law); *Coregis Ins. Co.* v. *American Health Found., Inc.*, 241 F.3d 123, 127 (2d Cir. 2001) (interpreting insurance policy governed by Connecticut or Ohio law); *Ford Motor Co.* v. *Montana Eighth Judicial Dist. Ct.*, 592 U.S. 351, 362 (2021) (interpreting prior judicial opinions).

to indemnify licensees, Br. in Opp. 28, under the facts "at the time Congress enacted the statute," Pet. 22 (quoting *New Prime Inc.* v. *Oliveira*, 586 U.S. 105, 113 (2019)). That untenable result confirms the error of respondent's "depart[ure] from the original meaning of the statute" in 1957. *New Prime*, 586 U.S. at 113. Indeed, the only "[c]ontext" that respondent cites (Br. in Opp. 22) is a 1962 amendment addressing foreign incidents, which did not amend Section 2210(d) or any provision relevant to this domestic case. See Pet. 27.

Like the Federal Circuit, respondent contravenes the Executive's longstanding interpretation of Section 2210(d)—a "consistent" and "contemporaneously" expressed view that should be treated as "especially useful in determining the statute's meaning." *Loper Bright Enters.* v. *Raimondo*, 603 U.S. 369, 394 (2024); see Pet. 22-23. To start, respondent acknowledges (Br. in Opp. 31) that the standard clauses that were adopted "just five years after" Price-Anderson (and incorporated into the underlying contract here) shed light on the statute's meaning. See Pet. 8-11. But contrary to respondent's contention, those clauses provide that merely handling "'material * * * produced or delivered under the contract' is *not* sufficient" to confer indemnity, Pet. 22 (emphasis added; brackets and citation omitted), because it satisfies only one of multiple conditions "connected by the conjunctive 'and,' meaning claimants must meet all of them," *ibid.* (quoting *United States* v. *Palomar-Santiago*, 593 U.S. 321, 326 (2021)) (brackets and some internal quotation marks omitted). That conclusion receives further support from the clauses' exclusion of indemnity for activities on subcontractors' property, which respondent ignores. Pet. 9. Respondent does not justify its revisionist reading, which improperly substitutes "or" for "and"

in defiance of the text and decades of contract performance.

Respondent next misreads (Br. in Opp. 25, 31-33) the reports to Congress that the government has regularly submitted since Congress amended the statute to require them beginning in 1983. See Pet. 9-10, 23; Act of Dec. 31, 1975, Pub. L. No. 94-197, 89 Stat. 1115 (42 U.S.C. 2210(p) (1976)). Respondent fails to address the government's longstanding view that a "terrorist" cannot be indemnified for terrorism using nuclear material produced under a government contract, Pet. 26 (brackets and citation omitted), which itself defeats respondent's view that indemnity runs with the material. And while respondent tries to claim support from other passages in the reports, those passages are distinguishable because they all refer to nuclear material under control of the government or subcontractors, suppliers, and other parties acting "for the account of the government," for whom "responsibility" can "be logically attributed to the Government," unlike here. Pet. 23 (first quoting C.A. App. 1236, then quoting U.S. Dep't of Energy, *Report to the Congress as Required by Section-170 p. of the Atomic Energy Act of 1954, as amended* 7 (Aug. 1, 1983) (1983 Report)) (brackets omitted).[2] For example, contrary to respondent's selective quotation (Br. in Opp. 32), the 1983 Report stated that indemnity would attach only "*if* the nuclear incident causing the harm arose out of or in connection with a contractual activity *and*" satisfied additional requirements, including that the incident was traceable to "item[s] produced or delivered

[2] See Br. in Opp. 25 (citing a 1997 report's discussion of subcontractors and suppliers); *id.* at 25, 31-32 (selectively quoting a 1999 report's discussion of commercial activity "on [government] property," C.A. App. 1236).

under the contract." 1983 Report 7 (emphases added). In other words, that report adhered to the 1962 clauses' position that the material alone is not sufficient for indemnity. See p. 5, *supra*.

Also like the Federal Circuit, respondent invokes a broad understanding of putative congressional "purpose," see Br. in Opp. 3, 23, 33, and selected pre- and post-enactment legislative history, *id.* at 4-5, 23-24; see Pet. 27-29. And respondent's sole example of other "courts" supporting its position (Br. in Opp. 25) is dictum from a decision discussing legislative history from 1988, without addressing Section 2210(d) or its text, *In re TMI Litig. Cases Consol. II*, 940 F.2d 832, 852 (3d Cir. 1991). Respondent does not explain why the Court should rely on those materials instead of the statute's "clear" text and structure (or other legislative materials "supporting" the government). Pet. App. 59a-60a.[3]

2. The Federal Circuit accordingly erred in holding that respondent has stated a claim for indemnification under Section 2210(d). Because it rejected the trial court's reading of the statute as requiring a nexus to contractual activity for the benefit of the United States, Pet. App. 23a-24a, the Federal Circuit did not suggest that respondent could meet that standard. And respondent would plainly fail to do so: The liability for which it seeks indemnification undisputedly does not arise from its service as a con-

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[3] Even on its own terms, respondent misconstrues (Br. in Opp. 4-5, 32) the legislative-history hypothetical of an airplane crashing into a reactor. That hypothetical involves mandatory license indemnification for reactors under Section 2210(a)-(c), see Pet. 6, not Section 2210(d), and is "inapposite" for multiple reasons, including that the hypothesized liability "occurred *during* the performance of indemnified activity and at the site of the indemnified activity," unlike respondent's activities here. Gov't C.A. Br. 45-46.

tractor, subcontractor, or in any other capacity contributing to the government's atomic-weapons contract with Mallinckrodt Chemical Works, the sole indemnifying contract identified in respondent's complaint. Instead, respondent purchased and then allegedly mishandled nuclear material for its own profit, off of government property, years after the government sold that material "as is" and disclaimed responsibility or indemnity. See Pet. 23-24, 26-27. That implausible claim for government-contract indemnification fails as a matter of law, as the Court of Federal Claims correctly held. Pet. 14-15.

Respondent now asserts (Br. in Opp. 2, 17) that the "standard" for Section 2210(d) indemnification will not be "dispositive in this case" because respondent "clearly meets" any nexus requirement. That is plainly incorrect, which is presumably why the Federal Circuit never suggested it. Respondent's new theory appears to be that the 1966 bill of sale to Continental Mining & Milling Co. (see Pet. 11) is itself a contract for the benefit of the United States, and that respondent's downstream liability has a sufficient nexus to *that* contract. See Br. in Opp. 17. But that theory suffers from multiple problems, including that respondent's complaint does not mention the bill of sale and instead identifies the 1962 Mallinckrodt indemnification agreement as the sole "Contract" supporting respondent's claim. See C.A. App. 23-24 (Compl. ¶¶ 5, 7-8). Moreover, the 1966 bill of sale could not support indemnification because it included no indemnification agreement. Pet. 11-12. And the arm's-length sale of material to a private party that "*paid* to use [material] for its own benefit" is not a contract for the benefit of the United States—unlike, *e.g.*, a contract with a weapons producer or storage provider, which "*the government pays* to handle material." Pet. 27. Respondent's contrary view would

evidently treat *every* contract as a contract "for the benefit of the United States," 42 U.S.C. 2210(d) (1964), violating the "cardinal principle of interpretation that courts must give effect, if possible, to every clause and word of a statute," *Liu* v. *SEC*, 591 U.S. 71, 89 (2020) (citation omitted).

B. The Decision Below Warrants Further Review

The Federal Circuit's decision vastly expanding the scope of government-contract indemnification under Section 2210(d) erroneously resolved an important question of federal law on a matter within its exclusive jurisdiction. That makes this a paradigmatic case for certiorari. Pet. 29-31.

Respondent contends (Br. in Opp. 9) that the decision affects "only" the "rare" circumstance of a "licensee without its own indemnity guarantee." But that circumstance is not rare at all. As respondent itself has told the Court, Price-Anderson liability has "enormous and recurring national importance" in part because "over 18,000 entities and individuals have licenses" to handle nuclear material today. Pet. at 2, 16, *Cotter Corp.* v. *Mazzocchio*, No. 24-1001 (filed Mar. 10, 2025) (*Mazzocchio* Pet.).[4] And numerous other licenses issued over the last 70 years may give rise to liability long after they expire, as this case illustrates. See Pet. 13 (respondent's license expired in 1974). Pursuant to its discretionary authority under Section 2210(a)-(c), see Pet. 6, the government has historically "chosen *not*" to "extend indemnity cov-

[4] In its response to the Court's invitation in *Mazzocchio*, the United States has explained that the petition for a writ of certiorari in that case presents a distinct legal question not at issue here. U.S. Amicus Br. at 11 n.2, *Mazzocchio*, *supra*. The brief in opposition's discussion (at 2, 15-16) of the merits of that "*different* petition" is therefore misplaced.

erage" to most of those licensees, "other than those possessing plutonium" and other narrow classes. U.S. Nuclear Regul. Comm'n, *The Price-Anderson Act—The Third Decade* I-4, A-3 (Dec. 1983) (emphasis added). And the effects of the decision below are not limited "only" to the universe of Section 2210(d) cases, contra Br. in Opp. 12, because respondent's "key phrase," *id.* at 19—"arising out of or in connection with"—also defines the scope of licensee indemnification under the parallel provisions of Section 2210(a)-(c). See Pet. 6-7, 20. The relevant "fact pattern" therefore occurs with "regularity." Br. in Opp. 13.[5]

As respondent has also informed the Court, Price-Anderson cases "recur frequently"; respondent "alone has been sued by more than 500 plaintiffs since 2012, and continues to face" pending cases "seeking many millions in liability" (as do other parties). *Mazzocchio* Pet. 19-20.[6] Indeed, respondent recently filed another indemnification suit in express reliance on "the Federal Circuit's decision" in this case, seeking about $9 million from the government for what respondent alleges is a "virtually identical" claim. Compl. ¶¶ 10, 86, *Cotter Corp. (N.S.L.)* v.

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[5] Respondent also invokes immaterial factual distinctions. The Federal Circuit's rule cannot be cabined to "World-War-II-era" or "pre-Cold-War" cases, Br. in Opp. 2, 9, when the United States has continued to produce nuclear material over the past 80 years. And contrary to respondent's speculation (*id.* at 11), the outcome of this case would not change "[h]ad Continental maintained title to the nuclear material" because Continental, too, paid to handle the material for its own private benefit under a non-indemnifying license, like respondent. See Pet. 11-12; p. 8, *supra*.

[6] See, *e.g.*, *Kitchin* v. *Bridgeton Landfill, LLC*, No. 18-cv-672 (E.D. Mo. filed Apr. 27, 2018); *Steward* v. *Honeywell Int'l, Inc.*, No. 18-cv-1124 (S.D. Ill. filed May 16, 2018); *Mazzocchio* v. *Cotter Corp.*, No. 22-cv-292 (E.D. Mo. filed Mar. 10, 2022).

United States, No. 26-cv-388 (Fed. Cl. Mar. 9, 2026); see *id.* at 24.

This Court therefore need not doubt that the question presented "is likely to recur," Br. in Opp. 11: It already has recurred, just as the government anticipated when the Federal Circuit "announc[ed] a new 'standard' that sweeps far more broadly than the scope of indemnification that has been applied in practice over the past seven decades." Pet. 29 (citation omitted). That respondent was evidently the first tortfeasor in Price-Anderson "history" with the audacity to claim indemnity on that commonplace factual predicate just shows why the Federal Circuit's "entirely novel" ruling greenlighting such claims is so disruptive. Br. in Opp. 9-10. Nor should the Court credit respondent's second-guessing of "serious[]" burdens on the federal government's nuclear-policy agenda or of the "importance of stability in the nuclear industry," *id.* at 13, 16, when respondent elsewhere finds it "difficult to overstate the importance" of "upend[ing]" a "stable, predictable rule" that has governed Price-Anderson for decades, *Mazzocchio* Pet. 3, 16.

Finally, this case is not "fact-bound." Br. in Opp. 15. The "legal interpretation" of Section 2210(d) is a "'legal question[],'" as respondent admits. *Id.* at 33 (citation omitted). And the decision below announced a "sweeping" new "standard" governing indemnification claims under that provision, "breaking" with the "carefully calibrated federal" policies that have applied "for decades." *Id.* at 15-16, 19. The Federal Circuit articulated that standard in reversing a dismissal order based on undisputed allegations. Pet. App. 3a-4a. This Court regularly reviews court of appeals decisions that articulate pleading standards in that posture. See, *e.g.*, *Macquarie Infrastructure Corp.* v. *Moab Partners, L.P.*,

601 U.S. 257 (2024); *Health & Hosp. Corp.* v. *Talevski*, 599 U.S. 166 (2023); *Retirement Plans Comm. of IBM* v. *Jander*, 589 U.S. 49 (2020) (per curiam). It should follow the same course here.

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The petition for a writ of certiorari should be granted.

Respectfully submitted.

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