No. 25-428

IN THE
Supreme Court of the United States

PERCIPIENT.AI, INC.,

Petitioner,

v.

UNITED STATES; CACI, INC.-FEDERAL,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Federal Circuit

BRIEF IN OPPOSITION OF CACI, INC.-FEDERAL

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QUESTION PRESENTED

Under 28 U.S.C. § 1491(b)(1), "an interested party" may sue in the Court of Federal Claims "objecting to a solicitation by a Federal agency for bids or proposals for a proposed contract or to a proposed award or the award of a contract or any alleged violation of statute or regulation in connection with a procurement or a proposed procurement." In the decision below, the Federal Circuit reaffirmed its longstanding, "settled interpretation" that "interested part[ies]" are limited to "actual or prospective bidders or offerors whose direct economic interest would be affected by the award of the contract or by failure to award the contract." Pet. App. 16a-17a; *see Am. Fed'n of Gov't Employees, AFL-CIO* v. *United States*, 258 F.3d 1294, 1302 (Fed. Cir. 2001), *cert. denied*, 534 U.S. 1113 (2002). The question presented is:

Whether putative subcontractors or other companies that are not actual or prospective bidders or offerors on a prime contract but sell commercially available products that purportedly meet the government's requirements are "interested part[ies]" under 28 U.S.C. § 1491(b)(1).

RULE 29.6 STATEMENT

Pursuant to this Court's Rule 29.6, undersigned counsel state that Respondent CACI, Inc.-Federal is wholly owned by CACI International Inc., a publicly traded company. No other publicly held company owns 10 percent or more of CACI, Inc.-Federal's stock.

RULE 14.1(B)(iii) STATEMENT

The following proceedings are directly related to the case in this Court:

Percipient.ai, Inc. v. *United States*, No. 23-1970 (Fed. Cir.) (judgment entered Aug. 28, 2025).

Percipient.ai, Inc. v. *United States*, No. 1:23-cv-00028 (Fed. Cl.) (judgment entered May 18, 2023).

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BRIEF IN OPPOSITION

Respondent CACI, Inc.-Federal ("CACI") respectfully submits that the petition for a writ of certiorari should be denied.

STATEMENT

Congress has limited who may sue to challenge the government's procurement decisions. In 1996, Congress gave the Court of Federal Claims jurisdiction over actions "by an interested party" objecting to an agency's contract solicitation, an agency's proposed award or award of a contract, or "any alleged violation of statute or regulation in connection with a procurement or a proposed procurement." 28 U.S.C. § 1491(b)(1). Nearly a quarter century ago, the Federal Circuit held that "interested party" means "actual or prospective bidders or offerors whose direct economic interest would be affected by the award of the contract or by failure to award the contract." *Am. Fed'n of Gov't Employees, AFL-CIO* v. *United States*, 258 F.3d 1294, 1302 (Fed. Cir. 2001) ("*AFGE*"), *cert. denied*, 534 U.S. 1113 (2002). In the decision below, the Federal Circuit reaffirmed that longstanding interpretation. Pet. App. 16a-17a.

There is no dispute that Petitioner Percipient.ai, Inc. ("Percipient") lacks statutory standing under that rule because it is a would-be subcontractor, not an actual or prospective bidder or offeror on a government contract. Although Percipient could have submitted an offer during the competition for the prime contract that an agency ultimately awarded to CACI, Percipient elected not to do so. Percipient therefore asks this Court to rewrite settled procurement law by expanding the meaning of "interested party" to encompass putative subcontractors and other companies selling

commercially available products that supposedly meet the government's requirements—at least when the plaintiff alleges a "violation of statute or regulation in connection with a procurement." 28 U.S.C. § 1491(b)(1). The Court should decline that invitation.

In challenging the well-functioning procurement status quo, Percipient overstates the importance of the question presented. Putative subcontractors have lacked statutory standing to bring bid protests for decades. This Court declined to review *AFGE*, and Congress has repeatedly amended § 1491 without overriding the well-established interpretation of "interested party." Percipient offers no evidence that the Federal Circuit's settled construction of that term has resulted in systematic underenforcement of procurement laws—including the commercial-preference provisions of 10 U.S.C. § 3453 that Percipient claims were violated here. Disrupting the status quo by adopting Percipient's expansive definition of "interested party," on the other hand, would both hinder the government's efforts to obtain products and services and frustrate the ability of prime contractors—such as CACI—to provide those products and services in a timely and efficient manner.

On top of all that, the decision below was correct. Before Congress enacted § 1491(b)(1) in 1996, other procurement statutes expressly defined "interested party" as limited to actual or prospective bidders or offerors with a direct interest in the award of a government contract. Congress carried that meaning forward into § 1491(b)(1). Statutory context, history, and the presumption against waivers of sovereign immunity all confirm that reading.

Finally, this case is a poor vehicle to consider the meaning of § 1491(b)(1). Multiple alternative grounds for affirmance—including threshold jurisdictional bars—would complicate the Court's review.

For all of these reasons, the Court should deny certiorari.

A. Statutory History

Congress enacted § 1491(b)(1) as part of the Administrative Dispute Resolution Act of 1996 ("ADRA"), Pub. L. No. 104-320, 110 Stat. 3870 (1996). ADRA consolidated judicial review of bid-protest cases in the Court of Federal Claims.

1. Before ADRA, bid protests could be brought in four venues: the Court of Federal Claims, federal district courts, the Government Accountability Office, and the General Services Administration Board of Contract Appeals. In each of these settings, standing was limited to disappointed bidders or offerors with a direct interest in the award of the prime contract.

First, the Court of Federal Claims had jurisdiction over pre-award bid protests. Parties could bring a claim based on an "express or implied contract with the United States," and the court could grant relief "on any contract claim brought before the contract [was] awarded." 28 U.S.C. § 1491(a)(1), (3) (1994). Bid protests were confined to a specific "theory—that the government made an implied contract with prospective bidders to fairly assess their bids" but failed to do so. *Impresa Construzioni Geom. Domenico Garufi* v. *United States*, 238 F.3d 1324, 1331 (Fed. Cir. 2001). Standing was limited to "disappointed bidders or their equivalents." *Motorola, Inc.* v. *United States*, 988 F.2d 113, 115 (Fed. Cir. 1993).

Second, federal district courts had jurisdiction over certain post-award bid protests. Under the Administrative Procedure Act ("APA"), a person "adversely affected or aggrieved by agency action" may bring a claim in federal district court. 5 U.S.C. § 702. In the government-contracting context, statutory standing was typically limited to "disappointed bidder[s]" or "sufficiently viable runners-up in a procurement process." *AFGE*, 258 F.3d at 1301 (citations omitted). The leading D.C. Circuit case, for example, held that a "frustrated bidder" could challenge the award of a government contract in district court. *Scanwell Labs., Inc.* v. *Shaffer*, 424 F.2d 859, 861, 866 (D.C. Cir. 1970). Cases applying *Scanwell* likewise "did not involve, or even discuss, disappointed subcontractors." Pet. App. 30a (collecting cases).[1]

Third, under the Competition in Contracting Act, an "interested party" could file protests with the Government Accountability Office. 31 U.S.C. § 3552 (1994); *see* Competition in Contracting Act of 1984, Pub. L. No. 98-369, § 2741, 98 Stat. 1175, 1199 (1984). An "interested party" was defined as "an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract." 31 U.S.C. § 3551(2) (1994). Like the first and second prongs of what would become § 1491(b)(1), interested parties could protest a

[1] There are "isolated cases" in which subcontractors were permitted to sue. Pet. App. 31a; *see* Pet. 31. But those cases involved an "agency-like relationship between the prime contractor and the government" such that the subcontractor, in turn, "was essentially acting like a prime" contractor. Pet. App. 32a. Those decisions do not speak to whether a "subcontractor lacking privity with the government independently had standing to sue." Pet. App. 31a-32a.

"solicitation" or an "award or proposed award of" a contract. *Id.* § 3551(1)(A), (C). And like the third prong of § 1491(b)(1), interested parties could also protest "an alleged violation of a procurement statute or regulation." *Id.* § 3552; *see* Pet. App. 12a.

Fourth, under the Brooks Act as amended by the Competition in Contracting Act, an "interested party" in procurements for automated data processing equipment could protest in the General Services Administration Board of Contract Appeals. 40 U.S.C. § 759(f)(1) (1994); *see* Pub. L. No. 98-369, § 2713, 98 Stat. at 1182-84. As in the Competition in Contracting Act, an "interested party" was defined as "an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract." 40 U.S.C. § 759(f)(9)(B) (1994). Interested parties could challenge a solicitation for bids or proposals for a proposed contract, a proposed or actual contract award, or—like the third prong of what would become § 1491(b)(1)—"any decision by a contracting officer that is alleged to violate a statute [or] regulation" in connection with any procurement. *Id.* § 759(f)(1), (9); *see* Pet. App. 14a.

2. This fragmented regime produced confusion and uncertainty. Congress therefore directed the Department of Defense to form an advisory panel to recommend amendments to procurement laws. Pub. L. No. 101-510, Title VIII, § 800, 104 Stat. 1485, 1587 (1990). The panel recommended consolidating judicial review in the Court of Federal Claims and, most relevant here, limiting "protests" to "only interested parties, as defined by the Competition in Contracting Act." *Streamlining Defense Acquisition Laws*, Report of the Acquisition Law Advisory Panel to the United

States Congress at 1-265-66 (Jan. 1993), https://perma.cc/5RA9-P3G2.

Against this backdrop, Congress enacted ADRA in 1996. Pub. L. No. 104-320, § 12(a), 110 Stat. at 3874. Consistent with the Department of Defense panel's recommendation, Congress consolidated judicial review of bid protests in the Court of Federal Claims by enacting § 1491(b)(1).

In relevant part, Congress gave the Court of Federal Claims "jurisdiction to render judgment on an action by an interested party objecting to a solicitation by a Federal agency for bids or proposals for a proposed contract or to a proposed award or the award of a contract or any alleged violation of statute or regulation in connection with a procurement or a proposed procurement." 28 U.S.C. § 1491(b)(1).[2]

Congress also provided that the Court of Federal Claims would review bid protests under the APA's standard of review. 28 U.S.C. § 1491(b)(4) (cross-referencing 5 U.S.C. § 706). But Congress did not import the APA's grant of statutory standing to persons "adversely affected or aggrieved by agency action." 5 U.S.C. § 702.

3. Shortly after ADRA's enactment, the Federal Circuit authoritatively construed § 1491(b)(1)'s statutory-standing requirement. Nearly 25 years ago, the Federal Circuit held that "interested party" under 28 U.S.C. § 1491(b)(1) means "actual or prospective bidders or offerors whose direct economic interest would

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[2] Congress initially granted concurrent jurisdiction to the Court of Federal Claims and the district courts, but a five-year sunset provision terminated district court jurisdiction in 2001. Pub. L. No. 104-320, § 12(d), 110 Stat. at 3875.

be affected by the award of the contract or by failure to award the contract." *AFGE*, 258 F.3d at 1302.

B. Factual Background

The National Geospatial-Intelligence Agency ("NGA") analyzes images and geospatial information to provide intelligence to the Department of Defense. Pet. App. 51a. In 2020, the NGA issued the "SAFFIRE solicitation" for delivery of an integrated system to obtain, store, and interpret visual intelligence data. Pet. App. 2a.[3] The SAFFIRE solicitation was a single consolidated procurement that included two key components. First, the NGA sought a "Structured Observation Management Enterprise Repository" system to store and distribute data. Pet. App. 2a-3a (alterations omitted). Second, the NGA sought "Computer Vision" capabilities, which allow the agency to recognize, organize, and interpret visual data using automated software. Pet. App. 3a.

As a result of a competitive acquisition process, the NGA awarded the SAFFIRE contract to CACI, a civilian contractor, in January 2021. Pet. App. 3a. The contract called for CACI to deliver a system that integrated the Structured Observation Management and Computer Vision capabilities. *Id.* The NGA simultaneously issued a task order directing CACI to deliver the Computer Vision system. *Id.* The contract required CACI to procure commercial products "to the maximum extent practicable." *Id.* This provision implements Congress's directive that federal agencies ensure, "to the maximum extent practicable," that

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[3] "SAFFIRE" stands for the Structured Observation Management, Automation, Augmentation and Artificial Intelligence Framework for Integrated Reporting and Exploitation. Pet. App. 2a n.2.

prime contractors use commercially available products or nondevelopmental items, rather than developing new products. 10 U.S.C. § 3453(b)(2); *see* 48 C.F.R. § 52.244-6.

Percipient could have participated in the bidding process on the SAFFIRE contract, but chose not to do so. Percipient offers a commercial Computer Vision platform but not a Structured Observation Management product, so it was not able, on its own, to submit an offer on the SAFFIRE solicitation. Pet. App. 3a. As an alternative, however, Percipient could have teamed up with a business partner to submit a joint offer. *Id.*; *see* C.A. J.A. 907. Or it could have asked the NGA to break up the SAFFIRE solicitation and issue a separate Computer Vision procurement, and then protested if the NGA declined to do so. *See Telos Identity Mgmt. Sols., LLC* v. *United States*, 143 Fed. Cl. 787, 793 (2019). Percipient took neither of these available paths.[4]

After the NGA awarded the contract to CACI in 2021, Percipient requested that the NGA and CACI evaluate Percipient's platform for a potential subcontract encompassing the Computer Vision component of the contract. C.A. J.A. 70-71. "For two years," "both CACI and NGA, fully aware of and exercising their various § 3453 responsibilities, conducted extensive tests" of Percipient's platform. Pet. App. 87a-88a

[4] Before the NGA issued the SAFFIRE solicitation, it conducted statutorily required market research to determine the availability of commercial products or nondevelopmental items. 10 U.S.C. § 3453(c); 48 C.F.R. § 7.102(a)(1). The NGA issued requests for information from potential contractors and convened an industry day. *See* C.A. J.A. 571-73. But Percipient did not reply to any of the requests for information. *See* C.A. J.A. 150, 907.

(Clevenger, J., dissenting); *see* C.A. J.A. 955-60, 966. CACI and the NGA "ultimately concluded that [Percipient's platform] was not suitable." Pet. App. 88a (Clevenger, J., dissenting); *see* C.A. J.A. 964-68. Existing government software exceeded the functionality of Percipient's platform. *See* C.A. J.A. 967. To meet the Computer Vision component of the contract, CACI therefore used government-owned technology and updated it in accordance with the contract's requirements. *See* C.A. J.A. 470, 496, 966-67.

C. Procedural History

1. In January 2023—three years after the NGA issued the SAFFIRE solicitation, and two years into CACI's contract performance—Percipient sued the NGA in the Court of Federal Claims. Pet. App. 5a. CACI intervened to defend the NGA's contractual award. *Id.*

Percipient alleged that the NGA violated the commercial item preference requirements of 10 U.S.C. § 3453. Pet. App. 5a. Under that statute, agencies must, "to the maximum extent practicable," "require prime contractors" under agency contracts "to incorporate commercial services, commercial products, or nondevelopmental items" as "components of items supplied to the agency." 10 U.S.C. § 3453(b)(2). The statute also requires agencies to "take appropriate steps to ensure that any prime contractor" of certain contracts "engages in such market research as may be necessary to carry out the requirements of subsection (b)(2)." *Id.* § 3453(c)(5). Percipient alleged that the NGA failed to require CACI to use commercial products and failed to ensure that CACI conducted appropriate market research. Pet. App. 5a; Pet. 13-14.

2. The Court of Federal Claims dismissed Percipient's complaint for lack of subject matter jurisdiction. Pet. App. 126a-27a. Under the Federal Acquisition Streamlining Act's task-order bar, protests "in connection with the issuance or proposed issuance of a task or delivery order" are barred, subject to certain exceptions. 10 U.S.C. § 3406(f)(1). The Court of Federal Claims held that the task-order bar applied because Percipient's protest was "directly and causally related to the agency's issuance" of the task order directing CACI to deliver the Computer Vision system. Pet. App. 125a.

3. A panel of the Federal Circuit reversed, concluding that the task-order bar did not apply to Percipient's claims. Pet. App. 51a. Although Percipient challenged work performed under the NGA's task order, the panel determined that Percipient's challenge was not "in connection with" the task order's issuance because "no allegation asserts that the language of [the task order] was deficient or forced the alleged statutory violations to occur." Pet. App. 62a.

The panel also rejected the government's and CACI's alternative argument that Percipient, as a putative subcontractor that did not bid on the prime contract, lacked statutory standing under § 1491(b)(1). The panel concluded that, "in the context of this case involving alleged violations of 10 U.S.C. § 3453, an interested party includes an offeror of commercial or nondevelopmental items" such as Percipient. Pet. App. 70a.

The panel further concluded that Percipient's claims were timely and that Percipient alleged statutory or regulatory violations "in connection with a procurement" within the meaning of § 1491(b)(1). Pet. App. 51a.

Judge Clevenger dissented and would have held that Percipient is not an "interested party" under § 1491(b)(1). Pet. App. 86a-87a. He explained that "there is no clear daylight between this case and *AFGE*"—where the Federal Circuit had limited statutory standing under § 1491(b)(1) to "actual or prospective bidders or offerors," 258 F.3d at 1302—and that the panel majority had "grant[ed] potential subcontractors standing to protest for the first time in Tucker Act history." Pet. App. 100a, 117a. The panel's expansive interpretation, Judge Clevenger warned, would "soon flood the Claims Court with § 1491(b)(1) protests." Pet. App. 118a. Just "[t]hink of all of the products and services that go into government contracts for a battleship, or airplane, or new headquarters for an agency, and the vast number of potential subcontractors who can so easily allege possession of a suitable off-the-shelf product or service and inadequate agency attention to § 3453's requirements." *Id.*

Judge Clevenger also would have held that the Federal Acquisition Streamlining Act's task-order bar foreclosed Percipient's claims. Pet. App. 88a-98a. The NGA's task order directed CACI to produce and deliver a Computer Vision system. Pet. App. 89a. Absent that task order, Judge Clevenger emphasized, the "work that Percipient is challenging would not be taking place," and Percipient would have no claim. *Id.* (citation omitted).

4. The Federal Circuit granted the government's petition for rehearing en banc. Pet. App. 47a. The court vacated the panel opinion in full and "reinstated" the appeal. *Id.* It limited the scope of rehearing to statutory standing under § 1491(b)(1). Pet. App. 48a.

The en banc Federal Circuit affirmed the dismissal of Percipient's claims because would-be subcontractors like Percipient lack statutory standing under § 1491(b)(1). Pet. App. 2a. The court explained that it saw "no reason to depart from [its] settled interpretation" of § 1491(b)(1) dating back to *AFGE*, which provides that "an interested party is an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract." Pet. App. 2a, 17a.

The court rejected Percipient's interpretation of "interested party" because it was "countertextual, unsupported by statutory history, and contravenes our long-standing precedent." Pet. App. 25a. The court grounded its analysis in four textual guideposts.

First, the court found "no statutory support" to assign a "different meaning" to the term "interested party"—as Percipient's reading would require—depending on whether a plaintiff challenges a solicitation, an award, or a statutory or regulatory violation in connection with a procurement. Pet. App. 17a.

Second, the court explained that the "term 'interested party' carries the context imparted by the history of bid protest cases and prior statutes." Pet. App. 19a. When Congress enacted ADRA in 1996, "the term 'interested party' had a specific understood meaning in the procurements sphere" that was limited to actual or prospective bidders or offerors. Pet. App. 20a. Congress transplanted that "'old soil'" into § 1491(b)(1). Pet. App. 19a.

Third, the court reasoned that if Congress "had intended to expand standing in the procurement context, it could have invoked the broad language of the

APA and extended standing to 'a person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action.'" Pet. App. 24a (quoting 5 U.S.C. § 702). But Congress did not do so. Congress "explicitly invoked" the APA "only in defining ADRA's standard of review, but not for its party standing requirements." Pet. App. 24a-25a.

Finally, the court explained that its interpretation would not "leave subcontractors no remedy to enforce § 3453." Pet. App. 34a. There are "other mechanisms for enforcing the statute as to subcontractors, such as through protests by prime contractors or joint bids with other subcontractors." Pet. App. 35a. In any event, Percipient's policy-based objections to giving "interested party" its plain meaning were not a "persuasive argument for expanding the jurisdiction of the Court of Federal Claims." *Id.*

The en banc court did "not address" the "task order bar" because that issue "exceed[ed] the scope of the rehearing that was granted." Pet. App. 5a n.4. The court also did not address whether Percipient's claims alleged violations "in connection with a procurement" or whether the claims were timely. Pet. App. 6a n.5.

REASONS FOR DENYING THE PETITION

This Court should deny certiorari because the Federal Circuit's decision merely reaffirms longstanding precedent and thus has limited legal or practical significance, because the decision below was correct, and because this case is a poor vehicle for addressing the question presented.

I. THE DECISION BELOW HAS LIMITED SIGNIFICANCE.

Percipient overstates the importance of the decision below. The Federal Circuit simply reaffirmed the settled status quo in procurement law that subcontractors and other companies that are not actual or prospective bidders on a government contract lack standing to bring bid protests under § 1491(b)(1). And Percipient offers no evidence that procurement laws have been underenforced because of that decades-old rule. Conversely, adopting Percipient's expansive reading of § 1491(b)(1) would destabilize the procurement process by inviting disappointed companies that sat out the procurement process to delay performance of contracts, including critical national-security contracts, with lengthy litigation.

A. The Federal Circuit Reaffirmed Its Longstanding Interpretation Of § 1491(b)(1).

The decision below reaffirmed the well-established status quo in procurement law: Only actual or prospective bidders or offerors with a direct economic interest in the award of a government contract have statutory standing under § 1491(b)(1). This Court has declined to review the question presented before, and there is no reason for it to intervene now.

1. Nearly 25 years ago, the Federal Circuit held that "interested party" under 28 U.S.C. § 1491(b)(1) means "actual or prospective bidders or offerors whose direct economic interest would be affected by the award of the contract or by failure to award the contract." *Am. Fed'n of Gov't Employees, AFL-CIO* v. *United States*, 258 F.3d 1294, 1302 (Fed. Cir. 2001) ("*AFGE*"). There, federal employees alleged that an

agency "failed to conduct a proper price comparison as required by" statutes and agency guidance when awarding a contract. *Id.* at 1297. Like Percipient, the employees argued that "interested party" under § 1491(b)(1) encompasses "parties who satisfy the APA requirements for standing." *Id.* at 1299. The court rejected that view, holding that parties who are "not actual or prospective bidders or offerors" on the government contract "do not have standing." *Id.* at 1302.

The Federal Circuit's decision in *AFGE* was itself consistent with pre-ADRA procurement law. Before Congress enacted ADRA in 1996, bid protests could be brought in four venues: the Court of Federal Claims, federal district courts, the General Services Administration Board of Contract Appeals, and the Government Accountability Office. Standing in each of those settings was limited to disappointed bidders or offerors on the prime contract. *See Motorola, Inc.* v. *United States*, 988 F.2d 113, 115 (Fed. Cir. 1993) (Court of Federal Claims); *AFGE*, 258 F.3d at 1301 (discussing district court jurisdiction); 40 U.S.C. § 759(f)(1), (9)(B) (1994) (GSABCA); 31 U.S.C. § 3551(2)(A) (1994) (GAO); *supra* at 3-5. When Congress consolidated the federal district courts' "*Scanwell* jurisdiction" in the Court of Federal Claims, Congress conferred jurisdiction over "complaints brought by disappointed bidders only." *AFGE*, 258 F.3d at 1301 (discussing *Scanwell Labs., Inc.* v. *Shaffer*, 424 F.2d 859, 869 (D.C. Cir. 1970)). ADRA therefore changed *where* parties could bring bid protests, not *who* could bring them. *Id.*

This Court had the opportunity to review the Federal Circuit's *AFGE* decision but denied the petition without noted dissent. *Am. Fed'n of Gov't Employees,*

AFL-CIO v. *United States*, 534 U.S. 1113 (2002). That petition, like Percipient's, urged this Court to review whether the Federal Circuit misconstrued § 1491(b)(1) by limiting it to "only disappointed bidders." Petition for Writ of Certiorari 10, *AFGE*, 534 U.S. 1113 (2002) (No. 01-664).

Percipient tries to sidestep *AFGE* by claiming that, before the decision below, "no case had previously addressed the meaning of" the term "interested party" where the "protestor invoked only the third prong of § 1491(b)(1)"—*i.e.*, the authorization to sue based on "any alleged violation of statute or regulation in connection with a procurement." Pet. 17. But the *AFGE* plaintiffs told this Court that they—like Percipient—were "interested parties objecting to any alleged violation of statute or regulation in connection with a procurement." *AFGE* Pet. 8 (citation and alteration omitted). At a minimum, the "primary thrust of the case was the prong three allegation" that the agency "misappl[ied]" statutory and regulatory cost-evaluation standards, which the plaintiffs asserted as a "'wholly separate and independent'" basis for statutory standing. Pet. App. 101a-02a (Clevenger, J., dissenting) (citation omitted).

Even on its own terms, however, Percipient's attempt to distinguish *AFGE* only undermines the petition. If Percipient is correct that this case presents a novel issue that *AFGE* did not decide and that has not previously arisen in the three decades since ADRA was enacted, Pet. 16, then the question is not likely to "recur[ ]"—which is usually a "decisive" reason to deny certiorari. Stephen M. Shapiro et al., Supreme Court Practice § 4.4(a) (10th ed. 2013).

2. The need for this Court's intervention has only diminished further since it denied review in *AFGE*.

The Federal Circuit has repeatedly reaffirmed that only actual or prospective bidders or offerors with a direct interest in the award of the prime contract qualify as interested parties with statutory standing to sue under § 1491(b)(1). *Distributed Sols., Inc.* v. *United States*, 539 F.3d 1340, 1343 (Fed. Cir. 2008); *Diaz* v. *United States*, 853 F.3d 1355, 1358 (Fed. Cir. 2017). The decision below reaffirmed *AFGE* yet again, concluding that there was "no reason to depart from this settled interpretation." Pet. App. 17a.

There is no need for this Court to examine a decades-old principle of procurement law. Stakeholders in the government-contracts industry—federal agencies, prime contractors, and potential subcontractors alike—have developed settled expectations about how judicial review of procurements works. While the need for this Court's review might "increase[ ]" when "the Federal Circuit" has exclusive jurisdiction and "*departs* from its own . . . precedents," Shapiro, *supra*, § 4.21 (emphasis added), the opposite is true here, where the Federal Circuit *reaffirmed* its longstanding and consistent interpretation of § 1491(b)(1).

Indeed, the Court has never granted review of a Federal Circuit decision that reaffirmed a preexisting procurement-law principle. That distinguishes this case from the only procurement decision Percipient cites from this Court. Pet. 32 (citing *Kingdomware Techs., Inc.* v. *United States*, 579 U.S. 162 (2016)). There, this Court granted review of a Federal Circuit decision resolving a novel statutory question concerning procurement preferences for veteran-owned small businesses. 579 U.S. at 164; *see Kingdomware Techs., Inc.* v. *United States*, 107 Fed. Cl. 226, 230 (2012) (noting it was a "case of first impression"). By contrast,

the decision below reaffirmed a decades-old interpretation of § 1491(b)(1) that this Court has already declined to review. *See supra* at 15-16.

Finally, the Federal Circuit's exclusive jurisdiction cuts against this Court's review because there is no circuit split and never will be one. Pet. 37; *see* Sup. Ct. R. 10(a). That does not mean, however, that the decision below "shall forever govern" absent this Court's review. Pet. 22. If Congress believes subcontractors should have statutory standing, it can amend § 1491(b)(1)—although Congress has never done so in the 24 years since *AFGE* was decided, even as it amended *other* aspects of § 1491 five times. *See infra* at 27-28 & n.7. It is "Congress's job," not this Court's, to "amend the statutory language" if that policy change is warranted. *Lackey* v. *Stinnie*, 604 U.S. 192, 205 (2025).

B. The Decision Below Will Not Hinder Enforcement Of Procurement Laws.

Percipient also overstates the practical significance of the decision below. For decades, before and after ADRA's enactment, only actual or prospective bidders or offerors have had standing to challenge procurement decisions. *See supra* at 3-5. That rule balances efficiency in contract performance with meaningful judicial review. *See* Pet. App. 108a (Clevenger, J., dissenting). Percipient does not argue, and certainly offers no evidence, that procurement laws have been systematically underenforced as a result of the longstanding rule that subcontractors lack standing to challenge government procurements.

At most, Percipient contends that the decision below would supposedly "block[ ] the enforcement" of one procurement law—10 U.S.C. § 3453. Pet. 1; *see also*

Pet. 33 (similar). That statute requires agencies, "to the maximum extent practicable," to ensure prime contractors "incorporate commercial services, commercial products, or nondevelopmental items other than commercial products as components of items supplied to the agency." 10 U.S.C. § 3453(b)(2); *see also id.* § 3453(c)(5) (directing agencies to "take appropriate steps" to ensure contractors engage in "market research as may be necessary to carry out" subsection (b)(2)).

Percipient's fears are unfounded. There is "no evidence, anecdotal or empirical, that the statute is widely disregarded by agencies or contractors." Pet. App. 110a (Clevenger, J., dissenting). After all, there are legal tools for remedying § 3453 violations both before and after contract awards.

On the front end, Percipient concedes that the decision below does not impair "challenges to § 3453 violations that occur before the award of a prime contract." Pet. 34. These challenges are meaningful mechanisms to enforce § 3453's requirements.

To start, disappointed bidders or offerors whose commercial products the government declined to purchase are "interested part[ies]" with standing to sue under § 1491(b)(1) to enforce § 3453. These litigants "clearly have a significant interest to police possible violations of" that statute's preference for commercial products. Pet. App. 110a (Clevenger, J., dissenting). If a disappointed bidder or offeror proves a § 3453 violation, the contract might be canceled and awarded to a different party—including the disappointed bidder or offeror. *Id.*

In fact, one of Percipient's principal authorities arose in that exact posture. Pet. 35-36 (citing *Palantir*

USG v. *United States*, 904 F.3d 980 (Fed. Cir. 2018)). There, a company filed a pre-award bid protest alleging that the government's solicitation violated statutory preferences for commercial items. 904 F.3d at 985, 988. The company plainly had standing as an "interested party" because it was a prospective bidder or offeror on the prime contract. *Id.* at 988-99; *see CGI Fed. Inc.* v. *United States*, 779 F.3d 1346, 1349 (Fed. Cir. 2015) (holding that a "prospective bidder" has standing where it "diligently pursue[s] its protest rights"). Earlier this year, the same company again challenged a proposed contract award, claiming that it violated commercial-preference laws. Nick Wakeman, *Palantir challenges DIA's sole-source contract plan*, Washington Technology (July 2, 2025), https://perma.cc/7DYE-V8B9.[5]

That kind of pre-award protest is available even to companies, like Percipient, that do not meet all of the prime contract's requirements. For example, contractors and subcontractors can "work together to meet agency requirements." *Brooks Range Contract Servs., Inc.* v. *United States*, 101 Fed. Cl. 699, 703 (2011); *see* 48 C.F.R. §§ 9.601-9.603. Percipient could have partnered with another business to submit a joint proposal for the SAFFIRE contract that included Percipient's commercial platform as the Computer Vision component. If the government did not select the joint offer, Percipient, along with its partner, could have protested that award as an "interested party" under § 1491(b)(1). *See Monbo* v. *United States*, 175

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[5] The commercial-preference statute at issue in *Palantir*, 41 U.S.C. § 3307, is the "sister statute" to 10 U.S.C. § 3453. Pet. App. 110a (Clevenger, J., dissenting). The former applies to government procurements generally, while the latter applies to military procurements. Pet. App. 87a & n.2.

Fed. Cl. 440, 458 (2025). As another example, Percipient could have asked the NGA to break up the SAFFIRE solicitation and issue a separate Computer Vision procurement, and then protested if the NGA declined. *See Telos Identity Mgmt. Sols., LLC* v. *United States*, 143 Fed. Cl. 787, 793 (2019).

On the back end of the procurement process, compliance with § 3453 can be enforced contractually. The prime contract here required CACI to incorporate, to the maximum extent practicable, commercial or nondevelopmental items as components. Pet. App. 3a; *see* C.A. J.A. 797; 48 C.F.R. § 52.244-6(b). Under the Contract Disputes Act, the government may sue if prime contractors breach this obligation. *See* 41 U.S.C. § 7103(a)(3). And if contractors do not cure the violation, the United States may "terminate performance of work" under the contract. 48 C.F.R. § 52.249-6(a)(2).[6]

In short, there is "no factual support for [Percipient's] dispositive worry that § 3453's goals are illusory . . . unless potential subcontractors are granted standing." Pet. App. 110a (Clevenger, J., dissenting).

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[6] Violations of statutory or regulatory requirements "incorporated into" government contracts "are not mere technicalities," and the government regularly sues, or cancels the contracts of, prime contractors that violate such requirements. *Kelso* v. *Kirk Bros. Mech. Contractors, Inc.*, 16 F.3d 1173, 1176 (Fed. Cir. 1994) (discussing government enforcement of Davis-Bacon Act violations); *see*, *e.g.*, *Appeal of Axxon Int'l, LLC*, ASBCA No. 61549, 20-1 B.C.A. (CCH) ¶ 37,564 (Mar. 24, 2020) (upholding agency termination of contract based on contractor's violation of incorporated regulatory requirement to accelerate payments to small-business subcontractors).

C. Percipient's Interpretation Would Destabilize The Procurement Process.

While Percipient overstates the purported consequences of the Federal Circuit's interpretation of § 1491(b)(1), it downplays the practical problems its interpretation would create.

Congress expressly recognized the importance of an efficient procurement process. In granting the Court of Federal Claims bid-protest jurisdiction, Congress emphasized that courts "shall give due regard" to the "need for expeditious resolution of" procurement challenges and "the interests of national defense and national security." 28 U.S.C. § 1491(b)(3).

Percipient's expansive interpretation of "interested party" would frustrate those objectives by inviting contractual delays and uncertainty about contracts' legal status—including for critical national-security contracts. Under Percipient's rule, putative subcontractors or other companies offering commercially available products could sit on the sidelines during the procurement process, then emerge up to six years later to challenge the performance of the contract. Pet. App. 118a (Clevenger, J., dissenting); *see* 28 U.S.C. § 2501 (six-year statute of limitations). That significant lag time opens the door to intrusive litigation years after the fact. Even if a putative subcontractor never filed suit, the prime contractor would labor under the threat of litigation until the day it completed work (and, potentially, beyond that date). As the Court has recognized in other government-contract settings, expanding the availability of these types of "postcontract challenges would disrupt timely and efficient performance of Government contracts" and "introduce substantial uncertainty into Government contracting." *Univs. Rsch. Ass'n* v. *Coutu*, 450

U.S. 754, 782-83 (1981) (holding that employees of federal construction contractors lacked a private right of action to enforce statutory wage requirements).

Further, Percipient fails to grapple with any of the difficult legal and practical issues that would arise if a putative subcontractor prevailed on its claims long after a contract had been awarded. The government and the prime contractor might be forced to unwind years of contract performance. The government's payments to the prime contractor might be called into question. And if the government must re-do the procurement process, it might need to pay for the same products or services a second time. For these reasons, a "remedy for error later on in a contract's life may be more costly than remedy for error earlier caught, and will significantly delay receipt by the government of the product or services for which it contracted." Pet. App. 108a (Clevenger, J., dissenting).

These practical problems would be widespread if Percipient's rule were adopted. There are hundreds of "products and services that go into government contracts for a battleship, or airplane, or new headquarters for an agency." Pet. App. 118a (Clevenger, J., dissenting). And a "vast number of potential subcontractors" could "easily allege possession of a suitable off-the-shelf product and inadequate agency attention to § 3453's requirements." *Id.* If all of those potential subcontractors may bring claims, they will "soon flood the Claims Court with § 1491(b)(1) protests." *Id.* Congress sensibly declined to expand statutory standing to subcontractors in part because "'increasing the number of possible protestors would further complicate procurements and increase the opportunity for delay.'" Pet. App. 23a (en banc majority opinion) (citation and alterations omitted).

This case illustrates the chaos that Percipient's approach would generate. The NGA awarded CACI the SAFFIRE contract nearly five years ago, in January 2021. Pet. App. 3a. During the procurement, Percipient chose not to partner with another company to submit a proposal or ask the NGA to reissue separate solicitations for the project's two components. *Id.*; *see supra* at 8. CACI thereafter spent two years investing significant effort and resources to meet the government's contractual requirements. Pet. App. 4a; C.A. J.A. 172. Only then, two years after the contract award, did Percipient bring this litigation—and it could have waited even longer, given the six-year statute of limitations. 28 U.S.C. § 2501. Percipient's after-the-fact litigation threatens to "partially suspend or discontinue performance" of a contract that is already well underway. Pet. App. 126a; *see* C.A. J.A. 102. And if Percipient is successful, the NGA may have to pay twice for the Computer Vision platform. That is not the streamlined and efficient procurement process Congress envisioned for critical national-security contracts.

II. THE DECISION BELOW IS CORRECT.

Congress gave the Court of Federal Claims jurisdiction over actions "by an interested party objecting to a solicitation by a Federal agency for bids or proposals for a proposed contract or to a proposed award or the award of a contract or any alleged violation of statute or regulation in connection with a procurement or a proposed procurement." 28 U.S.C. § 1491(b)(1). The court of appeals correctly held that Percipient—a would-be subcontractor on the SAFFIRE contract—is not an "interested party" under § 1491(b)(1), a conclusion confirmed by the statute's text, context, and history.

Starting with the text, the Federal Circuit gave "interested party" its ordinary meaning. Pet. App. 19a. That phrase is a "'term of art,'" *id.* (citation omitted), so the "ordinary legal meaning is to be expected, which often differs from common meaning," Antonin Scalia & Bryan A. Garner, Reading Law § 6 (2012). And where, as here, "'Congress employs a term of art obviously transplanted from another legal source, it brings the old soil with it.'" Pet. App. 19a (quoting *George* v. *McDonough*, 596 U.S. 740, 746 (2022)). That principle is not confined to terms with "common-law meanings." Pet. 29. Congress may incorporate meaning from any "legal source, whether the common law or other legislation." *Stokeling* v. *United States*, 586 U.S. 73, 80 (2019) (citation omitted).

Here, the old soil came from the Competition in Contracting Act and the Brooks Act. Pet. App. 19a-20a. Both statutes used the phrase "interested party" to mean "actual or prospective bidder or offeror." 31 U.S.C. § 3551(2) (1994); 40 U.S.C. § 759(f)(9)(B) (1994). Both statutes also included provisions like § 1491(b)(1)'s language authorizing suits for an "alleged violation of statute or regulation in connection with a procurement"—a fact Percipient ignores. Pet. 29 & n.5. The Competition in Contracting Act authorized review of a "protest concerning an alleged violation of a procurement statute or regulation." 31 U.S.C. § 3552 (1994). And the Brooks Act authorized review of "any decision by a contracting officer that is alleged to violate a statute [or] regulation" in "connection with any procurement." 40 U.S.C. § 759(f)(1) (1994). Thus, far from being "inapposite," Pet. 29, these statutes are direct ancestors of § 1491(b)(1), and they confirm that Congress "conserved and carried forward" the procurement-specific meaning of "interested party" into § 1491(b)(1), Pet. App. 20a-21a.

The court of appeals also explained that its interpretation ensures a "single term carries the same meaning throughout a single sentence." Pet. App. 18a. Congress used "interested party" once in § 1491(b)(1), in a "single, unbroken, and undivided sentence." *Id.* Percipient agrees that term is limited to actual or prospective bidders or offerors with respect to objections to "bids or proposals for a proposed contract or to a proposed award or the award of a contract." 28 U.S.C. § 1491(b)(1); *see* Pet. 27. Under the Federal Circuit's reading, the same limitation also applies to objections alleging statutory or regulatory violations in connection with a procurement. In those cases, the nature of the objection changes, but the nature of the interested party does not. Percipient's reading, by contrast, would upend that symmetry by assigning different meanings to "a single antecedent term within a single sentence." Pet. App. 18a.

Percipient's interpretation also lacks principled limits. In Percipient's view, a party is "interested" if it has "a 'direct economic interest' in the agency action it is challenging." Pet. 27. But it never grounds that reading in a dictionary definition or case law. And the limits Percipient claims to impose on subcontractor standing—a party must have a "direct" rather than a "derivative" interest, and an economic rather than a non-economic one, Pet. 32 n.6—are nowhere in the statutory text; they are selectively pulled from the old soil Percipient otherwise disclaims. Regardless, Percipient's broad definition would invite litigation from anyone with a financial stake in an alleged violation of procurement law, such as a minority partner in a putative subcontractor passed over by a prime contractor. Congress chose a term of art with a well-established legal meaning to avoid saddling the procurement process with such boundless litigation.

Percipient also draws the wrong inference (at 30-31) from the interplay between § 1491 and the APA. The APA grants statutory standing to all persons "aggrieved" by agency action, 5 U.S.C. § 702, and supplies a standard for judicial review, *id.* § 706. In ADRA, Congress expressly adopted the APA's standard of review, 28 U.S.C. § 1491(b)(4), but not the APA's broad grant of statutory standing, 5 U.S.C. § 702. If Congress intended to incorporate the APA's broader conception of statutory standing, Pet. 30, it "could have replicated" the APA's statutory-standing language in ADRA, *Badgerow* v. *Walters*, 596 U.S. 1, 11 (2022); *see* Pet. App. 24a. The decision below correctly gave "effect to Congress' express inclusions and exclusions," *Nat'l Ass'n of Mfrs.* v. *Dep't of Defense*, 583 U.S. 109, 126 (2018), while Percipient's interpretation disregards them.

"Statutory history" is also "an important part of th[e] context" of the statute. *United States* v. *Hansen*, 599 U.S. 762, 775 (2023). Here, Congress has repeatedly declined to alter the Federal Circuit's longstanding interpretation of § 1491(b)(1).

Since the Federal Circuit's *AFGE* decision in 2001, Congress has amended § 1491 five times without overriding that decision's interpretation of "interested party."[7] For example, in 2011, Congress added a provision about jurisdiction over bid protests of maritime contracts. Pub. L. No. 112-81, § 861(a) (amending 28 U.S.C. § 1491(a)(6)). But Congress has never

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[7] Consolidated Appropriations Act, Pub. L. No. 110-161, Title VII, § 739(c)(2), 121 Stat. 1844 (2007); Pub. L. No. 110-181, Title III, § 326(c), 122 Stat. 63 (2008); Pub. L. No. 110-417, Title X, § 1061(d), 122 Stat. 4613 (2008); Pub. L. No. 111-350, § 5(g)(7), 124 Stat. 3848 (2011); Pub. L. No. 112-81, Title VIII, § 861(a), 125 Stat. 1521 (2011).

amended § 1491(b)(1). In "light of th[e] settled precedent on the meaning of" "interested party" under the Federal Circuit's "exclusive jurisdiction," Congress's inaction reflects a choice to maintain "the earlier judicial construction of that phrase." *Helsinn Healthcare S.A.* v. *Teva Pharms. USA, Inc.*, 586 U.S. 123, 131 (2019).

Congress also repeatedly "considered and rejected" proposals to "includ[e] subcontractors as interested parties." Pet. App. 22a. For example, Congress considered but declined to include language in the Competition in Contracting Act defining an "interested party" as a person "whose direct economic interest would be affected as [a] contractor *or subcontractor*." *Id.* (citation omitted). Likewise, Congress considered but declined to amend the Brooks Act to expressly include a "prospective subcontractor" in the definition of "interested party." *Id.* (citation omitted). Those definitions were acknowledged to be "inconsistent with existing procurement law." Pet. App. 23a (citation omitted). They never made it into the U.S. Code.

If any doubt remained, it would be resolved by the canon that waivers of sovereign immunity "must be construed narrowly." *United States* v. *Miller*, 604 U.S. 518, 534 (2025). At a minimum, Congress did not "unequivocally express[ ]" a waiver in § 1491(b)(1) permitting suits by putative subcontractors. *Lane* v. *Pena*, 518 U.S. 187, 192 (1996). Percipient's broad reading of "interested party" thus would "violate the sovereign immunity canon." Pet. App. 113a (Clevenger, J., dissenting).

Finally, Percipient echoes (at 32-36) the panel majority's assertion that limiting standing to actual or prospective bidders and offerors will make statutory

commercial-preference requirements "illusory." Pet. App. 79a. Those policy concerns are misplaced. *See supra* at 18-21. In any event, "no amount of policy-talk can overcome a plain statutory command." *Niz-Chavez* v. *Garland*, 593 U.S. 155, 171 (2021). The Federal Circuit applied traditional interpretive tools and correctly concluded that Percipient lacks statutory standing.

III. THIS CASE IS A POOR VEHICLE.

There is yet another reason to deny review: The question whether Percipient is an "interested party" under § 1491(b)(1) is not cleanly presented because multiple alternative threshold grounds—several of which are jurisdictional—would independently require dismissing Percipient's complaint. The "presence" of these "alternative ground[s] for affirmance" would "complicate" this Court's review. *Schock* v. *United States*, 586 U.S. 1183, 1183 (2019) (Sotomayor, J., statement respecting the denial of certiorari).

In particular, the Federal Acquisition Streamlining Act bars jurisdiction over Percipient's claims. That statute prohibits protests "in connection with the issuance or proposed issuance of a task or delivery order." 10 U.S.C. § 3406(f). This task-order bar applies when the alleged violation "is 'directly and causally connected to issuance' of a task order." Pet. App. 88a (Clevenger, J., dissenting) (quoting *SRA Int'l, Inc.* v. *United States*, 766 F.3d 1409, 1413-14 (Fed. Cir. 2014)). Here, the NGA's first task order directed CACI to produce and deliver a Computer Vision system. Pet. App. 89a. Percipient's claim that the NGA violated 10 U.S.C. § 3453 by not incorporating Percipient's Computer Vision system arose only because of that task order. Without it, the "work that Percipient

is challenging would not be taking place," and Percipient would have no claim. *Id.* (citation omitted). Section 3406(f) is thus a jurisdictional bar to Percipient's suit.

Percipient's claims fail for other reasons, too. Percipient's protest challenges contract performance and administrative activities, not statutory or regulatory violations "in connection with a procurement or a proposed procurement." 28 U.S.C. § 1491(b)(1). Percipient's claims fall outside § 1491(b)(1)'s scope for that independent reason. In addition, a protestor who "has the opportunity to object to the terms of a government solicitation" but fails to do so "waives its ability to raise the same objection" after the contract has been awarded. *Blue & Gold Fleet* v. *United States*, 492 F.3d 1308, 1315 (Fed. Cir. 2007). Percipient could have raised its objections during the SAFFIRE procurement process and did not; it cannot do so now.

Although the panel rejected these arguments, Pet. 16, the en banc Federal Circuit vacated the panel opinion and did not address any of these issues in its own opinion, Pet. App. 47a. The United States and CACI therefore remain free to assert these threshold defenses in this Court.

In fact, if certiorari were granted, this Court likely would need to address at least two threshold jurisdictional questions before reaching the question presented. In general, the Court must address jurisdictional questions before nonjurisdictional questions, such as whether the plaintiff has a "cause of action." *Steel Co.* v. *Citizens for Better Env't*, 523 U.S. 83, 89 (1998). When the Court decided *Steel Co.*, it accepted the premise that "a statutory standing question can be given priority over an Article III question." *Id.* at

97 n.2. But the Court has since clarified that "statutory standing" does "not implicate subject-matter jurisdiction"; it instead implicates whether the plaintiff "has a cause of action under the statute." *Lexmark Int'l, Inc.* v. *Static Control Components, Inc.*, 572 U.S. 118, 128 & n.4 (2014). Based on that decision, lower courts have logically concluded that jurisdictional questions must be decided "before statutory standing issues bound up with the merits." *Alliance for Env't Renewal, Inc.* v. *Pyramid Crossgates Co.*, 436 F.3d 82, 87 (2d Cir. 2006); *accord Flecha* v. *Medicredit, Inc.*, 946 F.3d 762, 771 (5th Cir. 2020) (Oldham, J., concurring).

Here, the applicability of the task-order bar is a jurisdictional question. *22nd Century Techs., Inc.* v. *United States*, 57 F.4th 993, 999 (Fed. Cir. 2023). So is the question whether Percipient alleged violations "in connection with a procurement or a proposed procurement." 28 U.S.C. § 1491(b)(1); *see Diaz*, 853 F.3d at 1358. By contrast, whether Percipient has statutory standing as an "interested party" is "not jurisdictional." *CACI, Inc.-Fed.* v. *United States*, 67 F.4th 1145, 1151 (Fed. Cir. 2023); *accord Lexmark*, 572 U.S. at 128 n.4. To reach the question presented, the Court would therefore need to decide whether consideration of statutory standing can precede jurisdictional questions—and if the answer is no, it would need to resolve the jurisdictional questions before reaching the question presented.

That complication makes this case a particularly unsuitable vehicle. If the Court wants to consider the meaning of "interested party" under § 1491(b)(1), it should wait for a petition cleanly presenting that question.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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