No. 25-____

IN THE

Supreme Court of the United States

CALPORTLAND COMPANY,

Petitioner,

v.

ROBERT THOMAS

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

KELLY HOLT RODRIGUEZ
JONES DAY
90 South Seventh Street
Suite 4950
Minneapolis, MN 55402

NOEL J. FRANCISCO
ANTHONY J. DICK
Counsel of Record
CHRISTOPHER S. DINKEL
JONES DAY
51 Louisiana Ave., NW
Washington, D.C.
20001
(202) 879-7679
ajdick@jonesday.com

Counsel for Petitioner

QUESTIONS PRESENTED

The Federal Mine Safety and Health Act (the "Mine Act") provides that in judicial appeals from decisions of the Federal Mine Safety and Health Review Commission, "[t]he findings of the Commission with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive." 30 U.S.C. § 816(a)(1).

The question presented is:

When the Commission rejects factual findings of an administrative law judge and makes its own contrary findings, must courts defer to the "findings of the Commission" if supported by substantial evidence, as the Third, Sixth, and Eighth Circuits hold, or should courts instead defer to the contrary findings of the administrative law judge that the Commission rejected, as the Fourth, Ninth, Tenth, and D.C. Circuits hold?

PARTIES TO THE PROCEEDING

Petitioner CalPortland Company was a Respondent below.

Respondent Robert Thomas was the Petitioner below.

Respondent Federal Mine Safety and Health Review Commission was a Respondent below.

CORPORATE DISCLOSURE STATEMENT

Petitioner CalPortland Company is a subsidiary of Taiheiyo Cement, USA, Inc., which is a subsidiary of Taiheiyo Cement Corporation. No publicly held corporation owns 10% or more of the stock of CalPortland Company or its corporate parents.

LIST OF RELATED PROCEEDINGS

Thomas v. Federal Mine Safety and Health Review Commission, United States Court of Appeals for the Ninth Circuit, Case No. 24-1442 (May 7, 2025), reh'g denied (Sept. 15, 2025).

Thomas v. CalPortland Company, United States Court of Appeals for the Ninth Circuit, Case No. 20-70541 (Apr. 14, 2021).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

CONSTITUTIONAL AND STATUTORY AUTHORITIES

OTHER AUTHORITIES

INTRODUCTION

The text of the Mine Act's judicial review provision could not be more clear: "[t]he findings of the [Mine Safety and Health Review] Commission with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive." 30 U.S.C. § 816(a)(1). Nonetheless, the Ninth Circuit panel majority refused to treat the Commission's factual findings as conclusive in this case, "regardless of whether the Commission's view of the facts might . . . be supported by substantial evidence." *Thomas v. Fed. Mine Safety & Health Rev. Comm'n*, No. 24-1442, 2025 WL 2651299, at *2 (9th Cir. Sept. 16, 2025) (*Thomas II*). Instead, the Ninth Circuit vacated and remanded because it concluded that the factual findings of an administrative law judge—which were *rejected* by the Commission—were themselves supported by substantial evidence.

In taking that atextual approach, the Ninth Circuit deepened a circuit split about the meaning of the Mine Act's judicial review provision: the Ninth Circuit joins the Fourth, Tenth, and D.C. Circuits in effectively treating the ALJ's decision as that of the "Commission" for purposes of judicial review, while the Third, Sixth, and Eighth Circuits have rejected that approach. That dispute in the Mine Act context, in turn, implicates broader disagreement among the lower courts about how to approach judicial review of agency decisions when both the court and the final agency decision-maker's scope of review are limited by statute or regulation—a commonplace framework that applies not only to the Mine Act but across many statutory schemes.

This case presents an ideal vehicle to resolve the split regarding the Mine Act's judicial review provision and provide guidance for countless similar judicial-review provisions throughout the U.S. Code. The question presented was squarely raised and addressed by both the majority and dissent below. And as Judge Bumatay's dissent makes clear, resolution of the question presented is dispositive, because the Commission's factual findings are amply supported by the record evidence and thus would be affirmed under a proper standard of review.

The Court should grant certiorari and reverse the decision below.

OPINIONS BELOW

The decision of the U.S. Court of Appeals for the Ninth Circuit denying rehearing en banc is not reported, but is available at 2025 WL 2651299, and reproduced at Pet.App.1a–13a. The decision of the U.S. Court of Appeals for the Ninth Circuit vacating and remanding the decision of the Federal Mine Safety and Health Review Commission is not reported, but is available at 2025 WL 1319429, and reproduced at Pet.App.14a–26a. The Federal Mine Safety and Health Review Commission's decision is unreported and is reproduced at Pet.App.27a–56a.

The U.S. Court of Appeals for the Ninth Circuit's prior order vacating and remanding a prior decision of the Federal Mine Safety and Health Review Commission is reported at 993 F.3d 1204, and is reproduced at Pet.App.108a–25a. The Federal Mine Safety and Health Review Commission's prior decision is unreported and is reproduced at Pet.App.126a–55a.

JURISDICTION

The Ninth Circuit issued its decision in this case on May 7, 2025. Pet.App.14a. It denied CalPortland's timely petition for rehearing en banc on September 15, 2025. Pet.App.1a. CalPortland timely requested an extension of time to file a petition for writ of certiorari on November 25, 2025, which was granted on December 2, 2025, extending the time to file until February 13, 2026. This petition is timely because it is filed by February 13, 2026, within the time permitted by the extension. This Court has jurisdiction under 28 U.S.C. § 1254.

PROVISIONS INVOLVED

The federal statutory provisions at issue are: 30 U.S.C. § 816 and 30 U.S.C. § 823. These provisions are included in the Appendix at Pet.App.191a–200a.

STATEMENT

A. Statutory Background

The Federal Mine Safety and Health Act of 1977 regulates surface and underground mines across the country. 30 U.S.C. § 801 et seq. The Act imposes "a variety of requirements, including safety standards and employment practices" on mine operators. *Thomas v. CalPortland Co.*, 993 F.3d 1204, 1206 (9th Cir. 2021) (*Thomas I*).

As relevant here, the Act prohibits mine operators from discriminating against miners who make a complaint about "an alleged danger or safety or health violation." 30 U.S.C. § 815(c)(1). It also protects miners against retaliation for exercising their rights under the Act. *Id.* If a miner "believes that he has been discharged, interfered with, or otherwise discriminated against" for engaging in protected activity, he may file an administrative complaint with the Mine Safety and Health Administration (MSHA). 30 U.S.C. § 815(c). If the agency finds a violation has occurred, it "shall immediately file a complaint with the Commission." *Id.* § 815(c)(2). But if the agency finds no violation and declines to file a complaint, then the miner may "file an action in his own behalf before the Commission." *Id.* § 815(c)(3).

When a complaint is filed, the Commission must afford an "opportunity for a hearing" then "issue an order, based upon findings of fact, dismissing or sustaining the complainant's charges." *Id.* The order is "subject to judicial review." *Id.* But in any judicial proceeding, "[t]he findings of the Commission with respect to questions of fact, if supported by substantial

evidence on the record considered as a whole, shall be conclusive." *Id.* § 816.

The Act establishes a process for the Commission to make "findings . . . with respect to questions of fact." *Id.* In the first instance, an administrative law judge conducts a hearing and renders a decision. *Id.* § 823(d)(1). The ALJ's decision "shall become the final decision of the Commission" within 40 days "unless" the Commission decides to review it. *Id.* A party aggrieved by the ALJ's decision may ask the Commission to grant discretionary review on a variety of grounds, including that one or more of the ALJ's "finding[s] or conclusion[s] of material fact is not supported by substantial evidence." *Id.* § 823(d)(2)(A)(ii)(I). "If granted, review shall be limited to the questions raised by the petition." *Id.* § 823(d)(2)(A)(iii). But as part of the review process, the Commission has broad discretion to "affirm, set aside, or modify the decision or order of the administrative law judge in conformity with the record." *Id.* § 823(d)(2)(C). ALJs are inferior officers appointed by the Commission and removable only for good cause. *See id.* § 823(b)(2) (citing 5 U.S.C. § 7521).

B. Factual Background

CalPortland is a building materials company that produces cement and construction materials, such as sand and gravel used as aggregate for concrete and asphalt. CalPortland uses the Sanderling, a 220-foot dredge, to obtain sand from the bottom of the Columbia River for processing at its Vancouver, Washington, aggregate yard. *See Thomas I.*, 993 F.3d at 1206. Under federal law, the Sanderling is classified as a "surface mine" and thus is subject to

regulation under the Mine Act. *Id.* (citing 30 U.S.C. §§ 802(h)(1), 803).

Robert Thomas worked as a dredge operator on the Sanderling. *Id.* at 1206. In early 2017, Thomas complained to CalPortland's marine manager, Dean Demers, "that the lack of other crew members forced [the miners] to work long hours, without relief." *Id.* Although Thomas later testified that the long hours posed a safety concern, he did not frame his complaint to Demers as a safety complaint. *Id.* Nonetheless, Demers responded to Thomas's complaints by supplementing the Sanderling's crew with several new crew members. *Id.* at 1206–07.

In late January 2018, an inspector from the MSHA confronted Thomas for working aboard the Sanderling without his personal flotation device. *Id.* at 1207. According to Thomas, he removed the device while welding but put it back on shortly thereafter. *Id.* The MSHA inspector, however, saw Thomas climb a ladder without a life jacket or safety line, so he issued CalPortland a citation for Thomas's conduct. *Id.*; Pet.App.130a–31a. Thomas disputed the inspector's account, but CalPortland suspended Thomas pending further investigation. *Thomas I*, 993 F.3d at 1207.

Within days, Demers and CalPortland's safety manager interviewed Thomas and gave him a copy of the MSHA inspector's statement. *Id.* Thomas insisted that "this whole thing is nothing but a sham." *Id.* But when pressed about whether he regularly worked without a flotation device, Thomas refused to answer, saying that they would not believe him and that he did not want to incriminate himself. Pet.App.132a–33a.

After meeting with Thomas, Demers drafted a letter recommending that Thomas's employment be terminated. *Thomas I*, 993 F.3d at 1207. On January 30, Demers mistakenly sent a second draft of that letter to the entire barge-scheduling email list, which included Thomas and third parties. *Id.* After Thomas read the letter, he retained an attorney and refused further communication with the company. *Id.* Human Resources notified him that, under the company's "voluntary resignation process," if he did not respond by February 8 then he would be considered to have "voluntarily resigned." *Id.* On February 9, having received no response, CalPortland sent Thomas a final letter confirming his voluntary resignation. *Id.*

C. Procedural History

1. In February 2018, Thomas filed a complaint with the MSHA alleging that he had been unlawfully terminated for engaging in protected conduct. *See* 30 U.S.C. § 815(c)(2). The MSHA found no violation and declined to pursue the claim. Thomas then filed a complaint with the Commission on his own behalf. *See id.* § 815(c)(3).

An administrative law judge held a hearing and determined that Thomas's termination was unlawful. The ALJ found that CalPortland had taken adverse action against Thomas when it suspended him, when Demers circulated the draft recommendation letter, and when the company invoked the voluntary resignation policy. Pet.App.171a. The ALJ also found that these adverse actions were "motivated at least partially by [Thomas's protected] activity," and thus awarded Thomas back pay, lost benefits, and attorneys' fees. Pet.App.167a, 176a, 189a.

CalPortland filed a petition for review with the Commission. Pet.App.127a. The Commission granted the petition and reversed, holding that Thomas failed to establish that CalPortland's adverse actions were "in any way" motivated by Thomas's protected activity. Pet.App.141a.

Thomas appealed to the Ninth Circuit, which held that the ALJ and the Commission had erred by applying a "partially motivated" standard, rather than the required "'but-for' causation" standard. *Thomas I*, 993 F.3d at 1209–11. The court thus vacated the order and remanded the case for the Commission to apply the but-for standard in the first instance. *Id.* at 1211.

2. The Commission remanded to the ALJ to apply the but-for causation standard. On remand, the ALJ reached the same conclusion under the new standard, finding that Thomas's protected activities were the but-for cause of CalPortland's adverse actions against him. Pet.App.94a. The ALJ inferred but-for causation based on (i) CalPortland's "knowledge of the protected activity, (ii) its hostility towards the protected activity, (iii) the coincidence in time between the protected activity and the adverse action, and (iv) disparate treatment of [Thomas]." Pet.App.78a.

CalPortland again sought review from the Commission, and the Commission again reversed the ALJ, concluding that Thomas was not subjected to "unlawful discrimination under any causation standard." Pet.App.35a. In particular, the Commission found no substantial evidence that CalPortland interfered with or retaliated against Thomas for his discussion with the MSHA inspector, noting that "Thomas admitted that the company did

not display any animus regarding his participation in the inspection." Pet.App.36a. Similarly, the Commission found that Thomas failed to establish a causal connection between any safety complaints and any adverse action—noting that CalPortland took prompt action to address Thomas's complaints and that Thomas conceded that Demers did not respond to the complaints with animosity or hostility. Pet.App.36a–40a. Finally, the Commission rejected the ALJ's finding that Thomas's letter informing CalPortland that he intended to file a claim was a but-for cause of CalPortland's actions, because at the time of that letter Thomas had already been suspended and received the draft termination notice. Pet.App.40a–41a.

The Commission also rejected other aspects of the ALJ's findings for lack of substantial evidence, including that Thomas suffered disparate treatment because of his protected activities and that CalPortland's justifications for its actions were pretextual. Pet.App.36a–55a. It therefore reversed the ALJ's finding of discrimination and dismissed the case for a second time. Pet.App.55a.

3. Thomas again appealed, and a divided panel of the Ninth Circuit again vacated the Commission's order. *Thomas II*, 2025 WL 2651299. This time, though, the Ninth Circuit reversed because the Commission had not been sufficiently deferential to the ALJ's factual determinations.

The panel majority acknowledged that "the Commission purported to review the ALJ's decision for substantial evidence," but nevertheless determined that the court had an independent duty to evaluate

whether substantial evidence supported the ALJ's decision. *Id.* at *2 ("[W]e must determine whether the Commission erred in concluding that the ALJ's decision did not meet this standard."). The majority surveyed "the entire factual record," and held that the ALJ's findings were supported by substantial evidence and thus entitled to deference. *Id.* The majority highlighted a few "key pieces of evidence" that it found supported the ALJ's findings. *Id.* It stated that, "[a]lthough the Commission voiced some valid concerns with" the evidence relied on by the ALJ, those concerns "were insufficient to overcome the evidence cited by the ALJ." *Id.* at *3. The majority thus concluded that the ALJ's findings, and not the contrary findings of the Commission, controlled.

The panel majority noted the Mine Act provision stating, "[t]he findings of the Commission with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive." *Id.* at *1 (quoting 30 U.S.C. § 816(a)(1)). But it concluded that this "reference to 'Commission' refers to the agency generally—not just the Commission—because 'in many cases the ALJ's decisions will become the decision of the Commission.'" *Id.* (quoting *Donovan ex rel. Chacon v. Phelps Dodge Corp.*, 709 F.2d 86, 91 n.7 (D.C. Cir. 1983)). Thus, in the majority's view, it need not treat the Commission's factual findings as conclusive if they differed from those of the ALJ, "regardless of whether the Commission's view of the facts might also be supported by substantial evidence." *Id.* at *2.

Judge Bumatay dissented. Under the Mine Act, he urged, the "Commission's factual findings *must* be treated as 'conclusive' if supported by substantial

evidence." *Id.* at *3 (Bumatay, J., dissenting). Indeed, on Judge Bumatay's view, "[t]he Mine Act is crystal clear on [the court's] review of Commission decisions." *Id.* "As its title suggests, [30 U.S.C.] § 816 governs the 'Judicial review of Commission orders,'" and so is the relevant provision for purposes of identifying the standard of review. *Id.* That section "prescribes a limited role for federal courts over fact findings," specifically "instruct[ing] that '[t]he findings of the Commission with respect to questions of fact, if supp[ort]ed by substantial evidence on the record as a whole, *shall be conclusive*.'" *Id.* (quoting 30 U.S.C. § 816(a)(1)). Because that "command is straightforward," the court was permitted to "review only for 'substantial evidence,'" meaning that "[i]f the Commission's factfinding clears that low bar, its findings are 'conclusive.'" *Id.* "And the provision doesn't leave wiggle room for [courts] to do anything otherwise," because "the mandatory term *shall* 'normally creates an obligation impervious to judicial discretion.'" *Id.* (quoting *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998)).

Judge Bumatay criticized the majority for "seiz[ing] on a phrase in the Act's provision governing *administrative* review"—Section 823(d)(2)(A)(ii)(I)—while downplaying the clear command of Section 816(a)(1). *Id.* at *4. On Judge Bumatay's reading, Section 816 required treating the Commission's findings of fact as conclusive *regardless* of whether the ALJ's factual findings differed. *Id.* That is, "when the Commission and the ALJ disagree" on questions of fact, courts "must review the Commission's version." *Id.* at *5. In other words, when the statute refers to the "findings of the Commission with respect to

questions of fact," it means precisely that: "the Commission's findings of fact." *Id.* at *3.

If the court had applied the correct standard of review, Judge Bumatay explained, it would "have easily denied Thomas's . . . claims." *Id.* After all, "[t]he majority d[id]n't disagree that substantial evidence supports the Commission's findings." *Id.* at *4. And "substantial evidence supports the Commission's finding that Thomas failed to show a causal nexus between any protected activity and an adverse action," as well as "the Commission's finding that CalPortland's justifications for firing Thomas weren't mere pretext." *Id.* The court thus should have simply affirmed the Commission's decision, rather than second-guessing its well-supported factual findings, vacating the decision, and remanding to the Commission. *Id.* at *4–5.

REASONS FOR GRANTING THE PETITION

I. THE CIRCUITS ARE INTRACTABLY DIVIDED ON WHETHER TO DEFER TO THE FACTUAL FINDINGS OF THE COMMISSION OR THE ALJ.

The decision below worsened a circuit conflict over when, under the Mine Act, reviewing courts should defer to the findings of the Commission or the ALJ. Despite the judicial review provision's clear focus on the *Commission's* factual findings, there are now four circuits that treat the ALJ as the relevant fact-finder for purposes of judicial review, resulting in a 4–3 split.

A. The Ninth Circuit's Decision Below Joins the Fourth, Tenth, and D.C. Circuits in Holding the ALJ's Factual Findings Merit Deference as the "Findings of the Commission" for Purposes of Judicial Review.

The Ninth Circuit is only the latest to hold that the ALJ's factual findings are the "findings of the Commission" that warrant deference upon judicial review, even if the Commission itself has squarely rejected those findings.

The leading case on this side of the split is *Donovan ex rel. Chacon v. Phelps Dodge Corp.*, 709 F.2d 86 (D.C. Cir. 1983). In *Donovan*, an ALJ found that the defendant "illegally discriminated against an employee active in promoting mine safety when it twice disciplined him for alleged on-the-job infractions." *Id.* at 87. After granting review, however, the Commission reversed, concluding that while the Secretary of Labor had established a prima facie case of discrimination against the defendant, the defendant had successfully rebutted the prima facie case by establishing "that it would have disciplined [the employee] in any event for the unprotected activities alone." *Id.* at 90.

On appeal, the D.C. Circuit reversed the Commission, concluding that "the ALJ's findings in this case were more than amply supported by the record as a whole." *Id.* According to the court, that meant that the Commission "exceeded its statutory standard of review," requiring the court to reverse "even if the Commission's own view found support in the record as well." *Id.* at 90, 92.

In reaching that conclusion, the court relegated its analysis of the Mine Act's judicial review provision, 30 U.S.C. § 816(a)(1), to a single, three-sentence footnote. *Id*. at 91 n.7. That footnote acknowledged the statute's requirement that "'[t]he findings of the Commission with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive' for purposes of judicial review." *Id*. (quoting 30 U.S.C. § 816(a)(1)). But the court dismissed that language as irrelevant to its analysis, reasoning that "[t]his reference to 'the Commission' does not focus on the Commission as distinguished from an ALJ." *Id*.

After dismissing the importance of the judicial-review provision, the court focused on 30 U.S.C. § 823(d)(2), which provides the framework for administrative review by the Commission. In particular, the court highlighted Section 823(d)(2)(A)(ii), which limits the grounds upon which a person affected by the ALJ's decision may file a petition for discretionary review with the Commission, and Section 823(d)(2)(A)(iii), which provides that "[i]f granted, review shall be limited to the questions raised by the petition." Coupled with "[t]he legislative history of the Mine Act"—which showed "Congress thought it 'imperative that the Commission strenuously avoid unnecessary delay in acting upon cases,'"—the court concluded that these provisions "[l]imit[ed] the Commission's ability to reopen factual disputes already reasonably settled by an ALJ." *Donovan*, 709 F.2d at 91 (quoting Senate Report).

The Fourth Circuit took the same approach in *Wellmore Coal Corp. v. Federal Mine Safety & Health Review Comm'n*, 133 F.3d 920 (table), 1997 WL 794132

(4th Cir. Dec. 30, 1997) (per curiam). As in *Donovan*, the court reviewed an order of the Commission that reversed certain factual findings made by an ALJ. *Id.* at *2. And as in *Donovan*, the Fourth Circuit reversed the Commission because "the ALJ's determination was supported by substantial evidence," rather than evaluating whether the Commission's contrary decision was itself supported by substantial evidence. *Id.* at *3. Notably, though, the Fourth Circuit went even further than the D.C. Circuit in sidelining the Mine Act's limitations on the scope of judicial review—the court did not even *mention* the statute's judicial-review provision, much less attempt to square its approach with the statutory text.

Similarly, in *Secretary of Labor v. Federal Mine Safety and Health Review Comm'n*, 81 F.3d 173 (table), 1996 WL 164529 (10th Cir. Apr. 8, 1996), the Tenth Circuit asserted that "[t]he Commission does not have authority to make independent findings, only to consider whether the ALJ's findings are supported by substantial evidence." *Id.* at *1 n.3 (citing *Donovan*, 709 F.2d at 91).

The panel majority below is thus only the latest of four circuits to adopt the perspective that, despite the judicial review provision's clear language stating that "[t]he findings *of the Commission* with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive," 30 U.S.C. § 816(a)(1) (emphasis added), courts should instead review the factual findings of the ALJ for substantial evidence.

B. The Ninth Circuit's Approach Conflicts with Decisions of the Third, Sixth, and Eighth Circuits.

In joining the circuits noted above, the Ninth Circuit deepened a split with the Third, Sixth, and Eighth Circuits, all of which take a contrary approach.

The Sixth Circuit's decision in *KenAmerican Resources, Inc. v. Secretary of Labor*, 33 F.4th 884 (6th Cir. 2022), presents the starkest contrast. As in this case, in *KenAmerican*, the court was asked to review a Commission decision in which the Commission reversed the ALJ because it rejected the ALJ's factual findings. The ALJ concluded that a dispatcher had not unlawfully warned underground miners that inspectors were on their way, while the Commission found the dispatcher had done just that. *Id*. at 887. Unlike the Ninth Circuit, however, the Sixth Circuit did not evaluate whether the ALJ's original factual findings were supported by substantial evidence. Instead, relying on Section 816, the court explained that it "review[s] the *Commission's* factual findings deferentially." *Id*. at 891 (emphasis added). Consistent with that articulation of the standard, in its analysis, the court relied on the Commission's findings of fact, even on points on which the Commission had rejected the ALJ's factual findings. *See, e.g., id*. at 892 n.7 ("[W]e need not remand for further factfinding regarding intent because it is clear that *the Commission found as fact* that [the dispatcher intended to offer a warning]."(emphasis added)).

The Third Circuit, too, has declined to treat the decision of the ALJ as the decision of the Commission for purposes of judicial review. In *Emerald Coal*

Resources LP v. Hoy, 620 F. App'x 127 (3d Cir. 2015), "[t]he Commission issued a split decision" that did not command a majority of the Commissioners' votes on any view of the facts. *Id.* at 128–29. But rather than evaluating whether the ALJ's findings of fact were supported by substantial evidence, as the circuits on the other side of the split would, the court instead "grant[ed] the petition for review, vacate[d], and remand[ed]" to the Commission because "the Commission failed to set forth a rationale amenable to review." *Id.* at 129. In other words, even though the ALJ had reached a decision with its own factual findings, the Third Circuit recognized that the *Commission itself* had not. That is directly contrary to the Ninth Circuit and the others discussed above, which treat *the ALJ's* findings of fact as the findings of the Commission.

In *Bussen Quarries, Inc. v. Acosta*, 895 F.3d 1039, 1044 (8th Cir. 2018), the court acknowledged that Section 816(a) requires treating "[t]he findings of the Commission with respect to questions of fact" as "conclusive" so long as supported by "substantial evidence." *Id.* In that particular case, the court held that it was proper to defer to "the ALJ's finding" only because the Commission was evenly divided, and "the effect of the split decision was to allow the ALJ's decision to stand as if affirmed." *Id.* at 1043. But it made clear that was only because the Commission had left the ALJ's findings in place as if it had "declined discretionary review." *Id.* at 1044 n.4.

In sum, the Third, Sixth, and Eighth Circuits all recognized that the factual findings of the ALJ and the Commission are distinct, and that generally only the latter are entitled to deference. They also recognize

that the ALJ's factual findings warrant deference only where the ALJ's decision actually *becomes* that of the Commission through operation of law.

C. The Mine Act Split Implicates Numerous Other Regulatory Schemes With Similar Statutory Language and Structure.

The division of authority on the proper approach to judicial review under the Mine Act would itself justify this Court granting certiorari. But the split on the Mine Act is just one aspect of broader confusion in the lower courts regarding how agency decisions should be evaluated under regulatory schemes in which both the court and the final agency decision-maker have limited review authority.

In *Putnam Center v. United States Dep't of Health & Human Services*, 770 F. App'x 630 (4th Cir. 2019), for example, the Fourth Circuit was faced with a judicial review provision materially indistinguishable from the Mine Act's judicial review provision, this one arising in the context of civil monetary penalties involving federal medical programs. Specifically, like the Mine Act, the relevant judicial review provision provided that "[t]he findings of the Secretary with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive." 42 U.S.C. § 1320a-7a(e). And as in the Mine Act context, the final decision-maker at the agency reviewed the factual findings in an underlying ALJ decision for substantial evidence, rather than *de novo*. *Putnam*, 770 F. App'x at 639 n.7. Nonetheless, the panel majority rejected the dissent's focus on the ALJ's findings (which had been reversed by the Departmental Review Board) because the judicial

review provision made clear that "it is the [Departmental Review] Board's decision, and not the ALJ's[,]" that should be the court's focus. *Id*.

The Eleventh Circuit has taken the same approach to appeals under that same provision. *See Emerald Shores Health Care Assocs., LLC v. U.S. Dep't of Health & Hum. Servs.*, 545 F.3d 1292, 1296 (11th Cir. 2008) (explaining that while the petitioner "contests the [final agency decision-maker's] determinations that there was not substantial evidence to support the ALJ's findings," the court was "statutorily required to treat as conclusive all findings of fact made by the [final agency decision-maker], so long as they are supported by substantial evidence").

Similarly, in *Cappetta v. Commissioner of Social Security Administration*, 904 F.3d 158 (2d Cir. 2018), the Second Circuit reviewed a decision of the Departmental Appeal Board (which had been adopted as the final decision of the Commissioner of Social Security) under a judicial review provision providing that "[t]he findings of the Commissioner . . . if supported by substantial evidence on the record considered as a whole, shall be conclusive." 42 U.S.C. § 1320a-8(d)(2). The relevant regulations, meanwhile, stated that the Appeal Board had to "limit its review to whether the ALJ's initial decision is supported by substantial evidence on the whole record or contained error of law." 20 C.F.R. § 498.221(i); *see also Cappetta*, 904 F.3d at 160–61 (explaining that 20 C.F.R. § 498.221 provided the relevant regulatory framework). Nonetheless, although the Appeal Board reversed many of the ALJ's factual findings, the court analyzed only the Appeal Board's decision for

substantial evidence, rather than the underlying ALJ decision. *Cappetta*, 904 F.3d at 171–74.

More broadly, the Administrative Procedure Act ("APA") generally authorizes only substantial-evidence review of agency factfinding. And while by default the APA authorizes the final agency decision-maker to perform *de novo* review of ALJ findings, the Mine Act is far from alone in departing from that default. The question presented regarding the proper standard of review for Commission decisions under the Mine Act is thus mirrored across countless other statutory schemes for which judicial review is governed by the APA.

In *BNSF Railway Co. v. United States Dep't of Labor Administrative Review Board*, 867 F.3d 942, 948 (8th Cir. 2017), for example, the Eighth Circuit considered a decision made by the Administrative Review Board of the Department of Labor regarding a Federal Rail Safety Act dispute. The court noted that its standard of review was provided by the APA, including its substantial-evidence standard for factual findings. *Id.* at 945. But the court also explained that the ARB's authority to review ALJ findings was limited by regulation—and it was that limitation that ultimately drove its analysis. *See id.* at 948 ("The ARB was unable to salvage an ALJ analysis built upon a flawed theory of causation because the ARB lacked critical fact findings needed to affirm the ALJ's decision . . . . To the extent the ARB filled in the missing findings, it exceeded its scope of review."). In other words, the Eighth Circuit's analysis closely mirrored the Ninth Circuit's analysis below, contrasting sharply with the approach taken by the Fourth Circuit in *Putnam*, the

Eleventh Circuit in *Emerald Shores*, and the Second Circuit in *Cappetta*.

These examples only scratch the surface, as the general framework for administrative and then judicial review of ALJ fact-finding that is contained in the Mine Act is replicated throughout federal law. *See, e.g.*, 33 U.S.C. § 921; 20 C.F.R. § 404.970; 29 C.F.R. § 1980.110; 29 C.F.R. § 1986.110; 29 C.F.R. § 1983.110 ; 29 C.F.R. § 1987.110; 33 U.S.C. § 921; 32 C.F.R. § 200.2021; 42 C.F.R. § 3.548; 20 C.F.R. § 498.221. Yet as these examples make clear, lower courts have failed to adopt any consistent approach to reviewing agency decisions under this framework.

II. THE NINTH CIRCUIT ERRED BY CONCLUDING THAT THE WORD "COMMISSION" DOES NOT MEAN THE COMMISSION.

The Ninth Circuit's decision cannot be squared with the Mine Act's plain text. As Judge Bumatay noted in his dissent, "Congress's command" in Section 816(a)(1) "is straightforward. When reviewing the Commission's findings of fact, [courts] must review only for 'substantial evidence.'" *Thomas II*, 2025 WL 2651299, at *3 (Bumatay, J., dissenting). Thus, "[i]f the Commission's factfinding clears th[e] low bar [of substantial-evidence review], its findings are 'conclusive.'" *Id.* "[T]he provision doesn't leave wiggle room for [courts] to do anything otherwise." *Id.* (citing *Lexecon*, 523 U.S. at 35).

That unambiguous statutory command ought to be the end of the analysis. Rather than adopting that "straightforward interpretation," though, the panel majority's opinion undertakes "elaborate efforts to

avoid the most natural meaning of the text." *Patel v. Garland*, 596 U.S. 328, 340 (2022).

First, the majority insisted that Section 816(a)(1)'s "reference to 'Commission' refers to the agency generally—not just the Commission—because 'in many cases the ALJ's decision will become the decision of the Commission.'" *Thomas II*, 2025 WL 2651299 at *1 (quoting *Donovan*, 709 F.2d at 91 n.7). But that makes no sense. The Mine Act's definitions section expressly provides that "'Commission' means the Federal Mine Safety and Health Review Commission," 30 U.S.C. § 802, not the agency generally. And while the statute provides that the ALJ's decision "shall become the final decision of the Commission 40 days after its issuance unless within such period the Commission has directed that such decision shall be reviewed by the Commission," 30 U.S.C. § 823(d)(1), that provision simply confirms that the ALJ's decision is *not* the "final decision of the Commission" where the Commission *does* grant review. After all, under the canon of "[e]xpressio unius est exclusio alterius," the "most natural reading" of Section 823(d)(1) is that the ALJ's decision is the final decision of the Commission *only* where Section 823(d)(1) applies. *TRW Inc. v. Andrews*, 534 U.S. 19, 28 (2001).

Where the Commission not only grants review but also *expressly rejects* the ALJ's factual findings, then, Section 823(d)(1) provides no support for treating the ALJ's factual findings as those of the "Commission." In other words, when the statute refers to the "findings of the Commission with respect to questions of fact," the statute means "the Commission's findings of fact." *Thomas II*, 2025 WL 2651299, at *3 (Bumatay, J., dissenting).

Second, the majority turned away from the *judicial* review provision altogether, focusing instead on the statute's separate section addressing *administrative* review. *Id.* at *4 (Bumatay, J., dissenting). As the majority saw it, under 30 U.S.C. § 823(d)(2)(A)(ii)–(iii), "the Commission may only review an ALJ's factual findings for substantial evidence, and it commits legal error if it does not apply this standard." *Id.* at *1 (citation omitted). It is far from clear that analysis is correct as to the Commission's authority—after all, while Section 823 limits the grounds on which a petitioner may seek review of the ALJ's decision, it also empowers the Commission to "affirm, set aside, or modify the decision or order of the administrative law judge in conformity with the record" after review is granted. 30 U.S.C. § 823(d)(2)(C); *see also Thomas II*, 2025 WL 2651299, at *4 (Bumatay, J., dissenting) (noting that even under Section 823, "Congress gives broad powers to the Commission over ALJ decisions").

Regardless of whether the Ninth Circuit's interpretation of the proper scope of the Commission's review of the ALJ's findings is correct, though, "it says nothing about [*a court's*] review of [the] Commission's factfinding." *Thomas II*, 2025 WL 2541299, at *5 (Bumatay, J., dissenting) (emphasis added). Nothing in the Mine Act gives courts authority to review the Commission's decision whether to uphold the handiwork of its ALJs. Instead, the judicial role is limited to assessing whether *the Commission's* decision is supported by substantial evidence. As far as *judicial* review is concerned, *the Commission's* factual findings are "conclusive" regardless of whether the court approves of how they were reached—provided only that they be "supported by substantial

evidence on the record considered as a whole." 30 U.S.C. § 816(a)(1). And "even if the [administrative review provision and the judicial review provision] conflict, '[i]t is a commonplace of statutory construction that the specific governs the general.'" *Thomas II*, 2025 WL 2651299, at *5 (Bumatay, J., dissenting) (quoting *State v. Su*, 121 F.4th 1, 13 (9th Cir. 2024)). Because the judicial review provision "directly and expressly cabins [the court's] authority," then, it is dispositive as to the court's standard of review regardless of how the administrative review provision is interpreted. *Id*.

Traditional separation-of-powers principles underscore why the Mine Act focuses judicial review on the ultimate findings of the Commission itself, not on the provisional and pre-decisional findings of an ALJ. Administrative adjudications "are exercises of—indeed, under our constitutional structure they *must be* exercises of—the 'executive Power.'" *United States v. Arthrex, Inc*., 594 U.S. 1, 17 (2021). And of course, Article II vests all of "[t]he executive Power" in the President and requires him to "take Care that the Laws be faithfully executed." U.S. Const. Art., § 1, Cl. 1; § 3. Thus, treating an inferior officer's findings of fact as conclusive, even where they are expressly rejected by more senior executive officials subject to more direct oversight by the President, would raise significant concerns about the President's "general administrative control of those executing the laws." *Myers v. United States*, 272 U.S. 52, 164 (1926). That is why, in the realm of administrative "adjudications," "the traditional rule [is] that a *principal* officer, if not the President himself, makes the final decision on how to exercise executive power," including the power to

give the executive branch's ultimate view on the facts of the matter at hand. *Arthrex,* 594 U.S. at 21 (emphasis added). Indeed, the constitutional problem would be especially grave if the executive branch's final factual determinations could be made by an ALJ insulated by statutory removal protections, which the Mine Act provides. *See* 30 U.S.C. § 823(b)(2) (incorporating 5 U.S.C. § 7521, allowing ALJs to be removed only "for good cause").

Relatedly, to the extent Congress instructed the Commission to defer to ALJ fact-finding, it does not follow that Congress created a private right to *enforce* such deference through judicial review. To the contrary, the Court long ago abandoned the "*ancien regime*" that maintained that courts should automatically "provide such remedies as are necessary to make effective the congressional purpose expressed by a statute." *Alexander v. Sandoval*, 532 U.S. 275, 287 (2001) (cleaned up). Instead, courts must "interpret the statute Congress has passed to determine whether it displays an intent to create not just a private right but also a private remedy." *Id.* at 286. Where Congress has not provided a "private remedy"—or has chosen to foreclose one—"courts may not create one." *Id.* at 286–87. Here, the Mine Act's judicial review provision creates only a limited private right to challenge the Commission's decision, and expressly provides that the facts found by the Commission "shall be conclusive" subject only to substantial-evidence review. 30 U.S.C. § 816(a)(1). Courts cannot sidestep that clear limitation and ask whether the Commission's ultimate factual determinations were sufficiently deferential to its subordinate officer, which would allow the judiciary to

intrude into an intra-agency dispute among executive officials contrary to an express congressional command.

Finally, the Ninth Circuit majority relied heavily on the D.C. Circuit's decision in *Donovan*, which focused on legislative history instead of statutory text. *See Thomas II*, 2025 WL 2651299, at *1 (repeatedly citing *Donovan* in discussing standard of review). The court in *Donovan* suggested that it could focus on whether substantial evidence supported the ALJ's factual findings, rather than the Commission's, in part because "Congress thought it 'imperative that the Commission strenuously avoid unnecessary delay in acting upon cases.'" *Donovan*, 709 F.2d at 91 (quoting S. Rep. No. 181, 95th Cong., 1st Sess. 48 (1977)); *see also id*. (quoting statements of two senators asserting that the Mine Act "vastly streamlines nearly every aspect of the enforcement and administration of the mine safety and health program").

Even setting aside the usual concerns about reliance on such legislative history to interpret a statute, a purported congressional goal of "streamlin[ing]" proceedings and "avoid[ing] unnecessary delay" cuts *against* the approach to judicial review adopted in *Donovan* and later by the Ninth Circuit. After all, while limiting the scope of the Commission's review of ALJ fact-finding undoubtedly streamlines the *Commission's* proceedings, permitting courts to second-guess the Commission's factual findings if the Commission disagrees with the ALJ does just the opposite.

Consider this very case: the alleged Mine Act violation here occurred in January 2018, more than

eight years ago. *See Thomas I*, 993 F.3d at 1207. The Ninth Circuit has now vacated and remanded the Commission's decision *twice*, and there is still no final decision regarding the alleged violation. This time, the sole basis for vacatur is the Ninth Circuit's view that the Commission rendered its factual findings without sufficient deference to the ALJ's fact-finding, "regardless of whether the Commission's view of the facts might also be supported by substantial evidence." *Thomas II*, 2025 WL 2651299, at *2. Reversing the Commission on that ground does nothing to "streamline" these proceedings. Instead, it just eliminates finality for a decision that was based on a reasonable interpretation of the facts.

Treating the Commission's findings as conclusive so long as supported by substantial evidence, regardless of whether the Commission agreed with the ALJ's findings, would better serve the goal of "avoid[ing] unnecessary delay." *Donovan*, 709 F.2d at 91.

Again, though, consideration of these broader policy concerns is unnecessary in this case. The plain text of the judicial review provision makes clear that the factual findings of the *Commission*, not the ALJ, are conclusive if supported by substantial evidence. The statute leaves no "wiggle room" for courts to set aside the Commission's factual findings for other reasons. *Thomas II*, 2025 WL 2651299, at *3 (Bumatay, J., dissenting). That should be the end of the analysis, and it forecloses the Ninth Circuit's approach.

III. THIS IS AN IDEAL VEHICLE TO ADDRESS AN IMPORTANT ISSUE.

This case presents an ideal vehicle to resolve the question presented. The proper standard of review in

appeals from the Commission's decisions under the Mine Act was squarely raised below, was directly addressed by both the majority and the dissent, and was dispositive.

As Judge Bumatay's dissent thoroughly explained, the Commission's key factual findings were all supported by substantial evidence. *Thomas II*, 2025 WL 2651299, at *4 (Bumatay, J., dissenting). For example, "the Commission reasonably concluded" that Thomas's supervisor's animus toward him "resulted from Thomas's perceived disrespectful behavior toward" the supervisor, such as "hanging up on [the supervisor] during a heated phone call," rather than from any protected activity. *Id.* Similarly, the Commission reasonably "found that Thomas couldn't identify similarly situated employees not punished as Thomas was for his misconduct—thus failing to show disparate treatment." *Id.* And ultimately, "the Commission reasonably found the firing justifiable because, based on the mine's violation history, [Thomas's violation] 'was by far the most serious violation the company had dealt with.'" *Id.*

The Ninth Circuit majority "d[id]n't disagree that substantial evidence supports the Commission's findings." *Thomas II*, 2025 WL 2651299, at *4 (Bumatay, J., dissenting). Nor did the Ninth Circuit hold that the Commission had committed any errors aside from its allegedly improper factual findings. Instead, the majority's decision to vacate and remand to the Commission rested entirely on its holding that "regardless of whether the Commission's view of the facts might also be supported by substantial evidence, as the dissent contends, the Commission erred" by failing to adequately defer to the ALJ's factual

findings. *Id.* at *2. Had the majority treated the Commission's factual findings as conclusive, it would have affirmed the Commission's decision.

Moreover, the question presented is important. Mining is a critical part of the American economy, with the average American using an average of 40,000 pounds of newly mined materials every year.[1] Mining provides necessary resources for nearly every industry and product, including not only raw materials but also power.[2] Unsurprisingly, then, hundreds of thousands of Americans work in mines.[3] Proper operation of the Mine Act is necessary to ensure both that those miners are able to work in a safe environment and that this industry, which forms the backbone of America's infrastructure, continues to operate as Congress intended.

Were that not enough, as explained above, resolving the question presented will have implications that sweep far beyond the Mine Act itself. Countless statutory and regulatory schemes contain similar administrative and judicial review provisions, and lower courts have failed to adopt any sort of consistent approach to judicial review under these circumstances. By resolving the split regarding the Mine Act, the Court can thus provide guidance on the appropriate balance between executive and judicial authority across these schemes.

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[1] https://nma.org/wp-content/uploads/2024/03/25_NMA_Mining-Facts_0307.pdf.

[2] *Id.*

[3] *Id.*

CONCLUSION

The Court should grant the petition.

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Respectfully submitted,

KELLY HOLT RODRIGUEZ
JONES DAY
90 South Seventh Street
Suite 4950
Minneapolis, MN 55402

NOEL J. FRANCISCO
ANTHONY J. DICK
Counsel of Record
CHRISTOPHER S. DINKEL
JONES DAY
51 Louisiana Ave., NW
Washington, D.C. 20001
(202) 879-7679
ajdick@jonesday.com

Counsel for Petitioner