No. _____

In the Supreme Court of the United States

KC TRANSPORT, INC.,

Petitioner,

v.

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION; AND FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The District Of Columbia Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

KC Transport, Inc., is a small-town transport company that hauls gravel, sand, coal, and other materials for businesses around Emmett, West Virginia. In 2019, an inspector of the Mine Safety and Health Administration (MSHA) showed up, for the first time ever, at KC's parking lot in Emmett where KC sometimes repairs trucks, some of which occasionally haul coal. He observed two trucks undergoing repairs and concluded that such work violated an MSHA rule, issued under the Federal Mine Safety and Health Amendments Act of 1977, requiring equipment to be "blocked against motion" when being repaired. 30 C.F.R. § 77.404. He therefore issued to KC two penalty citations. KC then administratively contested the citations, arguing among other things that neither the Emmett facility nor trucks repaired thereon constitute a "coal or other mine" within the meaning of the Act, 30 U.S.C. § 802(h)(1).

Ultimately, the Federal Mine Safety and Health Review Commission agreed with KC. MSHA then sought review in the D.C. Circuit, which sided with the agency. The panel majority held—in conflict with the Sixth Circuit and other courts of appeals—that a facility like KC's that is not actually located at a coal (or other mineral) extraction, milling, or preparation site can nevertheless qualify as a regulable "mine" so long as the facility is, in some vague and undefined way, "necessarily connected" with mining.

The question presented is:

Whether a truck-repair facility that is not located at an extraction, milling, or preparation site is a "coal or other mine" under 30 U.S.C. § 802(h)(1).

PARTIES TO THE PROCEEDING

Petitioner KC Transport, Inc., was a respondent in the D.C. Circuit.

Respondent Secretary of Labor, Mine Safety and Health Administration, was the petitioner in the D.C. Circuit.

Respondent Federal Mine Safety and Health Review Commission was a respondent in the D.C. Circuit.

CORPORATE DISCLOSURE STATEMENT

KC Transport, Inc., is a privately owned West Virginia corporation. No publicly held entity holds 10% or more of its stock and it does not have a ticker symbol.

STATEMENT OF RELATED CASES

The following proceedings are directly related to this case:

- *KC Transport, Inc. v. Su, et al.*, No. 23-876, 144 S. Ct. 2708 (U.S. July 2, 2024).
- *Secretary of Labor, Mine Safety and Health Administration v. KC Transport, Inc., et al.*, No. 22-1071, 173 F.4th 294 (D.C. Cir. Apr. 17, 2026).
- *Secretary of Labor, Mine Safety and Health Administration v. KC Transport, Inc.*, No. WEVA 2019-0458, 44 F.M.S.H.R.C. 211 (Rev. Comm'n Apr. 5, 2022).
- *Secretary of Labor, Mine Safety and Health Administration v. KC Transport, Inc.*, No. WEVA 2019-458, 42 F.M.S.H.R.C. 221 (ALJ Mar. 3, 2020).

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PETITION FOR A WRIT OF CERTIORARI

KC Transport, Inc., respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit.

OPINIONS BELOW

The opinions of the D.C. Circuit are reported at 173 F.4th 294 (App.1a-94a), and 77 F.4th 1022 (App.95a-131a). The opinion of the Federal Mine Safety and Health Review Commission (Commission) is reported at 44 F.M.S.H.R.C. 211 (App.132a-177a). The opinion of the Commission's administrative law judge is reported at 42 F.M.S.H.R.C. 221 (App.178a-213a).

JURISDICTION

The date of the decision sought to be reviewed is April 17, 2026. The D.C. Circuit denied *en banc* rehearing on July 13, 2026. App.214a. Chief Justice Roberts, as circuit justice, allowed (No. 26A409) additional time to file this Petition, to and including November 6, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1) and 30 U.S.C. § 816(a)(1).

STATUTORY AND REGULATORY PROVISIONS AT ISSUE

Pertinent provisions—30 U.S.C. § 802; 30 C.F.R. § 77.404—are reproduced at App.215a-217a.

STATEMENT OF THE CASE

A. Legal Framework

Congress enacted the Federal Mine Safety and Health Amendments Act of 1977, Pub. L. No. 95-164, 91 Stat. 1290 (Mine Act), to protect the "health and

safety" of "miner[s]." 30 U.S.C. § 801(a). To that end, the Act directs the establishment of standards to "prevent death," "serious physical harm," and "occupational diseases." *Id.* § 801(c). This case, however, is not about those safety standards, "but rather the jurisdictional boundaries to which they apply," App.96a—specifically, whether a facility that is not located at an extraction, milling, or processing site can nevertheless be deemed a "coal or other mine" under the Mine Act.

The Act applies to "[e]ach coal or other mine, … each operator of such mine, and every miner in such mine." 30 U.S.C. § 803. The Act regulates "any individual working in a coal or other mine," which individual the Act defines as a "miner." *Id.* § 802(g). And it regulates each "operator," that is, any "person who operates, controls, or supervises a coal or other mine or any independent contractor performing services or construction at such mine." *Id.* §§ 802(d), 802(f) (defining "person" to include "corporation").

Key to the statutory scheme is the definition of "coal or other mine," 30 U.S.C. § 802(h). The Act defines "coal or other mine" as "(A) an area of land from which minerals are extracted … , (B) private ways and roads appurtenant to such area, and," relevant here, "(C) … facilities, equipment, … or other property … used in, or to be used in, or resulting from, the work of extracting such minerals … , or used in, or to be used in, the milling of such minerals, or the work of preparing coal or other minerals." *Id.* § 802(h)(1). The activities of "extracting" or "milling" are not defined in the Act, but "work of preparing the coal" is defined. *Id.* § 802(i).

To enforce the Mine Act, Congress created the Mine Safety and Health Administration (MSHA) within the Department of Labor. 29 U.S.C. § 557a; 30 U.S.C. § 802(n). MSHA develops and promulgates mandatory health and safety standards under the Act, 30 U.S.C. § 811(a), much like the Occupational Safety and Health Administration (OSHA) does for all other occupations, 29 U.S.C. § 655. MSHA enforces its standards by conducting "frequent inspections," 30 U.S.C. § 813(a), issuing safety orders, *id.* § 813(k), issuing citations for violations, and assessing a corresponding "civil penalty," *id.* §§ 813(a), 814(a), 815(a), 820(a).

Any person to whom MSHA issues a citation may contest it. Citation contests are administratively adjudicated within the Commission, a separate agency within the Executive Branch. *Id.* §§ 802(o); 823(a). The challenge is first heard before a Commission ALJ, *id.* § 823(d)(1), whose ruling either party may appeal to the Commission, *id.* § 823(d)(2)(A)(i). The Commission is empowered to issue "order[s]." *Id.* § 816. If the enforcement target is aggrieved by the Commission's order, it can petition the appropriate circuit court for review. *Id.* § 816(a)(1). But the Mine Act also authorizes MSHA "[to] obtain review … of any final order of the Commission by filing a petition for such relief" in the appropriate circuit court, *id.* § 816(b). Appeals from the circuit court come to this Court as ordinary certiorari petitions, 28 U.S.C. § 1254; 30 U.S.C. § 816(a)(1) (last sentence).

B. Factual Background

Petitioner KC is a small-town trucking company in Emmett, West Virginia, that hauls coal, earth, gravel,

and other materials for various businesses including nearby mines. App.8a. KC operates a truck maintenance facility located "about four to five miles away" from the nearest extraction site, and "about one mile away" from the nearest preparation plant. App.9a. KC occasionally repairs "a mix of" "off-road" and "on-road trucks" at the Emmett facility. App.9a.

Until March 11, 2019, MSHA inspectors "had never inspected or attempted to inspect" KC's trucks at the Emmett facility. App.10a n.4. But that day, an inspector "went 'looking for trucks.'" App.10a. At KC's Emmett parking lot, he observed two trucks undergoing maintenance, and because neither truck was "blocked against motion," 30 C.F.R. § 77.404(c), the inspector found KC in violation and issued two citations. App.10a-11a. The proposed civil penalties were $3,908 and $4,343. App.12a.

C. Administrative Proceedings

KC contested the two citations of its Emmett facility because, although the assessed penalties are small, the citations represented a dramatic, precedential, and troubling expansion of MSHA's Mine Act authority over the trucking industry. *See* App.11a; App.42a-43a. On cross-motions for summary decision, the ALJ ruled in MSHA's favor (App.178a-213a), upholding Mine Act jurisdiction over KC's trucks and the Emmett facility. App.11a. According to the ALJ, the parking lot where the trucks were undergoing repair was a "mine" under § 802(h)(1)(C), and so were KC's trucks because they were "used in mining." *Ibid.*

On administrative appeal, a divided Commission reversed and vacated the two citations. App.11a; App.132a-177a. The Commission majority (App.132a-

161a), relying extensively on *Maxxim Rebuild Co. v. Federal Mine Safety & Health Review Commission*, 848 F.3d 737 (6th Cir. 2017), and *Department of Labor v. Ziegler Coal Co.*, 853 F.2d 529 (7th Cir. 1988), held that an "independent repair, maintenance, or parking facility not located on or appurtenant to a mine site and not engaged in any extraction, milling, preparation, or other activities within the scope of [§ 802(h)(1)(A)] is not a mine." App.11a. The majority also rejected the ALJ's trucks-are-mines holding, but the dissenting commissioner (App.161a-175a) took the view that trucks are mines because they are "used in" mining and "essential and integral" to that process. App.11a.

D. Court Proceedings

1. MSHA petitioned the D.C. Circuit for review of the Commission's decision under 30 U.S.C. § 816(b), naming both KC and the Commission as respondents.

A divided D.C. Circuit refused to decide the interpretive question presented by MSHA's petition: Whether KC's truck-repair facility qualifies as a "coal or other mine." App.95a-119a. MSHA had argued KC's trucks and repair lot were unambiguously "equipment" and a "facility" "used in" mining and therefore themselves qualified as mines. App.106a. The panel majority, however, found the term "coal or other mine" to be ambiguous. But it declined to defer to MSHA's interpretation under the then-applicable *Chevron* doctrine because MSHA had "incorrectly treat[ed] the statute as unambiguous." App.105a. Instead, the court applied its *Chevron* Step One-and-a-Half doctrine and "remanded the case to the Commission, instructing [MSHA] to interpret the statute in recognition of its ambiguities" so that the

court could defer to MSHA's interpretation when the case returned. App.105a.

Judge Walker dissented. App.119a-131a. As to the statutory question of what qualifies as a "coal or other mine,"[1] Judge Walker interpreted the plain words of § 802(h)(1) of the Mine Act to conclude that KC's repair shop was "not a 'mine' under the Mine Act because it was not located at an extraction site or at a processing plant." App.123a. Finally, Judge Walker called the majority's remand to the Commission "[u]nwarranted" because the *Chevron* Step One-and-a-Half doctrine "relinquishes th[e] Court's duty to 'decide all relevant questions of law' and to 'interpret … statutory provisions.'" App.129a (citation omitted).

KC petitioned for a writ of certiorari, asking this Court to decide the best meaning of "coal or other mine" and to abrogate the *Chevron* Step One-and-a-Half doctrine. Petition, *KC Transport, Inc. v. Sec'y of Labor*, No. 23-876, 2024 WL 645391, at *i (U.S. Feb. 12, 2024). The Court granted KC's petition, vacated, and remanded "for further consideration in light of *Loper Bright Enterprises v. Raimondo*," 603 U.S. 369 (2024). *KC Transport, Inc. v. Su*, 144 S. Ct. 2708 (2024).

2. On remand, the D.C. Circuit ordered the parties to file supplemental briefs and scheduled oral argument to help the court determine the best

[1] Judge Walker also questioned MSHA's ability to petition courts for review of the Commission's decisions, pointing to the "constitutional quandary" that results when federal courts resolve suits "between two Executive Branch agencies." App.122a n.1 (quoting *USPS v. Postal Regul. Comm'n*, 963 F.3d 137, 143 (D.C. Cir. 2020) (Rao, J., concurring)).

meaning of "coal or other mine."[2] The court then issued a fractured decision authored by Judge Wilkins (App.1a-44a), with Judge Pan concurring (App.45a-51a) and Judge Walker again dissenting (App.51a-94a).

The majority first held that MSHA's petition was justiciable.[3] As to the statutory interpretation question, the majority held that KC's Emmett facility

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[2] The court also ordered post-argument briefs on the question of whether intra-Executive Branch disputes, that is, internal policy disagreements among two or more Executive Branch agencies, are justiciable.

[3] The MSHA-versus-Commission suit was justiciable according to the majority because (1) the Commission is "merely a nominal respondent," App.16a, (2) constitutional history and precedent "rebut" "the separation of powers objection," that is, the objection that courts have no power to settle policy disagreements occurring within the Executive Branch, App.16a, and (3) the court has power to "suspend," under Federal Rule of Appellate Procedure 2(a), the requirement under Federal Rule of Appellate Procedure 15 that the Commission be named a respondent. App.30a.

Judge Pan concurred and wrote separately to opine that "a purely adjudicatory body," such as the Commission, "is not a proper party when this court reviews one of its decisions." App.45a. Judge Pan would extend the "logic" that "a district court may not appear before us to defend a judgment that it has entered," to "purely adjudicatory entities" like the Commission that are housed within the Executive Branch, 30 U.S.C. §§ 823(a), 823(b)(1). App.45a.

Judge Walker dissented. He would have held that the "Constitution limits who can resolve … an intra-Executive Branch dispute." App.53a. "[T]he President or his designee" "typically resolve[s]" such disputes; the President has no power to "delegate" that task "to an Article III court." App.53a & n.12 (quoting *SEC v. FLRA*, 568 F.3d 990, 997 (D.C. Cir. 2009) (Kavanaugh, J., concurring)). Because the MSHA-versus-Commission suit "pits the Executive Branch against itself," the suit "has no place in a federal court." App.53a.

"is a mine within the meaning of the Mine Act." App.6a.[4] To the majority, "the best reading of the statute based on its text, structure, context, and history defines a 'facility' as a 'mine' under [§ 802(h)(1)(C)] when it is *necessarily connected with* the use and operation of extracting, milling, or processing coal and other minerals." App.42a-43a (emphasis added).

Judge Walker again dissented as to the statutory question of what is the best read of "coal or other mine." Judge Walker would have denied MSHA's petition because KC's Emmett facility is not a "mine" as it is not located at an extraction site or a processing plant. App.83a. Judge Walker strongly criticized the majority's "'I know it when I see it' approach to what a 'mine' is." App.92a-93a. Under the majority's vague and extra-textual "necessarily connected" standard, App.43a, would, he asked provocatively, a "[p]air of boots bought by a guy for use in his new mining job starting six months from now at a mine 1,200 miles away" qualify? App.93a. "[W]ho knows? Not the miner. Nor the owner of the boot factory. Nor the inspector. Nor the Commission. Nor [MSHA]. Nor the court." App.93a. Such confusion not only "leaves 'regulated parties' in the 'frustrating' position of not being able to 'perfectly predict the scope of [the Administration's] jurisdiction,'" it also represents a "forfeit[ure of the courts'] duty under *Loper Bright* (and *Marbury*) to interpret the term 'mine' at all." App.93a (footnote omitted).

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[4] Because it so held, the majority did "not reach whether the trucks were also independently jurisdictional 'mines' at the time they were cited." App.12a.

KC then sought rehearing en banc, which was denied without opinion. App.214a.

REASONS FOR GRANTING THE PETITION

I. The Court Should Take This Case To Resolve The Circuit Split As To Whether A Facility That Is Not Located At An Extraction, Milling, Or Preparation Site Can Nevertheless Qualify As A "Coal Or Other Mine" Under 30 U.S.C. § 802(h)(1)

The uncertainty as to MSHA's scope of authority as defined in § 802(h)(1) is a question of critical national importance. The majority's interpretation would place every tire repair shop, fueling station, and every upstream and downstream business that is "necessarily connected with" mines, App.43a, potentially within MSHA authority and thus at risk for civil, and even criminal, Mine Act liability. *See* 30 U.S.C. § 820; *see also* Brian Hendrix, *Haul Trucks and Hammers Aren't "Mines,"* Coal Age (June 24, 2022), https://perma.cc/QLK7-MN47. The panel majority below supplied an unsustainable, impractical, and unworkable construction of the Mine Act; that ruling merits this Court's review.

A. The D.C. Circuit's "necessarily connected" rule for determining whether a facility qualifies as a "coal or other mine" under the Mine Act conflicts with the decisions of the Sixth, Seventh, and other courts of appeals

The majority below held that a facility that "is necessarily connected with the use and operation of extracting, milling, or processing coal and other

minerals," is a "'mine' under" the Mine Act. App.42a-43a. In contrast, the Sixth Circuit has held that a repair shop that was "neither adjacent to nor part of a working mine" is plainly not a mine under the Act. *Maxxim*, 848 F.3d at 739. Likewise, the Seventh Circuit has held that an "electrical repair shop" that was not located at an actual coal mine "was not a facility used in the work of preparing the coal," despite the shop being "essential to an efficient mining operation." *Ziegler*, 853 F.2d at 536-37.

Even when upholding MSHA jurisdiction, decisions from other courts of appeals have read the agency's authority narrowly, contrary to the panel majority below. For example, the Third Circuit's *Marshall v. Stoudt's Ferry Preparation Co.*, decided close in time to the Act's enactment in 1977, held that a "preparation plant, which separates a low-grade fuel from sand and gravel dredged from a riverbed," is a "mine" because the plant engages in "the work of preparing coal or other minerals." 602 F.2d 589, 590-91 (3d Cir. 1979) (quoting 30 U.S.C. § 802(h)(1)(C)). *Marshall* represents straightforward statutory construction and is consistent with the Act's "locational focus," *Maxxim*, 848 F.3d at 742. *Accord RNS Servs., Inc. v. Sec'y of Labor*, 115 F.3d 182, 192 (3d Cir. 1997) (Alito, J., dissenting) (limiting the "work of preparing the coal" to "activities … usually done by a coal mine operator, as that term is commonly understood"); *Cyprus Indus. Minerals Co. v. Fed. Mine Safety & Health Rev. Comm'n*, 664 F.2d 1116, 1118 (9th Cir. 1981) (discussing *Marshall* and holding that the work of digging "a tunnel into a hill to assess the value of the talc deposits" is "ordinarily … mining" activity).

Some decisions have even gone further than *Maxxim* and *Ziegler* to hold that location is a

necessary, but not always sufficient, condition to "mine" status. That is because § 802(h)(1) (emphasis added) focuses on "an area of land from which minerals are extracted, … *and* … facilities, equipment, … used in, or to be used in, … the work of *extracting* such minerals … , the *milling* of such minerals, or the work of *preparing* coal or other minerals." For example, in *Jeroski v. Federal Mine Safety & Health Review Commission*, the Seventh Circuit said that MSHA lacked authority to regulate janitors working at a cement plant because "janitors [at the cement plant] are not engaged in mining operations." 697 F.3d 651, 652-53 (7th Cir. 2012). Similarly, in *Herman v. Associated Electric Cooperative, Inc.*, the Eighth Circuit held that an electric utility "that receive[d] processed coal from a mine [for] further processing the coal for combustion"—and thus might at first blush qualify as a regulated "facility"—nevertheless falls outside of MSHA's authority. 172 F.3d 1078, 1083 (8th Cir. 1999). Otherwise, "every company whose business brings it into contact with minerals" would "be classified as a mine." *Id.* at 1082. Likewise, in the Fourth Circuit's *Old Dominion Power Co. v. Donovan*, although a power company employee "was electrocuted" at an electric substation "located on the property adjacent to a mine-access road," the court held that the electrical substation where the fatality occurred was not a mine. 772 F.2d 92, 93, 96 (4th Cir. 1985). "MSHA regulations do not apply, and were not intended to apply, to electric utilities … whose sole relationship to the mine is the sale of electricity." *Id.* at 99. The court reached that conclusion despite the fact that the activities in question—to "install equipment to measure voltage and amperage for its meter, maintain the meter, and read it approximately once

per month for purposes of billing"—all concerned the essential provision of electricity to a coal mine, and all occurred on areas otherwise qualifying as "mine[s]." *See id*. at 93.

The majority below expressly "disagree[d]" with *Maxxim*, and impliedly with the other precedents discussed above which *Maxxim* follows. *See* App.36a. This square conflict deserves resolution by this Court.

B. The decision below is wrong

Although the Mine Act's definition of "coal or other mine" is broad, no plausible construction of that definition can justify the D.C. Circuit's "necessarily connected" rule. The panel majority below ignored all precedent it found inconvenient to adopt MSHA's reading that a facility is a "mine" if "the place … is 'used in, or to be used in, or resulting from' mining activities." App.33a. That "functional" analysis—which distilled by the panel majority became the "necessarily connected" standard—supposedly follows from the "ordinary meaning" and "context" of the use-in-mining language of the statute, according to the majority. App.34a-35a. The majority went so far as to entertain that any land, property, facilities, or equipment "used in, or to be used in, or resulting from, the work of extracting such minerals" could be a mine. App.37a (emphasis altered) (quoting 30 U.S.C. § 802(h)(1)(C)). As Judge Walker astutely observed, the majority's interpretation could reach mining "contractors anywhere they go—including at their homes," App.89a—an "absurd resul[t] … not required by the Act's text." App.126a.

The core error of the majority was to allow the statutory definition of "coal or other mine" to completely supplant the commonsense understanding of

what qualifies as a "mine." *Cf. Solid Waste Agency of N. Cook Cnty. v. U.S. Army Corps of Eng'rs*, 531 U.S. 159, 172 (2001) (holding that a defined term, "navigable waters," must still have some connection to navigability in the ordinary sense of that word); *Weyerhaeuser v. U.S. Fish & Wildlife Serv.*, 586 U.S. 9, 19-21 (2018) (holding that a defined term—"critical habitat"—must still be a "habitat" in the ordinary sense of that word). Construing statutory language "is not merely an exercise in ascertaining the outer limits of a word's definitional possibilities"; rather, it identifies the "one meaning [that] produces a substantive effect that is compatible with the rest of the law." *Sackett v. EPA*, 598 U.S. 651, 676 (2023) (simplified). That task requires a court "to consider the ordinary meaning of a defined term, particularly when there is dissonance between that ordinary meaning and the reach of the definition." *Id.* at 672 (quoting *Bond v. United States*, 572 U.S. 844, 861 (2014)); *Bond*, 572 U.S. at 862 (holding that the ordinary meaning of the defined term "chemical weapon" excludes common household items such as "detergent," "stain remover," or "vinegar"); *see also Yates v. United States*, 574 U.S. 528, 544 (2015) (holding that a fish is not a "tangible object" within the meaning of the Sarbanes-Oxley Act).

Accordingly, even though it is expressly defined in § 802(h)(1), the phrase "coal or other mine" does not entirely lose its ordinary meaning. Congress supplied a workable definition to everyday miners and MSHA inspectors: If extraction, milling, or preparation is taking place at a certain location, that location is a mine; otherwise, not. Truck repair is neither "extracting," nor "milling," nor "preparation," 30 U.S.C. § 802(h)(1), so KC's Emmett facility is not a "mine."

Nor is truck repair an activity or function that can be performed only at mines, processing plants, or appurtenant roads. The panel majority below was therefore wrong to jettison the ordinary meaning of "coal or other mine" to conclude that the work of repairing trucks makes a "mine."

Not surprisingly, the panel majority's overbroad construction renders unworkable other provisions of the Act. The Mine Act "is 'tailored to the dangers that arise from handling coal' and other minerals, not the generic dangers of making [or repairing] mining equipment." *Maxxim*, 848 F.3d at 743. To that end, the Mine Act directs MSHA to promulgate health-and-safety measures "for the protection of life and prevention of injuries *in* coal or other mines." 30 U.S.C. § 811(a) (emphasis added); *see also id.* § 801 (repeating variations of the formulation "*in* the coal or other mines") (emphasis added). That phrasing shows that "coal or other mine" denotes a physical location that humans can access. One cannot get inside most tools or equipment. *See* App.126a (Walker, J., dissenting) ("[The Act's requirements for a 'mine'] would make no sense if a mine's location was unfixed.").

A narrow reading of MSHA jurisdiction also harmonizes the Mine Act with the OSH Act. Congress created MSHA because it thought that workplace hazards *unique* to mining required a specialized response. *See* H.R. Rep. No. 95-312, at 1 (1977) ("Mining is … of a nature that is so unique, so complex, and so hazardous as to not fit neatly under the Occupational Safety and Health Act."). The "point of [OSHA] is to regulate … safety and health matters" that are not unique to mining. *Maxxim*, 848 F.3d at 742-43; *Otis Elevator Co. v. Sec'y of Labor*, 921 F.2d 1285, 1287 (D.C. Cir. 1990) (Thomas, J.) (same). The

harm presented by unblocked truck repair is not materially different from unblocked bus repair; both are "generic dangers" that have nothing to do with "'the dangers that arise from handling coal' and other minerals." *Maxxim*, 848 F.3d at 743 (quoting *Power Fuels, LLC v. Fed. Mine Safety & Health Rev. Comm'n*, 777 F.3d 214, 217 (4th Cir. 2015)). *See* App.93a-94a (Walker, J., dissenting) ("And to the extent a facility like KC's shop falls outside the Mine Safety and Health Administration's jurisdiction, other regulators like the Occupational Safety and Health Administration may step in.").

The Court should take this case because the majority's overbroad reading of the Mine Act is egregiously wrong.

II. This Case Is An Ideal Vehicle To Review The Meaning Of "Coal Or Other Mine" Under The Mine Act

There are no vehicle problems. There is no dispute that KC has standing to seek review of the D.C. Circuit's affirmance of MSHA's penalty citations. Moreover, there is no dispute that MSHA's broad interpretation of "coal or other mine" has remained in place—and will continue to be implemented—across presidential administrations of different political stripes.

Finally, there is little reason for the Court to defer review to allow for further percolation. After KC prevailed before the Commission, it was MSHA which petitioned the D.C. Circuit for review under 30 U.S.C. § 816(b). The D.C. Circuit has no mines within its jurisdiction, and MSHA could have selected the Fourth Circuit because Emmett, West Virginia, is geographically within the Fourth Circuit. But the

Fourth Circuit had precedent (*Old Dominion*, discussed *supra*) damaging to MSHA's desire to seek expanded jurisdiction, and the D.C. Circuit was perceived as more receptive to giving deference to MSHA's expansive reading of "coal or other mine." It is therefore to be expected that, in future cases, MSHA will seek review in the favorable D.C. Circuit, rather than risk losing in other circuits that have adopted, or may adopt, a more limited interpretation of "coal or other mine."[5]

The court below vastly expanded MSHA's jurisdiction. That decision leaves everyone worse off. *See* App.93a (Walker, J., dissenting) (criticizing the majority's decision to defer deciding which "things … possess sufficient mine-ness on a case-by-case basis"). The issue is ready now and cleanly presented. The Court should take the case to resolve the square conflict in the lower courts.

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[5] Below, KC contested the federal judiciary's power to hear MSHA's petition on the ground that the petition presented a non-justiciable intra-Executive Branch dispute, rather than a justiciable case or controversy. *Cf.* App.51a-83a (Walker, J., dissenting) (recommending dismissing MSHA's petition as nonjusticiable as it presents a nonjusticiable intra-Executive Branch dispute). MSHA disagreed, and the panel majority sided with MSHA, concluding that not only is there no impermissible intra-Executive Branch dispute, but also that, even if such a dispute were present here, it would not implicate federal courts' subject matter jurisdiction. App.12a-32a. For purposes of this petition, KC does not contest that portion of the panel majority's ruling. However, should the Court be of the view that the intra-Executive Branch issue merits review, it is KC's position that the issue pertains to justiciability and thus could be raised at the Court's own initiative.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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